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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
In the Court of Common Pleas for the Sixteenth Judicial Circuit

The Honorable William A. McKinnon, Circuit Court Judge

Appellate Case No. 2022-001510

Francine Steineman.....Respondent,

v.

Meridian Security Insurance Company Appellant.

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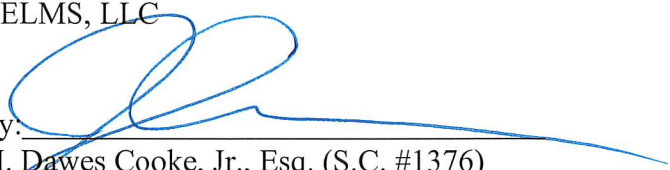
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May 8, 2023

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STATE OF SOUTH CAROLINA

COUNTY OF YORK

Francine Steineman,

Plaintiff,

v.

Meridian Security Insurance Company,

Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2020-CP-46-02221

ORDER

INTRODUCTION

This matter came before the Court on February 1, 2022 for a hearing on the parties' Motions for Judgment on the Pleadings. Plaintiff's attorney Bert G. Utsey, III argued in favor of Plaintiff's motion and against Defendant's motion. Defendant's attorney M. Dawes Cooke, Jr. argued in favor of Defendant's motion and against Plaintiff's motion. At the conclusion of the hearing, the Court took the matter under advisement.

After careful consideration of the issues, the parties' arguments, and the applicable law, the Court now grants Plaintiff's Motion for Judgment on the Pleadings and denies Defendant's Motion for Judgment on the Pleadings for the reasons discussed below.

BACKGROUND¹

On November 1, 2017, Defendant issued an automobile insurance policy, policy number ACS 0048016 ("the Policy"), to Plaintiff. Among other coverages, the Policy provided \$250,000 per person in bodily injury liability ("BI") coverage, \$250,000 per person in uninsured motorists ("UM") coverage, and \$250,000 per person in underinsured motorists ("UIM) coverage. The Policy insured three vehicles.

¹ Via their cross-Motions for Judgment on the Pleadings, the parties do not dispute the facts.

On January 22, 2018, Plaintiff was a passenger in one of the vehicles insured under the Policy. Her husband, Eric Steineman, was driving. The Steineman vehicle was involved in a collision with another vehicle (“the Collision”). The other vehicle was driven by Sarah Smith, an uninsured driver.²

Plaintiff sustained bodily injuries as a result of the Collision. Plaintiff alleges Eric Steineman and Sarah Smith were negligent, caused the Collision, and are therefore liable for her damages.

Accordingly, Plaintiff made demand on Defendant for payment of the limits of the Policy’s \$250,000.00 in BI coverage based on Eric Steineman’s alleged negligence, \$750,000 in UIM coverage (\$250,000 UIM limits stacked for the three insured vehicles) based on Eric Steineman’s alleged negligence, and \$750,000 in UM coverage (\$250,000 UM limits stacked for the three insured vehicles) based on Sarah Smith’s alleged negligence.

Defendant tendered the Policy’s \$250,000 BI limits to Plaintiff but denied her demands for UM and UIM coverages. The denial was based on Defendant’s argument that Plaintiff cannot collect UM or UIM coverages under the Policy because she has already received BI coverage under the Policy. Defendant cited the “duplicate payments” provisions of the Policy in support of its position.

Specifically, the “duplicate payments” provisions, which are included under the BI, UM, and UIM coverage sections of the Policy, are worded similarly and state:

No one will be entitled to receive duplicate payments for the same elements of loss under this [BI] coverage and: 1. [UM coverage] of this policy; or 2. Any Underinsured Motorists Coverage provided by this policy.

...

No one will be entitled to receive duplicate payments for the same elements of loss under this [UM] coverage and: 1. [BI coverage] of this policy; 2. Any Underinsured Motorists Coverage provided by this policy.... We will not make a duplicate payment under this [UM] coverage

² Although the names of the two drivers are not specified in Plaintiff’s Complaint, the Court takes judicial notice from filings in a related tort action that Plaintiff’s husband is named Eric Steineman and the uninsured driver is named Sarah Smith. The parties do not dispute that these are the names of the drivers involved in the subject collision and in fact used these names at the motion hearing. Therefore, the Court refers to the drivers by name in this Order.

for any element of loss for which payment has been made by or on behalf of persons or organizations who may be legally responsible.

...

No one will be entitled to receive duplicate payments for the same elements of loss under this [UIM] coverage and: [BI coverage or UM coverage] of this policy.... We will not make a duplicate payment under this [UIM] coverage for any element of loss for which payment has been made by or on behalf of persons or organizations who may be legally responsible.

The Policy does not define the terms “duplicate payments” and “elements of loss.”

Plaintiff filed this action seeking a declaratory judgment as to the parties’ rights with respect to UM and UIM coverages under the Policy. Defendant removed this action to federal court but the federal court remanded it to this Court for resolution. Each party thereafter filed a Motion for Judgment on the Pleadings.

STANDARDS FOR JUDGMENT ON THE PLEADINGS

A judgment on the pleadings is proper when the pleadings raise no issue of fact that, if resolved in favor of the non-moving party, would entitle it to judgment.

Here, the parties agree there are no determinative factual issues. Rather, the dispute in this action centers on the construction and application of the Policy, including the legal validity of the “duplicate payments” provisions at issue. This dispute is therefore a question of law and is properly before the Court on the cross-motions.

ANALYSIS

1. Questions presented.

Defendant’s denial of UM and UIM coverages raises two questions: First, does the instant contract deny such UIM and UM payments pursuant to the Policy’s “duplicate payments” provisions, and second, if so, would such provisions be valid under SC insurance law?

The holding of this Court is UIM and UM payments are not barred by the “duplicate” language, and as an additional ground as to UM only, any such provision would be contrary to public policy in South Carolina.

2. The policy language does not bar coverage in this situation

Defendant’s denial of UM and UIM coverage fails is because the Policy’s “duplicate payments” provisions do not achieve the result Defendant seeks to achieve.

As a threshold matter, “duplicate payments” is different than “payments.” “Duplicate” is defined in Black’s Law Dictionary as to double, to repeat, or to copy exactly. South Carolina cases in other contexts have applied the term consistent with that definition. *See, e.g., also Williamson v. U.S. Fire Ins. Co.*, 314 S.C. 215, 442 S.E.2d 587 (1994) (The court enforced a policy provision offsetting UIM coverage by workers compensation benefits received because the provision was authorized by statute. The court noted the policy of avoiding duplication prohibited *double recovery* and authorized the offset.); *Harvey v Art Metal, Inc.*, 247 S.C. 443, 147 S.E.2d 697 (1966) (In a workers compensation case, the court discussed the effect of a claimant’s receipt of unemployment compensation while out of work due to an injury. It referred to cases that “have allowed some form of credit or setoff so as to avoid duplicate payments for the same lost wages.” This clearly means the court was focused on the amount paid, not the fact of payment.).

This distinction is also consistent with South Carolina law on offsets, which permits a tortfeasor to get credit for payments a claimant receives from another tortfeasor for the same injury – which prohibits a double recovery by the claimant – but does not totally bar the claim against the non-paying tortfeasor.

To achieve the result for which Defendant argues, the Policy provisions did not need to use the term “duplicate” but could only have said “payments.” The fact that Defendant included the term

“duplicate” in the provisions demonstrates the language means a claimant cannot recover twice for the same amount, not that a claimant cannot recover under different coverages until fully compensated for her damages (or until coverage is exhausted). Otherwise, Defendant could achieve an offset equal to potentially millions by paying only a nominal amount of BI coverage.

While there are no South Carolina appellate decisions construing similar “duplicate payments” provisions, holdings from other jurisdictions have addressed this issue and have rejected arguments like the one Defendant makes here.

In *Argonaut Great Cent. Ins. Co. v. Casey*, 701 F.3d 829 (8th Cir. 2012), the claimants sought to recover UIM coverage and the insurer denied the claims based on a duplicate payments provision. The court there held that the provision only prohibited a double recovery by providing for an offset but did not affect the claimants’ ability to aggregate recoveries across different types of coverage. It explained:

[T]he reference to “duplicate payments” mean[s] “being paid twice for the same damages.” That conclusion is consistent with the plain meaning of the word “duplicate.” See New Oxford Am. Dictionary 539 (3d ed. 2010). Thus, both Policy provisions only prohibit *double* payments, from any coverage source, for the same claimant injuries. Here, no claimant seeks to recover more than his or her damages incurred in the accident.

Id. at 834 (emphasis in original).

Similarly, in *Lock v. American Family Ins. Co.*, 12 Wash. App. 2d 905, 460 P.3d 683 (2020), another case involving a denial of UIM coverage based on a duplicate payments provision, the court also concluded the provision simply prohibits double payments for the same injury by effecting an offset but did not constitute a bar to recovery of UIM benefits. *Id.* at 929-30, 460 P.3d 683, 695-96.

Government Emps. Ins. Co. v. Sherlock, 140 A.D.3d 872, 32 N.Y.S.3d 635 (2016), is yet another UIM case that distinguishes between double recovery and excess recovery. Construing a “duplicate payments” provision labeled “condition 11” in the insurance policy at issue, the court there noted:

The key to a proper understanding of condition 11 is the recognition that “shall not duplicate” is not aimed at preventing an insured from seeking full compensation by combining partial recoveries from several tortfeasors, but at preventing double recoveries for their bodily injuries.

Id. at 875, 32 N.Y.S.3d at 637.

Finally, in *Fischer v. Midwest Security Ins. Co.*, 268 Wis. 2d 519, 673 N.W.2d 297 (2003), the court rejected the insurer’s argument that the policy’s duplicate payments provision (which was essentially identical to the provisions at issue in the present case) barred the claimants’ claim for UIM coverage.

Like the Plaintiff here, the claimants in *Fischer* were injured while passengers in a vehicle operated by an at-fault motorist. Their driver was uninsured, so the insurer paid its UM coverage to the claimants. Another driver was also negligent in causing the collision. That driver was insured and his insurer paid its BI limits. The claimants sought UIM coverage for their claim against the at-fault insured (underinsured) motorist.

The court rejected the insurer’s denial of UIM coverage, noting:

The Fischers contend that they seek payment for uncompensated damages. The parties stipulated that the Fischers’ damages exceeded the limit of the UM coverage. Thus, the Fischers did not receive payments for some of their losses. The parties agree that the policy does not define “duplicate payment” or “same elements of loss.” The Fischers contend that the plain meaning of “duplicate payment” is double or two-fold payment. ... [W]e conclude that subsec. C does not render payments under separate UM and UIM coverage duplicate payments for the same elements of loss. ... A plain reading of subsec. D leads one to expect that a “duplicate payment” would be one where both a tortfeasor and an insurer compensate the insured for the same element of loss. Subsection D guards against profiting beyond the damages actually incurred.

Id. at 531, 673 N.W.2d at 302.

Here, Plaintiff is not seeking to recover twice for the damages paid by the BI coverage but is simply attempting to obtain full compensation for her damages via additional payments under the UM and UIM coverages. Defendant (as well as the defendants in the tort action) will receive full credit and an offset for the amount of the BI payment, so there is no risk of a double recovery by Plaintiff.

At best, Defendant's argument that recovery of Plaintiff's damages under the UIM and UM provisions would be "duplicate" even though Plaintiff is only being compensated once for the loss suggests an ambiguity in the policy language. This reading is no more plausible than Plaintiff's reading. "Ambiguous or conflicting terms in an insurance policy must be construed liberally in favor of the insured and strictly against the insurer." *USAA Prop. & Cas. Ins. Co. v. Clegg*, 377 S.C. 643, 655 (2008).

Based on the foregoing, the Court concludes that the Policy's "duplicate payments" provisions would not preclude Plaintiff's UM and UIM claims, even if they were able to do so validly under South Carolina law. Rather, these provisions simply ensure that Defendant does not have to pay Plaintiff twice for the same damages.

3. With regard to UM coverage, but not UIM coverage, an additional basis for judgment for the Plaintiff is reading the contract as Defendant proposes is void as contrary to public policy.

Plaintiff argues that Meridian's position violates public policy because it would eliminate statutorily-mandated UM coverage and UM/UIM coverages that statutes required Meridian to offer. South Carolina law requires that all policies of automobile insurance include UM coverage of \$25,000/\$50,000. See S.C. Code § 38-77-150(A). The statute further requires that insurers offer optional UIM coverage and additional UM coverage (up to the limits of liability coverage). See S.C. Code § 38-77-160 (emphasis added).

UM coverage in this State is controlled by the UM statutes so that any inconsistent policy provisions are void. *Southern Farm Bureau Cas. Ins. Co. v. Fulton*, 244 S.C. 559, 564-65, 137 S.E.2d 769, 771 (1964). Specifically, as the South Carolina Supreme Court noted, almost 50 years ago:

The general rule is that *an insurer may not limit its liability under uninsured motorist coverage by setoffs or limitations* through "other insurance," excess insurance, or medical payment reduction clauses, and this is true even when the setoff for the reduction is claimed with respect to a separate, independent policy of insurance (workmen's compensation) *or other*

insured motorist coverage. And this is true because the insured is entitled to recover the same amount he would have recovered if the offending motorist had maintained liability insurance.

Ferguson v. State Farm Mut. Auto. Ins. Co., 261 S.C. 96, 101-02, 198 S.E.2d 522, 525 (1973), quoting *Stephens v. Allied Mut. Ins. Co.*, 182 Neb. 562, 156 N.W.2d 133 (1968) (emphasis added).

UM coverage in South Carolina is mandated by S.C. CODE ANN. § 38-77-150(A) (1976, as amended), which states that a policy providing UM coverage shall “pay the insured all sums which he is legally entitled to recover as damages from the owner or operator of an uninsured motor vehicle,” subject to the policy’s coverage limits. Here, if Plaintiff demonstrates she is legally entitled to recover damages from Sarah Smith, an admitted uninsured motorist, the Policy must by law provide UM coverage for the net amount Plaintiff is entitled to recover.³ Any contrary provision of the Policy would have the effect of defeating this statutorily required coverage and would instead allow Defendant to limit its liability under the Policy’s UM coverage based upon limitations for other insured motorist (BI) coverage, which is expressly prohibited by the rule set forth in *Ferguson*. The contractual provision in this case regarding “duplicate payments” is therefore void, at least as to UM payments under the interpretation of the provision advanced by Defendant.

On the other hand, with regard to UIM coverage, Plaintiff relies primarily on *Bratcher v. National Grange Mut. Ins. Co.*, 292 S.C. 330, 356 S.E.2d 151 (1987). Plaintiff’s argument is that this case prohibits any limitation on UIM coverage at all unless expressly provided by statute. However, viewing *Bratcher* in the context of the insurance statutes and the cases interpreting them, this Court must conclude that *Bratcher* (and Section 38-77-160) cannot be extended to preclude parties from

³ Any verdict Plaintiff may obtain in the tort action would, of course, be reduced by the \$250,000 in BI coverage Plaintiff already received. See *Smith v. Widener*, 397 S.C. 468, 472, 724 S.E.2d 188, 190 (Ct. App. 2012). However, while that payment would reduce the amount of the verdict, it would not reduce the amount of UM coverage.

agreeing to a nonduplication provision. First, the *Bratcher* court did not address nonduplication clauses and did not express any intention to do so.

Further, this issue has been addressed persuasively in *Sibert v. State Auto Mut. Ins. Co.*, No. CV 8:20-4000-HMH, 2021 WL 3514000 (D.S.C. Aug. 10, 2021). The *Sibert* court found that a similar non-duplication provision did not offend South Carolina UIM law. Primarily, the *Sibert* court relied on South Carolina cases subsequent to *Bratcher* which upheld limits on UIM coverage not mentioned in a statute. See *Nationwide Ins. Co. of Am. v. Knight*, 433 S.C. 371, 380 (2021) (“Knight also argues the policy provision violates section 38-77-160 of the South Carolina Code ... because it excludes statutorily required UIM coverage. We disagree on this point as well”) and *Burgess v. Nationwide Mut. Ins. Co.*, 373 S.C. 37, 42, (2007) (“We hold that public policy is not offended by an automobile insurance policy provision which limits the portability of basic ‘at-home’ UIM coverage when the insured has a vehicle involved in the accident”). This Court agrees with the *Sibert* that non-duplication provisions limiting UIM coverage are permissible.

CONCLUSION AND ORDER

For the reasons discussed above, the Court finds, as a matter of law, that Defendant cannot validly rely upon the Policy’s “duplicate payments” provisions to deny UM or UIM coverage to Plaintiff for her claims resulting from the collision as the policy language does not support this reading. Additionally, Defendant’s denial of UM coverage (but not UIM) is contrary to South Carolina public policy.

IT IS THEREFORE ORDERED that Plaintiff’s Motion for Judgment on the Pleadings is hereby granted; and

IT IS THEREFORE FURTHER ORDERED that Defendant's Motion for Judgment on the Pleadings is hereby denied; and

IT IS THEREFORE FURTHER ORDERED that Plaintiff is awarded a declaratory judgment in her favor that the Policy provides \$750,000 in UM coverage for Plaintiff's claims against Sarah Smith as a result of the Collision and \$750,000 in UIM coverage for Plaintiff's claims against Eric Steineman as a result of the Collision.



York Common Pleas

Case Caption: Francine Steineman VS Meridian Security Insurance Company

Case Number: 2020CP4602221

Type: Order/Other

So Ordered

/s William A. McKinnon, #2761, Circuit Judge

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK	)	
	)	
Francine Steineman,	)	Case No. 2020–CP–46–02221
	)	
Plaintiff,	)	<u>ORDER</u>
	)	
vs.	)	DENYING DEFENDANTS’ MOTION
	)	TO RECONSIDER, ALTER, OR
Meridian Security Insurance Company	)	AMEND AND GRANTING IN PART
	)	PLAINTIFF’S MOTION TO ALTER
Defendant.	)	OR AMEND.
_____	)	

This matter is before this Court on Defendant’s motion to reconsider, alter, or amend and Plaintiff’s motion to alter or amend.

Procedural History

On June 2, 2022, this Court issued an order holding that Meridian Security Insurance Company (“Defendant”) could not rely on the “duplicate payments” provisions of the insurance policy it issued to Francine Steineman (“Plaintiff”) to deny uninsured motorist (“UM”) or underinsured motorist (“UIM”) coverage to Plaintiff resulting from the incident that was the subject of this lawsuit. This holding was based on the Court’s ruling that the policy language does not bear the interpretation Defendant preferred. It was also based on the Court’s ruling that any provision effectively drafted to deny UM (but not UIM) coverage is void because it is contrary to South Carolina’s public policy.

Defendant filed a motion to reconsider, alter, or amend, arguing that persuasive caselaw interpreted similar duplicate payments provisions in its favor. Defendant also argued that the duplicate payment provisions, properly interpreted, were contrary to public policy only to the

extent that they applied to the basic limits of UM coverage—that is, that an effectively drafted provision forbidding a victim from recovering for damages under both liability coverage and UM for injuries arising from the same incident is fully consistent with public policy to the extent that the UM coverage provided by the policy exceeds the basic limits required by statute (\$25,000/\$50,000/\$25,000).¹ Plaintiff responded and filed a motion to alter or amend, asking this Court to hold that an effectively drafted bar to recovery under both liability and either or both UM and UIM would be contrary to South Carolina’s public policy regardless of the amounts of coverage at issue.

After a hearing, this Court took the matter under advisement. Defendant’s motion is hereby denied. However, after thorough consideration, this Court partially grants Plaintiff’s motion to alter or amend but for different reasons than those articulated in Plaintiff’s written motion.

Analysis

An automobile insurance policy that offers stated amounts of liability and either or both UM and UIM coverage but provides that any person who recovers liability coverage cannot also recover either or both UM or UIM coverage violates public policy. These “either/or” provisions are void² for two reasons. First, a policy that prevents victims from recovering UM up to the basic

¹ That is, an at-fault driver’s insurance policy containing an effectively drafted provision barring recovery more than one category of coverage for a single incident (referred to below as an “either/or” provision) could lawfully provide that a victim who recovers any liability coverage cannot recover more than the basic limits in UM coverage. For example, Driver A secures an automobile insurance policy with large liability limits (\$500,000/\$750,000/\$500,000) and somewhat large UM coverage (\$100,000/\$300,000/\$100,000). Victim B is a passenger in Driver A’s car when the negligence of Driver A and Driver C, who is operating another automobile, is injured and incurs \$1,000,000 in bodily injury damages. She could recover the liability bodily injury coverage maximum of \$500,000. An either/or provision would, under Defendant’s interpretation of South Carolina public policy, prevent her from also recovering more than \$25,000 in UM coverage.

² Automobile insurance policies in South Carolina must contain all provisions required by law; any provision contrary to our insurance statutes or public policy are void. See *Williams v. Gov’t Emps. Ins. Co.*, 409 S.C. 586, 598 (2014) (citations omitted); S.C. Code § 38-77-10(3); S.C. Code § 38-77-20. South Carolina by statute requires that all automobile insurance policies include liability coverage in the amounts of at least \$25,000 per

limits (\$25,000/\$50,000/\$25,000) merely because they also are entitled to and have claimed or recovered all or some liability coverage—or vice versa—violates the statutes that require automobile insurance policies to provide minimum amounts of both liability and UM coverage (\$25,000/\$50,000/\$25,000). Second, and more broadly, South Carolina insurance and contract law prohibits automobile insurance policies from agreeing to a stated amount of a category of coverage (liability, UM, or UIM) in one provision of the policy and then in a subsequent provision effectively reducing that stated amount by redefining the category of coverage more narrowly than the insurance statutes define that category.

Policies Must Provide at Least the Basic Limits of Liability and UM Coverage, Respectively

Liability and UM/UIM converge when a passenger is injured and both the insured driver and the uninsured or underinsured driver of the other vehicle are at fault. Because liability coverage is required by statute to cover “loss from the liability imposed by law for damages arising out of the ownership, maintenance, or use of” the driver’s car, S.C. Code §38-77-140(A), that liability coverage must necessarily cover the injured passenger in such a case to the extent of the lesser of the injuries attributable to the at-fault driver or the liability limits. Because UM is defined as coverage for “all sums which [the insured] is legally entitled to recover as damages from the owner or operator of an uninsured motor vehicle,” S.C. Code §38-77-150(A), the UM coverage must also

incident in bodily injury to a single person, at least \$50,000 per incident for bodily injury to two or more persons, and \$25,000 per incident for property damage (\$25,000/\$50,000/\$25,000). S.C. Code § 38-77-140. The policy must also include UM coverage in the same minimum amounts. S.C. Code § 38-77-150. In addition to the minimum required liability and UM coverage (“basic limits”), yet another statute requires automobile insurance companies to offer to the insured the option to buy UM coverage in the same amounts as the insured’s liability coverage, as well as a similar offer to buy underinsured motorist (“UIM”) coverage in the same amounts as the insured’s liability coverage. S.C. Code § 38-77-160.

necessarily cover the injured passenger in such a case to the extent of the lesser of the injuries attributable to the uninsured driver or the UM limits.

Therefore, a policy provision forbidding a victim from recovering UM when the victim has already recovered liability coverage—that is, that the insurance company is not required to pay under the UM provision if it must pay under the liability provision—would violate South Carolina insurance law at least to the extent of the basic limits of liability and UM (\$25,000/\$50,000/\$25,000) because those basic limits are the required minimum amount of coverage defined as liability coverage and the minimum amount of coverage defined as the separate and distinct category of UM coverage. The reverse is also true. An automobile insurance policy cannot provide that a victim who recovers UM coverage cannot recover any liability coverage or vice versa.

Policies Cannot Reduce the Amount of a Category of Coverage by Redefining the Category

However, the South Carolina Supreme Court's interpretation of S.C. Code § 38-77-142(A)-(C) goes further. Under § 142, “once the face amount of coverage is agreed upon, it may not be arbitrarily reduced or limited by conflicting policy provisions that effectively retract this stated coverage.” *Williams*, 409 S.C. at 604. That is, once the parties agree on a face amount of a category of coverage defined by statute, any provision that purports to exclude or limit that category of coverage by redefining the category of coverage or denying coverage in situations covered by the statutory definition of that category of coverage—such as an either/or provision—is unenforceable because it is an attempt to walk back the parties' agreement by reducing the face amount of coverage in that category. *See id.* at 603-04; *Nationwide Mutual Fire Insurance Company v. Walls*, 433 S.C. 206 (2021).

For instance, in *Williams*, an insurance company sold a policy for a face amount of \$100,000 in liability bodily injury (“BI”) coverage for a single person, but the policy contained an exclusion of coverage that reduced the amount of liability BI coverage to the basic limit (then \$15,000) when the victim was the insured’s family member. *Williams*, 409 at 592. The definition of liability coverage includes coverage for injuries to victims who are family members of the insured. *Id.* at 600 (citing S.C. Code §38-77-142(A) and (B)). The provision attempting to reduce the face amount of coverage to the basic limits when the victim was an insured’s family member was be an attempt to avoid the statute’s definition of liability coverage—and the parties’ agreement to sell and buy, respectively, the stated amount of liability coverage—and was therefore void. *Id.* at 603-04. Therefore, as the *Williams* Court reasoned, any provision that attempts to eliminate or reduce UM or UIM coverage merely because the victim was also entitled to liability coverage under the policy is an attempt to avoid the statute’s definition of UM and UIM, and is therefore void. It is also unenforceable because it is inconsistent with the parties’ agreement on the face amount of that category of coverage. *Id.*

Here, the relevant statutes define liability coverage to be coverage for injury to others caused by the insured driver’s fault, UM coverage to be coverage for injury to any insured victim caused by an uninsured motorist’s fault, and UIM coverage to be coverage for injury to any insured caused by an underinsured motorist’s fault to the extent that injury exceeds the underinsured motorist’s coverage. S.C. Code §§ 38-77-150 & 160. The insurance company offered liability, UM, and UIM coverage of \$250,000 each for BI to a single person. An insured driver was partially at fault and is covered by the liability BI. An uninsured motorist was also at fault and is covered by the UM and UIM BI coverages. Defendant’s attempt to prevent recovery under each category of coverage relied on a purported either/or provision, which if interpreted in the manner urged by

Defendant³ would eliminate or reduce the face amount of coverage agreed upon in the insurance policy. Like the family step-down provisions in *Williams* and the felony/flight step-down provisions in *Walls*, an effectively drafted “either/or” provision in this case would have the effect of reducing the amount of coverage the parties actually agreed to and would therefore violate S.C. Code § 38-77-142.

Conclusion

The public policy portion of this Court’s order dated June 2, 2022, is hereby WITHDRAWN. Defendant’s motion to alter or amend is DENIED because the Defendant’s preferred interpretation of the policy’s duplicate payments provisions is incorrect and further because South Carolina public policy invalidates provisions that are effectively drafted to yield the interpretation Defendant urges. Plaintiff’s motion to alter or amend is hereby PARTIALLY GRANTED for the reasons stated above.

THEREFORE, the court (1) DENIES Defendant’s motion to reconsider, alter, or amend; (2) PARTIALLY GRANTS Plaintiff’s motion to alter or amend, (3) WITHDRAWS the portion of its June 2, 2022, order dealing with public policy, and (4) HOLDS that South Carolina public policy renders void automobile insurance policy provisions that limit a victim who recovers one category of coverage (liability, UM, or UIM) from recovering another category, and also renders unenforceable an automobile insurance policy provision that offers a stated amount of a category of coverage (liability, UM, or UIM) in one provision of the policy and then in a subsequent

³ The prior order held that the “duplicate payments” provision should not be interpreted the way Defendant urges, and this order does not change, clarify, modify, or qualify that holding in any way.

provision effectively reducing that stated amount by redefining that category of coverage more narrowly than the relevant statutes do.

IT IS SO ORDERED.

_____, 2022
York, SC

Hon. William A. McKinnon
Presiding Judge



York Common Pleas

Case Caption: Francine Steineman VS Meridian Security Insurance Company

Case Number: 2020CP4602221

Type: Order/Other

So Ordered

/s William A. McKinnon, #2761, Circuit Judge

Electronically signed on 2022-09-27 15:28:47 page 8 of 8

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Francine Steineman,

Plaintiff,

v.

Meridian Security Insurance Company,

Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2020–CP–46–

SUMMONS

(As authorized by S.C. Code Ann. § 15–53–90, a
Jury Trial Demand)

(As authorized by Rule 57, SCRPC, a speedy
hearing is requested)

TO: THE DEFENDANT(S) ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to said complaint on the subscribed, Stewart Law Offices, LLC., 10 Calendar Court, Suite 100, Columbia, South Carolina 29206, within THIRTY (30) days after the service hereof, exclusive of the date of such service. If you fail to answer the complaint within the time aforesaid, then a default judgment will be rendered against you for the relief demanded in the complaint.

Respectfully Submitted,

Stewart Law Offices, LLC

s/Stephen G. Vicari, II
Stephen G. Vicari, II (S.C. Bar No. 102395)
10 Calendar Court, Suite 100
Post Office Box 6787 (29260)
Columbia, SC 29206
803–743–4200 (o)
803–743–4204 (f)
stephen@stewartlawoffices.net
Attorney for Plaintiff

Columbia, South Carolina
July 28, 2020

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Francine Steineman,

Plaintiff,

v.

Meridian Security Insurance Company,

Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2020–CP–46–

COMPLAINT DECLARATORY JUDGMENT
(As authorized by S.C. Code Ann. § 15–53–90, a
Jury Trial Demand)
(As authorized by Rule 57, SCRPC, a speedy
hearing is requested)

The Plaintiff would respectfully show this Honorable Court that:

JURISDICTION AND VENUE

1. Plaintiff is a citizen and resident of York County, South Carolina.
2. Defendant Meridian Security Insurance Company was at all times relevant to this Complaint a corporation organized under the laws of Ohio, licensed to do business in the State of South Carolina, and engaged in the business of providing insurance coverage for profit in York County, South Carolina.
3. This action is brought under the Uniform Declaratory Judgment Act, S.C. Code Ann. § 15-53-10 et seq. Plaintiff is therefore not seeking money damages here but a declaration from the Court as to the parties’ rights with respect to Meridian Security Insurance Company policy number ACS 0048016 (“Policy”) issued by Defendant Meridian to Plaintiff, with an effective date of coverage from November 1, 2017 to November 1, 2018. (Exhibit A.)
4. Jurisdiction and venue are proper over the Defendant.

FACTS

5. This declaratory action raises the question of whether, under the Policy, it is a “duplicate payment” to pay what the policy says must be paid? The answer should be no.

The Policy

6. On or about November 1, 2017, Defendant issued the Policy to Mrs. Steineman, providing liability, uninsured, and underinsured coverage, among other things, through November 1, 2018. (Exhibit A.)

7. The Policy covers three vehicles: a 2016 Dodge Challenger with a VIN number of 2C3CDZAG9GH240434, the 2001 Ford Explorer involved in the crash with a VIN number of 1FMCU70E01UC00890, and a 1998 Honda Civic with a VIN number of JHMEJ6677WS009994. (Exhibit A.)

8. Each of the three vehicles are covered in the amount of \$250,000.00 liability coverage, \$250,000 UM coverage, and \$250,000.00 UIM coverage. (Exhibit A.)

Liability

9. The Policy’s liability provision provides:

- A. We will pay damages for “bodily injury” or “property damage” for which any “insured” becomes legally responsible because of an auto accident. Damages include prejudgment interest awarded against the “insured”. We will settle or defend, as we consider appropriate, any claim or suit asking for these damages. In addition to our limit of liability, we will pay all defense costs we incur. Our duty to settle or defend ends when our limit of liability for this coverage has been exhausted by payment of judgments or settlements. We have no duty to defend any suit or settle any claim for “bodily injury” or “property damage” not covered under this policy.

Policy, Part A – Liability Coverage.

10. Relevant here, “Insured” is defined as “1. You or any ‘family member’ for the ownership, maintenance or use of any auto or ‘trailer’. 2. Any person using ‘your covered auto’.”

Policy, Part A – Liability Coverage, B.

UIM

11. The Policy's UIM provision provides further: "We will pay damages which an 'insured' is legally entitled to recover from the owner or operator of an 'underinsured motor vehicle' because of: 1. 'Bodily injury' sustained by an 'insured' and caused by an accident; and 2. 'Property damage' caused by an accident." Policy, Underinsured Motorists Coverage -South Carolina.

12. And "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 "insured" 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.
2. Designed mainly for use off public roads while not upon public roads.
3. While located for use as a residence or premises.

Policy, Underinsured Motorists Coverage -South Carolina.

UM

13. The policy's UM provision provides "We will pay damages which an 'insured' is legally entitled to recover from the owner or operator of an 'uninsured motor vehicle' because of: 1. 'Bodily injury' sustained by an 'insured' and caused by an accident; and 2. 'Property damage' caused by an accident." Policy, Uninsured Motorists Coverage – South Carolina, I. Part C.

14. Relevant here, "Uninsured motor vehicle' means a land motor vehicle or trailer of any type: 1. To which neither: a. A liability bond or policy; nor b. Cash or securities deposited with the State Treasurer; applies at the time of the accident." Policy, Uninsured Motorists Coverage – South Carolina, I. Part C.

Underlying Litigation

15. On January 22, 2018, Mrs. Steineman was a passenger in her 2001 Ford Explorer. Her husband was driving, traveling east on Highway 160 in Fort Mill, SC, in the inside lane, headed away from I 77.

16. Highway 160 is a five-lane road, two lanes traveling in the direction the Steinemans were traveling and three lanes traveling in the opposite direction.

17. Around 5:40 p.m., Mr. Steineman attempted to make a left turn, across the three lanes of traffic, onto Textile Way.

18. The two inside lanes of the three lanes were at a complete stop. So Mr. Steineman pulled out to make the left turn.

19. As Mr. Steineman attempted the left turn, he failed to check the outside lane before entering it, and the driver in the outside lane was traveling too fast for conditions and collided into Mrs. Steineman's car.

20. As a result of the collision, Mrs. Steineman sustained serious and permanent injuries.

21. And her damages exceed \$1,000,000.00.

22. In February 2020, Mrs. Steineman sent a demand to Defendant. She demanded \$250,000.00 in liability coverage, alleging she sustained bodily injury as a result of Mr. Steineman's negligence, arising out of an auto accident. Mr. Steineman is an insured under the policy and is legally responsible to pay for Mrs. Steineman's damages. And since the limits of Mr. Steineman's liability coverage is not enough to pay the full amount Mrs. Steineman is legally entitled to recover as damages, Mr. Steineman is underinsured, so Mrs. Steineman demanded the \$250,000.00 in UIM on her car involved in the wreck and the \$250,000.00 in UIM on each of her two other covered vehicles, stacked. The total demand was \$1,000,000.00.

23. In response, Defendant offered the liability policy-limit of \$250,000.00 but denied Mrs. Steineman's UIM demand, citing a "duplicate payments" provision in the Policy. (Exhibit B.)

24. In March 2020, Mrs. Steineman sent a UM demand to Defendant. She alleges the driver who collided into her was negligent in causing her damages, and because the driver is uninsured, Mrs. Steineman is entitled to her UM coverage. To be sure, the driver neither had a liability policy not cash or securities deposited with the State Treasurer.

25. Mrs. Steineman demanded \$750,000.00 in UM (UM on her car involved in the wreck and UM stacked on her two other covered vehicles).

26. Again, Defendant offered the liability policy-limit of \$250,000.00 but denied Mrs. Steineman's UM demand, citing a "duplicate payments" provision in the Policy.

27. Mrs. Steineman then filed a lawsuit alleging negligence against Mr. Steineman and the uninsured driver who collided into Mrs. Steineman's car. The lawsuit is filed in the York County Court of Common Pleas as Case Number 2020-CP-46-02219.

"Duplicate Payment" Provision

28. Relevant here, the "duplicate payments" provision appears in three places in the Policy: in Part A—Liability Coverage, Part C—Uninsured Coverage, and Underinsured Motorists Coverage – South Carolina.

29. Liability Coverage provides:

- "B. No one will be entitled to receive duplicate payments for the same elements of loss under this coverage and:
1. Part C of this policy; or
 2. Any Underinsured Motorists Coverage provided by this policy."

Policy, Amendment of Policy Provisions – South Carolina, II. Part A – Liability Coverage.

30. Uninsured Coverage provides:

- "E. No one will be entitled to receive duplicate payments for the same elements of loss under this coverage and:
1. Part A of this policy;

2. Any Underinsured motorist Coverage provided by this policy; or
3. Part D of this policy or any similar coverage under any other policy.”

Policy, Endorsement, Uninsured Motorist Coverage – South Carolina, Limit of Liability.

31. Underinsured Motorists Coverage provides:

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

Policy, Underinsured Motorists Coverage – South Carolina, Limit of Liability.

32. “Duplicate payment” is not defined in the policy.

33. According to Defendant, a “duplicate payment” will occur if it pays from more than one coverage in the Policy (e.g., liability and UIM). (See Exhibit B) (e-mail from Defendant stating, “pursuant to the non-duplication of benefits provisions in the policy Ms. Steineman may not recover both the liability limits and the Underinsured limits.”).

34. But that is a strained meaning of “duplicate payment.” And the policy doesn’t direct that outcome. Indeed, the Policy specifically allows for a recovery of both the liability limits and the underinsured limits. To pay it cannot be a “duplicate payment.”

35. This declaratory action was filed to determine the rights and obligations of the parties with respect to the “duplicate payments” provision in the Policy.

36. Specifically, this declaratory action raises the question of whether, under the Policy, it is a “duplicate payment” to pay what the policy says must be paid?

FOR A FIRST DECLARATION

37. Plaintiff restates and realleges each and every allegation as if repeated herein verbatim.

38. The Policy entitles Mrs. Steineman to certain benefits until her damages are satisfied.

39. Defendant maintains the Policy does not entitle Mrs. Steineman to certain benefits until her damages are satisfied because to satisfy her damages would be a “duplicate payment.”

40. A real, concrete, and substantial dispute between the parties exists as to whether this would be a “duplicate payment.”

41. Mrs. Steineman seeks a declaration stating what “duplicate payment” means.

42. Mrs. Steineman seeks a declaration stating the “duplicate payment” provision as interpreted by Defendant violates well-settled South Carolina law.

43. Mrs. Steineman also seeks a declaration stating Defendant unreasonably relied on the “duplicate payment” provision to deny Mrs. Steineman’s claim.

Wherefore, Mrs. Steineman prays for an Order from this Court declaring what the “duplicate payment” provision means; as interpreted by Defendant the “duplicate payment” provision violates well-settled South Carolina law; Defendant unreasonably relied on the “duplicate payment” provision to deny Mrs. Steineman’s claim; and Defendants are obligated to provide coverage under the Policy. Such a declaration would allow the Parties legal certainty moving forward with this litigation.

Mrs. Steineman further prays this Court award such other and further relief as it deems just and proper under the circumstances, including attorneys’ fees and expenses of litigation.

To the extent a determination of an issue of fact is necessary in resolving this Declaratory Judgment, Plaintiff demands such issue be tried and determined in the same manner as issues of fact are tried and determined in other civil actions in this Court.

[Signature Block on Following Page]

Respectfully Submitted,

Stewart Law Offices, LLC

s/Stephen G. Vicari, II
Stephen G. Vicari, II (S.C. Bar No. 102395)
10 Calendar Court, Suite 100
Post Office Box 6787 (29260)
Columbia, SC 29206
803-743-4200 (o)
803-743-4204 (f)
stephen@stewartlawoffices.net
Attorney for Plaintiff

Columbia, South Carolina
July 28, 2020

ELECTRONICALLY FILED - 2020 Jul 28 1:58 PM - YORK - COMMON PLEAS - CASE#2020CP4602221

**Request for a Certified Copy of a Policy
Affidavit**

State of Ohio

County of Franklin

Date 02/17/2020

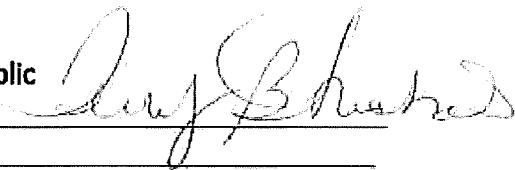
The undersigned, Brandon Macy having been
duly cautioned and sworn, states that he/she has the title of
Underwriter at Meridian
Security Insurance Company. Affiant further states that the attached materials
fairly and accurately represent the insurance policy ASC 0048016 01 with effective
dates of 11/01/2017 to 11/01/2018 issued by Meridian Security Insurance
Company to Francine Steineman as it would have appeared on 01/22/2018. Further
affiant saith naught.

Affiant Signature 

Sworn to and subscribed in my presence this the 17 day of February 2020.



TERRY B. NICHOLS
Notary Public, State of Ohio
My Commission Expires 09-27-2021

Notary Public
Signature 

Expiration Date of Notary's
Commission 27 September 2021

Ex. A

INDEPENDENT AGENT

FRANCINE STEINEMAN
 747 SUNSET POINT DR
 ROCK HILL, SC

29732

BRIGHTWAY INSURANCE INC
 PO BOX 5700
 JACKSONVILLE, FL 32247
 PHONE:(704) 218-6000

Attached is your policy and/or any policy changes. Please contact your agent if you have any questions.

Information about your coverages and any applicable special discounts is listed on the attached Declaration page(s). Any new contracts and policy conditions also are attached.

The State Auto Insurance Companies and your independent agent strive to provide overwhelming service to you. Please let us know how we can best serve your needs.

*** SEE OTHER SIDE FOR CLAIMS CONTACT INFORMATION ***
 *** SEE OTHER SIDE FOR IMPORTANT INFORMATION ABOUT YOUR POLICY ***

POLICY INFORMATION

----- PREMIUM TOTALS -----

ASC0048016 0140
 FRANCINE STEINEMAN
 EFT MONTHLY

0000950900480160010000148000000000

TOTAL PREMIUM..... \$2,870.24

THANK YOU FOR LETTING US SERVE
 YOUR INSURANCE NEEDS

ENCLOSED DOCUMENTS ARE POLICY
 INFORMATION ONLY

YOUR BILL WILL BE SENT SEPARATELY,
 IF NEEDED

R_030

SABAR

MOBDEC ASC 0048016 01 20171002 WFS STEI APV * R 32BRIG0008946 029732
(MOBILGLO)

TO FILE A CLAIM:

- 1) CALL BRIGHTWAY INSURANCE INC AT (704)218-6000, OR;
- 2) CALL STATE AUTO AT 1-800-766-1853, OR;
- 3) CONTACT STATE AUTO AT WWW.STATEAUTO.COM

R_031



MOBDEC

 ASC 0048016 01 20171002 WFS STEI APV * R 32BRIG0008946 029732
 POLICY NUMBER (IDTOPM)

ASC 0048016 01


 SOUTH CAROLINA State Auto Insurance Group
 INSURANCE IDENTIFICATION CARD

 NAIC NUMBER
 23353

(STATE)

 COMPANY
 MERIDIAN SECURITY INS CO

POLICY NUMBER

ASC 0048016

EFFECTIVE DATE

11-01-17

EXPIRATION DATE

11-01-18

YEAR

16

MAKE/MODEL

DODGE CHALLENGER

VEHICLE IDENTIFICATION NUMBER

2C3CDZAG9GH240434

AGENCY / COMPANY ISSUING CARD

 BRIGHTWAY INSURANCE INC
 PO BOX 5700
 JACKSONVILLE, FL
 704/218-6000

32247

INSURED

 FRANCINE STEINEMAN
 747 SUNSET POINT DR
 ROCK HILL, SC

29732

SEE IMPORTANT NOTICE ON REVERSE SIDE

 COVERAGE MEETS THE SC MINIMUM
 FINANCIAL RESPONSIBILITY REQUIREMENT

 SOUTH CAROLINA State Auto Insurance Group
 INSURANCE IDENTIFICATION CARD

 NAIC NUMBER
 23353

(STATE)

 COMPANY
 MERIDIAN SECURITY INS CO

POLICY NUMBER

ASC 0048016

EFFECTIVE DATE

11-01-17

EXPIRATION DATE

11-01-18

YEAR

01

MAKE/MODEL

FORD EXPLORER SP

VEHICLE IDENTIFICATION NUMBER

1FMCU70E01UC00890

AGENCY / COMPANY ISSUING CARD

 BRIGHTWAY INSURANCE INC
 PO BOX 5700
 JACKSONVILLE, FL
 704/218-6000

32247

INSURED

 FRANCINE STEINEMAN
 747 SUNSET POINT DR
 ROCK HILL, SC

29732

SEE IMPORTANT NOTICE ON REVERSE SIDE

 COVERAGE MEETS THE SC MINIMUM
 FINANCIAL RESPONSIBILITY REQUIREMENT

 SOUTH CAROLINA State Auto Insurance Group
 INSURANCE IDENTIFICATION CARD

 NAIC NUMBER
 23353

(STATE)

 COMPANY
 MERIDIAN SECURITY INS CO

POLICY NUMBER

ASC 0048016

EFFECTIVE DATE

11-01-17

EXPIRATION DATE

11-01-18

YEAR

98

MAKE/MODEL

HONDA CIVIC LX

VEHICLE IDENTIFICATION NUMBER

JHMEJ6677WS009994

AGENCY / COMPANY ISSUING CARD

 BRIGHTWAY INSURANCE INC
 PO BOX 5700
 JACKSONVILLE, FL
 704/218-6000

32247

INSURED

 FRANCINE STEINEMAN
 747 SUNSET POINT DR
 ROCK HILL, SC

29732

SEE IMPORTANT NOTICE ON REVERSE SIDE

 COVERAGE MEETS THE SC MINIMUM
 FINANCIAL RESPONSIBILITY REQUIREMENT

**IMPORTANT NOTICE
TO ALL SOUTH CAROLINA POLICYHOLDERS
NOTICE OF FEE SCHEDULE**

Pursuant to South Carolina Department of Insurance Bulletin 2006-08, written notice of the possible fees to be charged and the services to which they relate must be provided to, and acknowledged by, an insured at or before delivery of a property or casualty insurance policy. Maximum fees, which could be applicable during the initial term of your policy or any amendments, continuations, changes, or renewals thereafter, are shown below.

Please review the fee schedule carefully. If you have any questions, you should contact your agent.

FEE TYPE	MAXIMUM FEE
Installment Fee (applicable to each installment billed)	\$ 5.00
Non-Sufficient Funds Fee	\$ 20.00
Certificate of Financial Responsibility Filing Fee	\$ 25.00
Reinstatement Fee (fee applied when policy is to be reinstated as authorized by the Company)	\$ 10.00
Late Pay Fee (applied when payment has been received more than four days after the payment due date)	\$ 10.00

Note that the applicable fees may vary by type of policy or line of business, but the above-listed fee is the maximum fee which will be applied. Failure to pay such fees can result in cancellation, nonrenewal, failure to reinstate, or termination of the policy.

CF1640 (07/10) Page 1 of 1

***CF1640-201007

R_033

NOTICE

**POLICY CONDITIONS APPLICABLE TO
STATE AUTOMOBILE MUTUAL INSURANCE COMPANY ***

*** DIVIDENDS**

You are entitled to the proportionate part of any policyholder's dividend if declared by our Board of Directors in accordance with its Code of Regulations.

*** NOTICE OF POLICYHOLDERS' MEETINGS**

While your policy is in force, you are one of our members and entitled, in person or by proxy, to one vote at all meetings of the members. The annual meeting of the members is held at 9 a.m., Columbus time, on the first Friday of March, in our Home Office at 518 East Broad Street in Columbus, Ohio.

*** NON-ASSESSABLE**

This policy is non-assessable and the insured shall be neither liable for the payment of any assessment nor for the payment of any premium other than that stated in your policy.

FI1015 (04/08)

*/FI1015-200804

POLICY NUMBER: ASC 0048016 01**NOTICE OF POLICIES AND PRACTICES OF THE DISCLOSURE OF
NONPUBLIC, PERSONAL INFORMATION**

The State Auto Insurance Companies are required by federal statute--specifically, the Gramm Leach Bliley Act--to provide you with certain information about our practices regarding the nonpublic, personal information we obtain from, and about, you in the ordinary course of business. Our practices of information-gathering in order to provide your personal insurance are usual and appropriate and done in an acceptable manner for the purposes of insurance underwriting and reinsurance.

We collect the following categories of nonpublic, personal information in the normal course of business:

- * Information we receive from you on applications or other forms, such as social security numbers;
- * Information about your transactions with us, our affiliates, and others, such as arising from any claims you have presented or your coverage with an affiliate of ours;
- * Information we receive from a consumer-reporting agency, including credit scores, motor vehicle records, loss history information, prior insurance information, property characteristic and geographic information.

We may disclose any of the nonpublic, personal information you share with us to third parties who help us perform our business function of underwriting and pricing your insurance, settling claims, and otherwise servicing you and your policy(ies). This would include the following types of nonaffiliated entities: consumer-reporting agencies, insurance adjusters, rating bureaus, insurance department regulators, insurance agencies, property inspectors, and other insurance support organizations. The law permits disclosures to the entities described here, and we only disclose your nonpublic, personal information as permitted by law.

We may also share with our affiliates all of the information that we collect to conduct our business, to provide our customers with the best possible products and services, and for other purposes.

If you are a new customer and prefer that we not share certain information with our affiliates, you can opt out of this information-sharing by completing the request at the bottom of this notice.

SEE NEXT PAGE

If you are an existing customer and have already told us your sharing preference, no action is needed unless you want to change your information-sharing preference. To change your preference at any time, also complete the request at the bottom of this notice.

An opt-out of affiliate-sharing will not apply to: information about transactions or experiences between you and our affiliates or us; information provided to affiliates that provide services to us or on our behalf; or to other information disclosed as permitted by law. For example, an opt-out will not apply to information about your transactions with us (such as name, address, and payment history) or your experiences with us (such as your claim activity).

The election will remain effective until you revoke it in writing as long as you continue to have a relationship with us. If your present relationship with us terminates (that is, if you become a former customer), your request will continue to apply to information we have collected while you were our customer until you revoke it in writing. If there is more than one named insured (any named insured can request that we not share information), the request will apply to all named insureds on the policy. We will process your opt-out request as soon as reasonably practicable after we receive it.

If you choose this opt-out option, please understand that we may not be able to provide the best and fastest service for you or be able to advise you of products and services that may be available.

In addition, we do not disclose nonpublic, personal information about former customers except as permitted by law.

State Auto seeks to maintain the confidentiality of your nonpublic, personal information. State Auto intends for its employees to access customers' and consumers' nonpublic, personal information only in the course of their servicing our products. We notify each employee of our strict employment policy against any employee accessing nonpublic, personal information for any reasons other than to fulfill their job requirements or as permitted by law. All employees are also required to report to their supervisor any unauthorized use of customers' and consumers' nonpublic, personal information of which any employee becomes aware, so that the matter may be investigated and appropriate disciplinary action taken.

POLICY NUMBER: ASC 0048016 01

Named Insured(s): _____

Date: _____

Signature of Named Insured: _____

- ☐ I prefer that State Auto not share any of my personal information with any of its affiliated companies.
- ☐ I wish to change my information-sharing preference and allow State Auto to share my personal information with any of its affiliated companies.

Please mail this election to:

State Auto Insurance Companies
Attention: Work Flow Department
P.O. Box 182822
Columbus, Ohio 43218-2822



RENEWAL DECLARATIONS
ADVANTAGE POLICY

THIS DECLARATIONS PAGE WITH POLICY FORMS AND ENDORSEMENTS COMPLETES THE POLICY. THIS POLICY WILL CONTINUE IN FORCE FOR THE PERIOD INDICATED UPON VALID PAYMENT OF THE PREMIUM, WHEN DUE.

POLICY NUMBER ASC 0048016	POLICY PERIOD FROM 11/01/17 TO 11/01/18	COVERAGE IS PROVIDED IN THE FOLLOWING COMPANY MERIDIAN SECURITY INS COMPANYY	AGENCY 8946	PROD 00
------------------------------	--	---	----------------	------------

NAMED INSURED AND ADDRESS FRANCINE STEINEMAN 747 SUNSET POINT DR ROCK HILL SC 29732	AGENT BRIGHTWAY INSURANCE INC PO BOX 5700 JACKSONVILLE FL 32247 TELEPHONE 704/218-6000
--	--

VEHICLES COVERED

#	ST	TER	YR	MAKE-DESCRIPTION	SER NUMBER	CMP SYM	COL SYM	LIAB SYM	MP/PIP SYM	CLASS	ST	AM
01	SC	422	16	DODGE CHALLENGER	2C3CDZAG9GH240434	36	41	295	490	85A250		
02	SC	422	01	FORD EXPLORER S	1FMCU70E01UC00890	12	12	310	500	84I160		
03	SC	422	98	HONDA CIVIC LX	JHMEJ6677WS009994	13	13	290	515	85A250		

COVERAGE IS PROVIDED WHERE A PREMIUM IS SHOWN FOR THE COVERAGE

COVERAGE	LIMITS OF LIABILITY	AUTO	1	PREMIUMS	2	3
A LIABILITY-BODILY INJURY	\$ 250,000 EACH PERSON/ \$ 500,000 EACH ACCIDENT	156.00	236.00	157.00		
A LIABILITY-PROPERTY DAMAGE	\$ 100,000 EACH ACCIDENT	103.00	160.00	104.00		
C UNINSURED MOTORISTS						
BODILY INJURY	\$ 250,000 EACH PERSON/ \$ 500,000 EACH ACCIDENT	43.08	43.08	43.08		
PROPERTY DAMAGE	\$ 100,000 EACH ACCIDENT	7.00	7.00	7.00		
C UNDERINSURED MOTORISTS						
BODILY INJURY	\$ 250,000 EACH PERSON/ \$ 500,000 EACH ACCIDENT	161.00	161.00	161.00		
D DAMAGE TO YOUR AUTO- ACTUAL CASH VALUE LESS DEDUCTIBLE OTHER THAN COLLISION	\$ 250 DEDUCTIBLE	284.00	121.00	120.00		
COLLISION	\$ 500 DEDUCTIBLE	492.00	162.00	94.00		
TRANSPORTATION EXPENSES	\$20 PER DAY/\$600 MAXIMUM	INCL	INCL	INCL		
TOWING AND LABOR	\$100 PER DISABLEMENT	16.00	16.00	16.00		
TOTAL BY AUTO		1262.08	906.08	702.08		
TOTAL TERM PREMIUM		\$2,870.24				

*** YOUR STATE AUTO COMPANIES AUTO POLICY HAS BEEN DISCOUNTED AS SHOWN BELOW:

*** GOLD PLUS DRIVER DISCOUNT OF 15% APPLIES TO DRIVER # 1***
 *** GOLD PLUS DRIVER DISCOUNT OF 10% APPLIES TO DRIVER # 2***
 STATE AUTO STARTUP DISCOUNT
 ADVANCED QUOTE
 PREMIUMS REFLECT AUTO/HOME DISCOUNT OF: 71.00 49.00 39.00
 PASSIVE RESTRAINT DISCOUNT HAS BEEN APPLIED TO AUTO 1,2,3
 MULTI-CAR DISCOUNT APPLIED TO AUTO 1,2,3
 ANTI-THEFT DISCOUNT APPLIED TO AUTO 1,2
 SAFE DRIVING = INSURANCE SAVINGS FOR AUTOS 1,3
 FINANCIAL STABILITY DISCOUNT APPLIES
 ANTI-LOCK BRAKE DISCOUNT OF 5% APPLIED TO AUTO 1,2

DRV. ID	DRIVER NAME	VEH. ASSIGNED PRINC.	OCC.	GENDER	MARITAL STATUS
01	FRANCINE STEINEMAN	1	3	F	M
02	ERIC STEINEMAN	2		M	M

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PP0001	01/05	ALL	PP001A	01/13	ALL	PP0001B	01/07	ALL	AU100	01/05	ALL

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MOBDEC ASC 0048016 01 20171002 WFS STEI APV*R 32 BRIG0008946 029732



RENEWAL DECLARATIONS
ADVANTAGE POLICY

THIS DECLARATIONS PAGE WITH POLICY FORMS AND ENDORSEMENTS COMPLETES
THE POLICY. THIS POLICY WILL CONTINUE IN FORCE FOR THE PERIOD
INDICATED UPON VALID PAYMENT OF THE PREMIUM, WHEN DUE.

POLICY NUMBER ASC 0048016	POLICY PERIOD FROM 11/01/17 TO 11/01/18		COVERAGE IS PROVIDED IN THE FOLLOWING COMPANY MERIDIAN SECURITY INS COMPANY				AGENCY 8946	PROD 00																																																												
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POLICY NUMBER

PERSONAL AUTO POLICY

AGREEMENT

In return for payment of the premium and subject to all the terms of this policy, we agree with you as follows:

DEFINITIONS

A. Throughout this policy, "you" and "your" refer to:

1. The "named insured" shown in the Declarations; and
2. The spouse if a resident of the same household.

If the spouse ceases to be a resident of the same household during the policy period or prior to the inception of this policy, the spouse will be considered "you" and "your" under this policy but only until the earlier of:

1. The end of 90 days following the spouse's change of residency;
2. The effective date of another policy listing the spouse as a named insured; or
3. The end of the policy period.

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

C. For purposes of this policy, a private passenger type auto, pickup or van shall be deemed to be owned by a person if leased:

1. Under a written agreement to that person; and
2. For a continuous period of at least 6 months.

Other words and phrases are defined. They are in quotation marks when used.

D. "Bodily injury" means bodily harm, sickness or disease, including death that results.

E. "Business" includes trade, profession or occupation.

F. "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.

G. "Occupying" means:

1. In;
2. Upon; or
3. Getting in, on, out or off.

H. "Property damage" means physical injury to, destruction of or loss of use of tangible property.

I. "Trailer" means a vehicle designed to be pulled by a:

1. Private passenger auto; or
2. Pickup or van.

It also means a farm wagon or farm implement while towed by a vehicle listed in 1. or 2. above.

J. "Your covered auto" means:

1. Any vehicle shown in the Declarations.
2. A "newly acquired auto".
3. Any "trailer" you own.
4. Any auto or "trailer" you do not own while used as a temporary substitute for any other vehicle described in this definition which is out of normal use because of its:
 - a. Breakdown;
 - b. Repair;
 - c. Servicing;
 - d. Loss; or
 - e. Destruction.

This Provision (J.4.) does not apply to Coverage For Damage To Your Auto.

K. "Newly acquired auto":

1. "Newly acquired auto" means any of the following types of vehicles you become the owner of during the policy period:
 - a. A private passenger auto; or
 - b. A pickup or van, for which no other insurance policy provides coverage, that:
 - (1) Has a Gross Vehicle Weight Rating of 10,000 lbs. or less; and
 - (2) Is not used for the delivery or transportation of goods and materials unless such use is:
 - (a) Incidental to your "business" of installing, maintaining or repairing furnishings or equipment; or
 - (b) For farming or ranching.
2. Coverage for a "newly acquired auto" is provided as described below. If you ask us to insure a "newly acquired auto" after a specified time period described below has elapsed, any coverage we provide for a "newly acquired auto" will begin at the time you request the coverage.
 - a. For any coverage provided in this policy except Coverage For Damage To Your Auto, a "newly acquired auto" will have the broadest coverage we now provide for any vehicle shown in the Declarations. Coverage begins on the



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date you become the owner. However, for this coverage to apply to a "newly acquired auto" which is in addition to any vehicle shown in the Declarations, you must ask us to insure it within 14 days after you become the owner.

If a "newly acquired auto" replaces a vehicle shown in the Declarations, coverage is provided for this vehicle without your having to ask us to insure it.

- b. Collision Coverage for a "newly acquired auto" begins on the date you become the owner. However, for this coverage to apply, you must ask us to insure it within:

- (1) 14 days after you become the owner if the Declarations indicate that Collision Coverage applies to at least one auto. In this case, the "newly acquired auto" will have the broadest coverage we now provide for any auto shown in the Declarations.
- (2) Four days after you become the owner if the Declarations do not indicate that Collision Coverage applies to at least one auto. If you

comply with the 4 day requirement and a loss occurred before you asked us to insure the "newly acquired auto", a Collision deductible of \$500 will apply.

- c. Other Than Collision Coverage for a "newly acquired auto" begins on the date you become the owner. However, for this coverage to apply, you must ask us to insure it within:

- (1) 14 days after you become the owner if the Declarations indicate that Other Than Collision Coverage applies to at least one auto. In this case, the "newly acquired auto" will have the broadest coverage we now provide for any auto shown in the Declarations.
- (2) Four days after you become the owner if the Declarations do not indicate that Other Than Collision Coverage applies to at least one auto. If you comply with the 4 day requirement and a loss occurred before you asked us to insure the "newly acquired auto", an Other Than Collision deductible of \$500 will apply.

PART A - LIABILITY COVERAGE

INSURING AGREEMENT

- A. We will pay damages for "bodily injury" or "property damage" for which any "insured" becomes legally responsible because of an auto accident. Damages include prejudgment interest awarded against the "insured". We will settle or defend, as we consider appropriate, any claim or suit asking for these damages. In addition to our limit of liability, we will pay all defense costs we incur. Our duty to settle or defend ends when our limit of liability for this coverage has been exhausted by payment of judgments or settlements. We have no duty to defend any suit or settle any claim for "bodily injury" or "property damage" not covered under this policy.

- B. "Insured" 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. For "your covered auto", any person or organization but only with respect to legal responsibility for acts or omissions of a person for whom coverage is afforded under this Part.
4. For any auto or "trailer", other than "your covered auto", any other person or organization but only with respect to legal

responsibility for acts or omissions of you or any "family member" for whom coverage is afforded under this Part. This Provision (B.4.) applies only if the person or organization does not own or hire the auto or "trailer".

SUPPLEMENTARY PAYMENTS

We will pay on behalf of an "insured":

1. Up to \$250 for the cost of bail bonds required because of an accident, including related traffic law violations. The accident must result in "bodily injury" or "property damage" covered under this policy.
2. Premiums on appeal bonds and bonds to release attachments in any suit we defend.
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 \$200 a day for loss of earnings, but not other income, because of attendance at hearings or trials at our request.
5. Other reasonable expenses incurred at our request.

These payments will not reduce the limit of liability.



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EXCLUSIONS

A. We do not provide Liability Coverage for any "insured":

1. Who intentionally causes "bodily injury" or "property damage".
2. For "property damage" to property owned or being transported by that "insured".
3. For "property damage" to property:
 - a. Rented to;
 - b. Used by; or
 - c. In the care of;
 that "insured".

This Exclusion (A.3.) does not apply to "property damage" to a residence or private garage.

4. For "bodily injury" to an employee of that "insured" during the course of employment. This Exclusion (A.4.) does not apply to "bodily injury" to a domestic employee unless workers' compensation benefits are required or available for that domestic employee.
5. For that "insured's" liability arising out of the ownership or operation of a vehicle while it is being used as a public or livery conveyance. This Exclusion (A.5.) does not apply to a share-the-expense car pool.
6. While employed or otherwise engaged in the "business" of:
 - a. Selling;
 - b. Repairing;
 - c. Servicing;
 - d. Storing; or
 - e. Parking;

vehicles designed for use mainly on public highways. This includes road testing and delivery. This Exclusion (A.6.) does not apply to the ownership, maintenance or use of "your covered auto" by:

- a. You;
 - b. Any "family member"; or
 - c. Any partner, agent or employee of you or any "family member".
7. Maintaining or using any vehicle while that "insured" is employed or otherwise engaged in any "business" (other than farming or ranching) not described in Exclusion A.6. This Exclusion (A.7.) does not apply to the maintenance or use of a:
 - a. Private passenger auto;
 - b. Pickup or van; or
 - c. "Trailer" used with a vehicle described in a. or b. above.
 8. Using a vehicle without a reasonable belief that that "insured" is entitled to do so. This Exclusion (A.8.) does not apply to a "family member" using "your covered auto" which is owned by you.

9. For "bodily injury" or "property damage" for which that "insured":
 - a. Is an insured under a nuclear energy liability policy; or
 - b. Would be an insured under a nuclear energy liability policy but for its termination upon exhaustion of its limit of liability.

A nuclear energy liability policy is a policy issued by any of the following or their successors:

- a. Nuclear Energy Liability Insurance Association;
- b. Mutual Atomic Energy Liability Underwriters; or
- c. Nuclear Insurance Association of Canada.

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

1. Any vehicle which:
 - a. Has fewer than four wheels; or
 - b. Is designed mainly for use off public roads.

This Exclusion (B.1.) does not apply:

- a. While such vehicle is being used by an "insured" in a medical emergency;
- b. To any "trailer"; or
- c. To any non-owned golf cart.

2. Any vehicle, other than "your covered auto", which is:

- a. Owned by you; or
- b. Furnished or available for your regular use.

3. Any vehicle, other than "your covered auto", which is:

- a. Owned by any "family member"; or
- b. Furnished or available for the regular use of any "family member".

However, this Exclusion (B.3.) does not apply to you while you are maintaining or "occupying" any vehicle which is:

- a. Owned by a "family member"; or
- b. Furnished or available for the regular use of a "family member".

4. Any vehicle, located inside a facility designed for racing, for the purpose of:

- a. Competing in; or
 - b. Practicing or preparing for;
- any prearranged or organized racing or speed contest.

LIMIT OF LIABILITY

- A. The limit of liability shown in the Declarations for each person for Bodily Injury Liability is our maximum limit of liability for all damages, including damages for care, loss of services or death, arising out of "bodily injury" sustained by any one person in any one auto accident. Subject to this limit for each person, the limit of



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liability shown in the Declarations for each accident for Bodily Injury Liability is our maximum limit of liability for all damages for "bodily injury" resulting from any one auto accident.

The limit of liability shown in the Declarations for each accident for Property Damage Liability is our maximum limit of liability for all "property damage" resulting from any one auto accident.

This is the most we will pay regardless of the number of:

1. "Insureds";
 2. Claims made;
 3. Vehicles or premiums shown in the Declarations; or
 4. Vehicles involved in the auto accident.
- B. No one will be entitled to receive duplicate payments for the same elements of loss under this coverage and:
1. Part B or Part C of this policy; or
 2. Any Underinsured Motorists Coverage provided by this policy.

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,

we will interpret your policy for that accident as follows:

A. If the state or province has:

1. A financial responsibility or similar law specifying limits of liability for "bodily injury" or "property damage" higher than the limit shown in the Declarations, your policy will provide the higher specified limit.
2. A compulsory insurance or similar law requiring a nonresident to maintain insurance whenever the nonresident uses a vehicle in that state or province, your policy will provide at least the required minimum amounts and types of coverage.

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

FINANCIAL RESPONSIBILITY

When this policy is certified as future proof of financial responsibility, this policy shall comply with the law to the extent required.

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 for a vehicle you do not own, including any vehicle while used as a temporary substitute for "your covered auto", shall be excess over any other collectible insurance.

PART B - MEDICAL PAYMENTS COVERAGE

INSURING AGREEMENT

A. We will pay reasonable expenses incurred for necessary medical and funeral services because of "bodily injury":

1. Caused by accident; and
2. Sustained by an "insured".

We will pay only those expenses incurred for services rendered within 3 years from the date of the accident.

B. "Insured" as used in this Part means:

1. You or any "family member":
 - a. While "occupying"; or
 - b. As a pedestrian when struck by; a motor vehicle designed for use mainly on public roads or a trailer of any type.
2. Any other person while "occupying" "your covered auto".

EXCLUSIONS

We do not provide Medical Payments Coverage for any "insured" for "bodily injury":

1. Sustained while "occupying" any motorized vehicle having fewer than four wheels.
2. Sustained while "occupying" "your covered auto" when it is being used as a public or

livery conveyance. This Exclusion (2.) does not apply to a share-the-expense car pool.

3. Sustained while "occupying" any vehicle located for use as a residence or premises.
4. Occurring during the course of employment if workers' compensation benefits are required or available for the "bodily injury".
5. Sustained while "occupying", or when struck by, any vehicle (other than "your covered auto") which is:
 - a. Owned by you; or
 - b. Furnished or available for your regular use.
6. Sustained while "occupying", or when struck by, any vehicle (other than "your covered auto") which is:
 - a. Owned by any "family member"; or
 - b. Furnished or available for the regular use of any "family member".

However, this Exclusion (6.) does not apply to you.

7. Sustained while "occupying" a vehicle without a reasonable belief that that "insured" is entitled to do so. This Exclusion (7.) does not apply to a "family



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- member" using "your covered auto" which is owned by you.
8. Sustained while "occupying" a vehicle when it is being used in the "business" of an "insured". This Exclusion (8.) does not apply to "bodily injury" sustained while "occupying" a:
 - a. Private passenger auto;
 - b. Pickup or van; or
 - c. "Trailer" used with a vehicle described in a. or b. above.
 9. 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.
 10. From or as a consequence of the following, whether controlled or uncontrolled or however caused:
 - a. Nuclear reaction;
 - b. Radiation; or
 - c. Radioactive contamination.
 11. Sustained while "occupying" any vehicle located inside a facility designed for racing, for the purpose of:
 - a. Competing in; or
 - b. Practicing or preparing for;

any prearranged or organized racing or speed contest.

LIMIT OF LIABILITY

- A. The limit of liability shown in the Declarations for this coverage is our maximum limit of liability for each person injured in any one accident. This is the most we will pay regardless of the number of:
 1. "Insureds";
 2. Claims made;
 3. Vehicles or premiums shown in the Declarations; or
 4. Vehicles involved in the accident.
- B. No one will be entitled to receive duplicate payments for the same elements of loss under this coverage and:
 1. Part A or Part C of this policy; or
 2. Any Underinsured Motorists Coverage provided by this policy.

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, including any vehicle while used as a temporary substitute for "your covered auto", shall be excess over any other collectible auto insurance providing payments for medical or funeral expenses.

PART C - UNINSURED MOTORISTS COVERAGE

INSURING AGREEMENT

- A. We will pay compensatory damages which an "insured" is legally entitled to recover from the owner or operator of an "uninsured motor vehicle" because of "bodily injury":
 1. Sustained by an "insured"; and
 2. Caused by an 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".

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

- B. "Insured" 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 "bodily injury" to which this coverage applies sustained by a person described in 1. or 2. above.
- C. "Uninsured motor vehicle" means a land motor vehicle or trailer of any type:

1. To which no bodily injury liability bond or policy applies at the time of the accident.
2. To which a bodily injury liability bond or policy applies at the time of the accident. In this case its limit for bodily injury liability must be less than the minimum limit for bodily injury liability specified by the financial responsibility law of the state in which "your covered auto" is principally garaged.
3. Which is a hit-and-run vehicle whose operator or owner cannot be identified and which hits:
 - a. You or any "family member";
 - b. A vehicle which you or any "family member" are "occupying"; or
 - c. "Your covered auto".
4. To which a bodily injury liability bond or policy applies at the time of the accident but the bonding or insuring company:
 - a. Denies coverage; or
 - b. Is or becomes insolvent.

However, "uninsured motor vehicle" does 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, except a self-insurer which is or becomes insolvent.
3. Owned by any governmental unit or agency.
4. Operated on rails or crawler treads.
5. Designed mainly for use off public roads while not on public roads.
6. While located for use as a residence or premises.

EXCLUSIONS

- A. We do not provide Uninsured Motorists Coverage for "bodily injury" sustained:
 1. By an "insured" while "occupying", or when struck by, any motor vehicle owned by that "insured" which is not insured for this coverage under this policy. This includes a trailer of any type used with that vehicle.
 2. By any "family member" while "occupying", or when struck by, any motor vehicle you own which is insured for this coverage on a primary basis under any other policy.
- B. We do not provide Uninsured Motorists Coverage for "bodily injury" sustained by any "insured":
 1. If that "insured" or the legal representative settles the "bodily injury" claim and such settlement prejudices our right to recover payment.
 2. While "occupying" "your covered auto" when it is being used as a public or livery conveyance. This Exclusion (B.2.) does not apply to a share-the-expense car pool.
 3. Using a vehicle without a reasonable belief that that "insured" is entitled to do so. This Exclusion (B.3.) does not apply to a "family member" using "your covered auto" which is owned by you.
- C. This coverage shall not apply directly or indirectly to benefit any insurer or self-insurer under any of the following or similar law:
 1. Workers' compensation law; or
 2. Disability benefits law.
- D. We do not provide Uninsured Motorists Coverage for punitive or exemplary damages.

LIMIT OF LIABILITY

- A. The limit of liability shown in the Declarations for each person for Uninsured Motorists Coverage is our maximum limit of liability for all damages, including damages for care, loss of services or death, arising out of "bodily injury" sustained by any one person in any one accident. Subject to this limit for each person, the limit of liability shown in the Declarations for each accident for Uninsured Motorists Coverage is our maximum limit of liability for all damages for "bodily injury" resulting from any one accident.

This is the most we will pay regardless of the number of:

1. "Insureds";
 2. Claims made;
 3. Vehicles or premiums shown in the Declarations; or
 4. Vehicles involved in the accident.
- B. No one will be entitled to receive duplicate payments for the same elements of loss under this coverage and:
 1. Part A or Part B of this policy; or
 2. Any Underinsured Motorists Coverage provided by this policy.
 - C. We will not make a duplicate payment under this coverage for any element of loss for which payment has been made by or on behalf of persons or organizations who may be legally responsible.
 - D. We will not pay for any element of loss if a person is entitled to receive payment for the same element of loss under any of the following or similar law:
 1. Workers' compensation law; or
 2. Disability benefits law.

OTHER INSURANCE

If there is other applicable insurance available under one or more policies or provisions of coverage that is similar to the insurance provided under this Part of the policy:

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, including any vehicle while used as a temporary substitute for "your covered auto", shall be excess over any collectible insurance providing such coverage on a primary basis.
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 for coverage provided on an excess basis.



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ARBITRATION**A.** If we and an "insured" do not agree:

1. Whether that "insured" is legally entitled to recover damages; or
2. As to the amount of damages which are recoverable by that "insured";

from the owner or operator of an "uninsured motor vehicle", then the matter may be arbitrated. However, disputes concerning coverage under this Part may not be arbitrated.

Both parties must agree to arbitration. If so agreed, each party will select an arbitrator. The two arbitrators will select a third. If they cannot agree within 30 days, either may request that selection be made by a judge of a court having jurisdiction.

B. Each party will:

1. Pay the expenses it incurs; and
2. Bear the expenses of the third arbitrator equally.

C. Unless both parties agree otherwise, arbitration will take place in the county in which the "insured" lives. Local rules of law as to procedure and evidence will apply. A decision agreed to by at least two of the arbitrators will be binding as to:

1. Whether the "insured" is legally entitled to recover damages; and
2. The amount of damages. This applies only if the amount does not exceed the minimum limit for bodily injury liability specified by the financial responsibility law of the state in which "your covered auto" is principally garaged. If the amount exceeds that limit, either party may demand the right to a trial. This demand must be made within 60 days of the arbitrators' decision. If this demand is not made, the amount of damages agreed to by the arbitrators will be binding.

PART D - COVERAGE FOR DAMAGE TO YOUR AUTO**INSURING AGREEMENT****A.** We will pay for direct and accidental loss to "your covered auto" or any "non-owned auto", including their equipment, minus any applicable deductible shown in the Declarations. If loss to more than one "your covered auto" or "non-owned auto" results from the same "collision", only the highest applicable deductible will apply. We will pay for loss to "your covered auto" caused by:

1. Other than "collision" only if the Declarations indicate that Other Than Collision Coverage is provided for that auto.
2. "Collision" only if the Declarations indicate that Collision Coverage is provided for that auto.

If there is a loss to a "non-owned auto", we will provide the broadest coverage applicable to any "your covered auto" shown in the Declarations.

B. "Collision" means the upset of "your covered auto" or a "non-owned auto" or their impact with another vehicle or object.

Loss caused by the following is considered other than "collision":

1. Missiles or falling objects;
2. Fire;
3. Theft or larceny;
4. Explosion or earthquake;
5. Windstorm;
6. Hail, water or flood;
7. Malicious mischief or vandalism;
8. Riot or civil commotion;
9. Contact with bird or animal; or

10. Breakage of glass.

If breakage of glass is caused by a "collision", you may elect to have it considered a loss caused by "collision".

C. "Non-owned auto" means:

1. Any private passenger auto, pickup, van or "trailer" not owned by or furnished or available for the regular use of you or any "family member" while in the custody of or being operated by you or any "family member"; or
2. Any auto or "trailer" you do not own while used as a temporary substitute for "your covered auto" which is out of normal use because of its:
 - a. Breakdown;
 - b. Repair;
 - c. Servicing;
 - d. Loss; or
 - e. Destruction.

TRANSPORTATION EXPENSES**A.** In addition, we will pay, without application of a deductible, up to a maximum of \$600 for:

1. Temporary transportation expenses not exceeding \$20 per day incurred by you in the event of a loss to "your covered auto". We will pay for such expenses if the loss is caused by:
 - a. Other than "collision" only if the Declarations indicate that Other Than Collision Coverage is provided for that auto.
 - b. "Collision" only if the Declarations indicate that Collision Coverage is provided for that auto.



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2. Expenses for which you become legally responsible in the event of loss to a "non-owned auto". We will pay for such expenses if the loss is caused by:
 - a. Other than "collision" only if the Declarations indicate that Other Than Collision Coverage is provided for any "your covered auto".
 - b. "Collision" only if the Declarations indicate that Collision Coverage is provided for any "your covered auto".

However, the most we will pay for any expenses for loss of use is \$20 per day.
- B. Subject to the provisions of Paragraph A., if the loss is caused by:
 1. A total theft of "your covered auto" or a "non-owned auto", we will pay only expenses incurred during the period:
 - a. Beginning 48 hours after the theft; and
 - b. Ending when "your covered auto" or the "non-owned auto" is returned to use or we pay for its loss.
 2. Other than theft of a "your covered auto" or a "non-owned auto", we will pay only expenses beginning when the auto is withdrawn from use for more than 24 hours.

Our payment will be limited to that period of time reasonably required to repair or replace the "your covered auto" or the "non-owned auto".

EXCLUSIONS

We will not pay for:

1. Loss to "your covered auto" or any "non-owned auto" which occurs while it is being used as a public or livery conveyance. This Exclusion (1.) does not apply to a share-the-expense car pool.
2. Damage due and confined to:
 - a. Wear and tear;
 - b. Freezing;
 - c. Mechanical or electrical breakdown or failure; or
 - d. Road damage to tires.

This Exclusion (2.) does not apply if the damage results from the total theft of "your covered auto" or any "non-owned auto".
3. Loss due to or as a consequence of:
 - a. Radioactive contamination;
 - b. Discharge of any nuclear weapon (even if accidental);
 - c. War (declared or undeclared);
 - d. Civil war;
 - e. Insurrection; or
 - f. Rebellion or revolution.
4. Loss to any electronic equipment that reproduces, receives or transmits audio, visual or data signals. This includes but is not limited to:
 - a. Radios and stereos;

- b. Tape decks;
- c. Compact disk systems;
- d. Navigation systems;
- e. Internet access systems;
- f. Personal computers;
- g. Video entertainment systems;
- h. Telephones;
- i. Televisions;
- j. Two-way mobile radios;
- k. Scanners; or
- l. Citizens band radios.

This Exclusion (4.) does not apply to electronic equipment that is permanently installed in "your covered auto" or any "non-owned auto".

5. Loss to tapes, records, disks or other media used with equipment described in Exclusion 4.
 6. A total loss to "your covered auto" or any "non-owned auto" due to destruction or confiscation by governmental or civil authorities.
- This Exclusion (6.) does not apply to the interests of Loss Payees in "your covered auto".
7. Loss to:
 - a. A "trailer", camper body, or motor home, which is not shown in the Declarations; or
 - b. Facilities or equipment used with such "trailer", camper body or motor home. Facilities or equipment include but are not limited to:
 - (1) Cooking, dining, plumbing or refrigeration facilities;
 - (2) Awnings or cabanas; or
 - (3) Any other facilities or equipment used with a "trailer", camper body, or motor home.

This Exclusion (7.) does not apply to a:

- a. "Trailer", and its facilities or equipment, which you do not own; or
- b. "Trailer", camper body, or the facilities or equipment in or attached to the "trailer" or camper body, which you:
 - (1) Acquire during the policy period; and
 - (2) Ask us to insure within 14 days after you become the owner.
8. Loss to any "non-owned auto" when used by you or any "family member" without a reasonable belief that you or that "family member" are entitled to do so.
9. Loss to equipment designed or used for the detection or location of radar or laser.
10. Loss to any custom furnishings or equipment in or upon any pickup or van. Custom furnishings or equipment include but are not limited to:



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- a. Special carpeting or insulation;
- b. Furniture or bars;
- c. Height-extending roofs; or
- d. Custom murals, paintings or other decals or graphics.

This Exclusion (10.) does not apply to a cap, cover or bedliner in or upon any "your covered auto" which is a pickup.

- 11. Loss to any "non-owned auto" being maintained or used by any person while employed or otherwise engaged in the "business" of:

- a. Selling;
- b. Repairing;
- c. Servicing;
- d. Storing; or
- e. Parking;

vehicles designed for use on public highways. This includes road testing and delivery.

- 12. Loss to "your covered auto" or any "non-owned auto", located inside a facility designed for racing, for the purpose of:

- a. Competing in; or
 - b. Practicing or preparing for;
- any prearranged or organized racing or speed contest.

- 13. Loss to, or loss of use of, a "non-owned auto" rented by:

- a. You; or
- b. Any "family member";

if a rental vehicle company is precluded from recovering such loss or loss of use, from you or that "family member", pursuant to the provisions of any applicable rental agreement or state law.

LIMIT OF LIABILITY

- A. Our limit of liability for loss will be the lesser of the:

- 1. Actual cash value of the stolen or damaged property; or
- 2. Amount necessary to repair or replace the property with other property of like kind and quality.

However, the most we will pay for loss to:

- 1. Any "non-owned auto" which is a trailer is \$1500.
- 2. Electronic equipment that reproduces, receives or transmits audio, visual or data signals, which is permanently installed in the auto in locations not used by the auto manufacturer for installation of such equipment, is \$1,000.

- B. An adjustment for depreciation and physical condition will be made in determining actual cash value in the event of a total loss.

- C. If a repair or replacement results in better than like kind or quality, we will not pay for the amount of the betterment.

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:

- 1. You; or
- 2. The address shown in this policy.

If we return stolen property we will pay for any damage resulting from the theft. We may keep all or part of the property at an agreed or appraised value.

If we pay for loss in money, our payment will include the applicable sales tax for the damaged or stolen property.

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 "non-owned auto" shall be excess over any other collectible source of recovery including, but not limited to:

- 1. Any coverage provided by the owner of the "non-owned auto";
- 2. Any other applicable physical damage insurance;
- 3. Any other source of recovery applicable to the loss.

APPRAISAL

- A. If we and you do not agree on the amount of loss, either may demand an appraisal of the loss. In this event, each party will select a competent and impartial 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:

- 1. Pay its chosen appraiser; and
- 2. Bear the expenses of the appraisal and umpire equally.

- B. We do not waive any of our rights under this policy by agreeing to an appraisal.



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PART E - DUTIES AFTER AN ACCIDENT OR LOSS

We have no duty to provide coverage under this policy if the failure to comply with the following duties is prejudicial to us:

- A. We must be notified promptly of how, when and where the 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 the 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 and subscribe the same.
 - 4. Authorize us to obtain:
 - a. Medical reports; and

- b. Other pertinent records.
 - 5. Submit a proof of loss when required by us.
- C. A person seeking Uninsured Motorists 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.
- D. A person seeking Coverage For Damage To Your Auto must also:
 - 1. Take reasonable steps after loss to protect "your covered auto" or any "non-owned auto" and their equipment from further loss. We will pay reasonable expenses incurred to do this.
 - 2. Promptly notify the police if "your covered auto" or any "non-owned auto" is stolen.
 - 3. Permit us to inspect and appraise the damaged property before its repair or disposal.

PART F - GENERAL PROVISIONS

BANKRUPTCY

Bankruptcy or insolvency of the "insured" shall not relieve us of any obligations under this policy.

CHANGES

- A. This policy contains all the agreements between you and us. Its terms may not be changed or waived except by endorsement issued by us.
- B. If there is a change to the information used to develop the policy premium, we may adjust your premium. Changes during the policy term that may result in a premium increase or decrease include, but are not limited to, changes in:
 - 1. The number, type or use classification of insured vehicles;
 - 2. Operators using insured vehicles;
 - 3. The place of principal garaging of insured vehicles;
 - 4. Coverage, deductible or limits.

If a change resulting from A. or B. requires a premium adjustment, we will make the premium adjustment in accordance with our manual rules.
- C. If we make a change which broadens coverage under this edition of your policy without additional premium charge, that change will automatically apply to your policy as of the date we implement the change in your state. This Paragraph (C.) does not apply to changes implemented with a general program revision that includes both broadenings and restrictions in coverage, whether that general program revision is implemented through introduction of:

- 1. A subsequent edition of your policy; or
- 2. An Amendatory Endorsement.

FRAUD

We do not provide coverage for any "insured" who has made fraudulent statements or engaged in fraudulent conduct in connection with any accident or loss for which coverage is sought under this policy.

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:
 - 1. We agree in writing that the "insured" has an obligation to pay; or
 - 2. 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 an "insured".

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 shall be subrogated to that right. That person shall do:
 - 1. Whatever is necessary to enable us to exercise our rights; and
 - 2. Nothing after loss to prejudice them.



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However, our rights in this Paragraph (A.) 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 is made recovers damages from another, that person shall:

1. Hold in trust for us the proceeds of the recovery; and
2. Reimburse us to the extent of our payment.

POLICY PERIOD AND TERRITORY

- A. This policy applies only to accidents and losses which occur:

1. During the policy period as shown in the Declarations; and
2. Within the policy territory.

- B. The policy territory is:

1. The United States of America, its territories or possessions;
2. Puerto Rico; or
3. Canada.

This policy also applies to loss to, or accidents involving, "your covered auto" while being transported between their ports.

TERMINATION

A. Cancellation

This policy may be cancelled during the policy period as follows:

1. The named insured shown in the Declarations may cancel by:
 - a. Returning this policy to us; or
 - b. Giving us advance written notice of the date cancellation is to take effect.
2. We may cancel by mailing to the named insured shown in the Declarations at the address shown in this policy:
 - a. At least 10 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 or continuation 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 or continuation policy, we will cancel only:
 - a. For nonpayment of premium; or
 - b. If your driver's license or that of:
 - (1) Any driver who lives with you; or

- (2) 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 1 year; or

- c. If the policy was obtained through material misrepresentation.

B. Nonrenewal

If we decide not to renew or continue 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 20 days before the end of the policy period. Subject to this notice requirement, if the policy period is:

1. Less than 6 months, we will have the right not to renew or continue this policy every 6 months, beginning 6 months after its original effective date.
2. 6 months or longer, but less than one year, we will have the right not to renew or continue this policy at the end of the policy period.
3. 1 year or longer, we will have the right not to renew or continue this policy at each anniversary of its original effective date.

C. Automatic Termination

If we offer to renew or continue and you or your representative do not accept, this policy will automatically terminate at the end of the current policy period. Failure to pay the required renewal or continuation premium when due shall 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.

D. Other Termination Provisions

1. We may deliver any notice instead of mailing it. Proof of mailing of any notice shall be sufficient proof of notice.
2. If this policy is cancelled, you may be entitled to a premium refund. If so, we will send you 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.



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TRANSFER OF YOUR INTEREST IN THIS POLICY

- A. 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, coverage will be provided 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".

- B. Coverage will only be provided until the end of the policy period.

TWO OR MORE AUTO POLICIES

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



THE PERSONAL AUTO POLICY

STATE AUTO INSURANCE COMPANIES:

MERIDIAN CITIZENS MUTUAL INSURANCE COMPANY
MERIDIAN SECURITY INSURANCE COMPANY
MILBANK INSURANCE COMPANY
PATRONS MUTUAL INSURANCE COMPANY OF CONNECTICUT
STATE AUTO INSURANCE COMPANY OF OHIO
STATE AUTO INSURANCE COMPANY OF WISCONSIN
STATE AUTOMOBILE MUTUAL INSURANCE COMPANY
STATE AUTO PROPERTY & CASUALTY INSURANCE COMPANY

CORPORATE OFFICE
STATE AUTO INSURANCE COMPANIES • 518 EAST BROAD STREET • COLUMBUS, OHIO 43215-3976 • 614-464-5000 or toll free 800-444-9950

IN WITNESS WHEREOF, we have caused this policy to be signed by our Secretary and President at Columbus, Ohio, and countersigned on the Declarations page by an authorized agent of the State Auto Insurance Companies (if required by state law).

Secretary

President

A handwritten signature in cursive script, appearing to read 'Melissa A. Centers'.

A handwritten signature in cursive script, appearing to read 'Michael E. LaRocco'.

Melissa A. Centers

Michael E. LaRocco

READ YOUR POLICY CAREFULLY. This cover sheet provides only a brief outline of some of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth, in detail, the rights and obligations of both you and your insurance company. **IT IS, THEREFORE, IMPORTANT THAT YOU READ YOUR POLICY.**

YOUR PERSONAL AUTO POLICY QUICK REFERENCE

	Page No. of PP0001 (01/05)
PERSONAL AUTO POLICY	DECLARATIONS (pages numbered separately) Your Name and Address Your Auto or Trailer Policy Period Coverages and Amounts of Insurance AGREEMENT 1 DEFINITIONS 1-2
PART A - LIABILITY COVERAGE	Exclusions.....3 Financial Responsibility.....4 Insuring Agreement.....2 Limit of Liability.....3-4 Other Insurance.....4 Out-of-State Coverage.....4 Supplementary Payments.....2
PART B - MEDICAL PAYMENTS COVERAGE	Exclusions.....4 Insuring Agreement.....4 Limit of Liability.....5 Other Insurance.....5
PART C - UNINSURED MOTORISTS COVERAGE	Arbitration.....7 Exclusions.....6 Insuring Agreement.....5 Limit of Liability.....6 Other Insurance.....6
PART D - COVERAGE FOR DAMAGE TO YOUR AUTO	Appraisal.....9 Exclusions.....8-9 Insuring Agreement.....7 Limit of Liability.....9 No Benefit to Bailee.....9 Other Sources of Recovery.....9 Payment of Loss.....9 Transportation Expenses.....7-8
PART E - DUTIES AFTER AN ACCIDENT OR LOSS	General Duties.....10 Additional Duties for Coverage for Damage to Your Auto.....10 Additional Duties for Uninsured Motorists Coverage.....10
PART F - GENERAL PROVISIONS	Bankruptcy.....10 Changes.....10 Fraud.....10 Legal Action Against Us.....10 Our Right to Recover Payment.....10-11 Policy Period and Territory.....11 Termination.....11 Transfer of Your Interest in This Policy.....12 Two or More Auto Policies.....12
ENDORSEMENTS	IF ANY: Endorsement number and edition date as specified in the Declarations



POLICY NUMBER

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AMENDATORY ENDORSEMENT OTHER INSURANCE PROVISION

I. Part A-Liability Coverage

The **OTHER INSURANCE** Provision of Part **A** is hereby deleted and replaced with the following:

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 for a vehicle you do not own, including any vehicle while used as a temporary substitute for "your covered auto", shall be excess over any other collectible insurance. Any insurance we provide for use of "your covered auto" by any person other than "you" will be excess over any other collectible insurance, self-insurance, or bond.

II. Part B - Medical Payments Coverage

The **OTHER INSURANCE** Provision of Part **B** is hereby deleted and replaced with the following:

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, including any vehicle while used as a temporary substitute for "your covered auto", shall be excess over any other collectible auto insurance providing payments for medical or funeral expenses.

All other provisions not hereby amended shall apply.



POLICY NUMBER

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AMENDMENT OF POLICY PROVISIONS - SOUTH CAROLINA

I. Definitions

The following is added to the **Definitions** Section:

Throughout the policy, "minimum limits" refers to the following limits of liability as required by South Carolina law, to be provided under a policy of automobile liability insurance:

- A. \$25,000 for each person, subject to \$50,000 for each accident, with respect to "bodily injury"; and
- B. \$25,000 for each accident with respect to "property damage".

II. Part A - Liability Coverage

A. Exclusion A.1. is replaced by the following:
We do not provide Liability Coverage for any "insured":

- 1. Who intentionally causes "bodily injury" or "property damage" to the extent that the limits of liability for this coverage exceed the minimum limits of liability required by the South Carolina Financial Responsibility Act.

B. Paragraph B. of the Limit of Liability Provision is replaced by the following:
No one will be entitled to receive duplicate payments for the same elements of loss under this coverage and:

- 1. Part C of this policy; or
- 2. Any Underinsured Motorists Coverage provided by this Policy.

III. Part D - Coverage For Damage To Your Auto

The following is added to the Insuring Agreement of Part D:

We will pay under Other Than Collision Coverage or under Collision Coverage for loss to safety glass on "your covered auto" without applying a deductible.

IV. Part F - General Provisions

The Fraud provision in Part F - General Provisions is replaced by the following:

FRAUD

The entire policy will be void if any person we insure has:

- 1. Intentionally concealed or misrepresented any material fact or circumstance with respect to the application for, or continuation of, this policy; or
- 2. Made false statements or engaged in fraudulent conduct in connection with any accident or loss for which recovery is sought under this policy.

However, we will provide coverage to such "insured" for damages sustained by any person who has not made fraudulent statements or engaged in fraudulent conduct if such damages result from an accident which is otherwise covered under this policy.

B. The following is added to the **Our Right To Recover Payment** Provision:

OUR RIGHT TO RECOVER PAYMENT

This provision does not apply to **Part B - Medical Payments Coverage**.

C. The **Termination** Provision is replaced by the following:

TERMINATION

Cancellation

This policy may be cancelled during the policy period as follows:

- 1. Any named insured shown in the Declarations may cancel by:

- a. Returning this policy to us; or
- b. Giving us advance written notice of the date cancellation is to take effect.

- 2. We may cancel by mailing notice to the named insured shown in the Declarations at the address shown in this policy at least 15 days prior to the date cancellation is to take effect.

If this policy is cancelled within the first 60 days, and is not a renewal or continuation policy, the cancellation will become effective only on or after the 61st day of the policy period. However, if this policy is cancelled for nonpayment of premium, the cancellation will become effective only on or after the 31st day of the policy period.

- 3. After this policy has been in effect for more than 90 days, or if this is a renewal or continuation policy, we will cancel only:

- a. For nonpayment of premium; or
- b. If your driver's license or that of:
 - (1) Any driver who lives with you; or
 - (2) Any driver who customarily uses "your covered auto";
 has been suspended or revoked. This must have occurred:
 - (1) During the policy period; or



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- (2) If this is a renewal or continuation policy, during the policy period or the 90 days immediately preceding the last anniversary of the original effective date.

Nonrenewal

If we decide not to renew or continue 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. Subject to this notice requirement, if the policy period is:

1. Less than 6 months, we will have the right not to renew or continue this policy every 6 months, beginning 6 months after its original effective date.
2. 6 months or longer, but less than one year, we will have the right not to renew or continue this policy at the end of the policy period.
3. 1 year or longer, we will have the right not to renew or continue this policy at each anniversary of its original effective date.

Automatic Termination

If we offer to renew or continue and you or your representative do not accept, this policy will automatically terminate at the end of the current policy period. Failure to pay the required renewal or continuation premium when due shall mean that you have not accepted our offer.

Other Termination Provisions

1. We may deliver any notice instead of mailing it. Proof of mailing of any notice shall be sufficient proof of notice.
2. If this policy is cancelled, you may be entitled to a premium refund. If so, we will send you 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.



POLICY NUMBER

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

RECOVERED VEHICLE DEDUCTIBLE REIMBURSEMENT ENDORSEMENT

1. The following **Definition** is added:
"Vehicle Recovery System" means an electronic system utilizing radio location (RF) or global positioning (GPS) technology to transmit the location of a covered "auto" to a law enforcement agency or other monitoring entity.
2. The following is added to the **INSURING AGREEMENT**, under Part **D - COVERAGE FOR DAMAGE TO YOUR AUTO**, Section **A**:

We will reimburse the Other Than Collision Deductible for "loss" caused by theft of "your covered auto" when:

- a. a "vehicle recovery system" has been installed in the covered "auto" sustaining the theft "loss" prior to the "loss"; and
- b. "Your covered auto" is later recovered with the aid of its activated "vehicle recovery system."

We will reimburse only if the Declarations indicate that Other than Collision Coverage applies.

All other provisions of the policy apply.

COMMUNICABLE DISEASE EXCLUSION ENDORSEMENT

The following exclusion applies to this policy:

This policy does not provide coverage for "bodily injury" or "property damage" arising out of the transmission of a communicable disease by any insured.

AU650 (06/92)



POLICY NUMBER

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AMENDMENT TO SUPPLEMENTARY PAYMENTS
(Appeal Bonds)

Under Part **A**, Liability Coverage, Supplementary Payments, item **2.** is deleted and replaced by the following:

- 2.** Premiums on appeal bonds and bonds to release attachments, but not in excess of our limit of liability as stated on the Declarations Page, in any suit we defend. We are not required to apply for, secure, or otherwise furnish these bonds.

All other provisions of the policy apply.

AU706 (01/11) Page 1 of 1
*//AU706-201101



POLICY NUMBER

FEDERAL EMPLOYEES USING AUTOS IN GOVERNMENT BUSINESS

The following are not "insureds" under Part A:

1. The United States of America or any of its agencies.
2. Any person with respect to "bodily injury" or "property damage" 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 "bodily injury" or "property damage".

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*//PP0301-198608

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POLICY NUMBER

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

COVERAGE FOR DAMAGE TO YOUR AUTO EXCLUSION ENDORSEMENT

With respect to the coverage provided by this endorsement, the provisions of the policy apply unless modified by this endorsement.

I. Definitions

The following definition is added:

"Diminution in value" means the actual or perceived loss in market or resale value which results from a direct and accidental loss.

II. Part D - Coverage For Damage To Your Auto

The following exclusion is added:

We will not pay for:

Loss to "your covered auto" or any "non-owned auto" due to "diminution in value."

This endorsement must be attached to the Change Endorsement when issued after the policy is written.

PP1301 (12/99)

***PP1301-199912

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POLICY NUMBER

BROAD FORM PERSONAL AUTO COVERAGES ENDORSEMENT

PART A - LIABILITY

Supplementary Payments Provision 1. of Part A is replaced by the following:

1. Up to \$350 for the cost of bail bonds required because of an accident, including related traffic law violations. The accident must result in "bodily injury" or "property damage" covered under this policy.

Supplementary Payments Provisions 6., 7., and 8. are added:

6. Expenses incurred by an "insured" for first aid to others at the time of an accident involving an auto or "trailer" to which the Liability Coverage applies. However, any payment under this provision will reduce any amount that person is entitled to recover under the Liability and Medical Payments Coverages.
7. **ACCIDENTAL DEATH COVERAGE.** In addition to our limit of liability, we will pay on behalf of you or your spouse the sum of \$1,000 in the event of your death, subject to the following conditions:
 1. Death must result directly and independently of all other causes from "bodily injury";
 2. The injury must be caused by accident and sustained by you in one of the following ways:
 - a. While "occupying" a motor vehicle designed for use mainly on public roads;
 - b. As a pedestrian when struck by either a motor vehicle designed for use mainly on public roads or a trailer of any type.
 3. Death must occur within 90 days of the accident. (This provision, 7.A.3., does not apply in PA.)

Payment will be made to a decedent's surviving spouse, or to his or her estate, in the absence of a spouse. If both of you die, as provided herein, \$2,000 will be paid to the decedents' estates, or \$1000 will be paid to each individual estate, if separate.

The provisions of this **Supplementary Payments** Provision 7. do not apply:

1. To death sustained while "occupying" any vehicle located for use as a residence or premises;
2. To the death of you resulting from "bodily injury" sustained in the course of your occupation while operating,

"occupying", loading or unloading any commercial auto or trailer, or repairing or servicing any auto or trailer, or any auto or trailer used as a public or livery conveyance;

3. To suicide, sane or insane;
4. To death caused by, or as a consequence of, discharge of a nuclear weapon (even if accidental), war (declared or undeclared), civil war, insurrection, or rebellion or revolution.
8. Reasonable expenses for attorney's fee, not in excess of \$50, incurred by you in the event of your arrest as a result of an accident causing bodily injury to any person.

PART D - COVERAGE FOR DAMAGE TO YOUR AUTO

A. The following is added to **Insuring Agreement** paragraph A:

The deductible amount shall not apply:

1. To loss caused by a "collision" of "your covered auto" or any "non-owned auto", with another auto insured by us; or
2. To loss caused by a "collision" of "your covered auto" or any "non-owned auto", with another auto not insured by us provided:
 - a. The loss to "your covered auto" or any "non-owned auto" exceeds the deductible amount; and
 - b. The operator of such other auto has been positively identified; and
 - c. The operator of such other auto is, in our judgment, solely at fault for the loss to "your covered auto" or any "non-owned auto"; and
 - d. No statute is applicable at the time of the accident which relieves the operator of such other auto of tort liability or in any other manner impairs the subrogation right of us.

B. The **Personal Effects** Provision is added to Part D:

In addition, we will pay for loss by fire or lightning to wearing apparel and other personal effects, which are the property of you or a "family member", while such effects are in or upon "your covered auto" or any "non-owned auto". The limit of our liability for loss to personal effects arising out of any one accident is \$250.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**AMENDATORY ENDORSEMENT
AMENDMENT OF PART B - MEDICAL PAYMENTS COVERAGE**

Part B - Medical Payments Coverage, Insuring Agreement, Section A, is deleted and replaced with the following:

INSURING AGREEMENT

A. We will pay "reasonable medical expenses" incurred for necessary and related medical services, and reasonable funeral expenses, because of "bodily injury":

1. Caused by accident; and
2. Sustained by an "insured".

We will pay "reasonable medical expense" and/or funeral expenses only if incurred for services rendered within 3 years from the date of the accident that caused the "bodily injury".

For purposes of this Medical Payments Coverage, "reasonable medical expense" means the lesser of:

1. The negotiated amount that the health-care provider agrees to accept as part of a preferred provider (or similar) agreement; or
2. A charge for treatment or service which we determine is not more than what 90% of all health-care providers would charge for the same, or similar, treatment or service within a standard (as defined by us) geographic cost area.

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POLICY NUMBER

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PERSONAL VEHICLE SHARING PROGRAM EXCLUSION ENDORSEMENT

With respect to coverage provided by this endorsement, the provisions of the policy apply unless modified by the endorsement.

I. Part A - Liability Coverage

Part A is amended as follows:

The following exclusion is added:

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

"Your covered auto" while:

- a. Enrolled in a personal vehicle sharing program under the terms of a written agreement; and
- b. Being used in connection with such personal vehicle sharing program by anyone other than you or any "family member".

II. Part B - Medical Payments Coverage

Part B is amended as follows:

The following exclusion is added:

We do not provide Medical Payments Coverage for any "insured" for "bodily injury":

Sustained while "occupying", or when struck by, "your covered auto" while:

- a. Enrolled in a personal vehicle sharing program under the terms of a written agreement; and
- b. Being used in connection with such personal vehicle sharing program by anyone other than you or any "family member".

III. Part C - Uninsured Motorists Coverage

Part C is amended as follows:

The following exclusion is added:

We do not provide Uninsured Motorists Coverage for "bodily injury" sustained:

By any "insured" while "occupying", or when struck by, "your covered auto" while:

- a. Enrolled in a personal vehicle sharing program under the terms of a written agreement; and
- b. Being used in connection with such personal vehicle sharing program by anyone other than you or any "family member".

IV. Part D - Coverage For Damage To Your Auto

Part D is amended as follows:

The following exclusions are added:

We will not pay for:

Loss to "your covered auto" which occurs while:

- a. Enrolled in a personal vehicle sharing program under the terms of a written agreement; and
- b. Being used in connection with such personal vehicle sharing program by anyone other than you or any "family member".

Loss to, or loss of use of, a "non-owned auto" used by:

- a. You; or
 - b. Any "family member";
- in connection with a personal vehicle sharing program if the provisions of such a personal vehicle sharing program preclude the recovery of such loss or loss of use, from you or that "family member", or if otherwise precluded by any state law.

V. Underinsured Motorist Coverage Endorsement

If the Underinsured Motorists Coverage Endorsement is attached to the policy, the following exclusion is added:

We do not provide Underinsured Motorists Coverage for "bodily injury" sustained:

By any "insured" while "occupying", or when struck by, "your covered auto" while:

- a. Enrolled in a personal vehicle sharing program under the terms of a written agreement; and
- b. Being used in connection with such personal vehicle sharing program by anyone other than you or any "family member".



POLICY NUMBER

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

UNINSURED MOTORISTS COVERAGE - SOUTH CAROLINA**SCHEDULE**

Coverage is provided where a premium and a limit of liability are shown for the coverage.

Uninsured Motorists Coverage	Limit of Liability	Premium		
		Auto 1	Auto 2	Auto 3
Bodily Injury Liability	\$_____ each person \$_____ each accident			
Property Damage Liability	\$_____ each accident	\$_____	\$_____	\$_____

I. Part C - Uninsured Motorists Coverage

Part C is replaced by the following:

INSURING AGREEMENT

We will pay damages which an "insured" is legally entitled to recover from the owner or operator of an "uninsured motor vehicle" because of:

1. "Bodily injury" sustained by an "insured" and caused by an accident; and
2. "Property damage" caused by an 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".

"Insured" as used in this endorsement 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 "bodily injury" to which this coverage applies sustained by a person described in Paragraph 1. or 2. above.

"Property damage" as used in this endorsement means injury to or destruction of the property of an "insured".

"Uninsured motor vehicle" means a land motor vehicle or trailer of any type:

1. To which neither:
 - a. A liability bond or policy; nor
 - b. 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.
3. Which is a hit-and-run vehicle whose operator or owner cannot be identified and which hits or which causes an accident resulting in "bodily injury" or "property damage" 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 in accordance with the applicable provisions of the South Carolina Insurance Laws.

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

1. Owned or operated by a self-insurer under any applicable motor vehicle law, except a self-insurer which is or becomes insolvent.
2. 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, Subsection 15-78-60, or by other applicable statute.
3. Operated on rails or crawler treads.
4. Designed mainly for use off public roads while not on public roads.



POLICY NUMBER

EXCLUSIONS

A. We do not provide Uninsured Motorists Coverage for "property damage" or "bodily injury" sustained by any "insured";

1. If that "insured" or the legal representative settles the "bodily injury" or "property damage" claim and such settlement prejudices our right to recover payment.
2. While "occupying" "your covered auto" when it is being used as a public or livery conveyance. This Exclusion (A.2.) does not apply to a share-the-expense car pool.
3. Using a vehicle without a reasonable belief that that "insured" is entitled to do so. This Exclusion (A.3.) does not apply to a "family member" using "your covered auto" which is owned by you.
4. For the first \$200 of the amount of "property damage" to the property of each "insured" as the result of any one accident.

B. This 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.

LIMIT OF LIABILITY

A. If "bodily injury" or "property damage" is sustained in an accident by you or any "family member" while "occupying" "your covered auto":

1. Our maximum limit of liability for all damages, including damages for care, loss of services or death, arising out of "bodily injury" sustained by any one person in that accident is the sum of the limits of liability shown in the Schedule or 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 "bodily injury" sustained in that accident is the sum of the limits of liability shown in the Schedule or in the Declarations for each accident for Bodily Injury Liability Uninsured Motorists Coverage.
3. Our maximum limit of liability for all "property damage" resulting from that accident is the sum of the limits of liability shown in the Schedule or in the Declarations for each accident for Property Damage Liability Uninsured Motorists Coverage.

Subject to the maximum limit of liability set forth in Paragraphs 1., 2. or 3. above:

1. The most we will pay for "bodily injury" or "property damage" sustained in that accident by an "insured" other than you or any "family member" is that "insured's" pro rata share of the each person or each accident limit shown in the Schedule or in the Declarations for this coverage applicable to the vehicle that "insured" was "occupying" at the time of the accident; and
2. You or any "family member" who sustains "bodily injury" or "property damage" in that accident will also be entitled to a pro rata share of the each person or each accident limit described in Paragraph 1. above.

A person's pro rata share shall be the proportion that that person's damages bears to the total damages sustained by all "insureds".

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

1. "Insureds";
 2. Claims made;
 3. Vehicles or premiums shown in the Schedule or in the Declarations; or
 4. Vehicles involved in the accident.
- B. If "bodily injury" or "property damage" is sustained in an accident by you or any "family member" while not "occupying" any auto:

1. Our maximum limit of liability for all damages, including damages for care, loss of services or death, arising out of "bodily injury" sustained by any one person in that accident is the highest each person limit of liability shown in the Schedule or in the Declarations for each person 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 "bodily injury" sustained in that accident is the highest each accident limit of liability shown in the Schedule or in the Declarations for each accident for Bodily Injury Liability Uninsured Motorists Coverage applicable to any one of "your covered autos";
3. Our maximum limit of liability for all "property damage" resulting from that accident is the highest each accident limit of liability shown in the Schedule or in the Declarations for each accident 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:



POLICY NUMBER

1. "Insureds";
 2. Claims made;
 3. Vehicles or premiums shown in the Schedule or in the Declarations; or
 4. Vehicles involved in the accident.
- C. If "bodily injury" or "property damage" 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 damages, including damages for care, loss of services or death, arising out of "bodily injury" sustained by any one person in that accident is the highest each person limit of liability shown in the Schedule or 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 "bodily injury" sustained in that accident is the highest each accident limit of liability shown in the Schedule or 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 "property damage" resulting from that accident is the highest each accident limit of liability shown in the Schedule or 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. "Insureds";
 2. Claims made;
 3. Vehicles or premiums shown in the Schedule or in the Declarations; or
 4. Vehicles involved in the accident.
- D. If "bodily injury" or "property damage" is sustained by an "insured", other than you or any "family member", in an accident in which neither you nor any "family member" sustained "bodily injury" or "property damage":
1. Our maximum limit of liability for all damages, including damages for care, loss of services or death, arising out of "bodily injury" sustained by any one person in that accident will be the each person limit of liability shown in the Schedule or in the Declarations for Bodily Injury Liability Uninsured Motorists Coverage applicable to the vehicle that "insured" 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 "bodily injury" sustained in that accident is the each accident limit of liability shown in the Schedule or in the Declarations for Bodily Injury Liability Uninsured Motorists Coverage applicable to the vehicle that "insured" was "occupying" at the time of the accident.
3. Our maximum limit of liability for all "property damage" resulting from that accident is the each accident limit of liability shown in the Schedule or in the Declarations for Property Damage Liability Uninsured Motorists Coverage applicable to the vehicle that "insured" 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. "Insureds";
 2. Claims made;
 3. Vehicles or premiums shown in the Schedule or in the Declarations; or
 4. Vehicles involved in the accident.
- E. No one will be entitled to receive duplicate payments for the same elements of loss under this coverage and:
1. Part A of this policy;
 2. Any Underinsured Motorists Coverage provided by this policy; or
 3. Part D of this policy or any similar coverage under any other policy.
- F. We will not make a duplicate payment under this coverage for any element of loss for which payment has been made by or on behalf of persons or organizations who may be legally responsible.

OTHER INSURANCE

A. If an "insured" sustains "bodily injury" while:

1. "Occupying" a vehicle:
 - a. Not owned by that person, including any vehicle while used as a temporary substitute for "your covered auto"; or
 - b. Owned by you or any "family member" which is not insured for this coverage under this policy; or
2. Not "occupying" any vehicle;

The following priorities of recovery apply:

First Priority	The policy affording Uninsured Motorists Coverage to the vehicle the "insured" was "occupying" at the time of the accident.
Second Priority	Any policy affording Uninsured Motorists coverage to the "insured" as a named insured or family member.



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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 "insured" 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 "property damage", this insurance shall apply only after the limits of any other collectible insurance applicable to the damaged property have been exhausted.
- II. Part F - General Provisions**
- Part F is amended as follows with respect to Uninsured Motorists Coverage:
- A. The Our Right To Recover Payment Provision is replaced by the following:**
- OUR RIGHT TO RECOVER PAYMENT**
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 an "insured" 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 an "insured" making a claim for "property damage" under this insurance is also entitled to insurance or other compensation for the "property damage", we will not be obligated to pay a claim until the "insured" 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.
- B. The following is added to the Two Or More Auto Policies Provision:**
1. This provision does not apply to Uninsured Motorists Coverage.
 2. No one will be entitled to receive duplicate payments for the same elements of loss under Uninsured Motorists Coverage.
- C. The following provision is added:**
- CONFORMITY TO STATUTE**
- This endorsement is intended to be in full conformity with the South Carolina Insurance Laws. If any provision of this endorsement conflicts with that law, it is changed to comply with the law. This endorsement must be attached to the Change Endorsement when issued after the policy is written.



POLICY NUMBER

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

UNDERINSURED MOTORISTS COVERAGE - SOUTH CAROLINA**SCHEDULE**

Coverage is provided where a premium and a limit of liability is shown for the coverage.

Underinsured Motorists Coverage	Limit of Liability	Premium		
		Auto 1	Auto 2	Auto 3
Bodily Injury Liability	\$ _____ each person			
	\$ _____ each accident			
Property Damage Liability	\$ _____ each accident	\$ _____	\$ _____	\$ _____

We will pay damages which an "insured" is legally entitled to recover from the owner or operator of an "underinsured motor vehicle" because of:

1. "Bodily injury" sustained by an "insured" and caused by an accident; and
2. "Property damage" caused by an accident.

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

"Insured" as used in this endorsement 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 "bodily injury" to which this coverage applies sustained by a person described in 1. or 2. above.

"Property damage" as used in this endorsement means injury to or destruction of "your covered auto". However, "property damage" does not include damage to property owned by the "insured" while contained in "your covered auto".

"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 "insured" 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.
2. Designed mainly for use off public roads while not upon public roads.
3. While located for use as a residence or premises.

EXCLUSIONS

A. We do not provide Underinsured Motorists Coverage for "bodily injury" or "property damage" sustained:

1. By you while "occupying", or when struck by any motor vehicle you own which is not insured for this coverage. This includes a trailer of any type used with that vehicle.

2. By any "family member" while "occupying", or when struck by, a motor vehicle owned by such "family member" which is not insured for this coverage. This includes a trailer of any type used with that vehicle.

B. We do not provide Underinsured Motorists Coverage for "bodily injury" or "property damage" sustained by any "insured":

1. While "occupying" "your covered auto" when it is being used as a public or livery conveyance. This Exclusion (B.1.) does not apply to a share-the-expense car pool.
2. Using a vehicle without a reasonable belief that that "insured" is entitled to do so. This Exclusion (B.2.) does not apply to a "family member" using "your covered auto" which is owned by you.

C. This 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.

LIMIT OF LIABILITY

A. If "bodily injury" is sustained in an accident by any "insured" while "occupying" "your covered auto", or if "your covered auto" sustains "property damage" in an accident:

1. Our maximum limit of liability for all damages, including damages for care, loss of services or death, arising out of "bodily injury" sustained by any one person in that accident is the sum of the limits of liability shown in the Schedule or 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 "bodily injury" sustained in that accident is the sum of the limits of liability shown in the Schedule or in the Declarations for each accident for Bodily Injury Liability Underinsured Motorists Coverage.



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3. Subject to the maximum limit of liability set forth in Paragraphs 1. and 2. above:
- The most we will pay for "bodily injury" sustained in that accident by an "insured" other than you or any "family member" is that "insured's" pro rata share of the each person or each accident limit shown in the Schedule or in the Declarations for Bodily Injury Liability Underinsured Motorists Coverage applicable to the vehicle that "insured" was "occupying" at the time of the accident; and
 - You or any "family member" who sustains "bodily injury" 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 "bodily injury" damages bears to the total of all "bodily injury" damages sustained by all "insureds".
4. Our maximum limit of liability for all "property damage" resulting from that accident is the sum of the limits of liability shown in the Schedule or in the Declarations for each accident for Property Damage Liability Underinsured Motorists Coverage.
- The maximum limit of liability is the most we will pay regardless of the number of:
- "Insureds";
 - Claims made;
 - Vehicles or premiums shown in the Schedule or in the Declarations; or
 - Vehicles involved in the accident.
- B. If "bodily injury" is sustained in an accident by you or any "family member" while not "occupying" any auto:
- Our maximum limit of liability for all damages, including damages for care, loss of services or death, arising out of "bodily injury" sustained by any one person in that accident is the highest each person limit of liability shown in the Schedule or in the Declarations for each person for Bodily Injury Liability Underinsured Motorists Coverage.
 - Subject to this limit for each person, our maximum limit of liability for all damages arising out of "bodily injury" sustained in that accident is the highest each accident limit of liability shown in the Schedule or in the Declarations for each accident for Bodily Injury Liability Underinsured Motorists Coverage.
- The maximum limit of liability is the most we will pay regardless of the number of:
- "Insureds";
 - Claims made;
 - Vehicles or premiums shown in the Schedule or in the Declarations; or
 - Vehicles involved in the accident.
- C. If "bodily injury" is sustained in an accident by you or any "family member" while "occupying" a vehicle not owned by you or any "family member":
- Our maximum limit of liability for all damages, including damages for care, loss of services or death, arising out of "bodily injury" sustained by any one person in that accident is the highest each person limit of liability shown in the Schedule or in the Declarations for Bodily Injury Liability Underinsured Motorists coverage applicable to any one of "your covered autos".
 - Subject to this limit for each person, our maximum limit of liability for all damages arising out of "bodily injury" sustained in that accident is the highest each accident limit of liability shown in the Schedule or in the Declarations for Bodily Injury Liability Underinsured Motorists Coverage applicable to any one of "your covered autos"; and
- The maximum limit of liability is the most we will pay regardless of the number of:
- "Insureds";
 - Claims made;
 - Vehicles or premiums shown in the Schedule or in the Declarations; or
 - Vehicles involved in the accident.
- D. No one will be entitled to receive duplicate payments for the same elements of loss under this coverage and Part A, Part C or Part D of this policy.
- E. We will not make a duplicate payment under this coverage for any element of loss for which payment has been made by or on behalf of persons or organizations who may be legally responsible.
- F. We will not pay for any element of loss if a person is entitled to receive payment for the same element of loss under any of the following or similar law:
- Workers' compensation law; or
 - Disability benefits law.
- G. We will reduce the "insured's" total damages by any amount available to that "insured", under any bodily injury liability bonds or policies applicable to the "underinsured motor vehicle", that such "insured" did not recover as a result of a settlement between that "insured" and the insurer of an "underinsured motor vehicle". However, any reduction of the "insured's" total damages will not reduce the limit of liability for this coverage.

OTHER INSURANCE

- A. If an "insured" sustains "bodily injury" while:
- "Occupying" a vehicle;



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- a. Not owned by that person, including any vehicle while used as a temporary substitute for "your covered auto"; or
 - b. Owned by you or any "family member" which is not insured for this coverage under this policy; or
2. Not "occupying" any vehicle;
the following priorities of recovery apply:

First Priority	The policy affording Underinsured Motorists Coverage to the vehicle the "insured" was "occupying" at the time of the accident.
Second Priority	Any policy affording Underinsured Motorists coverage to the "insured" 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 "insured" 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 "property damage", this insurance shall apply only after the limits of any other collectible insurance applicable to the damaged property have been exhausted.

ADDITIONAL DUTY

Any person seeking coverage under this endorsement must also promptly send us copies of the legal papers if a suit is brought.

GENERAL PROVISIONS

Part F is amended as follows with respect to Underinsured Motorists Coverage:

- A. The **Our Right To Recover Payment** Provision does not apply to Underinsured Motorists Coverage.

- B. The following is added to the **Two Or More Auto Policies** Provision:

TWO OR MORE AUTO POLICIES

- 1. This provision does not apply to Underinsured Motorists Coverage.
- 2. No one will be entitled to receive duplicate payments for the same elements of loss under Underinsured Motorists Coverage.

- C. The following provision is added:

CONFORMITY TO STATUTE

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

TOWING AND LABOR COSTS COVERAGE

We will pay for towing and labor costs incurred each time "your covered auto" or any "non-owned auto" is disabled, up to the amount shown in the Declarations as application to that vehicle. If a "non-owned auto" is disabled, we will provide the broadest towing and

labor costs coverage applicable to any "your covered auto" shown in the Declarations.

We will only pay for labor performed at the place of disablement.

PP0303 (04/86)

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Stephen Vicari

From: Stephanie Murphy <stephanie.murphy@stateauto.com>
Sent: Friday, February 28, 2020 1:15 PM
To: Stephen Vicari
Subject: stephen@stewartlawoffices.net
Attachments: Certified Policy -Steineman.pdf; F. Steineman.doc

Follow Up Flag: Follow up
Flag Status: Flagged

Mr. Vicari:

Please be advised State Auto is in receipt of your demand from Ms. Steineman's injury claim for \$1,000,000 as follows:
\$250,000 Liability Limits
\$250,000 UIM on the vehicle Ms. Steineman occupied at the time of the accident
\$500,000 UIM limits (stacked) for the other two vehicles insured on the policy

Based on the information provided as of date, it would appear that pursuant to the non-duplication of benefits provisions in the policy Ms. Steineman may not recover both the liability limits and the Underinsured limits.

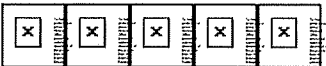
State Auto will tender the bodily injury liability limits of \$250,000.00 for Ms. Steineman's bodily injury claim.

I have attached a letter regarding the same that will also be sent to your office via certified mail and regular mail as well as a certified copy of Ms. Steinemans's policy.

Should you have any questions or wish to discuss this matter further, please feel free to contact me.

Thank you

Stephanie Murphy
CARE Associate Senior
State Auto Insurance Companies
Phone: 6145157140



Ex B



P.O. Box 182822
Columbus, OH 43218
1-800-444-9950

February 27, 2020
Stewart Law Offices, LLC
10 Calendar Court, Suite 100
Columbia, SC 29206

Re: Claim number: AU-0000000-357186
Insured: Michael Ronchetto
Policy Number: ASC0048016
Date of loss: 01/22/2018

Dear Mr. Vicari:

Please be advised State Auto is in receipt of your demand from Ms. Steineman's injury claim for \$1,000,000 as follows:
\$250,000 Liability Limits
\$250,000 UIM on the vehicle Ms. Steineman occupied at time of accident
\$500,000 UIM limits (stacked) for other two vehicles insured on policy

This matter involves a three vehicle collision that occurred on January 22, 2018 at 5:40 p.m. in Fort Mill, South Carolina. Named insured Eric Steineman was traveling north on I-77 and got off on Exit 85 (Hwy 160). His wife, named insured Francine Steineman, was a passenger in the car.

After exiting, Mr. Steineman was traveling in the far left lane preparing for a left turn. He was facing eastbound traffic and westbound traffic was very heavy.

Westbound traffic is three lanes – the median and center lane were backed up and Mr. Steineman stated someone waived him through to make his left turn. As he was turning left into the Kingsley Shopping Center, a vehicle operated by Sara Smith, who was traveling in the curb lane, hit Mr. Steineman's vehicle on the right side.

The impact pushed his vehicle left and his vehicle struck a vehicle being operated by Ms. Harris, who was exiting the shopping center.

There was no traffic signal where Mr. Steineman was turning into the shopping center.

Policy:

Meridian Security Insurance Company issued a personal auto policy to named insured, Francine Steineman, Policy Number. ASC 0048016, with effective dates of November 1, 2017 through November 1, 2018. The policy provides coverage for a 2001 Ford Exploded, a 1998 Honda Civic and a 2016 Dodge Challenger.

Part A – Liability Coverage

LIMIT OF LIABILITY

- A. The limit of liability shown in the Declarations for each person for Bodily Injury Liability is our maximum limit of liability for all damages, including damages for care, loss of services or death, arising out of “bodily injury” sustained by any one person in any one auto accident. Subject to this limit for each person, the limit of liability shown in the Declarations for each accident for Bodily Injury Liability is our maximum limit of liability for all damages for “bodily injury” resulting from any one auto accident...

This is the most we will pay regardless of the number of:

1. “Insureds”;
 2. Claims made;
 3. Vehicles or premiums shown in the Declarations; or
 4. Vehicles involved in the auto accident.
- B. No one will be entitled to receive duplicate payments for the same elements of loss under this coverage and:
1. Part **B** or Part **C** of this policy; or
 2. Any Underinsured Motorists Coverage provided by this policy.

Underinsured Motorists Coverage Endorsement

LIMIT OF LIABILITY

- A. If “bodily injury” is sustained in an accident by any “insured” while “occupying” “your covered auto”, or if “your covered auto” sustains “property damage” in an accident:
1. Our maximum limit of liability for all damages, including damages for care, loss of services or death, arising out of “bodily injury” sustained by any one person in that accident is the sum of the limits of liability shown in the Schedule or 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 "bodily injury" sustained in that accident is the sum of the limits of liability shown in the Schedule or in the Declarations for each accident for Bodily Injury Liability Underinsured Motorists Coverage...

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

1. "Insureds";
2. Claims made;
3. Vehicles or premiums shown in the Schedule or in the Declarations; or
4. Vehicles involved in the accident.

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

GENERAL PROVISIONS

Part **F** is amended as follows with respect to Underinsured Motorists Coverage:

- B. The following provision is added:

CONFORMITY TO STATUTE

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

Based on the information provided as of date, it would appear that pursuant the non-duplication of benefits provisions in the policy Ms. Steineman may not recover both the liability limits and the Underinsured limits.

State Auto will tender the bodily injury liability limits of \$250,000.00 for Ms. Steineman's bodily injury claim.

Should you have additional information to present or if you wish to discuss this matter further, please feel free to contact us.

Respectfully,

Stephanie Murphy
CARE Associate Senior
PO BOX 182822
Columbus, OH 43218-2822
614.515.7140

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION**

Francine Steineman,

Plaintiff,

vs.

Meridian Security Insurance Company,

Defendant.

Civil Action No. 0:20-cv-03118-MGL

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, the Defendant, Meridian Security Insurance Company (hereinafter “Meridian” or “Defendant”) gives notice that the case captioned *Francine Steineman v. Meridian Security Insurance Company*, Civil Action Number 2020-CP-46-02221, is hereby removed to the United States District Court for the District of South Carolina, Rock Hill Division, from the York County Court of Common Pleas (Sixteenth Judicial Circuit), where it was originally filed by the Plaintiff, Francine Steineman, on July 28, 2020.

True and correct copies of all process and pleadings served upon Defendant, such being all of the documents filed with the state court, are attached hereto collectively as **Exhibit A**.

STATEMENT OF GROUNDS FOR REMOVAL

1. Defendant bases this Notice of Removal on 28 U.S.C. § 1332(a), which states, in pertinent part, “The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between --- (1) citizens of different States” Further, Defendant is entitled to remove this action pursuant to 28 U.S.C. § 1441 because complete diversity exists and the amount in controversy exceeds the jurisdictional amount.

2. The Plaintiff Francine Steineman is an individual citizen and resident of York County, South Carolina. (Complaint ¶1).

3. Plaintiff alleges that the Defendant is a corporation incorporated and existing under the laws of the State of Ohio. (Complaint ¶2). Even though Defendant is actually a corporation incorporated and existing under the laws of the State of Indiana, Plaintiff still admits that the Defendant is not a citizen of the State of South Carolina for purposes of diversity jurisdiction.

4. The test in the Fourth Circuit “for determining the amount in controversy in a diversity proceeding is ‘the pecuniary result to either party which [a] judgment would produce.’” *Dixon v. Edwards*, 290 F.3d 699, 710 (4th Cir. 2002) (quoting *Gov’t Emp. Ins. Co. v. Lally*, 327 F.2d 568, 569 (4th Cir. 1964)). Generally, the amount in controversy is determined by reference to the plaintiff’s complaint. *JTH Tax, Inc. v. Frashier*, 624 F.3d 635, 639 (4th Cir. 2010). When the complaint does not specify the amount in controversy, however, the Court may go beyond the pleadings and “‘look to the entire record before it and make an independent evaluation as to whether or not the jurisdictional amount is in issue, including ‘evidence outside the complaint.’” *Carver v. Phoenix Ins. Co.*, No. 1:11cv203, 2012 U.S. Dist. LEXIS 57060, *5 (W.D.N.C. Apr. 24, 2012) (quoting *Dash v. FirstPlus Home Loan Trust 1996-2*, 248 F.Supp.2d 489, 498 (M.D.N.C. 2003)). Importantly, the Fourth Circuit examines the value of the equitable or declaratory relief to either party, not just the plaintiff, that a judgment may produce. *Dixon*, 290 F.3d at 710.

5. The Plaintiff’s Complaint seeks a declaration that Defendant is obligated pay \$750,000 in underinsured motorist coverage as well as \$750,000 in uninsured motorist coverage to Plaintiff. (Complaint ¶¶22, 25). Therefore, the amount in controversy exceeds \$75,000.

6. Defendant's Notice of Removal is timely under 28 U.S.C. §1446(b), as it is filed "within 30 days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based" The Plaintiff affected service upon Defendant on August 3, 2020 by serving the South Carolina Department of Insurance with a copy of the Summons and Complaint. (See Letter from Department of Insurance, attached hereto as part of **Exhibit A**). Accordingly, Defendant's removal of this case is timely, as it is within thirty (30) days of proper service of the Plaintiff's initial pleading.

7. In accordance with 28 U.S.C. §1446(d), concurrently with filing this Notice of Removal, Defendant will provide written notice of the removal to Plaintiff and will file a true and correct copy of this Notice of Removal with the Clerk of Court for the York County Court of Common Pleas.

8. Defendant submits this Notice without waiving any defenses to the claims asserted by the Plaintiff or conceding that the Plaintiff has pled claims upon which relief can be granted.

9. All of the other prerequisites for removal under 28 U.S.C. § 1446 have been met.

WHEREFORE, Defendant gives notice that the referenced action currently pending in the Court of Common Pleas, York County, South Carolina, has been removed to this Court.

[Signature block on following page]

BARNWELL WHALEY PATTERSON & HELMS, LLC

BY: s/Jeffrey M. Bogdan

M. Dawes Cooke, Jr. (Fed ID # 00288)

Jeffrey M. Bogdan (Fed. ID # 10453)

288 Meeting Street, Suite 200

Charleston, SC 29401

843-577-7700 (phone)

843-577-7708 (fax)

mdc@barnwell-whaley.com

jbogdan@barnwell-whaley.com

Attorneys for Defendant

August 31, 2020

Charleston, South Carolina

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION**

Francine Steineman,

Plaintiff,

vs.

Meridian Security Insurance Company,

Defendant.

Civil Action No.

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true and correct copy of the foregoing Notice of Removal was filed electronically using the Court's Electronic Case Filing System. A Notice of Electronic Filing will be sent by electronic mail to all counsel of record by operation of the Court's Electronic Filing System, and upon the following by U.S. Mail, sufficient postage prepaid:

Stephen G. Vicari, II
Stewart Law Offices, LLC
P.O. Box 6787
Columbia, SC 29260

BARNWELL WHALEY PATTERSON & HELMS, LLC

BY: s/ Jeffrey M. Bogdan

JEFFREY M. BOGDAN (Fed. Bar ID: #10453)
288 Meeting Street, Suite #200
Charleston, South Carolina 29401
PHONE: (843) 577-7700
jbogdan@barnwell-whaley.com
Attorneys for Defendant

August 31, 2020
Charleston, South Carolina



South Carolina Department of Insurance

Capitol Center
1201 Main Street, Suite 1000
Columbia, South Carolina 29201

HENRY McMASTER
Governor

RAYMOND G. FARMER
Director

Mailing Address:
P.O. Box 100105, Columbia, S.C. 29202-3105

August 4, 2020

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
MERIDIAN SECURITY INSURANCE COMPANY
518 East Broad Street
Columbus, OH 43215

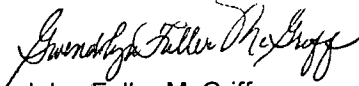
Dear Sir:

On August 3, 2020, I accepted service of the attached Summons and Complaint on your behalf. I am, hereby, forwarding that accepted process on to you pursuant to the provisions of S.C. Code Ann. § 38-5-70. By forwarding accepted process on to you, I am meeting a ministerial duty imposed upon me by S.C. Code Ann. § 38-77-160. I am not a party to this case. The State of South Carolina Department of Insurance is not a party to this case. It is important for you to realize that service was effected upon your insurer on my date of acceptance for service.

You must promptly acknowledge in writing your receipt of this accepted process to sdubois@doi.sc.gov. When replying, please refer to File Number 180204, Francine Steineman v. MERIDIAN SECURITY INSURANCE COMPANY, 2020-CP-46-02221.

By:

Sincerely Yours,


Gwendolyn Fuller McGriff
Deputy Director and General Counsel
(803)737-6200

Raymond G. Farmer
Director
State of South Carolina
Department of Insurance

Attachment

CC: Stephen G. Vicar II
Post Office Box 6787
Columbia, SC 29260

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Francine Steineman,

Plaintiff,

v.

Meridian Security Insurance Company,

Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2020-CP-46-

SUMMONS

(As authorized by S.C. Code Ann. § 15-53-90, a
Jury Trial Demand)

(As authorized by Rule 57, SCRCP, a speedy
hearing is requested)

TO: THE DEFENDANT(S) ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to said complaint on the subscribed, Stewart Law Offices, LLC., 10 Calendar Court, Suite 100, Columbia, South Carolina 29206, within THIRTY (30) days after the service hereof, exclusive of the date of such service. If you fail to answer the complaint within the time aforesaid, then a default judgment will be rendered against you for the relief demanded in the complaint.

Respectfully Submitted,

Stewart Law Offices, LLC

s/Stephen G. Vicari, II

Stephen G. Vicari, II (S.C. Bar No. 102395)

10 Calendar Court, Suite 100

Post Office Box 6787 (29260)

Columbia, SC 29206

803-743-4200 (o)

803-743-4204 (f)

stephen@stewartlawoffices.net

Attorney for Plaintiff

Columbia, South Carolina
July 28, 2020

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Francine Steineman,

Plaintiff,

v.

Meridian Security Insurance Company,

Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2020-CP-46-

COMPLAINT DECLARATORY JUDGMENT
(As authorized by S.C. Code Ann. § 15-53-90, a
Jury Trial Demand)
(As authorized by Rule 57, SCRCP, a speedy
hearing is requested)

The Plaintiff would respectfully show this Honorable Court that:

JURISDICTION AND VENUE

1. Plaintiff is a citizen and resident of York County, South Carolina.
2. Defendant Meridian Security Insurance Company was at all times relevant to this Complaint a corporation organized under the laws of Ohio, licensed to do business in the State of South Carolina, and engaged in the business of providing insurance coverage for profit in York County, South Carolina.
3. This action is brought under the Uniform Declaratory Judgment Act, S.C. Code Ann. § 15-53-10 et seq. Plaintiff is therefore not seeking money damages here but a declaration from the Court as to the parties' rights with respect to Meridian Security Insurance Company policy number ACS 0048016 ("Policy") issued by Defendant Meridian to Plaintiff, with an effective date of coverage from November 1, 2017 to November 1, 2018. (Exhibit A.)
4. Jurisdiction and venue are proper over the Defendant.

FACTS

5. This declaratory action raises the question of whether, under the Policy, it is a “duplicate payment” to pay what the policy says must be paid? The answer should be no.

The Policy

6. On or about November 1, 2017, Defendant issued the Policy to Mrs. Steineman, providing liability, uninsured, and underinsured coverage, among other things, through November 1, 2018. (Exhibit A.)

7. The Policy covers three vehicles: a 2016 Dodge Challenger with a VIN number of 2C3CDZAG9GH240434, the 2001 Ford Explorer involved in the crash with a VIN number of 1FMCU70E01UC00890, and a 1998 Honda Civic with a VIN number of JHMEJ6677WS009994. (Exhibit A.)

8. Each of the three vehicles are covered in the amount of \$250,000.00 liability coverage, \$250,000 UM coverage, and \$250,000.00 UIM coverage. (Exhibit A.)

Liability

9. The Policy’s liability provision provides:

- A. We will pay damages for “bodily injury” or “property damage” for which any “insured” becomes legally responsible because of an auto accident. Damages include prejudgment interest awarded against the “insured”. We will settle or defend, as we consider appropriate, any claim or suit asking for these damages. In addition to our limit of liability, we will pay all defense costs we incur. Our duty to settle or defend ends when our limit of liability for this coverage has been exhausted by payment of judgments or settlements. We have no duty to defend any suit or settle any claim for “bodily injury” or “property damage” not covered under this policy.

Policy, Part A – Liability Coverage.

10. Relevant here, “Insured” is defined as “1. You or any ‘family member’ for the ownership, maintenance or use of any auto or ‘trailer’. 2. Any person using ‘your covered auto’.”

Policy, Part A – Liability Coverage, B.

UIM

11. The Policy's UIM provision provides further: "We will pay damages which an 'insured' is legally entitled to recover from the owner or operator of an 'underinsured motor vehicle' because of: 1. 'Bodily injury' sustained by an 'insured' and caused by an accident; and 2. 'Property damage' caused by an accident." Policy, Underinsured Motorists Coverage -South Carolina.

12. And "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 "insured" 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.
2. Designed mainly for use off public roads while not upon public roads.
3. While located for use as a residence or premises.

Policy, Underinsured Motorists Coverage -South Carolina.

UM

13. The policy's UM provision provides "We will pay damages which an 'insured' is legally entitled to recover from the owner or operator of an 'uninsured motor vehicle' because of: 1. 'Bodily injury' sustained by an 'insured' and caused by an accident; and 2. 'Property damage' caused by an accident." Policy, Uninsured Motorists Coverage – South Carolina, I. Part C.

14. Relevant here, "'Uninsured motor vehicle' means a land motor vehicle or trailer of any type: 1. To which neither: a. A liability bond or policy; nor b. Cash or securities deposited with the State Treasurer; applies at the time of the accident." Policy, Uninsured Motorists Coverage – South Carolina, I. Part C.

Underlying Litigation

15. On January 22, 2018, Mrs. Steineman was a passenger in her 2001 Ford Explorer. Her husband was driving, traveling east on Highway 160 in Fort Mill, SC, in the inside lane, headed away from I 77.

16. Highway 160 is a five-lane road, two lanes traveling in the direction the Steinemans were traveling and three lanes traveling in the opposite direction.

17. Around 5:40 p.m., Mr. Steineman attempted to make a left turn, across the three lanes of traffic, onto Textile Way.

18. The two inside lanes of the three lanes were at a complete stop. So Mr. Steineman pulled out to make the left turn.

19. As Mr. Steineman attempted the left turn, he failed to check the outside lane before entering it, and the driver in the outside lane was traveling too fast for conditions and collided into Mrs. Steineman's car.

20. As a result of the collision, Mrs. Steineman sustained serious and permanent injuries.

21. And her damages exceed \$1,000,000.00.

22. In February 2020, Mrs. Steineman sent a demand to Defendant. She demanded \$250,000.00 in liability coverage, alleging she sustained bodily injury as a result of Mr. Steineman's negligence, arising out of an auto accident. Mr. Steineman is an insured under the policy and is legally responsible to pay for Mrs. Steineman's damages. And since the limits of Mr. Steineman's liability coverage is not enough to pay the full amount Mrs. Steineman is legally entitled to recover as damages, Mr. Steineman is underinsured, so Mrs. Steineman demanded the \$250,000.00 in UIM on her car involved in the wreck and the \$250,000.00 in UIM on each of her two other covered vehicles, stacked. The total demand was \$1,000,000.00.

23. In response, Defendant offered the liability policy-limit of \$250,000.00 but denied Mrs. Steineman's UIM demand, citing a "duplicate payments" provision in the Policy. (Exhibit B.)

24. In March 2020, Mrs. Steineman sent a UM demand to Defendant. She alleges the driver who collided into her was negligent in causing her damages, and because the driver is uninsured, Mrs. Steineman is entitled to her UM coverage. To be sure, the driver neither had a liability policy nor cash or securities deposited with the State Treasurer.

25. Mrs. Steineman demanded \$750,000.00 in UM (UM on her car involved in the wreck and UM stacked on her two other covered vehicles).

26. Again, Defendant offered the liability policy-limit of \$250,000.00 but denied Mrs. Steineman's UM demand, citing a "duplicate payments" provision in the Policy.

27. Mrs. Steineman then filed a lawsuit alleging negligence against Mr. Steineman and the uninsured driver who collided into Mrs. Steineman's car. The lawsuit is filed in the York County Court of Common Pleas as Case Number 2020-CP-46-02219.

"Duplicate Payment" Provision

28. Relevant here, the "duplicate payments" provision appears in three places in the Policy: in Part A—Liability Coverage, Part C—Uninsured Coverage, and Underinsured Motorists Coverage – South Carolina.

29. Liability Coverage provides:

- "B. No one will be entitled to receive duplicate payments for the same elements of loss under this coverage and:
1. Part C of this policy; or
 2. Any Underinsured Motorists Coverage provided by this policy."

Policy, Amendment of Policy Provisions – South Carolina, II. Part A – Liability Coverage.

30. Uninsured Coverage provides:

- "E. No one will be entitled to receive duplicate payments for the same elements of loss under this coverage and:
1. Part A of this policy;

2. Any Underinsured motorist Coverage provided by this policy; or
3. Part D of this policy or any similar coverage under any other policy.”

Policy, Endorsement, Uninsured Motorist Coverage – South Carolina, Limit of Liability.

31. Underinsured Motorists Coverage provides:

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

Policy, Underinsured Motorists Coverage – South Carolina, Limit of Liability.

32. “Duplicate payment” is not defined in the policy.

33. According to Defendant, a “duplicate payment” will occur if it pays from more than one coverage in the Policy (e.g., liability and UIM). (See Exhibit B) (e-mail from Defendant stating, “pursuant to the non-duplication of benefits provisions in the policy Ms. Steineman may not recover both the liability limits and the Underinsured limits.”).

34. But that is a strained meaning of “duplicate payment.” And the policy doesn’t direct that outcome. Indeed, the Policy specifically allows for a recovery of both the liability limits and the underinsured limits. To pay it cannot be a “duplicate payment.”

35. This declaratory action was filed to determine the rights and obligations of the parties with respect to the “duplicate payments” provision in the Policy.

36. Specifically, this declaratory action raises the question of whether, under the Policy, it is a “duplicate payment” to pay what the policy says must be paid?

FOR A FIRST DECLARATION

37. Plaintiff restates and realleges each and every allegation as if repeated herein verbatim.

38. The Policy entitles Mrs. Steineman to certain benefits until her damages are satisfied.

39. Defendant maintains the Policy does not entitle Mrs. Steineman to certain benefits until her damages are satisfied because to satisfy her damages would be a “duplicate payment.”

40. A real, concrete, and substantial dispute between the parties exists as to whether this would be a “duplicate payment.”

41. Mrs. Steineman seeks a declaration stating what “duplicate payment” means.

42. Mrs. Steineman seeks a declaration stating the “duplicate payment” provision as interpreted by Defendant violates well-settled South Carolina law.

43. Mrs. Steineman also seeks a declaration stating Defendant unreasonably relied on the “duplicate payment” provision to deny Mrs. Steineman’s claim.

Wherefore, Mrs. Steineman prays for an Order from this Court declaring what the “duplicate payment” provision means; as interpreted by Defendant the “duplicate payment” provision violates well-settled South Carolina law; Defendant unreasonably relied on the “duplicate payment” provision to deny Mrs. Steineman’s claim; and Defendants are obligated to provide coverage under the Policy. Such a declaration would allow the Parties legal certainty moving forward with this litigation.

Mrs. Steineman further prays this Court award such other and further relief as it deems just and proper under the circumstances, including attorneys’ fees and expenses of litigation.

To the extent a determination of an issue of fact is necessary in resolving this Declaratory Judgment, Plaintiff demands such issue be tried and determined in the same manner as issues of fact are tried and determined in other civil actions in this Court.

[Signature Block on Following Page]

ELECTRONICALLY FILED - 2020 Jul 28 1:58 PM - YORK - COMMON PLEAS - CASE#2020CP4602221

Respectfully Submitted,

Stewart Law Offices, LLC

s/Stephen G. Vicari, II

Stephen G. Vicari, II (S.C. Bar No. 102395)

10 Calendar Court, Suite 100

Post Office Box 6787 (29260)

Columbia, SC 29206

803-743-4200 (o)

803-743-4204 (f)

stephen@stewartlawoffices.net

Attorney for Plaintiff

Columbia, South Carolina
July 28, 2020

DE

P.O. BOX 100105
COLUMBIA, S.C. 29202-3105



9489 0090 0027 6032 6438 77

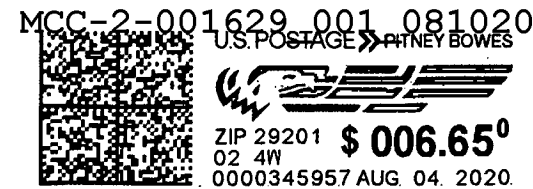
Label 950-PB, Oct. 2015
Pinney Bowes

CERTIFIED MAIL

RETURN RECEIPT REQUESTED

SERVICE OF PROCESS

MERIDIAN SECURITY INSURANCE COMPANY
518 East Broad Street
Columbus, OH 43215



State Auto CHQ

8/10/2020 8:01:38 AM

Carrier: USPS Certified
Sender
Dest: Office Services
Building: PavLL
MailStop:
EUID: SPO5850



STATE AUTO INSURANCE

AUG 10 2020

P-#5

P-#5

AUG 10 2020

STATE AUTO INSURANCE

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION**

Francine Steineman,

Plaintiff,

vs.

Meridian Security Insurance Company,

Defendant.

Civil Action No.0:20-cv-03118-MGL

**DEFENDANT MERIDIAN SECURITY
INSURANCE COMPANY'S ANSWER
AND COUNTERCLAIM**

TO: STEPHEN G. VICARI, II, ESQUIRE, ATTORNEY FOR PLAINTIFF:

The Defendant, Meridian Security Insurance Company (hereinafter "Defendant"), by and through its undersigned counsel, hereby submits its Answer to the Plaintiff's Complaint and Counterclaim. Each and every allegation not specifically admitted herein is denied.

AS TO JURISDICTION AND VENUE

1. Defendant is without sufficient knowledge and information to form a belief as to the allegations of Paragraph 1 but admits the same, upon information and belief.
2. Defendant denies the allegations contained in Paragraph 2.
3. Defendant admits the allegations contained in Paragraph 3.
4. In response to the allegations contained in Paragraph 4, Defendant admits that jurisdiction and venue are proper in this court, not in state court where Plaintiff filed.

AS TO FACTS

5. Defendant denies the allegations contained in Paragraph 5.
6. In response to Paragraph 6, Defendant craves reference to the Policy and denies all allegations inconsistent therewith.

7. In response to Paragraph 7, Defendant craves reference to the Policy and denies all allegations inconsistent therewith.

8. In response to Paragraph 8, Defendant craves reference to the Policy and denies all allegations inconsistent therewith.

9. In response to Paragraph 9, Defendant craves reference to the Policy and denies all allegations inconsistent therewith.

10. In response to Paragraph 10, Defendant craves reference to the Policy and denies all allegations inconsistent therewith.

11. In response to Paragraph 11, Defendant craves reference to the Policy and denies all allegations inconsistent therewith.

12. In response to Paragraph 12, Defendant craves reference to the Policy and denies all allegations inconsistent therewith.

13. In response to Paragraph 13, Defendant craves reference to the Policy and denies all allegations inconsistent therewith.

14. In response to Paragraph 14, Defendant craves reference to the Policy and denies all allegations inconsistent therewith.

15. Defendant is without sufficient knowledge and information to form a belief as to the allegations of Paragraph 15 and, therefore, denies the same.

16. Defendant is without sufficient knowledge and information to form a belief as to the allegations of Paragraph 16 and, therefore, denies the same.

17. Defendant is without sufficient knowledge and information to form a belief as to the allegations of Paragraph 17 and, therefore, denies the same.

18. Defendant is without sufficient knowledge and information to form a belief as to the allegations of Paragraph 18 and, therefore, denies the same.

19. Defendant is without sufficient knowledge and information to form a belief as to the allegations of Paragraph 19 and, therefore, denies the same.

20. Defendant is without sufficient knowledge and information to form a belief as to the allegations of Paragraph 20 and, therefore, denies the same.

21. Defendant is without sufficient knowledge and information to form a belief as to the allegations of Paragraph 21 and, therefore, denies the same.

22. In response to Paragraph 22, Defendant craves reference to the demand and denies all allegations inconsistent therewith. Defendant denies that it owes any benefits under the Policy in addition to what is has already paid.

23. In response to Paragraph 23, Defendant craves reference to the offer and denies all allegations inconsistent therewith.

24. In response to Paragraph 24, Defendant craves reference to the demand and denies all allegations inconsistent therewith.

25. In response to Paragraph 25, Defendant craves reference to the demand and denies all allegations inconsistent therewith.

26. In response to Paragraph 26, Defendant craves reference to the offer and denies all allegations inconsistent therewith.

27. In response to Paragraph 27, Defendant craves reference to the pleadings in the underlying lawsuit and denies all allegations inconsistent therewith.

28. In response to Paragraph 28, Defendant craves reference to the Policy and denies all allegations inconsistent therewith.

29. In response to Paragraph 29, Defendant craves reference to the Policy and denies all allegations inconsistent therewith.

30. In response to Paragraph 30, Defendant craves reference to the Policy and denies all allegations inconsistent therewith.

31. In response to Paragraph 31, Defendant craves reference to the Policy and denies all allegations inconsistent therewith.

32. In response to Paragraph 32, Defendant craves reference to the Policy and denies all allegations inconsistent therewith.

33. Paragraph 33 contains conclusions of law to which Defendant is not required to respond. To the extent a response is required, Defendant craves reference to the email cited therein and the Policy and denies all allegations inconsistent therewith. Defendant admits that Plaintiff is not entitled to recover liability coverage, UIM coverage, and UM coverage for the accident at issue pursuant to the language of the Policy.

34. Defendant denies the allegations contained in Paragraph 34.

35. Defendant is without sufficient knowledge and information to form a belief as to the allegations of Paragraph 35 but admits the same, upon information and belief.

36. Defendant denies the allegations contained in Paragraph 36.

AS TO THE FIRST DECLARATION

37. In response to Paragraph 37, Defendant incorporates its responses to each of the preceding paragraphs of the Plaintiff's Complaint as if fully stated herein.

38. Defendant denies the allegations contained in Paragraph 38.

39. Defendant denies the allegations contained in Paragraph 39, as written.

40. Defendant admits the allegations contained in Paragraph 40.

41. Defendant admits the allegations contained in Paragraph 41.

42. Defendant admits the allegations contained in Paragraph 42, but denies that Plaintiff is entitled to such a declaration.

43. Defendant admits the allegations contained in Paragraph 43, but denies that Plaintiff is entitled to such a declaration.

44. In response to the Plaintiff's WHEREFORE paragraphs, Defendant asserts that Plaintiff is not entitled to her requested declarations, any judgment, damages, costs, interest, or other relief in this matter.

**FURTHER ANSWERING THE PLAINTIFF'S COMPLAINT AND AS AN
AFFIRMATIVE DEFENSE THERETO, DEFENDANT ALLEGES:**
(Unconstitutional Claim for Attorney's Fees)

45. To the extent the Plaintiff seeks and/or may be alleged to seek attorney's fees pursuant to *S.C. Code Ann.* § 38-59-40(1) (or any other authority), Defendant alleges that the referenced statute is unconstitutional and, therefore, not enforceable against Defendant in that the statute impermissibly treats insurance carriers differently than other entities without any rational basis therefore.

**FURTHER ANSWERING THE PLAINTIFF'S COMPLAINT AND AS AN
AFFIRMATIVE DEFENSE THERETO, DEFENDANT ALLEGES:**
(Reservation of Rights)

46. Defendant hereby gives notice that it intends to rely upon such other affirmative defenses as may become available or apparent during the course of discovery, and thus reserves the right to amend its Answer to assert such defenses and does not waive any other defenses that may become available.

**FURTHER ANSWERING THE PLAINTIFF'S COMPLAINT AND BY WAY OF
COUNTERCLAIM AGAINST THE PLAINTIFF, DEFENDANT ALLEGES:**
(Declaratory Judgment)

47. Defendant repeats and realleges each and every allegation and response contained in its Answer and Counterclaim as if fully set forth herein verbatim.

48. This is an action for declaratory judgment, pursuant to the Federal Rule of Civil Procedure 57 and 28 U.S.C. § 2201. This Court has subject matter jurisdiction over this case because it presents an actual case or controversy, the resolution of which will benefit both the Plaintiff and the Defendant herein.

49. Jurisdiction is proper pursuant to 28 U.S.C. §§ 1332 and 1367 because there is complete diversity of citizenship and the amount in controversy exceeds \$75,000.00, exclusive of all fees and costs.

50. At all times material to this action, Defendant was a company organized and existing under the laws of the State of Indiana and has been authorized to transact business within the State of South Carolina and submits itself to the jurisdiction and venue of this Court for purposes of this case only.

51. At all times relevant to this action, upon information and belief, Plaintiff was a citizen and resident of York County, South Carolina.

52. A substantial part of the events or omissions giving rise to the claims described herein occurred in this District so that venue in this District is proper based on 28 U.S.C. § 1391(a)(2).

FACTS

53. Defendant issued Policy # ASC 0048016 to Named Insured Francine Steineman, which provided certain insurance coverage for the policy period November 1, 2017 through November 1, 2018 (hereinafter the “Policy”).

54. The Policy provided Plaintiff liability insurance coverage (Part A) with a limit of \$250,000 per person, uninsured motorist (“UM”) coverage (Part C) with a limit of \$250,000 per person, and underinsured motorist (“UIM”) coverage with a limit of \$250,000 per person.

55. The Liability Coverage Part (Part A) of the Policy, as amended by Endorsement SC0178 (05/15) states: “No one will be entitled to receive duplicate payments for the same elements of loss under this coverage and: (1) Part C of this policy; or (2) Any Underinsured Motorist Coverage provided by this policy.”

56. The UM Coverage Part (Part C) of the Policy, as amended by Endorsement SC0465 (07/15) similarly provides: “E. No one will be entitled to receive duplicate payments for the same elements of loss under this coverage and: (1) Part A of this policy; (2) Any Underinsured Motorist Coverage provided by this policy; or (3) Part D of this policy or any similar coverage under any policy. F. We will not make a duplicate payment under this coverage for any element of loss for which payment has been made or on behalf of persons or organizations who may be legally responsible.”

57. The UIM Coverage Part also provides: “D. No one will be entitled to receive duplicate payments for the same elements of loss under this coverage and Part A, Part C or Part D of this policy. E. We will not make a duplicate payment under this coverage for any element of loss for which payment has been made or on behalf of persons or organizations who may be legally responsible.”

58. Pursuant to her demand, Defendant paid to the Plaintiff the maximum amount of benefits provided by the Policy's Liability Coverage Part.

59. Pursuant to the terms of the UM Coverage Part and the UIM Coverage Part, Defendant does not owe the Plaintiff any benefits under these coverage parts because such payments would be duplicative of what Defendant already paid under the Liability Coverage Part and, therefore, expressly excluded.

FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment)

60. Defendant repeats and realleges each and every allegation and response contained in this Answer and Counterclaim as if fully set forth herein verbatim.

61. The Policy's Liability Coverage Part, UM Coverage Part, and UIM Coverage Part each contain express language providing that no person is entitled to receive duplicate payments for the same elements of loss under each of the coverage parts.

62. The benefits that Plaintiff is seeking under the UM and UIM Coverage Parts would be duplicate payments to the benefits she already received under the Liability Coverage Part.

63. Defendant seeks a declaration that, under the Policy language, it does not owe Plaintiff any UM or UIM benefits because it has already paid Plaintiff the maximum limits of the Liability benefits.

WHEREFORE, Defendant, Meridian Security Insurance Company requests entry of final judgment in its favor against Plaintiff, declaring that:

(1) Defendant has no duty under the Policy or otherwise to pay Plaintiff any benefits under either the Uninsured Motorist Coverage Part or the Underinsured Motorist Coverage Part.

(2) Any other relief this Court deems just and appropriate.

BARNWELL WHALEY PATTERSON & HELMS, LLC

BY: s/Jeffrey M. Bogdan

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Attorneys for Defendant

September 1, 2020
Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Francine Steineman,

Plaintiff,

v.

Meridian Security Insurance Company,

Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2020-CP-46-02221

PLAINTIFF'S MOTION FOR
JUDGMENT ON THE PLEADINGS

Pursuant to Rule 12(c), SCRCP, Plaintiff hereby moves the Court for judgment in her favor based on the pleadings herein.

Specifically, the pertinent facts are established by the allegations of the Complaint, exhibits thereto,¹ and admissions in Defendant's Answer. Therefore, the dispute before the Court is a question of law – that is, whether Defendant can deny uninsured motorist ("UM") and underinsured motorist ("UIM") coverages for Plaintiff's bodily injury claims based on the "duplicate payments" provision of the subject insurance policy.

Because Defendant's position would have the effect of eliminating statutorily mandated UM coverage as well as UM and UIM coverages Defendant was statutorily required to offer, it is contrary to public policy and must fail. *See, e.g., Bratcher v. National Grange Mut. Ins. Co.*, 292 S.C. 330, 356 S.E.2d 151 (1987); *Garris v. Cincinnati Ins. Co.*, 280 S.C. 149, 311 S.E.2d 723 (1984); *Ferguson v. State Farm Mut. Auto Ins. Co.*, 261 S.C. 96, 198 S.E.2d 522 (1973). Moreover, application of the provision to the policy's UIM coverage would have the effect of transforming that coverage into "reduction coverage" as opposed to "excess coverage" in

¹ It is proper for the Court to consider these exhibits in the context of the present motion. *See, e.g., Goines v. Valley Cmty. Servs. Bd.*, 822 F.3d 159, 166 (4th Cir. 2016); *Gibson v. Toyota Motor Sales, U.S.A.*, 2017 WL 4296723, at *1 n.2 (D.S.C. 2017).

contravention of South Carolina law. *See State Farm Mut. Auto. Ins. Co. v. Horry*, 304 S.C. 165, 403 S.E.2d 318 (1991); *Purvis v. State Farm Mut. Auto. Ins. Co.*, 304 S.C. 283, 403 S.E.2d 662 (Ct. App. 1990); S.C. CODE ANN. § 38-73-1105 (1976, as amended); S.C. CODE ANN. § 38-77-30 (14) & (15) (1976, as amended). Finally, because Defendants are entitled to an offset against any damages award for liability coverage previously paid and Plaintiff's UM and UIM claims are for damages after application of that offset, the duplicate payments provision of the policy simply does not apply to the present claims. *See, e.g., Argonaut Great Cent. Ins. Co. v. Casey*, 701 F.3d 829 (8th Cir. 2012); *Lock v. American Family Ins. Co.*, 12 Wash. App. 2d 905, 460 P.3d 683 (2020); *GEICO v. Sherlock*, 140 A.D.3d 872, 32 N.Y.S.3d 635 (2016); *Fischer v. Midwest Security Ins. Co.*, 268 Wis. 2d 519, 673 N.W.2d 297 (2003).

This motion will be supported by the pleadings and exhibits thereto, the applicable law and Rules of Civil Procedure, a memorandum of law to be provided to the Court prior to any hearing hereon, the arguments of counsel, and such other matters as the Court may request.

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 BERT G. UTSEY, III
 S.C. Bar # 10093

September 30, 2021
 Charleston, South Carolina

Attorneys for Plaintiff

STATE OF SOUTH CAROLINA)
)
 COUNTY OF YORK) IN THE COURT OF COMMON PLEAS
)
) CASE NO.: 2020-CP-46-02221

Francine Steineman,

Plaintiff,

vs.

Meridian Security Insurance Company,

Defendant.

**DEFENDANT'S NOTICE OF MOTION
 AND MOTION FOR JUDGMENT ON
 THE PLEADINGS**

TO: ATTORNEYS FOR PLAINTIFF:

AND NOW COMES Defendant Meridian Security Insurance Company, d/b/a State Auto Insurance Company ("Defendant"), by and through its undersigned counsel, pursuant to Rule 12(c), SCRCF, and moves the Court for judgment in its favor based on the pleadings filed in this matter.

The basis for this Motion is that Defendant is not contractually required to pay underinsured motorist ("UIM") or uninsured motorist ("UM") benefits to Plaintiff for the accident at issue in this case. Specifically, the plain and unambiguous language of the insurance policy at issue in this case provides that Defendant shall not be obligated to make duplicate payments for the same elements of loss under both: (a) the policy's liability coverage part; and (b) the policy's UM or UIM coverage part. *See e.g., Sibert v. State Auto. Mut. Ins. Co.*, No. 8:20-4000-HMH, 2021 U.S. Dist. LEXIS 149971 (D.S.C. Aug. 10, 2021).

Defendant will support this Motion with the pleadings in this matter. In addition, Defendant will set forth its contentions in further detail in a Memorandum in Support of this Motion that it will file with the Court at the appropriate time.

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Attorneys for Defendant

October 4, 2021
Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF YORK	)	CASE NO.: 2020-CP-46-02221
Francine Steineman,	)	
	)	
Plaintiff,	)	DEFENDANT'S MEMORANDUM IN
	)	IN SUPPORT OF ITS MOTION FOR
vs.	)	JUDGMENT ON THE PLEADINGS
	)	AND IN OPPOSITION TO
Meridian Security Insurance Company,	)	PLAINTIFF'S MOTION FOR
	)	JUDGMENT ON THE PLEADINGS
Defendant.	)	
	)	
	)	

AND NOW COMES Defendant Meridian Security Insurance Company ("Meridian" or "Defendant"), by and through its undersigned counsel, and files the following Memorandum in Support of Its Motion for Judgment on the Pleadings and in Opposition to Plaintiff's Motion for Judgment on the Pleadings.

INTRODUCTION

Meridian issued Policy # ASC 0048016 to Named Insured Francine Steineman, which provided certain insurance coverage for the policy period November 1, 2017 through November 1, 2018 ("Policy"). (*See* Def.'s Ans. and Counterclaim ¶ 53). The Policy provided Plaintiff liability insurance coverage (Part A) with a limit of \$250,000 per person, uninsured motorist ("UM") coverage (Part C) with a limit of \$250,000 per person, and underinsured motorist ("UIM") coverage with a limit of \$250,000 per person. (*See id.* ¶ 54).

Plaintiff claims that she was injured in an accident while a passenger in a 2001 Ford Explorer driven by her husband. (*See* Pl.'s Compl. ¶¶ 15-20). She alleges that "[a]s Mr. Steineman attempted the left turn, he failed to check the outside lane before entering it, and the driver in the outside lane was traveling too fast for conditions and collided into Mrs. Steineman's car." (*See id.* ¶ 19). In this lawsuit, Plaintiff alleges that she is entitled to UIM benefits under the Policy because of her husband's negligence. Plaintiff further claims that the other "driver who collided into her was [also] negligent in causing her damages, and because the driver is uninsured, Mrs. Steineman

is entitled to her UM coverage." (*See id.* ¶ 24). Plaintiff alleges that her damages from the accident exceed \$1 million. (*See id.* ¶ 21).

Pursuant to her demand, Meridian paid to the Plaintiff the maximum amount of benefits provided by the Policy's Liability Coverage Part (\$250,000). (*See* Def.'s Ans. and Counterclaim ¶ 58). Plaintiff has claimed that she is entitled to underinsured motions ("UIM") benefits of up to \$750,000 (\$250,000 X 3 vehicles) and uninsured motorist ("UM") benefits of up to \$750,000 (\$250,000 X 3 vehicles). Meridian has alleged in this matter that, "[p]ursuant to the terms of the UM Coverage Part and the UIM Coverage Part, Defendant does not owe the Plaintiff any benefits under these coverage parts because such payments would be duplicative of what Defendant already paid under the Liability Coverage Part and, therefore, expressly excluded." (*See id.* ¶ 59).

The parties have filed cross-Motions for Judgment on the Pleadings. For the reasons set forth below, the Court should deny Plaintiff's Motion for Judgment on the Pleadings and grant Meridian's Motion for Judgment on the Pleadings.

ARGUMENTS

A. The Court Should Grant Defendant's Motion for Judgment on the Pleadings (and Deny Plaintiff's Motion for Judgment on the Pleadings) Because the Policy's "Nonduplication Provisions" Preclude Payment of UIM and UM Benefits Where the Full Limits of Liability Coverage Were Paid to Plaintiff Under the Same Policy.

1. The Policy's Plain Nonduplication Language Precludes UIM or UM Benefits Coverage.

a. Policy Limits

The Policy includes the following Limits of Liability that are potentially applicable to this case:

COVERAGE	LIMITS OF LIABILITY		AU
A LIABILITY-BODILY INJURY	\$ 250,000 EACH PERSON/ \$ 500,000 EACH ACCIDENT		
A LIABILITY-PROPERTY DAMAGE	\$ 100,000 EACH ACCIDENT		
C UNINSURED MOTORISTS			
BODILY INJURY	\$ 250,000 EACH PERSON/ \$ 500,000 EACH ACCIDENT		
PROPERTY DAMAGE	\$ 100,000 EACH ACCIDENT		
C UNDERINSURED MOTORISTS			
BODILY INJURY	\$ 250,000 EACH PERSON/ \$ 500,000 EACH ACCIDENT		

i. Liability Coverage

Part A of the Policy includes the following insuring agreement for liability coverage under the Policy:

We will pay damages for "bodily injury" or "property damage" for which any "insured" becomes legally responsible because of an auto accident. Damages include prejudgment interest awarded against the "insured". We will settle or defend, as we consider appropriate, any claim or suit asking for these damages. In addition to our limit of liability, we will pay all defense costs we incur. Our duty to settle or defend ends when our limit of liability for this coverage has been exhausted by payment of judgments or settlements. We have no duty to defend any suit or settle any claim for "bodily injury" or "property damage" not covered under this policy.

(See Pl.'s Compl. Ex. A (Form PP0001 (01/05), at 2))). The liability coverage provisions of the Policy state that "[n]o one will be entitled to receive duplicate payments for the same elements of loss under this coverage and: 1. Part B [Medical Payments Coverage] or Part C of this Policy

[Uninsured Motorist Coverage]; or [a]ny Underinsured Motorists Coverage provided by this Policy." (*See* Pl.'s Compl. Ex. A (Form PP0001 (01/05), at 4))).

ii. Underinsured Motorist ("UIM") Coverage

The insuring provision of the Policy's South Carolina Underinsured Motorist Coverage states in relevant part:

We will pay damages which an "insured" is legally entitled to recover from the owner or operator of an "underinsured motor vehicle"¹ because of: 1. "Bodily injury" sustained by an "insured" and caused by an accident The owner's or operator's liability for these damages must arise out of the ownership, maintenance or use of the "underinsured motor vehicle".

(*See* Pl.'s Compl. Ex. A (Form SC0488 (07/15))). The Policy's South Carolina Underinsured Motorist Coverage form further defines "insured" as including "[y]ou²] or any 'family member.'"³ (*See id.*). The Policy also includes the following "nonduplication" provision in its South Carolina UIM coverage form:

D. No one will be entitled to receive duplicate payments for the same elements of loss under this coverage and Part A [Liability], Part C [Uninsured Motorist coverage] or Part D [Coverage for Damage to Your Auto] of this policy.

E. We will not make a duplicate payment under this coverage for any element of loss for which payment has been made by or on behalf of persons or organizations who may be legally responsible.

(*See id.*).

¹ An "underinsured motor vehicle" is defined as 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 'insured' is legally entitled to recover as damages." (*See* Pl.'s Compl. Ex. A (Form SC0488 (07/15))).

² "You" is defined as "1. The 'named insured' shown in the Declarations; and 2. The spouse if a resident of the same household." (*See* Pl.'s Compl. Ex. A (Form PP0001 (01/05))). The named insured on the Policy is Francine Steineman. (*See* Pl.'s Compl. Ex. A (Declarations)).

³ The Policy defines "family member" to mean "a person related to you by blood, marriage or adoption who is a resident of your household." (*See* Pl.'s Compl. Ex. A (Form PP0001 (01/05), at 1)).

iii. Uninsured Motorist ("UM") Coverage

The insuring provision of the Policy's South Carolina Uninsured Motorist Coverage states in relevant part:

We will pay damages which an "insured" is legally entitled to recover from the owner or operator of an "uninsured motor vehicle"[⁴] because of: 1. "Bodily injury" sustained by an "insured" and caused by an 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".

(See Pl.'s Compl. Ex. A (Form SC0465 (07/15))). The Policy's South Carolina Uninsured Motorist Coverage form defines "insured" as including "[y]ou or any 'family member.'" (See *id.*). The Policy also includes the following "nonduplication" provision in its South Carolina Uninsured Motorist coverage form:

D. No one will be entitled to receive duplicate payments for the same elements of loss under this coverage and: 1. Part A of this policy [Liability]; 2. Any Underinsured Motorists coverage provided by this policy; or 3. Part D [Coverage for Damage to Your Auto] of this policy or any other similar coverage under any other policy.

E. We will not make a duplicate payment under this coverage for any element of loss for which payment has been made by or on behalf of persons or organizations who may be legally responsible.

(See *id.*).

⁴ An "uninsured motor vehicle" is defined as a "land motor vehicle or trailer of any type with regard to which:

1. To which neither: a. A liability bond or policy; nor b. 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.
3. Which is a hit-and-run vehicle whose operator or owner cannot be identified

(See Pl.'s Compl. Ex. A (Form SC0465 (07/15))).

b. The Unambiguous Language of the Nonduplication Provisions Preclude the Payment of UM and UIM Benefits to Plaintiff.

"In the absence of ambiguity, the terms of an insurance policy . . . must be interpreted and enforced according to their plain and ordinary meaning." *See South Carolina Ins. Co. v. White*, 301 S.C. 133, 137, 390 S.E.2d 471, 474 (Ct. App. 1990). A policy term can be said to be ambiguous only when the language used is capable of two reasonable interpretations. *See Edens v. S.C. Farm Bur. Mut. Ins. Co.*, 279 S.C. 377, 379, 308 S.E.2d 670, 671 (1983); *accord Hansen v. United Services Automobile Ass'n*, 350 S.C. 62, 67, 565 S.E.2d 114, 117 (Ct. App. 2002) (policy only ambiguous where term may fairly and reasonably be understood in more than one way).

The policy terms define an insurer's obligation under a policy of insurance; the Court may not use judicial construction to enlarge the insurer's obligations. *South Carolina Ins. Co. v. White*, 301 S.C. 133, 390 S.E.2d 471, 474 (Ct. App. 1990). When the parties' intention is clear from the policy language, the court has "no authority to torture the meaning of policy language to extend or defeat coverage that was never intended by the parties." *Torrington Co. v. Aetna Cas. and Sur. Co.*, 264 S.C. 636, 643, 216 S.E.2d 547, 550 (1975). "Our courts must enforce, not write, contracts of insurance and must give policy language its plain, ordinary and popular meaning." *Helton v. St. Paul Fire & Marine Ins. Co.*, 286 S.C. 220, 222, 332 S.E.2d 776, 777 (Ct. App. 1985).

The above-quoted nonduplication provisions plainly provide that Meridian will not be required to make "duplicate payments for the same elements of loss under" both UIM/UM and liability coverage parts. The Policy also sets forth that Meridian "will not make a duplicate payment under this coverage for any element of loss for which payment has been made by or on behalf of person or organizations who may be legally responsible." These provisions preclude UIM and UM coverage, because Plaintiff seeks UIM/UM coverage for the same elements of loss paid under the liability coverage, *i.e.*, medical bills, lost earning capacity, pain and suffering, etc. because of injuries sustained in this accident. She claims the same medical bills, the same pain and suffering, and other identical elements of loss under UIM/UM coverage that she did when she settled for the full liability coverage policy limit. This is the precise situation to which the

nonduplication provisions apply.

Although South Carolina appellate courts have not specifically considered the application of nonduplication provisions under these facts, persuasive authority applying South Carolina law supports Meridian's contention. In *Sibert v. State Auto. Mut. Ins. Co.*, No. 8:20-4000-HMH, 2021 U.S. Dist. LEXIS 149971 (D.S.C. Aug. 10, 2021) (Ex. A hereto), Judge Herlong recently granted summary judgment to State Auto (a related company to Meridian), which made arguments essentially identical to those Meridian makes here. In *Sibert*, the injured person was a passenger in a vehicle driven by an insured. The injured person received payment of the full limits of the insured's liability coverage and sought UIM benefits. State Auto denied coverage, citing nonduplication provisions identical to those at issue here. The court granted State Auto summary judgment, holding that "the nonduplication provisions are unambiguous and plainly prohibit duplicate payments for the same elements of loss under the Policy's liability and UIM coverages." *See id.*, 2021 U.S. Dist. LEXIS 149971, at *6.

In another case, another federal district judge held that a non-duplication provision unambiguously precludes UIM coverage where the same policy paid the same claimant liability limits for the same injury from the same accident. In *Diamond State Ins. Co. v. Estate of McNeal*, Civil Action No. 1:11-cv-02528-JMC, 2013 U.S. Dist. LEXIS 33092 (D.S.C. Mar. 11, 2013) (Ex. B hereto), McNeal was killed when Ryan Craven allegedly negligently operated a vehicle that was negligently entrusted to him. The subject vehicle was covered by Diamond State's Commercial Auto Garage Insurance Policy. That policy had the following limits of coverage: (a) \$300,000 for garage operations auto; (b) \$300,000 for garage operations other than auto; and (c) \$75,000 for UIM coverage. Diamond State contended that its coverage was limited to \$300,000, while McNeal's estate claimed that it was \$675,000. The court granted Diamond State summary judgment. The policy included language similar to the Policy: "[n]o one will be entitled to receive duplicate payments for the same elements of 'loss' under this Coverage Form and any Liability Coverage Form." The court held that "[t]he UIM endorsement of the Policy plainly limits duplicate payments for losses covered by other liability coverage. Therefore, the Policy does not

provide UIM coverage in this case." *See id.*, 2013 WL 934182, at *5. Because liability and UIM coverage compensated McNeal's estate for the "same element of damages" (*i.e.*, damages recoverable in a personal injury tort suit), Diamond State was only obligated to pay under its liability coverage.

Following the District of South Carolina's well-reasoned opinions in *Sibert* and *Diamond State*, this Court should grant Meridian's Motion for Judgment on the Pleadings (and deny Plaintiff's Motion for Judgment on the Pleadings) and declare that, because of the cited nonduplication provision, there is no UIM coverage for Plaintiff's alleged injuries.

Similar non-duplication provisions have been upheld by Courts in other jurisdictions. *See Kearns v. Travelers Prop. Cas. Co. of Am.*, No. N16C-02-095 RRC, 2019 Del. Super. LEXIS 647, at *17-18 (Super. Ct. Nov. 1, 2019) ("[S]ince Travelers' non-duplication provision is enforceable, and Kearns recovered payments for medical bills, wages, and disfigurement, Kearns is not allowed to plead, prove and/or recover for these losses at trial against Travelers. However, benefits non-recoverable under workers' compensation insurance, such as pain and suffering, may be potentially recoverable under the Travelers policy, as acknowledged at oral argument by Travelers.") (Ex. E hereto); *Hanson v. Republic Ins. Co.*, 5 S.W.3d 324, 333 (Tex. App. 1999) ("We conclude that the trial court properly enforced the UM/UIM offset as a valid nonduplication of coverage provision and overrule point of error two.").

Similarly, the Minnesota Court of Appeals has determined that nonduplication language unambiguously precludes coverage under both liability and uninsured motorist parts of the same policy:

The policy language referring to "duplicate payments" and "elements of loss" is not reasonably susceptible to multiple interpretations. While neither phrase is defined in the policy, the plain language of the exclusion states that any UM coverage is precluded for an element of loss covered under the liability section of the policy. We will not strain to find ambiguity when the meaning is clear.

See Marchio v. W. Nat. Mut. Ins. Co., 747 N.W.2d 376, 380 (Minn. Ct. App. 2008) (emphasis added). The *Marchio* court noted that the insured's claims would also have been barred if the

insured sought both liability and UIM coverage, as is the situation here. *See id.* at 382 (citing *Jensen v. United Fire and Cas. Co.*, 524 N.W.2d 536, 539 (Minn. Ct. App. 1994) (insured cannot convert first-party UIM coverage to third-party liability coverage under same policy)).

Provisions that preclude coverage under liability and UIM/UM coverage under the same policy for the same injured person are consistent with the purpose of UIM/UM coverage: to protect the *insured* from injury caused by the negligence of *third-party drivers* (not to compensate for the negligence the named insured). *See Mercury Indem. Co. of Illinois v. Kim*, 358 Ill. App. 3d 1, 8, 830 N.E.2d 603, 609 (2005); accord *State Farm Mutual Automobile Insurance Co. v. Shahan*, 141 F.3d 819, 822 (8th Cir. 1998) ("The typically envisioned situation arises when the driver of one vehicle is injured due to the negligence of another driver. If the second driver's liability coverage is insufficient to compensate for the first driver's injuries, the first driver may recover under his own underinsured motor vehicle policy"); *Cantrell v. Cantrell*, 213 W.Va. 372, 582 S.E.2d 819, 823 (2003) ("We reiterate that the purpose of optional UIM coverage is to enable the insured to protect himself [or herself] if he [or she] chooses to do so, against losses occasioned by the negligence of other drivers who are underinsured.... 'Other drivers' necessarily infers the **drivers of vehicles other than the vehicle owned and operated by the insured**") (emphasis added) (internal citations omitted); *Millers Casualty Insurance Co. of Texas v. Briggs*, 100 Wash.2d 1, 665 P.2d 891, 895 (1983) ("The owner of a vehicle purchases liability insurance to protect passengers in the vehicle from his negligent driving. He purchases underinsured motorist coverage to protect himself and others from damages caused by another vehicle which is underinsured") (emphasis added); *Liberty Mutual Insurance Co. v. Lund*, 403 Mass. 1006, 1007, 530 N.E.2d 166, 168 (1988) ("Underinsurance and uninsured motorist protection is not additional liability insurance but rather is 'limited personal accident insurance chiefly for the benefit of the named insured.'").

In a related vein, courts have noted that allowing recovery under both liability and UIM coverage under the same policy would undermine the purpose of UIM statutes by making coverage prohibitively expensive. *Mercury Indem. Co. of Illinois v. Kim*, 358 Ill. App. 3d 1, 10, 830 N.E.2d 603, 611 (2005); accord *Kang v. State Farm Mutual Automobile Insurance Co.*, 72 Haw. 251, 261,

815 P.2d 1020, 1025 (1991) (“By invalidating the contested policy exclusion in this case, this court would, *in effect, eliminate the distinction between liability and underinsured motorist coverage and transform the inexpensive underinsured motorist coverage into the more expensive liability coverage*. Consequently, insurers would undoubtedly be compelled to increase the premiums for underinsured motorist coverage, thereby frustrating the legislative objective of optional protection at the least possible cost”) (emphasis added); *Briggs*, 100 Wash.2d at 8, 665 P.2d at 895 (“This result [of dual recovery] would cause insurance companies to charge substantially more for underinsured motorist coverage in order to match the cost of that coverage with the presently more expensive liability coverage. This increase in cost would discourage consumers from purchasing underinsured coverage, an important protection presently available for a minimal cost”).

Plaintiff's construction of the nonduplication provisions ignores the Policy's plain language and focuses only on the *amount of damages* rather than the elements of loss. Plaintiff bases her position on the fact that, by its terms, UIM coverage is not triggered until the *amount* of the injured person's damages (*i.e.*, compensable harm resulting caused by the accident) exceeds the amount of liability coverage. By way of example, if there are \$100,000 limits of liability and UIM coverage, the UIM coverage would never be triggered unless the injured party's overall damages exceed \$100,000. The South Carolina statutory definition of "underinsured motor vehicle" is "a motor vehicle . . . as to which there is bodily injury liability insurance . . . and the amount of the insurance or bond is less than the amount of the insureds' *damages*). See S.C. Code § 38-77-30(15) (emphasis added). Because of this, Plaintiff would argue that the UIM and UM coverage would never duplicate the \$100,000 liability coverage, since those coverages are only triggered *after* liability coverage is exhausted by the amount of damages (or no liability coverage exists, in the case of UM). The Court of Appeals of Indiana has rejected this precise argument about the meaning of the term "elements of loss":

Imre asserts "same elements of loss," contained within these provisions, is not defined by the Policy and the term can be construed to denote "same elements of damages" rather than the proposition that Gambill is not entitled to recover pursuant to both the uninsured and underinsured motorist provisions of the Policy. . . . This

argument is unpersuasive. When the Policy references "damages" it explicitly uses the term "damages." The Policy uses the term "damages" on at least six separate occasions. Appellants' App. pp. 28-35. We must accept an interpretation of the contract language that harmonizes the provisions of the insurance contract rather than one which supports a conflicting version of the provisions. [Citation omitted.]

Because "same elements of loss" does not denote "same elements of damages," Imre has not advanced a plausible interpretation of "same elements of loss" to compete with the interpretation advanced by Lake States, and there is no ambiguity in the term. Rather, as the name "Limit of Liability Clause" suggests, the term "same elements of loss" within Section C of the Underinsured and Uninsured Motorist Clauses serves to denote that an insured may not recover under both the underinsured and uninsured provisions of the Policy.

Imre v. Lake States Ins. Co., 803 N.E.2d 1126, 1130-31 (Ind. Ct. App. 2004)

The nonduplication provisions do not focus on the *amount of damages*; rather, those provisions preclude "duplicate payments for the same *elements of loss*." (emphasis added). Plaintiff's approach conflates the amount of damages with "elements of loss." The Policy uses the word "damages" on multiple occasions (more than a dozen times just in the South Carolina UIM coverage part). For example, the UIM and UM insuring agreements use that term, with Meridian agreeing to "pay *damages* which an 'insured' is legally entitled to recover." (See Pl.'s Compl. Ex. A (Form SC045 (07/15), at 1)); Pl.'s Compl. Ex. A (Form SC0488 (07/15), at 1))). Similarly, under the liability coverage, Meridian promises to "pay *damages* for 'bodily injury' or 'property damage' for which any 'insured' becomes legally responsible because of an auto accident." (See Pl.'s Compl. Ex. A (Form PP0001 (01/05), at 2))). If Meridian meant to refer to "damages" in the nonduplication provisions, it would have said so; the fact that it chose *not* to clearly shows "elements of loss" means something different from "damages."

Although the Policy does not define "damages," the South Carolina Supreme Court has stated that "[t]he plain, ordinary meaning of 'damages' is monies paid on an insured's loss." See *Helena Chem. Co. v. Allianz Underwriters Ins. Co.*, 357 S.C. 631, 638, 594 S.E.2d 455, 458 (2004). "Damages" has also been defined as "[a] pecuniary compensation or indemnity, which may be recovered in the courts by any person who has suffered loss, detriment, or injury, whether to his person, property, or rights, through the unlawful act or omission or negligence of another."

<https://thelawdictionary.org/damages/> (accessed July 15, 2021). Plaintiff's position focuses on *damages*. In other words, he asks simply whether the total amount of "damages" to which the injured person is entitled exceed the liability limit of coverage. Her interpretation would write the non-duplication provisions out of the policy, since there could never be a situation where UIM coverage includes the same amount of damages as the liability coverage.

On the other hand, "elements of loss" is *only* used in the Policy's nonduplication provisions. Although not defined in the Policy, Black's Law Dictionary defines "element" as "a basic principle or a fundamental part." <https://thelawdictionary.org/element/> (accessed July 15, 2021). In this regard, the phrase "element or loss" refers to categories or types of loss, rather than the total amount of damages to which an injured person might be entitled. The plain language of the nonduplication provisions expresses that it will preclude UIM coverage liability coverage has paid for the *same type* of injuries that the UIM claim covers. It does not require that the liability coverage pay the *full amount* of the injured person's total damages.

Plaintiff's construction of the nonduplication provision creates a scenario where the nonduplication provisions would *never* apply, since UIM/UM coverage is only triggered when underlying liability coverage is exhausted (*i.e.*, when injuries/damages exceed liability limits or there is no liability coverage). However, the Policy's nonduplication language anticipates that there *must be* some situation where a duplication could occur between liability and UIM/UM coverage; otherwise, there would be no reason to include nonduplication language with regard to UIM/UM coverage. Liability, UIM, and UM coverages all reference each other in their respective nonduplication provisions:

UIM Coverage "Nonduplication" Provision: "No one will be entitled to receive duplicate payments for the same elements of loss under this coverage and Part A [Liability], Part C [Uninsured Motorist coverage] or Part D [Coverage for Damage to Your Auto] of this policy." (See Pl.'s Compl. Ex. A (Form SC0488 (07/15))).

UM Coverage "Nonduplication" Provision: "No one will be entitled to receive duplicate payments for the same elements of loss under this coverage and: 1. Part A of this policy [Liability]; 2. Any Underinsured Motorists coverage provided by this policy; or 3. Part D [Coverage for Damage to Your Auto] of this policy or any

other similar coverage under any other policy." (See Pl.'s Compl. Ex. A (Form SC0465 (07/15))).

Liability Coverage "Nonduplication" Provision: "No one will be entitled to receive duplicate payments for the same elements of loss under this coverage and: 1. Part B [Medical Payments Coverage] or Part C of this Policy [Uninsured Motorist Coverage]; or [a]ny Underinsured Motorists Coverage provided by this Policy." (See Pl.'s Compl. Ex. A (Form PP0001 (01/05), at 4))).

Plaintiff's argument would render the Policy's nonduplication language "meaningless in contravention of the well-settled principles of contract law." See *Crenshaw v. Erskine Coll.*, 432 S.C. 1, 42, 850 S.E.2d 1, 22 (2020), *reh'g denied* (Nov. 30, 2020); accord *Yarborough v. Phoenix Mut. Life Ins. Co.*, 266 S.C. 344, 225 S.E.2d 344, 349 ("That construction will be adopted which will give effect to the whole instrument and to each of its various parts and provisions, if it is reasonable to do so. 43 Am. Jur. (2d) *Insurance* § 263 (1969)").

For the reasons set forth in detail above, judgment on the pleadings in favor of Meridian is appropriate because the Policy expressly and unambiguously prohibits the payment under both UM/UIM and liability coverages for the same elements of loss.

B. The Nonduplication Provisions Do Not Violate Public Policy.

In her Motion for Judgment on the Pleadings, Plaintiff argues that Meridian's "position would have the effect of eliminating statutorily mandated UM coverage as well as UM and UIM coverages Defendant was statutorily required to offer, it is contrary to public policy and must fail." (See Pl.'s Mot. for J. on Pldgs., at 1). In support of these arguments, Plaintiff cites *Bratcher v. National Grange Mut. Ins. Co.*, 292 S.C. 330, 356 S.E.2d 151 (1987), *Garris v. Cincinnati Ins. Co.*, 280 S.C. 149, 311 S.E.2d 723 (1984), and *Ferguson v. State Farm Mut. Auto Ins. Co.*, 261 S.C. 96, 198 S.E.2d 522 (1973).

South Carolina law requires that all policies of automobile insurance include UM coverage of \$25,000/\$50,000. See S.C. Code §§ 38-77-140(A)(1)-(2) & -150(A). The statute further permits (and required that insurers offer) optional UIM coverage and additional UM coverage (up to the limits of liability coverage):

Automobile insurance carriers shall offer, *at the option of the insured*, uninsured

motorist coverage up to the limits of the insured's liability coverage in addition to the mandatory coverage prescribed by Section 38-77-150. Such carriers shall also offer, *at the option of the insured*, underinsured motorist coverage up to the limits of the insured liability coverage to provide coverage in the event that damages are sustained in excess of the liability limits carried by an at-fault insured or underinsured motorist or in excess of any damages cap or limitation imposed by statute. If, however, an insured or named insured is protected by uninsured or underinsured motorist coverage in excess of the basic limits, the policy shall provide that the insured or named insured is protected only to the extent of the coverage he has on the vehicle involved in the accident. If none of the insured's or named insured's vehicles is involved in the accident, coverage is available only to the extent of coverage on any one of the vehicles with the excess or underinsured coverage. Benefits paid pursuant to this section are not subject to subrogation and assignment.

See S.C. Code § 38-77-160 (emphasis added). Nothing in this statute prohibits the nonduplication provisions or renders those provisions invalid. For the reasons discussed below, the Court should reject Plaintiff's contention and should grant Meridian Motion for Judgment on the Pleadings.

1. The Bratcher Case Does Not Support Plaintiff's Arguments.

a. Bratcher and Section 38-77-160 Do Not Prohibit These Nonduplication Provisions.

Plaintiff relies on *Bratcher v. National Grange Mut. Ins. Co.*, 356 S.E.2d 151, 292 S.C. 330 (Ct. App. 1987), wherein Franklin Bratcher was injured while riding in a car owned and driven by his father, who was at fault. The insurance policy provided liability and UIM coverage in the amount of \$50,000. The policy provided that an "'underinsured motor vehicle' does not include any vehicle or equipment . . . [o]wned by or furnished or available for the regular use of you [father] or any family member." See *id.*, 292 S.C. at 331, 356 S.E.2d at 152. The insurer settled the son's claim under the policy's liability coverage but denied his claim for UIM benefits. The Court of Appeals considered whether the exclusion of owned or regularly used vehicles from the definition of "underinsured motor vehicle" violated South Carolina statute. The Court of Appeals noted that "'where an insurance policy is issued pursuant to a statute which authorizes an exception to the coverage, all other exceptions are excluded.'" See *id.* (quoting *McDonald v. State Farm Mut. Auto. Ins. Co.*, 287 S.C. 40, 44, 336 S.E.2d 492, 494 (Ct. App. 1985)). Specifically, the court concluded that former South Carolina Code § 56-9-831 "authorizes insurance carriers to restrict

the amount of underinsured motorist coverage to the limits of the liability coverage but does not authorize any other restriction on the underinsured motorist coverage."⁵ *See id.*, 292 S.C. at 332, 356 S.E.2d at 152 (*citing Gambrell v. Travelers Ins. Cos.*, 280 S.C. 69, 71, 310 S.E.2d 814, 816 (1983) ("The only restriction recognized by the statute is that an insured may not have a greater amount of underinsured motorist coverage than he has liability coverage.")). The court held, without analysis (and without even discussing the text of Section 56-9-831), "that the exception from coverage which National Grange included in its policy is invalid." *See id.*, 292 S.C. at 332-33, 356 S.E.2d at 152.

This Court should not extend *Bratcher* (and Section 38-77-160) to preclude parties from agreeing to a nonduplication provision, because the *Bratcher* court did not address nonduplication clauses and did not express any intention to do so.⁶ The Court should not extend *Bratcher* to prevent the parties, in the context of optional and voluntary UIM and additional UM coverage, from *ever* voluntarily agreeing to *any* coverage limitation (aside from a limitation to the amount of liability coverage).⁷ *Bratcher* did not address or consider the provisions at issue here and, as a result, does not require invalidation of those provisions.

A recent decision from the District of South Carolina – *Sibert v. State Auto*, cited above -- is on all fours with the facts of this case and instructs that *Bratcher* does not invalidate the nonduplication provisions at issue in this case:

In *Bratcher*, the South Carolina Court of Appeals held invalid a provision of an automobile insurance policy excluding vehicles owned by the insured from the policy's definition of an UIM vehicle. [Citation omitted.] The court held that the exclusion was invalid because it was not specifically authorized by statute. *See id.* However, *Bratcher* did not consider the specific issue in the case at bar.

⁵ *Bratcher* interpreted the former UIM statute, Section 56-9-831. The current version of that statute appears at S.C. Code § 38-77-160.

⁶ Extending *Bratcher* would be inconsistent with Section 38-77-160, which does not expressly prohibit limitations on UIM coverage. Instead, that statute only requires a meaningful *offer* of UIM coverage and additional UM coverage.

⁷ The "overwhelming majority of our sister states that have considered the issue" have rejected the *Bratcher* approach. *See Mercury Indem. Co. of Ill. v. Kim*, 358 Ill. App. 3d 1, 6, 830 N.E.2d 603, 608 (2005) (collecting cases).

Additionally, following *Bratcher*, the South Carolina Court of Appeals and South Carolina Supreme Court have found other policy limitations and exclusions regarding UIM coverage do not violate South Carolina public policy and are valid under section 38-77-160. . . . Plaintiff has failed to point to any South Carolina law finding that nonduplication provisions are invalid. Further, after review, the court finds the Policy's nonduplication provisions do not violate section 38-77-160. Therefore, the court finds the Policy's nonduplication provisions are valid.

See Sibert v. State Auto. Mut. Ins. Co., No. 8:20-4000-HMH, 2021 U.S. Dist. LEXIS 149971, at *9 (D.S.C. Aug. 10, 2021) (Ex. A hereto).

While South Carolina appellate courts have not specifically analyzed the enforceability of nonduplication clauses in optional UIM and UM coverage under Section 38-77-160, they have ruled post-*Bratcher* — consistent with *Sibert* — that coverage limitations are enforceable. Several subsequent courts have refused to apply Section 38-77-160 to invalidate coverage limitations, suggesting that Plaintiff's requested blanket application of *Bratcher* is inconsistent with the statute. For example, in *Burgess v. Nationwide Mut. Ins. Co.*, 373 S.C. 37, 644 S.E.2d 40 (2007), Burgess was injured on his motorcycle, which was insured by Alpha. Burgess' damages exceeded the at-fault driver's coverage, but he had no UIM coverage on the motorcycle. He did have Nationwide UIM coverage on three other vehicles he owned. Nationwide denied the UIM claim, relying on the following provision:

If a vehicle owned by you or a relative is involved in an accident where you or a relative sustains bodily injury or property damage, this policy shall . . . be excess if the involved vehicle is not your auto described on this policy. The amount of coverage applicable under this policy shall be the lesser of the coverage limits under this policy or the coverage limits on the vehicle involved in the accident.

The trial court agreed with Burgess that Nationwide was obligated to pay UIM benefits under one of the policies insuring his other vehicles, and the Court of Appeals concluded that this provision violated S.C. Code § 38–77–160.⁸

⁸ The Court of Appeals focused on the following sentences in S.C. Code § 38-77-160: "If, however, an insured or named insured is protected by uninsured or underinsured motorist coverage in excess of the basic limits, the policy shall provide that the insured or named insured is protected only to the extent of the coverage he has on the vehicle involved in the accident. If none of the insured's or named insured's vehicles is involved in the accident, coverage is available only to the extent of coverage on any one of the vehicles with the excess or underinsured coverage." The Court of Appeals concluded that the provision violated Section 38-77-160:

The South Carolina Supreme Court reversed, holding that this provision was valid:

Neither § 38-77-160 nor our prior decisions decide the issue presented here: Is public policy offended by an automobile insurance policy provision that limits basic UIM portability when an insured is involved in an accident while in a vehicle he owns, but does not insure under the policy? We find it is not. UIM coverage is entirely voluntary, and permits insureds, at their option, to purchase insurance coverage for situations where they are injured by an at-fault driver who does not carry sufficient liability insurance to cover the insureds' damages. Essentially, the insured is buying insurance coverage for situations, as where he is a passenger in another's vehicle or is a pedestrian, where he cannot otherwise insure himself. When, however, the insured is driving his own vehicle, he has the ability to decide whether to purchase voluntary UIM coverage. Burgess chose not to do so when insuring his motorcycle. . . .

We hold that public policy is not offended by an automobile insurance policy provision which limits the portability of basic "at-home" UIM coverage when the insured has a vehicle involved in the accident. *Compare State Farm Mut. Auto. Ins. Co. v. Calcutt*, 340 S.C. 231, 530 S.E.2d 896 (Ct. App. 2000) (endorsement providing for set-off of workers' compensation benefits for UIM valid where UM set-off is not, because UIM coverage is voluntary).

See id., 373 S.C. at 41-42, 644 S.E.2d at 43. Thus, the South Carolina Supreme Court determined that Section 38-77-160 does not prohibit a provision limiting the portability of UIM coverage.

Further, in *State Farm Mutual v. Calcutt*, 340 S.C. 231, 530 S.E.2d 896 (Ct. App. 2000), *overruled on other grds. by Sweetser v. South Carolina Dep't of Ins. Res. Fund*, 390 S.C. 632, 703 S.E.2d 509 (2010), the South Carolina Court of Appeals held that a setoff provision did not violate Section 38-77-160:

[N]othing in section 38-77-160, which provides for UIM policies, conflicts with

Nowhere in the statute is there language that limits basic UIM coverage to an insured vehicle. To the contrary, the statute plainly allows coverage when none of the insured's vehicles is involved in the accident. To say that the legislative intent was to exclude basic UIM coverage if an insured's vehicle is involved in an accident but include coverage when none of the insured's vehicles is involved in an accident is absurd, absent specific language to that effect. . . . The manifest purpose of section 38-77-160 is to provide coverage in the event that the insured sustains damages in excess of the liability limits carried by the at fault motorist.

See Burgess v. Nationwide Mut. Ins. Co., 361 S.C. 196, 204-05, 603 S.E.2d 861, 866 (Ct. App. 2004), *rev'd*, 373 S.C. 37, 644 S.E.2d 40 (2007).

the setoff provision in Calcutt's policy. . . . [S]ection 38–77–160 does not prohibit a setoff provision, regardless of whether the employer or the employee purchased the UIM policy. Therefore, State Farm's setoff provision does not conflict with our insurance laws.

See id., 340 S.C. at 234-34, 530 S.E.2d at 897-98; *accord Williamson v. United States Fire Ins. Co.*, 314 S.C. 215, 442 S.E.2d 587 (1994) (enforcing policy provision stating that "[a]ny amount payable under this insurance shall be reduced by . . . [a]ll sums paid or payable under any workers' compensation, disability benefits or similar law."); *Brand v. Allstate Ins. Co.*, 2018 S.C. App. Unpub. LEXIS 49, at *1-*2 (Ct. App. Jan. 31, 2018) (Ex. C hereto) ("Allstate had the right to offset employee-purchased UIM coverage with paid workers' compensation benefits."). The offset provisions that courts have upheld post-*Bratcher* all operate much like the subject nonduplication provisions. As a result, these cases strongly validate those non-duplication provision.

The South Carolina Supreme Court has recently again refused to adopt *Bratcher*'s "heavy-handed"⁹ construction of Section 38-77-160. In *Nationwide Ins. Co. of Am. v. Knight*, 433 S.C. 371, 858 S.E.2d 633 (2021), the Supreme Court held that a provision excluding the named insured's husband from *all* coverages of the policy by an endorsement stating that "all coverages in your policy are not in effect while Danny Knight is operating any motor vehicle" was enforceable. *See id.*, 858 S.E.2d at 638 ("Knight also argues the policy provision violates section 38-77-160 of the South Carolina Code (2015) because it excludes statutorily required UIM coverage. We disagree on this point as well."). While *Knight* did not involve a nonduplication provision, it does confirm that the Supreme Court would likely not apply Section 38-77-160 in the blanket manner that Plaintiff proposes under *Bratcher*, invalidating each and every limitation on UIM or extra UM coverage aside from restricting the maximum amount of such coverage to the amount of liability coverage.

Other courts applying South Carolina law suggest that Plaintiff proposes an unwarranted

⁹ *See Kang v. State Farm Mut. Auto. Ins. Co.*, 72 Haw. 251, 258, 815 P.2d 1020, 1023 (1991) ("We cannot accept the rationale of the Court of Appeals of South Carolina. In Hawaii, the legislative history of the underinsured motorist statute gives no indication of any legislative intent that the statute be implemented in such a heavy-handed manner.").

extension of *Bratcher*. For example, in *Rowzie v. Allstate Insurance Company*, 556 F.3d 165 (4th Cir. 2009), after accidents with underinsured motorists, plaintiffs received benefit payments under the PIP/MedPay coverages. Plaintiff sought UIM benefits under the same policies, and Allstate claimed that it was entitled to reduce the amount payable as UIM benefits by the amounts previously paid as PIP/MedPay benefits under the following provision, which operated just like a non-duplication provision: "[UIM] damages payable will be reduced by ... all amounts payable under . . . Medical Expense Benefits Coverage of this policy, or any similar automobile medical payments coverage." Plaintiff argued that this provision violated South Carolina Code §§ 38-77-144¹⁰ and 38-77-160¹¹. The Fourth Circuit agreed with Judge Norton's grant of summary judgment to Allstate, finding that the provision did not violate these statutes.

Under South Carolina law, UIM coverage is not mandatory and must be paid only up to the amount of damages incurred by the injured driver. . . . The district court reasoned that, because Plaintiffs received UIM benefits up to a level that — when combined with their PIP/MedPay benefits — compensated them for their entire loss, they received all of the “rights” to coverage to which they were entitled, both under the terms of Allstate's policy and under South Carolina law. The district court, therefore, concluded that Allstate's policy does not create a subrogation or assignment of Plaintiffs' UIM benefits, and does not violate § 38-77-160. We agree with the district court.

See id., 556 F.3d at 170-71; *accord Koulpasis v. State Farm Fire & Cas. Co.*, 2021 U.S. Dist. LEXIS 22336, at *14 (D.S.C. Feb. 5, 2021) (Ex. D hereto) (enforcing plain language where "UIM exclusion^[12] prohibits UIM coverage on an owned vehicle that is not insured for UIM coverage"); *Siron v. Allstate Fire & Cas. Ins. Co.*, 225 F. Supp. 3d 574, 580 (D.S.C. 2016) ("The Court adopts the *Rowzie* court's rationale, as detailed above, in concluding the South Carolina Supreme Court would likely hold that a provision authorizing the offset of UIM benefits payable under a personal

¹⁰ That statute stated: "If an insurer sells no-fault insurance coverage which provides personal injury protection, medical payment coverage, or economic loss coverage, the coverage shall not be assigned or subrogated and is not subject to a setoff." S.C. Code § 38-77-144.

¹¹ Specifically, they argued that the provision violated S.C. Code § 38-77-160: "Benefits paid pursuant to this section are not subject to subrogation and assignment."

¹² The relevant provision excluded UIM coverage for "bodily injury sustained" while occupying a motor vehicle owned by the insured claimant or family member "which is not insured for this [UIM] coverage."

automobile insurance policy by MedPay benefits issued is enforceable under South Carolina law."); *Diamond State Ins. Co. v. Estate of McNeal*, Civil Action No. 1:11-cv-02528-JMC, 2013 U.S. Dist. LEXIS 33092, at *13 (D.S.C. Mar. 11, 2013) (Ex. B hereto) ("Under South Carolina law, an insured may be contractually prohibited from claiming UIM policy benefits by valid policy provision."). While the South Carolina courts have not considered the legality of nonduplication clauses in UIM coverage, they found similar offset provisions to be enforceable.

These cases confirm that the Court should not broadly extend *Bratcher*, because Section 38-77-160 does not expressly prohibit limitations on UIM coverage; rather, it only requires that insurers offer UIM coverage. Plaintiff can cite to no authority supporting that the legislature intended a statute mandating the *offer of optional* UIM or (excess) UM coverage to invalidate *all* contractual limitations on optional UIM and UM coverage.

Therefore, for the foregoing reasons, the Court should reject Plaintiff's reliance on *Bratcher* and deny their Motion for Judgment on the Pleadings. Additionally, the Court should grant Defendant Meridian's Motion for Judgment on the Pleadings.

b. The Cases Cited by *Bratcher* Do Not Support Its Conclusions.

Plaintiff's misplaced reliance on *Bratcher* is confirmed by examining the cases that the *Bratcher* court cited. First, *Bratcher* relied heavily on *Gambrell* to support the proposition that former South Carolina Code § 56-9-831 (now amended at Section 38-77-160) prohibits all restrictions on UIM coverage, except for a limitation to the amount of liability coverage. *Gambrell* does not stand for such a proposition. The *Gambrell* Court considered only whether, under Section 56-9-831, a claimant could recover under UIM coverage where the limit of the at-fault motorist's liability coverage was higher than the UIM coverage. The Court concluded only that Section 56-9-831 did not preclude UIM coverage under those circumstances:

We must enforce, not write, contracts of insurance and we must give policy language its plain, ordinary and popular meaning. We should not torture the meaning of policy language in order to extend or defeat coverage that was never intended by the parties. [Citation omitted].

With these rules in mind, we conclude the purpose of S.C. Code Ann. § 56-9-831

(1982 Supp.) is to provide coverage where the injured party's damages exceed the liability limits of the at fault motorist. The only restriction recognized by the statute is that an insured may not have a greater amount of underinsured motorist coverage than he has liability coverage. There is no requirement that the insured's underinsured motorist coverage limits must exceed the liability limits of the at fault motorist. . . .

To adopt the insured's argument that underinsured coverage is only intended to offer protection in the event damages are caused by out of state vehicles whose coverage does not meet the statutory minimum would negate the theory of uninsured motorist coverage.

One buys uninsured motorist coverage to protect himself in case an at fault driver has no liability coverage or has less liability coverage than required by statutes. . . . [O]ptional underinsured coverage would always be over and above either the at fault driver's liability coverage or over and above the policyholder's own uninsured motorist coverage. This is the protection provided for the additional premium paid for the underinsured motorist coverage.

See id., 580 S.C. at 71, 310 S.E.2d at 816. The Court only considered whether the predecessor to Section 38-77-160 precluded UIM coverage where the at-fault driver's liability limits exceeded the UIM limits. The Court concluded that UIM coverage could be triggered irrespective of the amount of the at-fault driver's liability coverage (so long as it was less than the amount of the injured person's damages). Nothing in *Gambrell* suggests (as Plaintiff and *Bratcher* suggest) that Section 38-77-160 is a blanket prohibition of limitations on UIM (or extra UM) coverage.

The Court of Appeals in *Bratcher* also relied on *McDonald v. State Farm Mut. Auto. Ins. Co.*, 287 S.C. 40, 336 S.E.2d 492 (Ct. App. 1985), for the proposition that when a policy is issued pursuant to a statute authorizing an exception to coverage, "all other exceptions are excluded." In *McDonald*, the Court of Appeals considered:

- Former S.C. Code § 56-11-110, which required that policies provide minimum benefits at the insured's option, including benefits for medical expenses and loss of earnings up to \$1,000 per person for "the named insured and members of his family residing in his household, Except such persons as may be specifically excluded in accordance with law, injured in any motor vehicle accident" The authorized exclusions were set forth in S.C. Code § 56-11-170, for an insured who:
 - (a) intentionally causes the accident resulting in the injury; or
 - (b) is injured while operating or voluntarily riding in a vehicle known by him to be stolen; or

- (c) is injured while in the commission of a felony or while in violation of Section 56-5-750;
- (d) with respect to motorcycles, economic loss benefits required under Section 56-11-110 may be excluded or may be offered with deductions, options or with specific exclusions.
- Former S.C. Code § 56-11-120 required that no application for insurance be taken unless Section 56-11-110 benefits were offered “with alternative benefit levels, at the option of such insured, of \$1500, \$2000, \$2500 or \$5000.”

McDonald did not purchase optional coverage for benefits on the policy covering the car involved in the accident, but had such coverage under a policy issued on another vehicle. The policy excluded coverage for injuries to the McDonalds while occupying a vehicle one of them owned.¹³

The Court of Appeals concluded that this exclusion was invalid.

It is equally clear that the exclusion is invalid under the Act. Section 56-11-110 allows exclusions from the coverage it requires only for “such persons as may be specifically excluded in accordance with law.” Section 56-11-170 sets out four authorized exclusions. None of these exclusions is applicable under the facts of this case. The policy issued by State Farm lists the exclusions authorized by this section and then attempts to further limit its coverage by adding several unauthorized exclusions including the exclusion in issue.

See id., 287 S.C. at 43, 336 S.E.2d at 494. In *McDonald*, unlike this case, the Court of Appeals interpreted a statute containing specific statutorily-allowed exclusions; in particular, the legislature detailed four permissible exclusions. Section 38-77-160 does not enumerate *any* coverage exclusions. It merely requires that insurers *offer* optional UIM coverage, up to the amount of liability coverage.¹⁴ Unlike the statutes in *McDonald*, Section 38-77-160 does not enumerate specific exclusions of coverage that would suggest the legislature was seeking to exhaust all possible exclusions or limitations.

Therefore, for the foregoing reasons, the Court should reject Plaintiff's reliance on *Bratcher*

¹³ The Court noted that, but for this exclusion, "it is clear that . . . they would be entitled to collect the benefits which they seek under both the terms of the policy issued on the Chevrolet and the requirements of the Act." *See id.*, 287 S.C. at 43, 336 S.E.2d at 494.

¹⁴ This makes sense from a policy perspective, as it discourages people from paying for extravagant UIM policies to protect themselves while purchasing only minimal liability coverage for the protection of people injured through their fault.

and deny her Motion for Judgment on the Pleadings. The Court should grant Meridian's Motion for Judgment on the Pleadings.

2. The *Garris* and *Ferguson* Cases Do Not Support Plaintiff's Motion for Judgment on the Pleadings.

Meridian can also distinguish the *Garris* and *Ferguson* cases that Plaintiff cites, as they do not support Plaintiff's contention that the nonduplication provisions violate public policy. To the contrary, these cases stand for limited propositions that are not implicated in this case.

In *Garris*, the Supreme Court held only that: (a) "underinsured motorist coverage is optional coverage provided by an insurance carrier in the event damages are sustained by the insured in excess of the at-fault driver's liability coverage, recovery therefrom being additional to any recovery from the at-fault motorist, total recovery not to exceed the damages sustained"; (b) "underinsured motorist coverage in any amount up to the insured's liability coverage must be offered to a policyholder"; and (c) stacking of UIM coverage was not proper for Class II insureds. *See Garris*, 280 S.C. at 151-56, 311 S.E.2d at 725-27. These holdings have nothing to do with the issue in this case: *i.e.*, whether a contractual nonduplication provision is enforceable. The *Garris* Court did not make any ruling that would support Plaintiff's contention that the nonduplication provisions are unenforceable.

In *Ferguson*, the Supreme Court considered whether a provision in a UM policy offsetting coverage by any amounts received under any workers' compensation law was enforceable in South Carolina. In that case, the UM carrier provided the then-mandatory minimum of \$10,000 per person coverage. The Court concluded that provision was unenforceable because:

The public policy declared by our uninsured motorist statute imposes an obligation on insurers to provide protection to their insureds against loss caused by wrongful conduct of an uninsured motorist, and any limiting language in an insurance contract which had the effect of providing less protection than made obligatory by the statutes is contrary to public policy and is of no force and effect. . . . The general rule supported by the majority of the decided cases is that an uninsured motorist endorsement provision for the reduction of payments by amounts received by the insured under any workmen's compensation law has been held void or invalid and unenforceable, on the ground that such provision reduced the effective coverage below that required by the statute and was contrary to public policy. . . .

It is our conclusion that the appellant's liability under the uninsured motorist endorsement is contractual in nature and arises after the liability of the uninsured motorist has been established and is not subject to reduction by the amounts received by the respondent here under the Workmen's Compensation Law for the reason that such provision places a limitation upon the requirement of the statute and conflicts with the terms thereof.

See Ferguson, 261 S.C. at 100-03, 198 S.E.2d at 524-25. The UM coverage at issue in *Ferguson*, by definition, included elements of loss (such as pain and suffering) that were not covered by the workers' compensation payment. As a result, the Court simply held that the insurance company was required to provide the minimum level of required UM coverage, under circumstances where the workers' compensation payments could not have compensated the Plaintiff for all elements of loss, since many of those elements are not recoverable under South Carolina's workers' compensation laws. This case is distinguishable in that the coverage under which Plaintiff seeks coverage is *optional* UIM and excess UM coverage. In any event, *Ferguson* did not consider a duplication provision that simply provides that the insurer shall not be required to pay for elements of loss that it has already paid *under the same policy*.

For the foregoing reasons, the *Garris* and *Ferguson* cases do not support Plaintiff's argument that the nonduplication provisions are unenforceable. Therefore, the Court should deny Plaintiff's Motion for Judgment on the Pleadings and grant Meridian's Motion for Judgment on the Pleadings.

C. The Duplication Provisions Do Not Impermissibly Transform the UIM Coverage into "Reduction Coverage"

Plaintiff argues that she is entitled to judgment on the pleadings because "application of the provision to the policy's UIM coverage would have the effect of transforming that coverage into 'reduction coverage' as opposed to 'excess coverage' in contravention of South Carolina law." (See Pl.'s Mot. for J. on Pldgs., at 1-2 (*citing State Farm Mut. Auto. Ins. Co. v. Horry*, 304 S.C. 165, 403 S.E.2d 318 (1991); *Purvis v. State Farm Mut. Auto. Ins. Co.*, 304 S.C. 283, 403 S.E.2d 662 (Ct. App. 1990); S.C. Code § 38-73-1105; S.C. Code § 38-77-30 (14) & (15)). For the following reasons, Plaintiff's argument is misplaced, and she is not entitled to Judgment on the

Pleadings.

The comparison of "excess" and "reduction" UIM coverage was discussed by the Court of Appeals thirty years ago:

"Excess" underinsured motorist coverage provides benefits to an insured under his own policy any time the at fault driver's liability coverage is less than the amount of the claimant's actual damages. The claimant is entitled to benefits equal to the difference between his actual damages and the at fault driver's limits up to the claimant's own underinsured motorist limits. . . . "Reduction" underinsured motorist coverage provides benefits to an insured under his own policy only when the claimant's underinsured motorist coverage is greater than the at fault driver's liability coverage because the amount of recovery from the claimant's underinsured motorist coverage is reduced by the amount of recovery from the at fault motorist.

See Purvis v. State Farm Mut. Auto. Ins. Co., 304 S.C. 283, 285, 403 S.E.2d 662, 664 (Ct. App. 1991) (finding that under then-existing statutes¹⁵ South Carolina was "reduction" coverage state). The legislature now defines an "underinsured motor vehicle" as a vehicle "as to which there is bodily injury liability insurance or a bond applicable at the time of the accident . . . and the amount of the insurance or bond is less than the amount of the insureds' damages." See S.C. Code § 38-77-30. South Carolina is now an "excess" state. *See State Farm Mut. Auto. Ins. Co. v. Horry*, 304 S.C. 165, 169, 403 S.E.2d 318, 320 (1991) (finding that *Purvis* "contains a well written and comprehensive review of how this state moved from being an 'excess' coverage state . . . to a 'reduction' coverage state . . . and then back to an 'excess' coverage state.").

However, whether South Carolina is a "reduction" or an "excess" state has no bearing on

¹⁵ Specifically, the statute defined an "underinsured motor vehicle" as one to which liability insurance coverage was "(a) less than the limit of underinsured motorist coverage under the insured's policy; or (b) has been reduced by payments to persons, other than the insured, injured in the accident to an amount less than the limit for underinsured motorist coverage under the insured's policy." See S.C. Code § 38-77-30(14) (pre-1989 version). Statutes further provided that this definition could "not be used by an insurer unless the insurer reduces his rate for [UIM] coverage by an amount determined appropriate by the Commissioner and refunds any such premium that the Commissioner determines is necessary to correspond with the new definition." See S.C. Code § 38-77-1105 (pre-1989 version). "In 1989 § 38-77-30(14) was amended to provide: 'Underinsured motor vehicle' means a motor vehicle as to which there is bodily injury liability insurance . . . less than the amount of the insured's damages." See *Horry*, 304 S.C. at 170, 403 S.E.2d at 320 (1991).

the enforceability of the nonduplication provisions. That inquiry deals only with the limited question of whether the level of UIM coverage was required to exceed liability coverage limits. Nothing in this authority concerns the question presented in this case. The law simply has not ruled that nonduplication provisions are illegal and unenforceable.

For the foregoing reasons, the distinction between "reduction" and "excess" views of UIM coverage does not support Plaintiff's argument that the nonduplication provisions are invalid. Therefore, the Court should deny Plaintiff's Motion for Judgment on the Pleadings and grant Meridian's Motion for Judgment on the Pleadings.

D. Plaintiff's Argument That the Nonduplication Provisions Are Unenforceable Because Payments Under the Liability Coverage Offset UIM and UM Coverage Is Without Merit

Plaintiff finally contends that "because Defendants are entitled to an offset against any damages award for liability coverage previously paid and Plaintiff's UM and UIM claims are for damages after application of that offset, the duplicate payments provision of the policy simply does not apply to the present claims." (See Pl.'s Mot. J. on Pldgs., at 2 (*citing Argonaut Great Cent. Ins. Co. v. Casey*, 701 F.3d 829 (8th Cir. 2012); *Lock v. American Family Ins. Co.*, 12 Wash. App. 2d 905, 460 P.3d 683 (2020); *GEICO v. Sherlock*, 140 A.D.3d 872, 32 N.Y.S.3d 635 (2016); *Fischer v. Midwest Security Ins. Co.*, 268 Wis. 2d 519, 673 N.W.2d 297 (2003))).

However, this argument does not directly address the issue here. Irrespective of whether there might be offset rights in some circumstances, the issue here is whether the nonduplication provisions preclude UIM and UM coverage. As set forth above, the plain language of the policies is clear that Plaintiff is seeking payments for the same "elements of loss" under the UIM and UM policies that Meridian already paid her under the liability coverage. Plaintiff has cited to no South Carolina authority invalidating those provisions. As a result, the Policy is unambiguous that Meridian is not required to pay Plaintiff any UIM or UM benefits here.

CONCLUSION

Based upon the facts, documents, and arguments set forth above, Defendant Meridian Security Insurance Company respectfully requests that this Court: (a) grant its Motion for Judgment on the Pleadings as to all claims asserted against it in this matter; (b) deny Plaintiff's Motion for Judgment on the Pleadings.

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***Attorneys for Defendant Meridian Security
Insurance Company***

October 13, 2021
Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF YORK	)	CASE NO.: 2020-CP-46-02221
Francine Steineman,	)	
	)	
Plaintiff,	)	DEFENDANT'S MOTION FOR
	)	RECONSIDERATION AND TO ALTER
vs.	)	OR AMEND PURSUANT TO
	)	S.C.R. CIV. P. 59(e)
Meridian Security Insurance Company,	)	
	)	
Defendant.	)	
	)	
	)	

TO: ATTORNEYS FOR PLAINTIFF:

AND NOW COMES Defendant Meridian Security Insurance Company ("Meridian" or "Defendant"), by and through its undersigned counsel, pursuant to Rule 59(e), SCRCPP, and moves the Court to reconsider, alter or amend its June 3, 2020 Order ruling on the parties' cross-motions for judgment on the pleadings. Defendant requests reconsideration in three respects: first, that the Court find that the subject insurance policy unambiguously distinguishes between "elements of loss" and the amount of damages; second, that the Court reconsider its interpretation of the term "duplicate payments"; and finally, that the Court find that the nonduplication provisions do not violate public policy with regard to *voluntary* uninsured motorist coverage.

INTRODUCTION

A. Factual Background

Meridian issued Policy # ASC 0048016 to Named Insured Francine Steineman, which provided certain insurance coverage for the policy period November 1, 2017 through November 1, 2018 ("Policy"). (*See* Def.'s Ans. and Counterclaim ¶ 53). The Policy provided Plaintiff liability insurance coverage (Part A) with a limit of \$250,000 per person, uninsured motorist ("UM") coverage (Part C) with a limit of \$250,000 per person, and underinsured motorist ("UIM") coverage with a limit of \$250,000 per person. (*See id.* ¶ 54).

Plaintiff was injured in an accident while a passenger in a 2001 Ford Explorer driven by

her husband. (*See* Pl.'s Compl. ¶¶ 15-20). She alleges that "[a]s Mr. Steineman attempted the left turn, he failed to check the outside lane before entering it, and the driver in the outside lane was traveling too fast for conditions and collided into Mrs. Steineman's car." (*See id.* ¶ 19). In this lawsuit, Plaintiff alleges that she is entitled to UIM benefits under the Policy because of her husband's negligence. Plaintiff further claims that the other "driver who collided into her was [also] negligent in causing her damages, and because the driver is uninsured, Mrs. Steineman is entitled to her UM coverage." (*See id.* ¶ 24). Plaintiff alleges that her damages from the accident exceed \$1 million. (*See id.* ¶ 21).

Pursuant to her demand, Meridian paid to the Plaintiff the maximum amount of benefits provided by the Policy's Liability Coverage Part (\$250,000). (*See* Def.'s Ans. and Counterclaim ¶ 58). Plaintiff has claimed that she is entitled to underinsured motions ("UIM") benefits of up to \$750,000 (\$250,000 X 3 vehicles) and uninsured motorist ("UM") benefits of up to \$750,000 (\$250,000 X 3 vehicles). Meridian has alleged in this matter that, "[p]ursuant to the terms of the UM Coverage Part and the UIM Coverage Part, Defendant does not owe the Plaintiff any benefits under these coverage parts because such payments would be duplicative of what Defendant already paid under the Liability Coverage Part and, therefore, expressly excluded." (*See id.* ¶ 59).

B. The Policy Provisions

The Policy includes the following Limits of Liability that are potentially applicable to this case:

COVERAGE	LIMITS OF LIABILITY	AU
A LIABILITY-BODILY INJURY	\$ 250,000 EACH PERSON/ \$ 500,000 EACH ACCIDENT	
A LIABILITY-PROPERTY DAMAGE	\$ 100,000 EACH ACCIDENT	
C UNINSURED MOTORISTS		
BODILY INJURY	\$ 250,000 EACH PERSON/ \$ 500,000 EACH ACCIDENT	
PROPERTY DAMAGE	\$ 100,000 EACH ACCIDENT	
C UNDERINSURED MOTORISTS		
BODILY INJURY	\$ 250,000 EACH PERSON/ \$ 500,000 EACH ACCIDENT	

1. Liability Coverage

Part A of the Policy includes the following insuring agreement for liability coverage under

the Policy:

We will pay damages for "bodily injury" or "property damage" for which any "insured" becomes legally responsible because of an auto accident. Damages include prejudgment interest awarded against the "insured". We will settle or defend, as we consider appropriate, any claim or suit asking for these damages. In addition to our limit of liability, we will pay all defense costs we incur. Our duty to settle or defend ends when our limit of liability for this coverage has been exhausted by payment of judgments or settlements. We have no duty to defend any suit or settle any claim for "bodily injury" or "property damage" not covered under this policy.

(See Pl.'s Compl. Ex. A (Form PP0001 (01/05), at 2))). The liability coverage provisions of the Policy state that "[n]o one will be entitled to receive duplicate payments for the same elements of loss under this coverage and: 1. Part B [Medical Payments Coverage] or Part C of this Policy [Uninsured Motorist Coverage]; or [a]ny Underinsured Motorists Coverage provided by this Policy." (See Pl.'s Compl. Ex. A (Form PP0001 (01/05), at 4))).

2. Underinsured Motorist ("UIM") Coverage

The insuring provision of the Policy's South Carolina Underinsured Motorist Coverage states in relevant part:

We will pay damages which an "insured" is legally entitled to recover from the owner or operator of an "underinsured motor vehicle"¹ because of: 1. "Bodily injury" sustained by an "insured" and caused by an accident The owner's or operator's liability for these damages must arise out of the ownership, maintenance or use of the "underinsured motor vehicle".

(See Pl.'s Compl. Ex. A (Form SC0488 (07/15))). The Policy's South Carolina Underinsured

¹ An "underinsured motor vehicle" is defined as 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 'insured' is legally entitled to recover as damages." (See Pl.'s Compl. Ex. A (Form SC0488 (07/15))).

Motorist Coverage form further defines "insured" as including "[y]ou²] or any 'family member.'"³ (*See id.*). The Policy also includes the following "nonduplication" provision in its South Carolina UIM coverage form:

D. No one will be entitled to receive duplicate payments for the same elements of loss under this coverage and Part A [Liability], Part C [Uninsured Motorist coverage] or Part D [Coverage for Damage to Your Auto] of this policy.

E. We will not make a duplicate payment under this coverage for any element of loss for which payment has been made by or on behalf of persons or organizations who may be legally responsible.

(*See id.*).

3. Uninsured Motorist ("UM") Coverage

The insuring provision of the Policy's South Carolina Uninsured Motorist Coverage states in relevant part:

We will pay damages which an "insured" is legally entitled to recover from the owner or operator of an "uninsured motor vehicle"⁴] because of: 1. "Bodily injury" sustained by an "insured" and caused by an 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".

² "You" is defined as "1. The 'named insured' shown in the Declarations; and 2. The spouse if a resident of the same household." (*See Pl.'s Compl. Ex. A (Form PP0001 (01/05))*). The named insured on the Policy is Francine Steineman. (*See Pl.'s Compl. Ex. A (Declarations)*).

³ The Policy defines "family member" to mean "a person related to you by blood, marriage or adoption who is a resident of your household." (*See Pl.'s Compl. Ex. A (Form PP0001 (01/05), at 1)*).

⁴ An "uninsured motor vehicle" is defined as a "land motor vehicle or trailer of any type with regard to which:

1. To which neither: a. A liability bond or policy; nor b. 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.

3. Which is a hit-and-run vehicle whose operator or owner cannot be identified

(*See Pl.'s Compl. Ex. A (Form SC0465 (07/15))*).

(See Pl.'s Compl. Ex. A (Form SC0465 (07/15))). The Policy's South Carolina Uninsured Motorist Coverage form defines "insured" as including "[y]ou or any 'family member.'" (See *id.*). The Policy also includes the following "nonduplication" provision in its South Carolina Uninsured Motorist coverage form:

D. No one will be entitled to receive duplicate payments for the same elements of loss under this coverage and: 1. Part A of this policy [Liability]; 2. Any Underinsured Motorists coverage provided by this policy; or 3. Part D [Coverage for Damage to Your Auto] of this policy or any other similar coverage under any other policy.

E. We will not make a duplicate payment under this coverage for any element of loss for which payment has been made by or on behalf of persons or organizations who may be legally responsible.

(See *id.*).

C. **Relevant Procedural History**

The parties filed cross-Motions for Judgment on the Pleadings. Oral argument on the parties' cross-motions for judgment on the pleadings was held on February 1, 2022 before the Honorable William A. McKinnon, at which Bert Glenn Utsey, III, Esq. appeared for Plaintiff and M. Dawes Cooke, Jr., Esq. appeared for Defendant. On June 3, Judge McKinnon entered the Order at issue, which: (a) denied Meridian's Motion for Judgment on the Pleadings; (b) granted Plaintiff's Motion for Judgment on the Pleadings; and (c) entered a declaratory judgment in favor of Plaintiff stating "that the Policy provides \$750,000 in UM coverage for Plaintiff's claims against Sarah Smith as a result of the Collision and \$750,000 in UIM coverage for Plaintiff's claims against Eric Steineman as a result of the Collision." The Court concluded that the Policy's non-duplication provision did not apply here because Plaintiff was not seeking "duplicate payments for the same elements of loss." However, the Court rejected Plaintiff's argument that the nonduplication provisions violated South Carolina public policy as to UIM coverage. The Court held that public policy did preclude the non-duplication provision from applying to the Policy's UM coverage.

For the reasons set forth below, the Court should reconsider, alter and/or amend its Order, deny Plaintiff's Motion for Judgment on the Pleadings and grant Meridian's Motion for Judgment

on the Pleadings.

ARGUMENTS

A. The Court Should Alter or Amend Its Order to Declare That the Policy's Non-Duplication Provisions Apply.

"In the absence of ambiguity, the terms of an insurance policy . . . must be interpreted and enforced according to their plain and ordinary meaning." *See South Carolina Ins. Co. v. White*, 301 S.C. 133, 137, 390 S.E.2d 471, 474 (Ct. App. 1990). A policy term can be said to be ambiguous only when the language used is capable of two reasonable interpretations. *See Edens v. S.C. Farm Bur. Mut. Ins. Co.*, 279 S.C. 377, 379, 308 S.E.2d 670, 671 (1983); *accord Hansen v. United Services Automobile Ass'n*, 350 S.C. 62, 67, 565 S.E.2d 114, 117 (Ct. App. 2002) (policy only ambiguous where term may fairly and reasonably be understood in more than one way).

The Policy's terms define Meridian's obligations; the Court may not use judicial construction to enlarge Meridian's obligations. *South Carolina Ins. Co. v. White*, 301 S.C. 133, 390 S.E.2d 471, 474 (Ct. App. 1990). When the parties' intention is clear from the policy language, the court has "no authority to torture the meaning of policy language to extend or defeat coverage that was never intended by the parties." *Torrington Co. v. Aetna Cas. and Sur. Co.*, 264 S.C. 636, 643, 216 S.E.2d 547, 550 (1975). "Our courts must enforce, not write, contracts of insurance and must give policy language its plain, ordinary and popular meaning." *Helton v. St. Paul Fire & Marine Ins. Co.*, 286 S.C. 220, 222, 332 S.E.2d 776, 777 (Ct. App. 1985).

1. The Unambiguous Language of the Nonduplication Provisions Precludes the Payment of UM and UIM Benefits to Plaintiff.

As set forth above, the operative Policy language states that "[n]o one will be entitled to receive duplicate payments for the same elements of loss" under both the liability coverage part and the UM or UIM coverage part. The Policy also sets forth that Meridian "will not make a duplicate payment under this coverage for any element of loss for which payment has been made by or on behalf of person or organizations who may be legally responsible." These provisions preclude UIM and UM coverage, because Plaintiff seeks "duplicate payments" for the same

"elements of loss" for which she was paid under the Policy's liability coverage, *i.e.*, medical bills, lost earning capacity, pain and suffering, etc. because of injuries sustained in this accident. She claims the same medical bills, the same pain and suffering, and other identical "elements of loss" under UIM/UM coverage for which she received payment under the Policy's liability coverage. This is the precise situation to which nonduplication provisions should apply.

Although South Carolina appellate courts have not specifically considered nonduplication provisions, in *Sibert v. State Auto. Mut. Ins. Co.*, No. 8:20-4000-HMH, 2021 U.S. Dist. LEXIS 149971 (D.S.C. Aug. 10, 2021), Judge Herlong granted summary judgment to State Auto (which is related to Meridian), construing the same policy language at issue here. In *Sibert*, the injured person was a passenger in a vehicle driven by an insured. State Auto paid the injured person the limits of the insured's liability coverage; the claimant then sought UIM benefits under the same policy. State Auto denied coverage under nonduplication provisions identical to the ones at issue. The court granted State Auto summary judgment, holding that "the nonduplication provisions are unambiguous and plainly prohibit duplicate payments for the same elements of loss under the Policy's liability and UIM coverages." *See id.*, 2021 U.S. Dist. LEXIS 149971, at *6. Similarly, in *Diamond State Ins. Co. v. Estate of McNeal*, Civil Action No. 1:11-cv-02528-JMC, 2013 U.S. Dist. LEXIS 33092 (D.S.C. Mar. 11, 2013), the court granted summary judgment, holding that "[t]he UIM endorsement of the Policy plainly limits duplicate payments for losses covered by other liability coverage. Therefore, the Policy does not provide UIM coverage in this case." *See id.*, 2013 WL 934182, at *5. Because liability and UIM coverage compensated for the "same elements of damages" (*i.e.*, damages that would be recoverable in a personal injury tort suit), the court only obligated Diamond State to pay under its liability coverage. Following the District of South Carolina's well-reasoned opinions in *Sibert* and *Diamond State*, this Court should reconsider, alter and/or amend its June 3, 2022 Order and declare that, under the nonduplication provisions, there is no UM or UIM coverage for Plaintiff's alleged injuries.

Courts have upheld similar non-duplication provisions in other jurisdictions. *See Kearns v. Travelers Prop. Cas. Co. of Am.*, No. N16C-02-095 RRC, 2019 Del. Super. LEXIS 647, at *17-

18 (Super. Ct. Nov. 1, 2019) ("[S]ince Travelers' non-duplication provision is enforceable, and Kearns recovered payments for medical bills, wages, and disfigurement, Kearns is not allowed to plead, prove and/or recover for these losses at trial against Travelers. However, benefits non-recoverable under workers' compensation insurance, such as pain and suffering, may be potentially recoverable under the Travelers policy, as acknowledged at oral argument by Travelers."); *Hanson v. Republic Ins. Co.*, 5 S.W.3d 324, 333 (Tex. App. 1999) ("We conclude that the trial court properly enforced the UM/UIM offset as a valid nonduplication of coverage provision and overrule point of error two."). A Minnesota court has applied nonduplication language to unambiguously preclude payments under both liability and UIM parts of the same policy:

The policy language referring to "duplicate payments" and "elements of loss" is not reasonably susceptible to multiple interpretations. While neither phrase is defined in the policy, the plain language of the exclusion states that any UM coverage is precluded for an element of loss covered under the liability section of the policy. We will not strain to find ambiguity when the meaning is clear.

See Marchio v. W. Nat. Mut. Ins. Co., 747 N.W.2d 376, 380 (Minn. Ct. App. 2008) (emphasis added). The *Marchio* court noted that the insured's claims would also have been barred if the insured sought both liability and UIM coverage, as is the situation here. *See id.* at 382 (citing *Jensen v. United Fire and Cas. Co.*, 524 N.W.2d 536, 539 (Minn. Ct. App. 1994) (insured cannot convert first-party UIM coverage to third-party liability coverage under same policy)).

Meridian's arguments under the Policy's nonduplication provisions are consistent with the purpose of UIM and UM coverage: to protect the *insured* from injury caused by the negligence of *third-party drivers*. UM and UIM coverages are not designed to compensate for *the named insured's negligence*; that is the function of liability coverage. *See Mercury Indem. Co. of Illinois v. Kim*, 358 Ill. App. 3d 1, 8, 830 N.E.2d 603, 609 (2005); accord *State Farm Mutual Automobile Insurance Co. v. Shahan*, 141 F.3d 819, 822 (8th Cir. 1998) ("The typically envisioned situation arises when the driver of one vehicle is injured due to the negligence of another driver. If the second driver's liability coverage is insufficient to compensate for the first driver's injuries, the first driver may recover under his own underinsured motor vehicle policy"); *Cantrell v. Cantrell*,

213 W.Va. 372, 582 S.E.2d 819, 823 (2003) ("We reiterate that the purpose of optional UIM coverage is to enable the insured to protect himself [or herself] if he [or she] chooses to do so, against losses occasioned by the negligence of other drivers who are underinsured.... 'Other drivers' necessarily infers the **drivers of vehicles other than the vehicle owned and operated by the insured**") (emphasis added) (internal citations omitted); *Millers Casualty Insurance Co. of Texas v. Briggs*, 100 Wash.2d 1, 665 P.2d 891, 895 (1983) ("The owner of a vehicle purchases liability insurance to protect passengers in the vehicle from his negligent driving. He purchases underinsured motorist coverage to protect himself and others from damages caused by another vehicle which is underinsured") (emphasis added); *Liberty Mutual Insurance Co. v. Lund*, 403 Mass. 1006, 1007, 530 N.E.2d 166, 168 (1988) ("Underinsurance and uninsured motorist protection is not additional liability insurance but rather is 'limited personal accident insurance chiefly for the benefit of the named insured.'").

In fact, courts have held that allowing recovery under liability and UM/UIM coverage parts of the same policy would undermine insurance statutes by making coverage prohibitively expensive. *Mercury Indem. Co. of Illinois v. Kim*, 358 Ill. App. 3d 1, 10, 830 N.E.2d 603, 611 (2005); accord *Kang v. State Farm Mutual Automobile Insurance Co.*, 72 Haw. 251, 261, 815 P.2d 1020, 1025 (1991) ("By invalidating the contested policy exclusion in this case, this court would, *in effect, eliminate the distinction between liability and underinsured motorist coverage and transform the inexpensive underinsured motorist coverage into the more expensive liability coverage*. Consequently, insurers would undoubtedly be compelled to increase the premiums for underinsured motorist coverage, thereby frustrating the legislative objective of optional protection at the least possible cost") (emphasis added); *Briggs*, 100 Wash.2d at 8, 665 P.2d at 895 ("This result [of dual recovery] would cause insurance companies to charge substantially more for underinsured motorist coverage in order to match the cost of that coverage with the presently more expensive liability coverage. This increase in cost would discourage consumers from purchasing underinsured coverage, an important protection presently available for a minimal cost").

Plaintiff's construction of the nonduplication provisions ignores the Policy's plain language

and focuses only on the *amount of damages* rather than the "elements of loss." Plaintiff bases her position on the fact that UIM coverage necessarily is only triggered when the *amount* of the injured person's damages (*i.e.*, compensable harm resulting caused by the accident) exceeds the amount of liability coverage. By way of example, if there are \$100,000 limits of liability and UIM coverage, the UIM coverage would never be triggered unless the injured party's overall damages exceed \$100,000. The South Carolina statutory definition of "underinsured motor vehicle" is "a motor vehicle . . . as to which there is bodily injury liability insurance . . . and the amount of the insurance or bond is less than the amount of the insureds' *damages*). See S.C. Code § 38-77-30(15) (emphasis added). Because of this, Plaintiff would argue that the UIM and UM coverage would never duplicate the \$100,000 liability coverage, since those coverages are only triggered *after* liability coverage is exhausted by the amount of damages (or no liability coverage exists, in the case of UM).

The Indiana Court of Appeals rejected this precise argument about the meaning of the term "elements of loss":

Imre asserts "same elements of loss," contained within these provisions, is not defined by the Policy and the term can be construed to denote "same elements of damages" rather than the proposition that Gambill is not entitled to recover pursuant to both the uninsured and underinsured motorist provisions of the Policy. . . . This argument is unpersuasive. When the Policy references "damages" it explicitly uses the term "damages." The Policy uses the term "damages" on at least six separate occasions. Appellants' App. pp. 28-35. We must accept an interpretation of the contract language that harmonizes the provisions of the insurance contract rather than one which supports a conflicting version of the provisions. [Citation omitted.]

Because "same elements of loss" does not denote "same elements of damages," Imre has not advanced a plausible interpretation of "same elements of loss" to compete with the interpretation advanced by Lake States, and there is no ambiguity in the term. Rather, as the name "Limit of Liability Clause" suggests, the term "same elements of loss" within Section C of the Underinsured and Uninsured Motorist Clauses serves to denote that an insured may not recover under both the underinsured and uninsured provisions of the Policy.

Imre v. Lake States Ins. Co., 803 N.E.2d 1126, 1130-31 (Ind. Ct. App. 2004)

Nonduplication provisions do not focus on the *amount of damages*; rather, they prohibit

"duplicate payments for the same elements of loss." (emphasis added). Plaintiff's approach conflates the amount of damages with "elements of loss." The Policy uses the word "damages" on multiple occasions (more than a dozen times just in the South Carolina UIM coverage part). For example, the UIM and UM insuring agreements use that term, with Meridian agreeing to "pay damages which an 'insured' is legally entitled to recover." (See Pl.'s Compl. Ex. A (Form SC045 (07/15), at 1)); Pl.'s Compl. Ex. A (Form SC0488 (07/15), at 1))). Similarly, under the liability coverage, Meridian promises to "pay damages for 'bodily injury' or 'property damage' for which any 'insured' becomes legally responsible because of an auto accident." (See Pl.'s Compl. Ex. A (Form PP0001 (01/05), at 2))). If Meridian meant to refer to "damages" in the nonduplication provisions, it would have said so; the fact that it chose *not* to clearly shows "elements of loss" means something different from "damages."

Although the Policy does not define "damages," the South Carolina Supreme Court has stated that "[t]he plain, ordinary meaning of 'damages' is monies paid on an insured's loss." See *Helena Chem. Co. v. Allianz Underwriters Ins. Co.*, 357 S.C. 631, 638, 594 S.E.2d 455, 458 (2004). "Damages" has also been defined as "[a] pecuniary compensation or indemnity, which may be recovered in the courts by any person who has suffered loss, detriment, or injury, whether to his person, property, or rights, through the unlawful act or omission or negligence of another." <https://thelawdictionary.org/damages/> (accessed July 15, 2021). Plaintiff's position focuses on damages. In other words, he asks simply whether the total amount of "damages" to which the injured person is entitled exceed the liability limit of coverage. Her interpretation would write the non-duplication provisions out of the policy, since there could never be a situation where UIM coverage includes the same amount of damages as the liability coverage.

On the other hand, "elements of loss" is *only* used in the Policy's nonduplication provisions. Although not defined in the Policy, Black's Law Dictionary defines "element" as "a basic principle or a fundamental part." <https://thelawdictionary.org/element/> (accessed July 15, 2021). In this regard, the phrase "element or loss" refers to categories or types of loss, rather than the total amount of damages to which an injured person might be entitled. The plain language of the nonduplication

provisions expresses that it will preclude UIM coverage liability coverage has paid for the *same type* of injuries that the UIM claim covers. It does not require that the liability coverage pay the *full amount* of the injured person's total damages.

Plaintiff's construction of the nonduplication provision creates a scenario where the nonduplication provisions would *never* apply, since UIM/UM coverage is only triggered when underlying liability coverage is exhausted (*i.e.*, when injuries/damages exceed liability limits or there is no liability coverage). However, the Policy's nonduplication language anticipates that there *must be* some situation where a duplication could occur between liability and UIM/UM coverage; otherwise, there would be no reason to include nonduplication language with regard to UIM/UM coverage. Liability, UIM, and UM coverages all reference each other in their respective nonduplication provisions:

UIM Coverage "Nonduplication" Provision: "No one will be entitled to receive duplicate payments for the same elements of loss under this coverage and Part A [Liability], Part C [Uninsured Motorist coverage] or Part D [Coverage for Damage to Your Auto] of this policy." (See Pl.'s Compl. Ex. A (Form SC0488 (07/15))).

UM Coverage "Nonduplication" Provision: "No one will be entitled to receive duplicate payments for the same elements of loss under this coverage and: 1. Part A of this policy [Liability]; 2. Any Underinsured Motorists coverage provided by this policy; or 3. Part D [Coverage for Damage to Your Auto] of this policy or any other similar coverage under any other policy." (See Pl.'s Compl. Ex. A (Form SC0465 (07/15))).

Liability Coverage "Nonduplication" Provision: "No one will be entitled to receive duplicate payments for the same elements of loss under this coverage and: 1. Part B [Medical Payments Coverage] or Part C of this Policy [Uninsured Motorist Coverage]; or [a]ny Underinsured Motorists Coverage provided by this Policy." (See Pl.'s Compl. Ex. A (Form PP0001 (01/05), at 4))).

Plaintiff's argument would render the Policy's nonduplication language "meaningless in contravention of the well-settled principles of contract law." See *Crenshaw v. Erskine Coll.*, 432 S.C. 1, 42, 850 S.E.2d 1, 22 (2020), *reh'g denied* (Nov. 30, 2020); accord *Yarborough v. Phoenix Mut. Life Ins. Co.*, 266 S.C. 344, 225 S.E.2d 344, 349 ("That construction will be adopted which will give effect to the whole instrument and to each of its various parts and provisions, if it is

reasonable to do so. 43 Am. Jur. (2d) *Insurance* § 263 (1969)").

For the foregoing reasons, the Court should reconsider, alter and/or amend its June 3, 2022 Order and declare that because the Policy expressly and unambiguously prohibits the payment under both UM/UIM and liability coverages for the same elements of loss.

2. The Court Should Reconsider Its Construction of the Term "Duplicate Payments."

The Court's Order focuses heavily on the meaning of the phrase "duplicate payments" in the Policy's non-duplication provision:

As a threshold matter, "duplicate payments" is different than "payments." "Duplicate" is defined in Black's Law Dictionary as to double, to repeat, or to copy exactly. South Carolina cases in other contexts have applied the term consistent with that definition. [Citations omitted.] This distinction is also consistent with South Carolina law on offsets, which permits a tortfeasor to get credit for payments a claimant receives from another tortfeasor for the same injury – which prohibits a double recovery by the claimant – but does not totally bar the claim against the nonpaying tortfeasor.

To achieve the result for which Defendant argues, the Policy provisions did not need to use the term "duplicate" but could only have said "payments." The fact that Defendant included the term "duplicate" in the provisions demonstrates the language means a claimant cannot recover twice for the same amount, not that a claimant cannot recover under different coverages until fully compensated for her damages (or until coverage is exhausted). Otherwise, Defendant could achieve an offset equal to potentially millions by paying only a nominal amount of BI coverage.

(See June 3, 2022 Order, at 4-5). For the following reasons, the Court should reconsider, alter and/or amend its ruling with regard to the phrase "duplicate payments."

The Court's Order cites two South Carolina cases construing the word "duplicate": *Williamson v. United States Fire Ins. Co.*, 314 S.C. 215, 442 S.E.2d 587 (1994), and *Harvey v Art Metal, Inc.*, 247 S.C. 443, 147 S.E.2d 697 (1966). For the following reasons, those cases do not support the Court's construction of the Policy's nonduplication provisions.

- In *Williamson*, the Court held that an *offset* (not nonduplication) provision in an injured claimant's *employer's* automobile policy that reduced coverage for "[a]ll sums paid or payable under any workers' compensation" law did not violate public policy and statute. The Court held that public policy favored

encouraging "*employer* voluntary coverage by not exposing *employers* to mandatory duplicative insurance premiums and by not allowing duplicative recoveries by employees." *See id.* (emphasis added). The Court did not address the issue in this case: the enforceability of insurance policy language prohibiting "duplicate payments for the same element of loss." In any event, the Court held that the policy limitation was permissible.

- In *Harvey*, the issue before the Court was whether and injured employee's receipt of unemployment benefits after a disability-causing injury equitably estopped him from receiving workers' compensation benefits. The Court held that, in the absence of evidence of prejudice, estoppel could not be asserted as a defense to workers' compensation benefits. Importantly, the case did not involve automobile insurance policy language and certainly not the nonduplication language at issue in this case. The issue before the Court in *Harvey* was not the meaning of "duplicate payments for the same element of loss."

Respectfully, the cases relied upon in the Court's Order do not support its ultimate conclusion. Those cases do not undermine any of the arguments set forth by Meridian in the prior section of this Motion. Therefore, the Court should reconsider, alter and/or amend its Order.

B. The Nonduplication Provisions Do Not Violate Public Policy As to *Voluntary* UM Coverage.

In its Order, the Court held that the non-duplications provisions at issue violated public policy as to the full amount of uninsured motorist (UM) coverage under the Policy. Meridian respectfully moves the Court to reconsider, alter and amend its Order to limit this holding to only *statutorily mandated* UM coverage.

Plaintiff has argued that Meridian's position violates public policy because it would eliminate statutorily-mandated UM coverages. South Carolina law, specifically, S.C. Code § 38-77-160, requires that "[a]utomobile insurance carriers shall offer, at the option of the insured, uninsured motorist coverage up to the limits of the insured's liability coverage in addition to the mandatory coverage prescribed by Section 38-77-150." However, nothing in the cited statute prohibits the nonduplication provisions or render such provisions invalid as to the optional level of UM coverage (*i.e.*, UM coverage in excess of the \$25,000 statutorily-mandated coverage).

As set forth in Meridian's filings, the public policy arguments under the statutory scheme that Plaintiff relied upon are all premised on and should be limited to statutorily-mandated limits

of UM coverage. Excess UM is not statutorily required coverage, so the parties should be permitted to agree to limit or modify the terms of coverage. These cases confirm that the Court should not broadly extend *Bratcher v. National Grange Mut. Ins. Co.*, 292 S.C. 330, 356 S.E.2d 151 (1987), because Section 38-77-160 does not expressly prohibit limitations on voluntary UM coverage; rather, it only requires that insurers offer UM coverage in limits up to the amount of liability coverage. Plaintiff can cite to no authority supporting that the legislature intended a statute mandating the *offer* of optional UM and UIM coverage to invalidate all contractual limitations on optional UIM and UM coverage. To the contrary, under the logic of *Bratcher*, the Court's finding of a violation of the statute should be limited to the *statutorily-mandated levels of UM coverage*. As a result, the Court should alter or amend its Order to reflect this.

CONCLUSION

Based upon the facts, documents, and arguments set forth above, Defendant Meridian Security Insurance Company respectfully requests that this Court to reconsider, alter and/or amend its order to: (a) declare that the non-duplication provisions in the Policy plainly and unambiguously apply to preclude UM and UIM in this case; and (b) declare that the Policy's non-duplication provisions do not violate public policy with regard to UIM coverage and with regard to UM coverage in excess of the statutory minimum limits.

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***Attorneys for Defendant Meridian Security
 Insurance Company***

June 13, 2022
 Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Francine Steineman,

Plaintiff,

v.

Meridian Security Insurance Company,

Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2020-CP-46-02221

PLAINTIFF'S MOTION
TO ALTER/AMEND

PLEASE TAKE NOTICE that, pursuant to Rule 59(e), SCRCP, the Plaintiff hereby moves this Honorable Court to alter its Order dated June 2, 2022.

Plaintiff only seeks to have the Court alter its ruling regarding public policy as applied to the underinsured motorist coverage. Specifically, Plaintiff asks the Court to alter its ruling so as to state that public policy prohibits the reduction of underinsured motorist coverage as proposed by Defendant. Underinsured motorist coverage is statutorily required coverage. *Carter v. Standard Fire Ins. Co.*, 406 S.C. 609, 615-16, 621-22, 753 S.E.2d 515, 518-19, 521-22 (2014); *Nationwide Ins. Co. of Am. v. Knight*, 433 S.C. 371, 380-81, 858 S.E.2d 633, 638 (2021).

This motion will be supported by the pleadings, records herein, arguments of counsel, and any other materials requested by the Court.

Respectfully submitted.

CLAWSON | FARGNOLI | UTSEY, LLC

BY: /s/Bert G. Utsey, III
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June 13, 2022
Charleston, South Carolina

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Oct 25 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
In the Court of Common Pleas for the Sixteenth Judicial Circuit

William A. McKinnon, Circuit Court Judge

Case No. 2020-CP-46-02221

Francine Steineman..... Plaintiff/Respondent

vs.

Meridian Security Insurance Company Defendant/Appellant

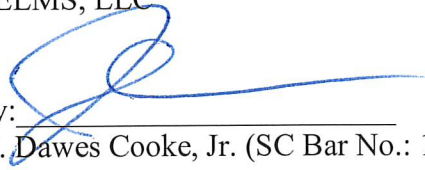
NOTICE OF APPEAL

Defendant/Appellant Meridian Security Insurance Company hereby appeals from:
(a) the Order denying and granting the parties' cross-motions for judgment on the pleadings, which the Honorable William A. McKinnon signed and filed on June 3, 2022 (attached hereto as Exhibit A); and (b) the Order Denying Defendants' Motion to Reconsider, Alter, or Amend and Granting in Part Plaintiff's Motion to Alter or Amend, which the Honorable William A. McKinnon signed and filed on September 27, 2022 (attached hereto as Exhibit B).

Defendant/Appellant Meridian Security Insurance Company received written notice of entry of the Order Denying Defendants' Motion to Reconsider, Alter, or Amend and Granting in Part Plaintiff's Motion to Alter or amend (Exhibit B) on September 27, 2022.

October 25, 2022

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Oct 25 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
In the Court of Common Pleas for the Sixteenth Judicial Circuit

William A. McKinnon, Circuit Court Judge

Case No. 2020-CP-46-02221

Francine Steineman..... Plaintiff/Respondent

vs.

Meridian Security Insurance Company Defendant/Appellant

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the above-referenced Respondent by depositing a copy of it in the United States Mail, postage prepaid, on October 25, 2022, addressed to her attorneys of record:

CLAWSON | FARGNOLI | UTSEY, LLC

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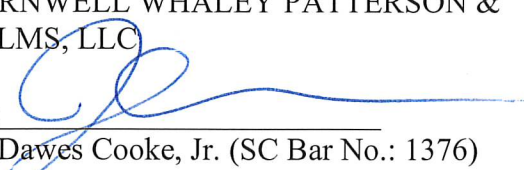
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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK	)	
	)	
Francine Steineman,	)	Case No. 2020–CP–46–02221
	)	
Plaintiff,	)	<u>ORDER</u>
	)	
vs.	)	DENYING DEFENDANTS’ MOTION
	)	TO RECONSIDER, ALTER, OR
Meridian Security Insurance Company	)	AMEND AND GRANTING IN PART
	)	PLAINTIFF’S MOTION TO ALTER
Defendant.	)	OR AMEND.
	)	

This matter is before this Court on Defendant’s motion to reconsider, alter, or amend and Plaintiff’s motion to alter or amend.

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Oct 25 2022

Procedural History

SC Court of Appeals

On June 2, 2022, this Court issued an order holding that Meridian Security Insurance Company (“Defendant”) could not rely on the “duplicate payments” provisions of the insurance policy it issued to Francine Steineman (“Plaintiff”) to deny uninsured motorist (“UM”) or underinsured motorist (“UIM”) coverage to Plaintiff resulting from the incident that was the subject of this lawsuit. This holding was based on the Court’s ruling that the policy language does not bear the interpretation Defendant preferred. It was also based on the Court’s ruling that any provision effectively drafted to deny UM (but not UIM) coverage is void because it is contrary to South Carolina’s public policy.

Defendant filed a motion to reconsider, alter, or amend, arguing that persuasive caselaw interpreted similar duplicate payments provisions in its favor. Defendant also argued that the duplicate payment provisions, properly interpreted, were contrary to public policy only to the

extent that they applied to the basic limits of UM coverage—that is, that an effectively drafted provision forbidding a victim from recovering for damages under both liability coverage and UM for injuries arising from the same incident is fully consistent with public policy to the extent that the UM coverage provided by the policy exceeds the basic limits required by statute (\$25,000/\$50,000/\$25,000).¹ Plaintiff responded and filed a motion to alter or amend, asking this Court to hold that an effectively drafted bar to recovery under both liability and either or both UM and UIM would be contrary to South Carolina’s public policy regardless of the amounts of coverage at issue.

After a hearing, this Court took the matter under advisement. Defendant’s motion is hereby denied. However, after thorough consideration, this Court partially grants Plaintiff’s motion to alter or amend but for different reasons than those articulated in Plaintiff’s written motion.

Analysis

An automobile insurance policy that offers stated amounts of liability and either or both UM and UIM coverage but provides that any person who recovers liability coverage cannot also recover either or both UM or UIM coverage violates public policy. These “either/or” provisions are void² for two reasons. First, a policy that prevents victims from recovering UM up to the basic

¹ That is, an at-fault driver’s insurance policy containing an effectively drafted provision barring recovery more than one category of coverage for a single incident (referred to below as an “either/or” provision) could lawfully provide that a victim who recovers any liability coverage cannot recover more than the basic limits in UM coverage. For example, Driver A secures an automobile insurance policy with large liability limits (\$500,000/\$750,000/\$500,000) and somewhat large UM coverage (\$100,000/\$300,000/\$100,000). Victim B is a passenger in Driver A’s car when the negligence of Driver A and Driver C, who is operating another automobile, is injured and incurs \$1,000,000 in bodily injury damages. She could recover the liability bodily injury coverage maximum of \$500,000. An either/or provision would, under Defendant’s interpretation of South Carolina public policy, prevent her from also recovering more than \$25,000 in UM coverage.

² Automobile insurance policies in South Carolina must contain all provisions required by law; any provision contrary to our insurance statutes or public policy are void. See *Williams v. Gov’t Emps. Ins. Co.*, 409 S.C. 586, 598 (2014) (citations omitted); S.C. Code § 38-77-10(3); S.C. Code § 38-77-20. South Carolina by statute requires that all automobile insurance policies include liability coverage in the amounts of at least \$25,000 per

limits (\$25,000/\$50,000/\$25,000) merely because they also are entitled to and have claimed or recovered all or some liability coverage—or vice versa—violates the statutes that require automobile insurance policies to provide minimum amounts of both liability and UM coverage (\$25,000/\$50,000/\$25,000). Second, and more broadly, South Carolina insurance and contract law prohibits automobile insurance policies from agreeing to a stated amount of a category of coverage (liability, UM, or UIM) in one provision of the policy and then in a subsequent provision effectively reducing that stated amount by redefining the category of coverage more narrowly than the insurance statutes define that category.

Policies Must Provide at Least the Basic Limits of Liability and UM Coverage, Respectively

Liability and UM/UIM converge when a passenger is injured and both the insured driver and the uninsured or underinsured driver of the other vehicle are at fault. Because liability coverage is required by statute to cover “loss from the liability imposed by law for damages arising out of the ownership, maintenance, or use of” the driver’s car, S.C. Code §38-77-140(A), that liability coverage must necessarily cover the injured passenger in such a case to the extent of the lesser of the injuries attributable to the at-fault driver or the liability limits. Because UM is defined as coverage for “all sums which [the insured] is legally entitled to recover as damages from the owner or operator of an uninsured motor vehicle,” S.C. Code §38-77-150(A), the UM coverage must also

incident in bodily injury to a single person, at least \$50,000 per incident for bodily injury to two or more persons, and \$25,000 per incident for property damage (\$25,000/\$50,000/\$25,000). S.C. Code § 38-77-140. The policy must also include UM coverage in the same minimum amounts. S.C. Code § 38-77-150. In addition to the minimum required liability and UM coverage (“basic limits”), yet another statute requires automobile insurance companies to offer to the insured the option to buy UM coverage in the same amounts as the insured’s liability coverage, as well as a similar offer to buy underinsured motorist (“UIM”) coverage in the same amounts as the insured’s liability coverage. S.C. Code § 38-77-160.

necessarily cover the injured passenger in such a case to the extent of the lesser of the injuries attributable to the uninsured driver or the UM limits.

Therefore, a policy provision forbidding a victim from recovering UM when the victim has already recovered liability coverage—that is, that the insurance company is not required to pay under the UM provision if it must pay under the liability provision—would violate South Carolina insurance law at least to the extent of the basic limits of liability and UM (\$25,000/\$50,000/\$25,000) because those basic limits are the required minimum amount of coverage defined as liability coverage and the minimum amount of coverage defined as the separate and distinct category of UM coverage. The reverse is also true. An automobile insurance policy cannot provide that a victim who recovers UM coverage cannot recover any liability coverage or vice versa.

Policies Cannot Reduce the Amount of a Category of Coverage by Redefining the Category

However, the South Carolina Supreme Court's interpretation of S.C. Code § 38-77-142(A)-(C) goes further. Under § 142, “once the face amount of coverage is agreed upon, it may not be arbitrarily reduced or limited by conflicting policy provisions that effectively retract this stated coverage.” *Williams*, 409 S.C. at 604. That is, once the parties agree on a face amount of a category of coverage defined by statute, any provision that purports to exclude or limit that category of coverage by redefining the category of coverage or denying coverage in situations covered by the statutory definition of that category of coverage—such as an either/or provision—is unenforceable because it is an attempt to walk back the parties' agreement by reducing the face amount of coverage in that category. *See id.* at 603-04; *Nationwide Mutual Fire Insurance Company v. Walls*, 433 S.C. 206 (2021).

For instance, in *Williams*, an insurance company sold a policy for a face amount of \$100,000 in liability bodily injury (“BI”) coverage for a single person, but the policy contained an exclusion of coverage that reduced the amount of liability BI coverage to the basic limit (then \$15,000) when the victim was the insured’s family member. *Williams*, 409 at 592. The definition of liability coverage includes coverage for injuries to victims who are family members of the insured. *Id.* at 600 (citing S.C. Code §38-77-142(A) and (B)). The provision attempting to reduce the face amount of coverage to the basic limits when the victim was an insured’s family member was be an attempt to avoid the statute’s definition of liability coverage—and the parties’ agreement to sell and buy, respectively, the stated amount of liability coverage—and was therefore void. *Id.* at 603-04. Therefore, as the *Williams* Court reasoned, any provision that attempts to eliminate or reduce UM or UIM coverage merely because the victim was also entitled to liability coverage under the policy is an attempt to avoid the statute’s definition of UM and UIM, and is therefore void. It is also unenforceable because it is inconsistent with the parties’ agreement on the face amount of that category of coverage. *Id.*

Here, the relevant statutes define liability coverage to be coverage for injury to others caused by the insured driver’s fault, UM coverage to be coverage for injury to any insured victim caused by an uninsured motorist’s fault, and UIM coverage to be coverage for injury to any insured caused by an underinsured motorist’s fault to the extent that injury exceeds the underinsured motorist’s coverage. S.C. Code §§ 38-77-150 & 160. The insurance company offered liability, UM, and UIM coverage of \$250,000 each for BI to a single person. An insured driver was partially at fault and is covered by the liability BI. An uninsured motorist was also at fault and is covered by the UM and UIM BI coverages. Defendant’s attempt to prevent recovery under each category of coverage relied on a purported either/or provision, which if interpreted in the manner urged by

Defendant³ would eliminate or reduce the face amount of coverage agreed upon in the insurance policy. Like the family step-down provisions in *Williams* and the felony/flight step-down provisions in *Walls*, an effectively drafted “either/or” provision in this case would have the effect of reducing the amount of coverage the parties actually agreed to and would therefore violate S.C. Code § 38-77-142.

Conclusion

The public policy portion of this Court’s order dated June 2, 2022, is hereby WITHDRAWN. Defendant’s motion to alter or amend is DENIED because the Defendant’s preferred interpretation of the policy’s duplicate payments provisions is incorrect and further because South Carolina public policy invalidates provisions that are effectively drafted to yield the interpretation Defendant urges. Plaintiff’s motion to alter or amend is hereby PARTIALLY GRANTED for the reasons stated above.

THEREFORE, the court (1) DENIES Defendant’s motion to reconsider, alter, or amend; (2) PARTIALLY GRANTS Plaintiff’s motion to alter or amend, (3) WITHDRAWS the portion of its June 2, 2022, order dealing with public policy, and (4) HOLDS that South Carolina public policy renders void automobile insurance policy provisions that limit a victim who recovers one category of coverage (liability, UM, or UIM) from recovering another category, and also renders unenforceable an automobile insurance policy provision that offers a stated amount of a category of coverage (liability, UM, or UIM) in one provision of the policy and then in a subsequent

³ The prior order held that the “duplicate payments” provision should not be interpreted the way Defendant urges, and this order does not change, clarify, modify, or qualify that holding in any way.

provision effectively reducing that stated amount by redefining that category of coverage more narrowly than the relevant statutes do.

IT IS SO ORDERED.

_____, 2022
York, SC

Hon. William A. McKinnon
Presiding Judge



York Common Pleas

Case Caption: Francine Steineman VS Meridian Security Insurance Company

Case Number: 2020CP4602221

Type: Order/Other

So Ordered

/s William A. McKinnon, #2761, Circuit Judge

Electronically signed on 2022-09-27 15:28:47 page 8 of 8

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Francine Steineman,

Plaintiff,

v.

Meridian Security Insurance Company,

Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2020-CP-46-02221

ORDER

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Oct 25 2022

SC Court of Appeals

INTRODUCTION

This matter came before the Court on February 1, 2022 for a hearing on the parties' Motions for Judgment on the Pleadings. Plaintiff's attorney Bert G. Utsey, III argued in favor of Plaintiff's motion and against Defendant's motion. Defendant's attorney M. Dawes Cooke, Jr. argued in favor of Defendant's motion and against Plaintiff's motion. At the conclusion of the hearing, the Court took the matter under advisement.

After careful consideration of the issues, the parties' arguments, and the applicable law, the Court now grants Plaintiff's Motion for Judgment on the Pleadings and denies Defendant's Motion for Judgment on the Pleadings for the reasons discussed below.

BACKGROUND¹

On November 1, 2017, Defendant issued an automobile insurance policy, policy number ACS 0048016 ("the Policy"), to Plaintiff. Among other coverages, the Policy provided \$250,000 per person in bodily injury liability ("BI") coverage, \$250,000 per person in uninsured motorists ("UM") coverage, and \$250,000 per person in underinsured motorists ("UIM) coverage. The Policy insured three vehicles.

¹ Via their cross-Motions for Judgment on the Pleadings, the parties do not dispute the facts.

On January 22, 2018, Plaintiff was a passenger in one of the vehicles insured under the Policy. Her husband, Eric Steineman, was driving. The Steineman vehicle was involved in a collision with another vehicle (“the Collision”). The other vehicle was driven by Sarah Smith, an uninsured driver.²

Plaintiff sustained bodily injuries as a result of the Collision. Plaintiff alleges Eric Steineman and Sarah Smith were negligent, caused the Collision, and are therefore liable for her damages.

Accordingly, Plaintiff made demand on Defendant for payment of the limits of the Policy’s \$250,000.00 in BI coverage based on Eric Steineman’s alleged negligence, \$750,000 in UIM coverage (\$250,000 UIM limits stacked for the three insured vehicles) based on Eric Steineman’s alleged negligence, and \$750,000 in UM coverage (\$250,000 UM limits stacked for the three insured vehicles) based on Sarah Smith’s alleged negligence.

Defendant tendered the Policy’s \$250,000 BI limits to Plaintiff but denied her demands for UM and UIM coverages. The denial was based on Defendant’s argument that Plaintiff cannot collect UM or UIM coverages under the Policy because she has already received BI coverage under the Policy. Defendant cited the “duplicate payments” provisions of the Policy in support of its position.

Specifically, the “duplicate payments” provisions, which are included under the BI, UM, and UIM coverage sections of the Policy, are worded similarly and state:

No one will be entitled to receive duplicate payments for the same elements of loss under this [BI] coverage and: 1. [UM coverage] of this policy; or 2. Any Underinsured Motorists Coverage provided by this policy.

...

No one will be entitled to receive duplicate payments for the same elements of loss under this [UM] coverage and: 1. [BI coverage] of this policy; 2. Any Underinsured Motorists Coverage provided by this policy.... We will not make a duplicate payment under this [UM] coverage

² Although the names of the two drivers are not specified in Plaintiff’s Complaint, the Court takes judicial notice from filings in a related tort action that Plaintiff’s husband is named Eric Steineman and the uninsured driver is named Sarah Smith. The parties do not dispute that these are the names of the drivers involved in the subject collision and in fact used these names at the motion hearing. Therefore, the Court refers to the drivers by name in this Order.

for any element of loss for which payment has been made by or on behalf of persons or organizations who may be legally responsible.

...

No one will be entitled to receive duplicate payments for the same elements of loss under this [UIM] coverage and: [BI coverage or UM coverage] of this policy.... We will not make a duplicate payment under this [UIM] coverage for any element of loss for which payment has been made by or on behalf of persons or organizations who may be legally responsible.

The Policy does not define the terms “duplicate payments” and “elements of loss.”

Plaintiff filed this action seeking a declaratory judgment as to the parties’ rights with respect to UM and UIM coverages under the Policy. Defendant removed this action to federal court but the federal court remanded it to this Court for resolution. Each party thereafter filed a Motion for Judgment on the Pleadings.

STANDARDS FOR JUDGMENT ON THE PLEADINGS

A judgment on the pleadings is proper when the pleadings raise no issue of fact that, if resolved in favor of the non-moving party, would entitle it to judgment.

Here, the parties agree there are no determinative factual issues. Rather, the dispute in this action centers on the construction and application of the Policy, including the legal validity of the “duplicate payments” provisions at issue. This dispute is therefore a question of law and is properly before the Court on the cross-motions.

ANALYSIS

1. Questions presented.

Defendant’s denial of UM and UIM coverages raises two questions: First, does the instant contract deny such UIM and UM payments pursuant to the Policy’s “duplicate payments” provisions, and second, if so, would such provisions be valid under SC insurance law?

The holding of this Court is UIM and UM payments are not barred by the “duplicate” language, and as an additional ground as to UM only, any such provision would be contrary to public policy in South Carolina.

2. The policy language does not bar coverage in this situation

Defendant’s denial of UM and UIM coverage fails is because the Policy’s “duplicate payments” provisions do not achieve the result Defendant seeks to achieve.

As a threshold matter, “duplicate payments” is different than “payments.” “Duplicate” is defined in Black’s Law Dictionary as to double, to repeat, or to copy exactly. South Carolina cases in other contexts have applied the term consistent with that definition. *See, e.g., also Williamson v. U.S. Fire Ins. Co.*, 314 S.C. 215, 442 S.E.2d 587 (1994) (The court enforced a policy provision offsetting UIM coverage by workers compensation benefits received because the provision was authorized by statute. The court noted the policy of avoiding duplication prohibited *double recovery* and authorized the offset.); *Harvey v Art Metal, Inc.*, 247 S.C. 443, 147 S.E.2d 697 (1966) (In a workers compensation case, the court discussed the effect of a claimant’s receipt of unemployment compensation while out of work due to an injury. It referred to cases that “have allowed some form of credit or setoff so as to avoid duplicate payments for the same lost wages.” This clearly means the court was focused on the amount paid, not the fact of payment.).

This distinction is also consistent with South Carolina law on offsets, which permits a tortfeasor to get credit for payments a claimant receives from another tortfeasor for the same injury – which prohibits a double recovery by the claimant – but does not totally bar the claim against the non-paying tortfeasor.

To achieve the result for which Defendant argues, the Policy provisions did not need to use the term “duplicate” but could only have said “payments.” The fact that Defendant included the term

“duplicate” in the provisions demonstrates the language means a claimant cannot recover twice for the same amount, not that a claimant cannot recover under different coverages until fully compensated for her damages (or until coverage is exhausted). Otherwise, Defendant could achieve an offset equal to potentially millions by paying only a nominal amount of BI coverage.

While there are no South Carolina appellate decisions construing similar “duplicate payments” provisions, holdings from other jurisdictions have addressed this issue and have rejected arguments like the one Defendant makes here.

In *Argonaut Great Cent. Ins. Co. v. Casey*, 701 F.3d 829 (8th Cir. 2012), the claimants sought to recover UIM coverage and the insurer denied the claims based on a duplicate payments provision. The court there held that the provision only prohibited a double recovery by providing for an offset but did not affect the claimants’ ability to aggregate recoveries across different types of coverage. It explained:

[T]he reference to “duplicate payments” mean[s] “being paid twice for the same damages.” That conclusion is consistent with the plain meaning of the word “duplicate.” See New Oxford Am. Dictionary 539 (3d ed. 2010). Thus, both Policy provisions only prohibit *double* payments, from any coverage source, for the same claimant injuries. Here, no claimant seeks to recover more than his or her damages incurred in the accident.

Id. at 834 (emphasis in original).

Similarly, in *Lock v. American Family Ins. Co.*, 12 Wash. App. 2d 905, 460 P.3d 683 (2020), another case involving a denial of UIM coverage based on a duplicate payments provision, the court also concluded the provision simply prohibits double payments for the same injury by effecting an offset but did not constitute a bar to recovery of UIM benefits. *Id.* at 929-30, 460 P.3d 683, 695-96.

Government Emps. Ins. Co. v. Sherlock, 140 A.D.3d 872, 32 N.Y.S.3d 635 (2016), is yet another UIM case that distinguishes between double recovery and excess recovery. Construing a “duplicate payments” provision labeled “condition 11” in the insurance policy at issue, the court there noted:

The key to a proper understanding of condition 11 is the recognition that “shall not duplicate” is not aimed at preventing an insured from seeking full compensation by combining partial recoveries from several tortfeasors, but at preventing double recoveries for their bodily injuries.

Id. at 875, 32 N.Y.S.3d at 637.

Finally, in *Fischer v. Midwest Security Ins. Co.*, 268 Wis. 2d 519, 673 N.W.2d 297 (2003), the court rejected the insurer’s argument that the policy’s duplicate payments provision (which was essentially identical to the provisions at issue in the present case) barred the claimants’ claim for UIM coverage.

Like the Plaintiff here, the claimants in *Fischer* were injured while passengers in a vehicle operated by an at-fault motorist. Their driver was uninsured, so the insurer paid its UM coverage to the claimants. Another driver was also negligent in causing the collision. That driver was insured and his insurer paid its BI limits. The claimants sought UIM coverage for their claim against the at-fault insured (underinsured) motorist.

The court rejected the insurer’s denial of UIM coverage, noting:

The Fischers contend that they seek payment for uncompensated damages. The parties stipulated that the Fischers’ damages exceeded the limit of the UM coverage. Thus, the Fischers did not receive payments for some of their losses. The parties agree that the policy does not define “duplicate payment” or “same elements of loss.” The Fischers contend that the plain meaning of “duplicate payment” is double or two-fold payment. ... [W]e conclude that subsec. C does not render payments under separate UM and UIM coverage duplicate payments for the same elements of loss. ... A plain reading of subsec. D leads one to expect that a “duplicate payment” would be one where both a tortfeasor and an insurer compensate the insured for the same element of loss. Subsection D guards against profiting beyond the damages actually incurred.

Id. at 531, 673 N.W.2d at 302.

Here, Plaintiff is not seeking to recover twice for the damages paid by the BI coverage but is simply attempting to obtain full compensation for her damages via additional payments under the UM and UIM coverages. Defendant (as well as the defendants in the tort action) will receive full credit and an offset for the amount of the BI payment, so there is no risk of a double recovery by Plaintiff.

At best, Defendant's argument that recovery of Plaintiff's damages under the UIM and UM provisions would be "duplicate" even though Plaintiff is only being compensated once for the loss suggests an ambiguity in the policy language. This reading is no more plausible than Plaintiff's reading. "Ambiguous or conflicting terms in an insurance policy must be construed liberally in favor of the insured and strictly against the insurer." *USAA Prop. & Cas. Ins. Co. v. Clegg*, 377 S.C. 643, 655 (2008).

Based on the foregoing, the Court concludes that the Policy's "duplicate payments" provisions would not preclude Plaintiff's UM and UIM claims, even if they were able to do so validly under South Carolina law. Rather, these provisions simply ensure that Defendant does not have to pay Plaintiff twice for the same damages.

3. With regard to UM coverage, but not UIM coverage, an additional basis for judgment for the Plaintiff is reading the contract as Defendant proposes is void as contrary to public policy.

Plaintiff argues that Meridian's position violates public policy because it would eliminate statutorily-mandated UM coverage and UM/UIM coverages that statutes required Meridian to offer. South Carolina law requires that all policies of automobile insurance include UM coverage of \$25,000/\$50,000. See S.C. Code § 38-77-150(A). The statute further requires that insurers offer optional UIM coverage and additional UM coverage (up to the limits of liability coverage). See S.C. Code § 38-77-160 (emphasis added).

UM coverage in this State is controlled by the UM statutes so that any inconsistent policy provisions are void. *Southern Farm Bureau Cas. Ins. Co. v. Fulton*, 244 S.C. 559, 564-65, 137 S.E.2d 769, 771 (1964). Specifically, as the South Carolina Supreme Court noted, almost 50 years ago:

The general rule is that *an insurer may not limit its liability under uninsured motorist coverage by setoffs or limitations* through "other insurance," excess insurance, or medical payment reduction clauses, and this is true even when the setoff for the reduction is claimed with respect to a separate, independent policy of insurance (workmen's compensation) *or other*

insured motorist coverage. And this is true because the insured is entitled to recover the same amount he would have recovered if the offending motorist had maintained liability insurance.

Ferguson v. State Farm Mut. Auto. Ins. Co., 261 S.C. 96, 101-02, 198 S.E.2d 522, 525 (1973), quoting *Stephens v. Allied Mut. Ins. Co.*, 182 Neb. 562, 156 N.W.2d 133 (1968) (emphasis added).

UM coverage in South Carolina is mandated by S.C. CODE ANN. § 38-77-150(A) (1976, as amended), which states that a policy providing UM coverage shall “pay the insured all sums which he is legally entitled to recover as damages from the owner or operator of an uninsured motor vehicle,” subject to the policy’s coverage limits. Here, if Plaintiff demonstrates she is legally entitled to recover damages from Sarah Smith, an admitted uninsured motorist, the Policy must by law provide UM coverage for the net amount Plaintiff is entitled to recover.³ Any contrary provision of the Policy would have the effect of defeating this statutorily required coverage and would instead allow Defendant to limit its liability under the Policy’s UM coverage based upon limitations for other insured motorist (BI) coverage, which is expressly prohibited by the rule set forth in *Ferguson*. The contractual provision in this case regarding “duplicate payments” is therefore void, at least as to UM payments under the interpretation of the provision advanced by Defendant.

On the other hand, with regard to UIM coverage, Plaintiff relies primarily on *Bratcher v. National Grange Mut. Ins. Co.*, 292 S.C. 330, 356 S.E.2d 151 (1987). Plaintiff’s argument is that this case prohibits any limitation on UIM coverage at all unless expressly provided by statute. However, viewing *Bratcher* in the context of the insurance statutes and the cases interpreting them, this Court must conclude that *Bratcher* (and Section 38-77-160) cannot be extended to preclude parties from

³ Any verdict Plaintiff may obtain in the tort action would, of course, be reduced by the \$250,000 in BI coverage Plaintiff already received. See *Smith v. Widener*, 397 S.C. 468, 472, 724 S.E.2d 188, 190 (Ct. App. 2012). However, while that payment would reduce the amount of the verdict, it would not reduce the amount of UM coverage.

agreeing to a nonduplication provision. First, the *Bratcher* court did not address nonduplication clauses and did not express any intention to do so.

Further, this issue has been addressed persuasively in *Sibert v. State Auto Mut. Ins. Co.*, No. CV 8:20-4000-HMH, 2021 WL 3514000 (D.S.C. Aug. 10, 2021). The *Sibert* court found that a similar non-duplication provision did not offend South Carolina UIM law. Primarily, the *Sibert* court relied on South Carolina cases subsequent to *Bratcher* which upheld limits on UIM coverage not mentioned in a statute. See *Nationwide Ins. Co. of Am. v. Knight*, 433 S.C. 371, 380 (2021) (“Knight also argues the policy provision violates section 38-77-160 of the South Carolina Code ... because it excludes statutorily required UIM coverage. We disagree on this point as well”) and *Burgess v. Nationwide Mut. Ins. Co.*, 373 S.C. 37, 42, (2007) (“We hold that public policy is not offended by an automobile insurance policy provision which limits the portability of basic ‘at-home’ UIM coverage when the insured has a vehicle involved in the accident”). This Court agrees with the *Sibert* that non-duplication provisions limiting UIM coverage are permissible.

CONCLUSION AND ORDER

For the reasons discussed above, the Court finds, as a matter of law, that Defendant cannot validly rely upon the Policy’s “duplicate payments” provisions to deny UM or UIM coverage to Plaintiff for her claims resulting from the collision as the policy language does not support this reading. Additionally, Defendant’s denial of UM coverage (but not UIM) is contrary to South Carolina public policy.

IT IS THEREFORE ORDERED that Plaintiff’s Motion for Judgment on the Pleadings is hereby granted; and

IT IS THEREFORE FURTHER ORDERED that Defendant's Motion for Judgment on the Pleadings is hereby denied; and

IT IS THEREFORE FURTHER ORDERED that Plaintiff is awarded a declaratory judgment in her favor that the Policy provides \$750,000 in UM coverage for Plaintiff's claims against Sarah Smith as a result of the Collision and \$750,000 in UIM coverage for Plaintiff's claims against Eric Steineman as a result of the Collision.



York Common Pleas

Case Caption: Francine Steineman VS Meridian Security Insurance Company

Case Number: 2020CP4602221

Type: Order/Other

So Ordered

/s William A. McKinnon, #2761, Circuit Judge

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STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF YORK	)	2020-CP-46-02221
	)	
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	)	
FRANCINE STEINEMAN,	)	
PLAINTIFF,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
MERIDIAN SECURITY INSURANCE	)	
COMPANY,	)	
DEFENDANTS.	)	
_____	)	

February 1, 2022
York, South Carolina

B E F O R E:

THE HONORABLE WILLIAM A. MCKINNON, JUDGE.

A P P E A R A N C E S:

BERT GLENN UTSEY, III, ESQ.
STEVEN GLENN VICARI, II, ESQ.
Attorney for the Plaintiff

M. DAWES COOKE, JR., ESQ.
Attorney for the Defendant

Proceedings Recorded by DCRP
Transcribed by Penny M. Johnson

P R O C E E D I N G S

THE COURT: We have cross motions for judgment on the pleadings, so whoever wants to go first is fine with me.

MR. UTSEY: Thank you, Your Honor. I think we filed first, so if it's all right with Mr. Cooke, I'll go first.

THE COURT: All right.

MR. UTSEY: Your Honor, I'll give you a little background on this case. This is an insurance coverage dispute that arises out of a motor vehicle collision. The collision occurred when Ms. Steineman, our client, was traveling as a passenger in a car operated by her husband, Mr. Steineman. As Mr. Steineman began making a left turn, he did so in front of a vehicle operated by Ms. Smith, who was traveling, we allege, at an excessive rate of speed. The combined negligence of Mr. Steineman and Ms. Smith resulted in a horrible collision and severe injuries to Ms. Steineman.

Mr. and Mrs. Steineman were insureds under policies issued by the Defendant Meridian, a motor vehicle policy that included liability or BI coverage as well as uninsured motorist coverage and underinsured motorist coverage. It turns out Ms. Smith, the other motorist involved in the collision, was uninsured.

So on the Steinemans behalf, Mr. Vicari made a claim -- on behalf of Ms. Steinman, that is, Mr. Vicari made a claim

1 against Mr. Steineman's liability coverage with Meridian as
2 well as the uninsured motorist coverage with respect to the
3 claim against Ms. Smith and the underinsured motorist
4 coverage on the claim against Mr. Steineman.

5 I think for purposes of today's -- the alleged damages,
6 the medical bills and future medical bills alone total over
7 a million dollars based on the claim.

8 The liability coverage was \$250,000, BI coverage.
9 Meridian paid that to Ms. Steineman without any prejudice to
10 her right to seek uninsured and underinsured motorist
11 coverage, which brings us to the current dispute.

12 With respect to the claims for uninsured motorist
13 coverage and underinsured motorist coverage, Meridian has
14 denied both of those claims alleging that its policy does
15 not provide coverage for either of those coverages under
16 these circumstances because Ms. Steineman has already
17 collected under the liability coverage of the same policy.

18 The specific language that it relies upon is a
19 duplicate payments provision. It's not stated as an
20 exclusion, it simply says quote, No one will be entitled to
21 receive duplicate payments for the same elements of loss
22 under, and I'll paraphrase, both the liability coverage and
23 either the uninsured or underinsured motorist coverage. So
24 that's the clause that is at issue here. The policy,
25 importantly, does not define the term duplicate payments nor

1 does it define the term elements of loss.

2 Now, the two questions, then, that are presented here
3 by these cross motions -- and I believe we all agree it's a
4 legal matter and that the pleadings and the policy which are
5 before the Court should be determinative. The two questions
6 are one, is Meridian properly construing and applying this
7 policy provision? And secondly, if it is, under Meridian's
8 interpretation of that policy provision, is that provision
9 valid and enforceable under South Carolina law?

10 So starting in that order, Your Honor --

11 THE COURT: If you don't mind, I think I've changed my
12 mind. Let me hear from Meridian's counsel.

13 MR. UTSEY: Yes, sir.

14 THE COURT: Mr. Cooke, my concern is you're arguing
15 duplicate payments, but my understanding of the facts is the
16 medicals exceed the coverage. They exceed the 750 even if
17 you get the 250 plus 250 plus 250, right?

18 MR. COOKE: Right.

19 THE COURT: How is that a duplicate payment?

20 MR. COOKE: Well, it's duplicate -- the language of the
21 policy says no one will be entitled to receive duplicate
22 payments for the same elements of loss, not for the same
23 damages. And there are a number of cases where -- first of
24 all, I think both Skip and I would both agree that there is
25 no case directly on point in South Carolina on a

1 nonduplication provision. But this provision appears,
2 actually, three different places in the policy. One for the
3 liability coverage, then again on the UM and then on the
4 UIM.

5 And the courts -- and I'll be the first to say that
6 some courts across the country have interpreted it
7 differently. Sometimes, it depends on the exact wording of
8 the policy, sometimes on the exact wording of the statute in
9 question. But, generally, the courts have said that there's
10 a difference between elements of loss and damages. In fact,
11 the policy uses the term damages very judiciously dozens of
12 times throughout the policy. And it uses the phrase
13 elements of loss only in these nonduplications.

14 THE COURT: I'll be honest, that's the first time I've
15 come across the term elements of loss. I didn't do much
16 practice in the insurance field, but is that defined in the
17 policy or anywhere?

18 MR. COOKE: It's not defined in the policy. And other
19 courts have noted that, that even though it's not defined in
20 the policy -- an example of where it would come up is some
21 policies have -- some of these nonduplication policies
22 across the country would say, for example, if you received
23 workers' comp or if you received disability insurance,
24 that's offset. And the courts would say that's a different
25 element of loss because they're different things recoverable

1 under workers' comp that are recoverable under a general
2 policy. So that would be an example where you're not
3 duplicating the same elements of loss.

4 THE COURT: But even if it's the same element of loss,
5 the Plaintiff is arguing they only got a partial payment.

6 MR. COOKE: Again, that's equating damages with
7 elements of loss. Elements of loss means the same types of
8 things, medical bills, lost wages, disability, pain and
9 suffering. The exact same elements of loss that are paid
10 under the liability policy are what you would be suing for
11 under either UIM or UM. They are exactly the same.

12 Under their interpretation, it would never apply
13 because they would say, you know, you're never going to --
14 as long as your damages exceed the amount of coverage,
15 you're never going to be recovering the same damages because
16 there's not enough money available.

17 THE COURT: It would set off. I assume the Plaintiff
18 would argue that set off is what you're referring to, that
19 you can't double dip on the same damages.

20 MR. COOKE: Right, except in this particular case,
21 there's \$250,000 coverage. There's arguably a million plus
22 in damages, so they would say you're never -- this
23 nonduplication clause will never apply because there's never
24 going to be a duplication of the damages paid under --

25 THE COURT: Under these facts.

1 MR. COOKE: Under these facts, that's correct.

2 But that's always pretty much the nature of the case
3 when you've already paid out your liability and now you're
4 going after the UIM and the UM.

5 But anyway, my answer to that question -- if you want
6 me to pass the baton back, I'll do that, but our answer to
7 that -- and we cited the cases in our brief --

8 THE COURT: I'm looking at your brief right now, so
9 tell me --

10 MR. COOKE: Eight, nine through ten cites the cases
11 from other jurisdictions that have discussed the difference
12 between elements of loss on one hand and items of damage on
13 the other hand.

14 For example, because the same elements of loss does not
15 denote same elements of damages, Emery has not advanced the
16 plausible interpretation of same elements of loss to compete
17 with the interpretation advanced by like states and there's
18 no ambiguity in the term, rather, as the name limit of
19 liability clause suggest the term same elements of loss
20 within section C of underinsured and uninsured motorist
21 clauses serves to denote that an insured may not recover
22 under both the underinsured and uninsured provisions. And
23 that's an Indiana case.

24 We've cited two district court cases in South Carolina.
25 One, Judge Childs, who may be on her way to the Supreme

1 Court --

2 THE COURT: At least, the DC circuit.

3 MR. COOKE: At least, the DC circuit and maybe beyond.
4 She said that the language was not ambiguous and that's what
5 it meant. And then more recently, Judge Herlong, just last
6 year, interpreted the exact same language. In fact, it's
7 from State Auto, which is related to Meridian Insurance, so
8 it's actually literally the same policy, and he said it's
9 unambiguous.

10 THE COURT: It's unambiguous if you assume they're not
11 synonyms.

12 MR. COOKE: Right.

13 THE COURT: I will say as someone, again, who is not
14 particularly versed in insurance policy language, I read
15 those as synonyms. And they're not defined, right?

16 MR. COOKE: Damages are not defined and loss is not
17 defined except that the policy very carefully uses the term
18 damages when it means damages. And when it describes the
19 policy limit, for example, it describes it in terms of the
20 amount of damages. It uses for very specific reason
21 elements of loss and element of loss. An element of loss
22 would be lost wages, pain and suffering, medical bills,
23 personal injury. I think those are pretty commonly
24 understood terms, elements of loss.

25 THE COURT: If that's what your client wanted, why

1 would they not phrase it as something like we will not pay
2 primary coverage and underinsured on the same claim? We
3 will not pay underinsured and uninsured on the same claim?
4 If that's what they mean, this seems like a really strange
5 way to word that.

6 MR. COOKE: Well, there's a footnote in one case, and I
7 forgot who the judge was, but he said, even though all those
8 terms aren't defined, they seem to be striving mightily to
9 be understood. In this case, they have put in three
10 different times the exact same phrase and that is we will
11 not pay for the same elements of loss. And they mention the
12 three coverages, liability, UIM and UM. And they mention it
13 again in each of those three coverages.

14 THE COURT: But it's so easy to say we won't pay UIM
15 and UM on the same claim. And they don't say that, right?

16 MR. COOKE: They could have said that, but there are
17 situations where they could pay UIM and UM. This is kind of
18 an unusual situation where you're claiming liability
19 coverage under your own policy. That doesn't happen that
20 often. This happened to be a situation where the Plaintiff
21 was a passenger --

22 THE COURT: Okay, let me ask -- and I apologize for
23 interrupting, but I don't want to lose my train of thought.
24 So assume it's a normal claim, two different vehicles that
25 are being sued, so you think they could pay both UIM and UM

1 on the same claim?

2 MR. COOKE: Correct, they could.

3 THE COURT: Why is that not the same element of loss?

4 MR. COOKE: Because those would be two different -- I
5 see what you're saying. Yeah, you're probably right now
6 that you mention it. So if you had both an UIM claim and a
7 UM claim under the same policy, that would be -- you're
8 right, that would be excluded as duplicative. Yeah, I agree
9 with you.

10 THE COURT: Let me hear from Mr. Utsey and I'll give
11 you the last word.

12 Yes, sir.

13 MR. UTSEY: Thank you, Your Honor.

14 To be clear, Ms. Steineman is not seeking a double
15 recovery. She concedes that the Defendants would both be
16 entitled to a \$250,000 offset based on the BI coverage
17 that's previously paid and, therefore, she's not seeking a
18 duplicate payment.

19 In addition, she has not been fully compensated for her
20 loss and that's the key here. I think you honed in on it
21 with your initial remarks to Mr. Cooke. The key question
22 here is looking at the term duplicate payments. They want
23 to talk about elements of loss, but duplicate payments is
24 the key. What does that mean? And you have to construe
25 that without the benefit of a definition in the policy, but

1 using ordinary terms.

2 I think probably the most remarkable way to see the
3 importance of the phrase duplicate payments is to look at
4 the identical clause. And if they hadn't used the word
5 duplicate, if they had just said payments under this
6 coverage, you can't get the other coverages, you would have
7 had the identical result that Meridian is arguing here.
8 Think about that for a minute. You don't need the word
9 duplicate to get to what they're saying.

10 THE COURT: Saying they won't pay the same element of
11 loss, right.

12 MR. UTSEY: The addition of the word duplicate means
13 something, in other words. So we look to -- if you look to
14 the traditional dictionary definitions, for example,
15 duplicate means to copy exactly, to double or to repeat.
16 And we don't even have to go that far. We can look in other
17 context to South Carolina cases.

18 And Mr. Cooke is correct that this specific issue
19 hasn't been addressed in our appellate courts, but if you
20 look at -- the two cases that I found were Williamson vs.
21 U.S. Fire, which is an underinsured motorist case where
22 they're looking at the application of a provision for
23 nonduplication of payments due to workers' compensation.

24 And what's important there, while it's not on all fours
25 with this case, is when the court talked about

1 nonduplication, the court said that means there's an offset
2 for what has been paid under workers' compensation. That
3 way, there's not a double recovery. The same elements of
4 loss or same damages have not been duplicated. The
5 insurance company gets the benefit of that provision, but
6 the Plaintiff isn't left without the right to seek full
7 compensation for her loss.

8 Similarly, in another workers' compensation case,
9 Harvey vs. Art Metal, in that case, the court considered
10 where a claimant had gone out on a work-related injury and
11 while he was temporarily disabled, he claimed unemployment
12 compensation benefits. And the question came up, what do we
13 do with those benefits that he got during this same
14 timeframe that he's now claiming temporary total benefits
15 for?

16 So the court was concerned about avoiding duplication
17 of recovery. In fact, it used duplication. And it says,
18 quote, Courts have allowed some form of credit or set off so
19 as to avoid duplicate payments. In other words, they
20 weren't ruling out the possibility of obtaining additional
21 workers' compensation benefits, but they were going to allow
22 a set off so that the worker didn't get a double recovery or
23 paid twice.

24 Now, this is consistent with a number of jurisdictions.
25 We cited four in our motion, four cases there. The Argonaut

1 case, the Lock case, Geico vs. Sherlock and Fischer vs.
2 Midwest Security. Each of those cases, they address the
3 same language we're talking about here. What does, quote,
4 unquote, duplicate payment --

5 THE COURT: Well, let me ask you, you've got Paragraph
6 D and Paragraph E. And D is a set off, right? They're
7 saying we're not going to make a duplicate payment when some
8 other entity has made payment for the injuries, right?

9 MR. UTSEY: Right.

10 THE COURT: So what does D mean?

11 MR. UTSEY: D comes in because it's not some other
12 entity, it's being paid under this same policy.

13 THE COURT: But what does it mean?

14 MR. UTSEY: What it means is they get a set off.
15 There's two ways to interpret this. There's the way that
16 they're arguing, which we, of course, say is the incorrect
17 way. But then there's also you could say this is intended
18 to avoid a double recovery.

19 In other words, let's say they paid \$250,000 on
20 liability coverage and we go to trial and we get a verdict
21 against Ms. Smith, the uninsured motorist, for \$250,000.
22 Under this provision, under the duplicate payments
23 provision, we wouldn't be able to say all right, well, now
24 pay us the \$250,000 for this uninsured motorist clause
25 because that would be a duplicate payment. That's what that

1 achieves.

2 THE COURT: Isn't that E, though?

3 MR. UTSEY: I don't have E in front of me.

4 THE COURT: E says, we will not make a duplicate
5 payment under this coverage for any element of loss for
6 which payment has been made by or on behalf of persons or
7 organizations who may be responsible.

8 MR. UTSEY: Well, that would mean other persons, not
9 this insurance company.

10 THE COURT: Okay. So you're -- D, in your view, is,
11 basically, a setoff provision if the insurance company is
12 paying all the claims?

13 MR. UTSEY: That's correct, Your Honor.

14 So back to those other cases that we think are really
15 dispositive insofar as the interpretation of the duplicate
16 payments provision. For example, in the Fischer case, the
17 court remarked the policy doesn't define duplicate payments
18 there either. But a plain reading of it leads to conclude
19 that a duplicate payment is just to prevent a double
20 recovery by the plaintiff, but not to prevent a plaintiff
21 from seeking full compensation for the loss. And those
22 other three cases that we cited are consistent with that.

23 THE COURT: Okay.

24 MR. UTSEY: More importantly, Your Honor, if you were
25 to accept their construction -- and here, giving them the

1 benefit of the doubt, which we don't, but even if you were
2 to give them the benefit of the doubt and say that's a
3 reasonable construction, then you've got to choose the
4 construction which favors coverage under principles of
5 insurance law. In other words, the more favorable to the
6 insured under two reasonable interpretations.

7 But even if you were to accept only their construction
8 as being valid or proper construction of the language, it
9 would not be a valid and enforceable provision under South
10 Carolina law because the courts in this state have addressed
11 a very similar provision. As you know, both uninsured and
12 underinsured motorist coverage are governed by the insurance
13 laws. And any provisions that are inconsistent with the
14 laws or the public policy established by those laws are void
15 or invalid.

16 With respect to underinsured motorist coverage, this
17 very topic was addressed by Bratcher vs. National Grange,
18 which is a 1987 South Carolina Court of Appeals case. In
19 Bratcher, you had an almost identical fact situation. You
20 had a father driving the vehicle and his son was a passenger
21 and the father caused the collision. The liability
22 insurance -- or liability coverage under the policy paid.
23 And then it took the position we don't have to pay
24 underinsured motorist coverage.

25 Now, granted, they based it on a differently-worded

1 policy provision, but the outcome was the same, that we can
2 avoid paying underinsured coverage when we pay liability
3 coverage. The court of appeals held that this was invalid
4 because it was not authorized by the underinsured motorist
5 statute. In fact, it's directly contrary to the language in
6 the statute, which says that the coverage should apply --

7 THE COURT: Is the language the same as it was in '87
8 currently?

9 MR. UTSEY: Yes, sir.

10 THE COURT: Okay.

11 MR. UTSEY: And so it even rejected one of their
12 arguments that's in Meridian's brief here, that this
13 effectively transforms UIM coverage and the BI coverage.
14 The court quoted that and said we don't care. That's for
15 the legislature to fix, not for us.

16 Now, there is -- and you mentioned a possible change in
17 the language of the statute. That's important because it's
18 another sign of legislative intent and of the public policy
19 of this state. There was a brief period of time in the late
20 1980s, you may recall, where they changed underinsured
21 motorist coverage from what we think of today, which is
22 called excess underinsured coverage, applies in excess of BI
23 coverage, to what's called reduction UIM coverage.
24 Reduction UIM coverage says whatever your UIM limits are get
25 reduced by whatever the BI limits are for the at-fault

1 motorist. So if you've got 250 and 250, you get zero UIM.
2 And for a brief period, I think, in late '89, the
3 legislature changed that definition.

4 There are a couple of cases, Purvis and Horry, that we
5 cited in our motion where the courts applied those different
6 definitions. But what's important is, the legislature came
7 back and changed the law. And they did so in very forceful
8 terms. And this is section 38-73-1105. In that statute,
9 the legislature says: An insurer may not use reduction
10 coverage in its policies for underinsured motorist coverage
11 without getting a special waiver from the department of
12 insurance without refunding insurance premiums to the
13 insureds and this whole rigamarole, none of which was done
14 here. In fact, if an insurance company tries to do that and
15 apply reduction coverage, it is considered, quote, an unfair
16 claims practice, bad faith entitling the injured person
17 reasonable attorney's fees, punitive damages and/or actual
18 damages. That's in the statute that says you can't do that.

19 Now, the effect of what they are doing would be the
20 equivalent of reduction coverage. We paid liability
21 coverage. You've got UIM coverage, but because we paid that
22 already, you no longer have UIM coverage. They're not
23 calling it reduction coverage, but the effect is the same.
24 My point is simply that when you look at the legislative
25 intent and the public policy of this state behind

1 underinsured motorist coverage, that is an invalid
2 proposition, just as the Bratcher case says.

3 Similarly, Your Honor, with respect to the uninsured
4 coverage, it would not be valid under the Ferguson case that
5 we cited in our motion as well. The Ferguson case made it
6 very clear that an insurer that writes uninsured motorist
7 coverage, quote, may not limit its liability under the UM
8 coverage by setoffs or limitations through other insurance
9 clause, excess coverage clause, even where the setoff is
10 claimed with respect to a separate policy of insurance or
11 other insured motorist coverage. Ferguson stands for
12 proposition that unless expressly authorized by statute, the
13 UM coverage cannot be taken away by a carrier who writes UM
14 coverage.

15 They've allowed that by statute -- by statutory
16 authorization when you're dealing with workers' compensation
17 because it's a specific statute on that, 38-77-220. There
18 is not a statute that would allow them to reduce the
19 coverage in the fashion that they're proposing here. So
20 even if you were to adopt their interpretation of those
21 terms, it would not pass public policy under our state law.

22 THE COURT: Thank you.

23 Mr. Cooke, I'll give you the last word.

24 MR. COOKE: Thank you, Your Honor.

25 Can I make one more comment on the construction of the

1 policy?

2 THE COURT: Sure.

3 MR. COOKE: Again, this is all in our brief, but the
4 Washington court -- excuse me, this is the Massachusetts
5 court explained the difference between element of loss and
6 element of damage. It says that the owner of a vehicle
7 purchases liability insurance to protect passengers in the
8 vehicle from his negligent driving. He purchases
9 underinsured motorist coverage to protect himself and others
10 from damages caused by another vehicle, which is
11 underinsured. Underinsured and uninsured motorist
12 protection is not additional liability insurance, but,
13 rather, is limited personal accident insurance chiefly for
14 the benefit of the named insured.

15 So that's how these other courts that have upheld this
16 -- and I'm not saying every court has come down the same
17 way, but most have and they have said that elements of loss
18 is different than items of damage. And it's significant
19 that you are already claiming liability coverage under the
20 same policy because underinsured motorist and uninsured
21 motorist is very cheap. So what these courts are concerned
22 about is if we treated this as something that could be
23 stacked on top of liability insurance, it would become
24 prohibitively expensive once they started underwriting the
25 cost of that.

1 And now if I could go to the public policy issue. The
2 Bratcher case is the primary one. This is a 1987 decision
3 by the Court of Appeals. And it had to do with a different
4 type of exclusion. The exclusion there said that they
5 excluded UIM coverage for any equipment, quote, owned by or
6 furnished or available for the regular use of the insured or
7 family member.

8 And what the Court of Appeals held there was no, you
9 can't do that because the predecessor -- the statute is now
10 38-77-160, it was a different statute at that time. It
11 said, It does provide some exceptions and you can't have any
12 other exceptions because by having some exceptions, the
13 legislature has impliedly excluded others. And what the
14 court said was where an insurance policy is issued pursuant
15 to statute which authorizes an exception to the coverage,
16 all other exceptions are excluded. Since then, neither the
17 Court of Appeals nor the Supreme Court has read Section
18 38-77-160 to exclude other offsets and even other
19 exclusions.

20 And, Judge, as I said, I hate to keep going back to it,
21 but attachment 8 on our brief is the recent analysis by
22 Judge Herlong in which he considers the Bratcher case and
23 notes they did not examine section 38-77-160 or the text of
24 it. And since then, the courts have uniformly held that
25 because underinsured motorist coverage is voluntary

1 coverage, the parties are free to contract with it as they
2 wish.

3 For example, Burgess vs. Nationwide, it's a 2007 case
4 by the South Carolina Supreme Court, there's a provision
5 that made underinsured motorist coverage excess if the
6 vehicle involved was not insured under the policy. Also,
7 reduced coverage to the lesser of the coverage under the
8 policy or the involved vehicles' coverage.

9 And the court said here, we find that it does not
10 violate the statute. UIM coverage is entirely voluntary and
11 permits insureds at their option to purchase insurance
12 coverage for situations where they are injured by an
13 at-fault driver who does not carry sufficient liability
14 insurance to cover insurance damages.

15 Essentially, the insured is buying insurance coverage
16 for situations where he is a passenger in another's vehicle
17 or is a pedestrian where he cannot otherwise insure himself
18 when, however, the insured is driving his own vehicle, he
19 has the ability to decide whether to purchase voluntary UIM
20 coverage or just chose not to do so when insuring his
21 motorcycle. So there would be the first example of there's
22 nothing in that section that says you can exclude those
23 vehicles, but yet, they allowed him to do it.

24 State Farm vs. (Inaudible), that was Court of Appeals
25 in 2000 upheld the setoff for workers' comp benefits

1 provided -- where the benefits were provided by the
2 insureds, same insurance company. Williamson vs. United
3 States Fire Insurance Company, that's a 1994 case by Supreme
4 Court of South Carolina. Amounts payable or reduced by,
5 quote, all sums paid or payable under any workers'
6 compensation, disability benefits or similar law. And they
7 held that was valid under the section.

8 Just last year -- and this is possibly the most
9 illuminating case, the Supreme Court decided Nationwide vs.
10 Knight. And they said -- they had a number of different
11 holdings, but they said Section 38-77-160 did not prohibit
12 the exclusion of UIM coverage when insured's husband was the
13 operator of the vehicle.

14 In other words, this insured's husband was a bad
15 driver, so there was a provision in the policy that
16 specifically said this coverage doesn't apply when he's
17 driving. He was driving and they excluded it. Argument was
18 made hey, Section 160 doesn't allow you to randomly exclude
19 certain people from it. You have to cover everybody. And
20 there, the Supreme Court specifically said that this is --
21 that that was not the case. This is voluntary coverage.
22 The parties were free to contract as they want.

23 The one question that they left unanswered and they
24 specifically left it unanswered, they declined to address
25 the required minimum uninsured motorist coverage. So if

1 there's any question that remains, I think, arguable, and
2 that is you could make the argument, the Plaintiff could
3 make the argument that the minimum limits of uninsured
4 motorist coverage, which is what's statutorily required, I
5 can see their argument there, that if you have this
6 nonduplication policy that that might conflict with that in
7 the event that they're claiming the minimum limits. But
8 anything in excess of that minimum limit is just like
9 underinsured motorist coverage and is voluntary coverage.

10 Other cases that the federal court relied on, Rowzie
11 vs. Allstate, Fourth Circuit case from 2009, allowed an
12 offset of PIP, personal injury protection, and med pay
13 coverage from underinsured motorist. Koulpasis vs.
14 StateFarm, district of South Carolina 2021, that excluded --
15 UIM was excluded for own vehicle that is not insured for UIM
16 coverage. Serrin vs. AllState, that's a district of South
17 Carolina, 2016, again, offered reliable offset of PIP
18 benefits against UIM coverage. Diamond State Insurance vs.
19 Estate of McNeil, that's Judge Childs' opinion, which was a
20 specifically nonduplication policy and she held that that
21 was valid.

22 So we also argued -- I'm not going to take everybody's
23 time, at Pages 20 to 22 of our brief that Bratcher,
24 actually, was probably wrong itself in the way it cited
25 cases, but I think for purposes of our argument, it's

1 sufficient to say that no court since Bratcher has extended
2 it to other situations other than --

3 THE COURT: And that was '87, right?

4 MR. COOKE: Yes, Your Honor. Again, this position is
5 not unique, but it's a very unusual situation where somebody
6 is claiming both their liability coverage and trying to get
7 UIM, underinsured motorist coverage. And as I said, the
8 courts that have upheld these provisions generally do it
9 because uninsured motorist coverage and UIM is very
10 inexpensive coverage and it's not meant to augment your
11 liability insurance --

12 THE COURT: If you don't mind, let me ask you, one of
13 the points made by Plaintiff's counsel was that the phrase
14 is that they're not normally entitled for duplicate payments
15 for the same elements. What -- their argument is even if
16 you define the same elements of loss in the way that you do,
17 there's no duplicate payments here.

18 MR. COOKE: It's not duplicate damages because there's
19 more money claimed and arguably due than there's coverage
20 for, but that's why it's a critical difference between
21 elements of loss. And I'd say that it could be ambiguous if
22 they left out the word elements. What does elements mean?
23 It means categories of loss. And in this particular case
24 and in all of these cases, the elements of loss that you can
25 claim under -- not the amounts, but the elements of loss

1 that you can claim under liability insurance are exactly the
2 same as what you would claim under UIM and uninsured
3 motorist.

4 THE COURT: All right. Counsel, I need to read some of
5 these cases y'all have cited to me, so I'm going to take
6 this matter under advisement.

7 MR. UTSEY: Thank you, Your Honor.

8 MR. COOKE: Thank you.

9 THE COURT: Thank you.

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STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF YORK	)	2020-CP-46-02221
	)	
	)	
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	)	
FRANCINE STEINEMAN,	)	
PLAINTIFF,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
MERIDIAN SECURITY INSURANCE	)	
COMPANY,	)	
DEFENDANT.	)	
_____	)	

September 6, 2022
York, South Carolina

B E F O R E:

THE HONORABLE WILLIAM A. MCKINNON, JUDGE.

A P P E A R A N C E S:

BERT GLENN UTSEY, III, ESQ.
Attorney for the Plaintiff

M. DAWES COOKE, JR., ESQ.
Attorney for the Defendant

Proceedings Recorded by DCRP
Transcribed by Penny M. Johnson

P R O C E E D I N G S

1
2 MR. COOKE: (Audio begins) and, therefore, the parties
3 -- under the case law, the parties are free to contract for
4 whatever limitations they want. And you cannot apply that
5 to the UM because UM is mandatory. So the only thing we're
6 going to ask you to modify on that is UM is only mandatory
7 up to the minimum limit, 25,000, under sections
8 38-77-140(a)(1)(2) and 158. And it's possible from reading
9 the order that you, actually, meant that, that is the
10 nonduplication could not validly apply to the mandatory
11 portion of the UM coverage, the 25,000.

12 So that's the point we'd like you to reconsider on
13 that. And that is that your holding that the optional UM
14 coverage should have followed the same rationale as the
15 optional UIM coverage, and that is that the nonduplication
16 couldn't stand up.

17 THE COURT: All right.

18 MR. COOKE: Then going back to the main point, you
19 agreed with the Plaintiffs that the policy language itself
20 didn't effectively provide for nonduplication because you
21 said that the terms -- I can take a break, Judge.

22 THE COURT: No, I forgot to bring in a legal pad, so I
23 have a stack of form bond orders and I'm going to use the
24 back of them to take notes. I just ask my law clerk for
25 some paper. Thank you. I don't want to trust my memory.

1 MR. COOKE: So you accepted the Plaintiff's argument
2 that the term elements of loss is not defined in the policy
3 and, therefore, you construed it to mean the same thing as
4 the amount of damages. So you reached the conclusion,
5 essentially, that the nonduplication provisions could never
6 apply because the Plaintiff -- they only kick in when the
7 Plaintiff has damages that exceed the amount of the
8 liability coverage. So by definition, any time they are
9 seeking UIM or UM coverage, they have damages that exceed
10 the limits of the other coverage and, therefore, they are
11 not recovering the same damages. So under that
12 interpretation, the nonduplication provision would never
13 apply.

14 Now, I would like to say that every court in the
15 country that's considered similar language has come to the
16 same result and they have, they're all over the place. But
17 we cited in our brief some of the ones that are particularly
18 -- that we hope the Court would find persuasive on that.

19 There's one case, Imre vs. Lake States, it's from the
20 Indiana Court of Appeals. And it says: Imre asserts same
21 elements of loss contained within these provisions is not
22 defined by the policy and the term can be construed to
23 denote same elements of damages rather than the proposition
24 that Gamble is not entitled to recover pursuant to both
25 uninsured and underinsured motorist provisions of the

1 policy.

2 This argument is unpersuasive. When the policy
3 references damage, it explicitly uses the term damages. The
4 policy uses the term damages on, at least, six separate
5 occasions. I'll stop there and say we pointed out that our
6 policy uses the term damages, at least, a dozen times. So
7 they clearly mean something different when they mean
8 elements of loss.

9 Going on, it says: We must accept the interpretation
10 of the contract language that harmonizes the provisions of
11 the insurance contract rather than one which supports a
12 conflicting version of the provision because same elements
13 of loss does not denote same elements of damages. Imre has
14 not advanced the plausible interpretation of same elements
15 of loss to concede with the interpretation advanced by like
16 states. And there's no ambiguity in the term, rather, as
17 the name limit of liability clause suggest, the term same
18 elements of loss within section C of the underinsured and
19 uninsured motorist clauses serves to denote that an insured
20 may not recover under both the underinsured and uninsured
21 provisions of the policy.

22 So, Your Honor, in terms of the contract
23 interpretation, I can't say that the Indiana court is any
24 more perceptive or any better able to read English than Your
25 Honor. So I would leave you with two essential points. One

1 is, as I just mentioned, the interpretation that the
2 Plaintiff's advanced and this court accepted effectively
3 writes out of existence the nonduplication provision. That
4 could never apply. And it's a fundamental precept of the
5 contract of construction that every term, if possible, is to
6 be construed to give it some meaning.

7 And then the second point is that the policy, even
8 though it doesn't define elements of loss, it uses the term
9 damages in a distinctly different context. The terms
10 elements -- we use elements in the law all the time. You
11 know, you have elements of cause of action, elements of
12 loss.

13 And in this case, the Plaintiff received the full
14 \$250,000 in liability coverage under our policy. And it
15 wasn't segregated. They didn't just settle for medical
16 bills or pain and suffering or loss of earning capacity, it
17 was a general settlement. In fact, that's what liability
18 insurance covers, all the damages that you could sustain.

19 It could have been a little different, say, it was
20 workers' compensation, but doesn't cover pain and suffering,
21 for example. There you could have some elements of loss
22 that weren't resolved in the workers' comp settlement, but
23 that's not the case here. The elements of damage -- the
24 elements of loss recoverable under uninsured, underinsured
25 and liability are the same.

1 THE COURT: Mr. Cooke, let me ask a question. The
2 thing that gives me the most trouble with your position is,
3 and I'll quote the language from the uninsured motorist
4 coverage, no one will be entitled to receive duplicate
5 payments for the same elements of loss under liability
6 and -- basically, liability and uninsured motorist. I'm
7 paraphrasing. What is the meaning of the word duplicate in
8 that sentence?

9 MR. COOKE: Well, I think it means --

10 THE COURT: I mean, versus leaving it out and just
11 saying no one can receive payments under UM and liability?

12 MR. COOKE: And I noticed in the order you said that,
13 and that is how do you explain this extraneous word
14 duplicate payments. And I think it just means you're
15 getting money for the same elements of loss. I don't think
16 it adds anything. And I don't think it would mean anything
17 different if you didn't have the word duplicate.

18 THE COURT: Isn't it much more straightforward in that
19 case to write the policy to say you can't receive payments
20 under liability and uninsured motorist?

21 MR. COOKE: Except it doesn't -- the test of ambiguity
22 is whether it can reasonably be construed to mean two
23 different things. And I think even if -- the courts have
24 said a number of times that just because you could have made
25 something clearer doesn't make it ambiguous.

1 THE COURT: Fair point.

2 MR. COOKE: And so I think that's the argument I would
3 make, Your Honor. I get your point. And I think you're
4 right, they could have taken it out, except for the fact
5 that they call it a nonduplication provision. That's how
6 they describe the limitation. And that is, you can't
7 recover for the same elements of loss under duplicate
8 coverages. And I think that's the way they're using that
9 term.

10 But I understand completely and I think grammatically,
11 it probably would mean the same thing without the term
12 duplicate in there, but I don't think duplicate adds a
13 separate requirement. It's just that -- because it's a
14 nonduplication clause.

15 THE COURT: Okay. Anything else, Mr. Cooke?

16 MR. COOKE: No, thank you.

17 THE COURT: Okay.

18 MR. UTSEY: Good morning, Your Honor.

19 THE COURT: Good morning.

20 MR. UTSEY: Thank you again for accommodating us.

21 THE COURT: Certainly.

22 MR. UTSEY: I guess I'll begin by addressing the points
23 Mr. Cooke made (inaudible) related to the public policy
24 issue. But, first and foremost, with respect to his
25 arguments on elements of loss and damages and duplicate

1 payments provision, we cited several cases and I believe you
2 adopted those in your order correctly, so to explain that
3 when you talk about duplicate payments, you're talking about
4 avoidance of double recovery.

5 While Mr. Cooke's argument is that if you read it that
6 way, you make (inaudible) meaningless, it never applies.
7 That's not accurate. For example, as you know, Your Honor,
8 under the Edens case, both uninsured motorist coverage and
9 underinsured motorist coverage is considered a vital source.
10 The tortfeasor cannot, for example, get an offset on a
11 judgment by virtue of those payments.

12 Now, if that rule were the same with respect to
13 uninsured or underinsured motorist carrier, people
14 (inaudible). Unless there is a duplicate provision like
15 this, the Plaintiff could conceivably recover double
16 recovery or triple recovery depending on how many
17 underinsured or uninsured carriers there are. That's really
18 the purpose of it. And I think you hit the nail on the head
19 when you said the addition of word duplicate has to be
20 applied and given some effect. Obviously, duplicate means
21 to duplicate, you would pay for the same thing.

22 The distinction between elements of loss and damages, I
23 think is (inaudible) for a couple of reasons. First of all,
24 the statute is, of course, what you have to look at. The
25 statute says (inaudible). So we have to figure -- we have

1 to look at what adopting the Defendant's position with
2 respect to elements of loss does with respect to damages.
3 And when you apply this clause as the Defense argued, you
4 end up eradicating an entire loss of damages within your
5 (inaudible). Whether you want to call it elements of loss
6 or not, it becomes, in effect, a conclusion of those
7 damages.

8 Further, Your Honor, there's further context in the
9 policy itself that helps you explain that that's
10 (inaudible). I'm looking at a portion of the underinsured
11 motorist -- the UIM for the policy disclosure on Page 4 of
12 Defendant's motion. This is important. This follows
13 (inaudible). This is clause E. We will not make a
14 duplicate payment under this coverage for any element of
15 loss for which payment has been made by or on behalf of
16 persons or organizations who may be legally responsible.
17 Underinsured motorist coverage, it only comes into play
18 after the responsible party has paid (inaudible).

19 So if you take their interpretation of the elements of
20 loss and apply it to this clause, this clause would bar
21 every claim for (inaudible). Because under every one of
22 those scenarios, there's already been a payment made on
23 behalf of the at-fault motorist. So if duplicate payment
24 means any payment for elements of loss, then there is UIM
25 under this policy, whether it's an insured driver under the

1 policy or a third party or anyone else. So I would argue
2 that that gives the Court further context to construe
3 elements of loss consistent with the position we've
4 articulated (inaudible). We believe that's the correct
5 interpretation.

6 Now, segue for a moment to the public policy argument.
7 And I hate to disagree with your order when you ruled in our
8 favor on results --

9 THE COURT: This is just belt and suspenders, right? I
10 mean, the ruling was the policy language is in your favor.
11 And as an additional ground, there's a public policy, okay.

12 MR. UTSEY: You know, I anticipate this could
13 potentially go up on appeal, so I wanted to preserve all of
14 our arguments --

15 THE COURT: I understand.

16 MR. UTSEY: -- if that occurs, Your Honor.

17 But we think that the defense is focused on the wrong
18 language, the wrong terminology when it looks at the public
19 policy issue. The older cases do employ the terms that Mr.
20 Cooke issues, mandatory versus voluntary, (inaudible) those
21 terms. But if you look at the courts' analysis over the
22 last few years, it has refined that analysis and, instead,
23 it uses the term statutorily required coverage.

24 And that's important, Your Honor, because statutorily
25 required coverage encompasses both mandatory coverages,

1 those that you have to carry, minimum limits of BI and
2 minimum limits UM, but it also covers any excess UM and any
3 underinsured coverage. Because the court reason in both the
4 Carter case that we cited in our motion and in the Knight
5 case that while it is optional for the insured to purchase
6 that coverage, once the insured makes the choice to buy
7 excess UM or underinsured coverage, the insurer must provide
8 it. Therefore, it is statutorily required.

9 THE COURT: I'll be honest, I have not read those cases
10 recent -- I mean, tell me that again, you've lost me. So
11 once the insured has made a choice to buy the policy, then
12 it's required?

13 MR. UTSEY: Right, I think it comes down to a matter of
14 respect. Is it mandatory from the point of view -- go back
15 to the old language.

16 THE COURT: Right.

17 MR. UTSEY: Is it mandatory from the point of view of
18 the insurance company or the insured? From the insurance
19 point of view, it's voluntary. The insured doesn't have to
20 purchase that coverage, but if it's mandatory in the sense
21 that if the insured elects to buy that coverage, what we
22 have in this case, then it is mandatory that the insurance
23 company provides consistent with our insurance statute.
24 Therefore, the courts have created this term statutorily
25 required coverage. They can't say -- when my client elects

1 to purchase underinsured coverage, they can't say oh, no,
2 we're not going to sell it to you.

3 THE COURT: Right.

4 MR. UTSEY: They're required to provide it. Not only
5 are they required to provide it, they're required to provide
6 it consistent with our insurance laws. It has to conform to
7 the law. If there is a conflict between the clauses in
8 their policy and what the coverage -- what the statutes
9 require, then public policy says that their policy
10 provisions are void.

11 THE COURT: But what that is, in fact, is a statutory
12 requirement that the policy be offered, isn't it? That's
13 not the same thing as required coverage. You're saying --

14 MR. UTSEY: And I don't want to disagree with you -- or
15 argue with you, rather --

16 THE COURT: You can argue with me, that's what we're
17 here for.

18 MR. UTSEY: I'm going to quote from the Carter case.
19 It says, While true, as Standard Fire suggest, we have
20 stated that UIM coverage is not mandatory coverage in the
21 sense that it forces you to purchase excess UIM coverage on
22 a vehicle and a specified amount is not required by statute.
23 It held that it is a statutorily required coverage in the
24 sense that it is required it be offered. (Inaudible) read
25 in the context of 38-77-160 unequivocally requires the

1 insurer to provide coverage in an amount equal to the excess
2 UIM coverage purchased on the vehicle (inaudible). That's
3 Carter.

4 Now, more recently, in Nationwide vs. Knight, citing
5 the Carter case, the court again says statutorily required
6 coverage is that would require the offer (inaudible) UIM
7 coverage is statutorily required coverage because it must be
8 offered.

9 Now, statutorily required is important because
10 statutorily required coverage is governed by (inaudible)
11 statute, simple as that. So we look at the UIM statute and
12 what does it say? The UIM statute says that UIM coverage
13 provides coverage in the event that damages are sustained in
14 excess of the liability limits carried by (inaudible)
15 insured motorist. The statute uses the word damages.

16 So if their policy provision erodes the ability to
17 recover damages, which is what the statute requires, damages
18 in excess of at-fault motorist, whether they call it
19 elements of loss or damages or whatever, then they have
20 violated the coverage required, statutorily required
21 coverage (inaudible). And the same analysis applies to
22 excess UIM coverage as well. Again, it's their recovered
23 damages caused by an at-fault uninsured motorist.

24 So in summary, the public policy issue is UIM and
25 excess UM are statutorily required. They are, therefore

1 governed by the statutes. If the policy conflicts with the
2 statute, the policy provision is void (inaudible). Even if
3 the Court were to adopt their interpretation (inaudible).

4 THE COURT: My rationale on the public policy part of
5 the order was not statutorily required in the sense of an
6 offer, but statutorily required in the sense of this
7 coverage must be carried, there's no option. And that was
8 why I found that it only applied to uninsured motorist
9 coverage.

10 MR. UTSEY: And I understand that. I would invite you
11 to look back to the Carter case and the Knight case because
12 I think what you're talking about there is mandatory
13 coverage. (Inaudible). And statutorily required coverage
14 encompasses both mandatory coverage, but also coverage that
15 they're required to offer once it's been selected by an
16 insured. It's actually a broader term and it's not defined
17 simply to mandatory coverage.

18 THE COURT: That doesn't seem to have the same public
19 policy weight to me. I mean, if the legislature is saying
20 it's got to be offered, but the driver can turn it down is
21 not the same thing as saying it must be carried on every
22 vehicle operated in South Carolina.

23 MR. UTSEY: You're right about that. The distinction
24 is this -- and, again, you've got to change the perspective.
25 Instead of looking at the driver's perspective, you've got

1 to look at it from the insurance company's perspective.
2 Once that driver has made the decision to purchase the
3 coverage, the insurance company is required to provide it
4 pursuant to the statute. The insurance company can't create
5 a different animal -- they can't sell you something under
6 the statute that is in conflict.

7 THE COURT: Right.

8 MR. UTSEY: That's where the statutory public policy
9 (inaudible).

10 THE COURT: Thank you, Mr. Utsey.

11 Mr. Cooke.

12 MR. COOKE: That's a great grammatical argument, but
13 it's not what the Supreme Court of South Carolina has
14 adopted. The distinction that Your Honor made is exactly
15 the one the Supreme Court made in Burgess vs. Nationwide.

16 That was the case, you may remember, where the issue
17 was there was a provision of the policy that UIM is excess
18 coverage if the vehicle involved is not insured under the
19 policy, then also reduced the coverage to the lesser
20 coverage under the policy where it involved vehicles covered
21 (inaudible). And the court said UIM coverage is entirely
22 voluntary and permits insureds options to purchase insurance
23 coverage for situations where they are injured by an
24 at-fault driver who does not carry sufficient liability
25 insurance to cover the insured's damages. Essentially, the

1 insured buying insurance coverage for situations as where he
2 is a passenger in another's vehicle or is a pedestrian where
3 he cannot otherwise insure himself.

4 So the court there made exactly the same distinction
5 that you made. And that is, it is true that the statute
6 says you have to offer UIM, but it's not mandatory. We
7 don't require that as a matter of public policy to be on
8 every vehicle. Likewise, with the excess UM coverage.

9 So that's what -- that was the key to the court there
10 holding that it was not a violation of the public policy to
11 put those limitations in the UIM coverage. And that
12 approach has been followed recently in State Farm vs.
13 Calcutt, that's Court of Appeals in 2000 upheld (inaudible)
14 worker's comp benefits as long as it was provided by the
15 insured employer.

16 Nationwide vs. Knight, just last year, said that
17 38-77-160 did not prohibit exclusion of UIM coverage when
18 the insured's husband was operating the vehicle. Again, if
19 you took Skip's argument, that would be illegal, also,
20 because it would be a limitation not provided for in the
21 statute.

22 And in terms of counsel argues that there are no
23 limitations where the nonduplication could apply because of
24 the application of the (inaudible) rule, that's not the
25 case. The only exclusion of duplication is duplication from

1 recovery under this policy, not if the other driver -- if
2 the other driver had liability coverage and you had
3 exhausted that, the nonduplication clause in this does not
4 prohibit you from collectin UIM or UM coverage.

5 The final thing I would say, and we've cited these
6 cases in our brief, the overall public policy -- and I say
7 this applies. The public policy, we've really been talking
8 about the statutory requirements, but there's an over
9 leaning public policy reason why a nonduplication provision
10 should be applied. The courts have said that UIM and UM is
11 not meant to be an extension of liability coverage because
12 liability coverage is very expensive and UIM and UM coverage
13 is very inexpensive. And so it's reasonable to interpret a
14 nonduplication provision as saying you can't both get the
15 liability coverage being provided and collect under our
16 policy UIM and UM because those are really cheap coverages.
17 Essentially, what you're doing is you're expanding your
18 liability coverage.

19 In this case, if they had their argument, they would
20 expand it from \$250,000 coverage to 1.75 million dollar
21 coverage because they want to stack the UIM. You can't
22 stack liability, but you can stack the UIM. So they take
23 this very inexpensive UM and UIM coverage and, basically,
24 quadruple their liability insurance coverage.

25 THE COURT: But isn't that -- you could turn that

1 around and say that's a criticism on the actuaries pricing
2 decisions by the insurance companies.

3 MR. COOKE: Well, and that's what these other courts
4 said, if we interpret it the way the Plaintiffs want to, the
5 price of all that coverage is going to have to come up. And
6 that kind of dovetails with the public policy. These are
7 voluntary coverages. The rationale that the court applies
8 is the parties are free to contract as they will. So if the
9 parties want to be able to buy very inexpensive coverage,
10 they should be allowed to do that.

11 THE COURT: I'll give you the last word, Mr. Utsey,
12 very briefly.

13 MR. UTSEY: I think I need to respond to a couple of
14 things. First, I'm not sure if the policy is in the record.
15 We attached the exhibits to the complaint. But to the
16 extent they want to argue about cost of coverage, if the
17 policy is in the record, you'll see that the underinsured
18 motorist coverage, which is the only part his argument would
19 apply to, not the UM. The underinsured motorist coverage
20 actually cost \$5 more per policy period than the liability
21 coverage. So the argument isn't supported by the record
22 that it's less expensive coverage.

23 Secondly, Your Honor, (inaudible) Burgess and whether
24 Burgess undermines the argument based on Carter, if you'll
25 read the paragraph from Carter that I quoted to you, that

1 paragraph directly addresses the argument they made because
2 in that case Standard Fire also argued that Burgess
3 prohibited the argument and the court said (inaudible) may
4 be reconciled and UIM is statutorily required. So I think
5 that's really the last word on Burgess.

6 And, finally, the outcome of Burgess is (inaudible)
7 while based on a public policy analysis. The court did
8 uphold the exclusion to both of those cases. And the reason
9 was, in each case, they found a statute for a foundation, a
10 statutory authorization for those exclusions. Here, there
11 is no equivalent. Here, the statute is actually contrary.

12 Thank you.

13 THE COURT: Counsel, thank you. I appreciate it. I am
14 not inclined to modify my order, but I will take another
15 look at it. I have a new law clerk, who is very bright and
16 will give me some assistance. So I will take a look at both
17 sides, but right now, I'm inclined to stick with what I've
18 got.

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May 08 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
In the Court of Common Pleas for the Sixteenth Judicial Circuit

The Honorable William A. McKinnon, Circuit Court Judge

Appellate Case No. 2022-001510

Francine Steineman.....Respondent,

v.

Meridian Security Insurance Company Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Record on Appeal contains all materials proposed by the parties to be included in the Record on Appeal and does not include any other materials.

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