STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG	)	IN THE COURT OF COMMON PLEAS
JAMES LUTHER PLEMMONS AND WANDA SUE CLARK PLEMMONS, Plaintiffs, vs. STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, PLAZA INSURANCE COMPANY, THE STOVER COMPANY, INC., and HOWARD E. NEWTON, III, Defendants.	)	Civil Action No. 2012-CP-42-00346 ORDER

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On May 17, 2013 this Court heard the motion for summary judgment State Farm Mutual Automobile Insurance Company (State Farm) and the plaintiffs' motion for summary judgment on the issue of coverage. For the following reasons State Farm's motion for summary judgment is granted and the plaintiffs' motion for summary judgment is denied.

This lawsuit arises out of an accident on July 31, 2010 in which James Plemmons was injured while operating a tow truck. The facts surrounding the accident are not in dispute. In July 2010 Plemmons operated a tow truck service in addition to being a mechanic with his own garage in Spartanburg. On July 30, 2010 Plemmons was contacted by Kim Carson to come to her house and pick up her car because it would not operate. Plemmons then went to Carson's house and loaded Carson's car on Plemmons'

tow truck. Once Plemmons loaded the Carson vehicle he then took it to his house rather than his garage because his garage was not open Friday evenings nor was it open on Saturdays.

Early the next morning Plemmons received a call to pick up another car. Plemmons received this call because he was on a rotating list of tow truck operators to pick up vehicles. Plemmons then drove his tow truck with the Carson car already on top to Highway 29 in Spartanburg County to pick up a car owned by a Ms. Mills. The Mills car had been pulled over because the driver of that car had been stopped by the police. At this time it was around four or five in the morning and there was very little traffic.

When Plemmons arrived to pick up Mills' car on Highway 29 the 2005 Dodge Neon owned by Kim Carson's father, John Carson, was inoperable and was secured on the flatbed in a stationary position. As Plemmons was in the process of securing the Mills car to the rear of his tow truck a car operated by Teresio Diaz approached from the other direction. Diaz's car left its lane of travel and hit the front of Plemmons' tow truck at a high rate of speed. The resulting impact knocked the tow truck backwards and it skidded over Plemmons' left leg.

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The Carson vehicle atop Plemmons' tow truck did not hit Plemmons, it was not being used for transportation at the time of the accident and it did not contribute to the accident. There is no evidence that the Dodge Neon insured by State Farm touched Plemmons or otherwise caused his injuries, nor is there evidence that the at fault car operated by Diaz touched the Carson car on top of the tow truck bed.

The issue presented to this Court is whether the plaintiffs are entitled to underinsurance motorist (UIM) coverage under the State Farm policy insuring the Carson

vehicle. The plaintiffs have recovered UIM coverage under a policy with Plaza Insurance Company which insured the tow truck. The plaintiffs have stacked UIM coverage for two vehicles insured under the Plaza policy as the plaintiffs were Class I insureds with respect to the Plaza policy insuring the tow truck and another vehicle.

Both the plaintiffs and State Farm have moved for summary judgment on the issue of whether the plaintiffs are entitled to UIM coverage under the State Farm policy insuring the Dodge Neon. State Farm has asserted a number of grounds in its motions for summary judgment. Because two of the grounds in State Farm's motions for summary judgment are dispositive it is unnecessary for this Court to address all of the grounds in State Farm's motions.

The first reason State Farm is entitled to summary judgment is that the vehicle it insured was completely outside the chain of causation for the plaintiff's injuries and outside of the chain of causation for the accident which resulted in the plaintiff's injuries. Here, as in Hite v. Hartford Accident and Indemnity Company, 344 S.E.2d 176 (S.C. App. 1986), "it is difficult to see where the use of the insured automobile was directly connected with or a cause of the ensuing accident." 344 S.E.2d at 177. Here, as in Hite, "the key to determining whether injuries remote to the operation of an automobile occurred during a 'use' of the vehicle is the existence of a causal connection between the injury and the use." 344 S.E.2d at 177 Hite is further on point because here, as in Hite, the injuries are the direct result of an intervening cause wholly disassociated from, independent of, and remote from the use of the insured automobile. 344 S.E.2d at 177

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Even if the plaintiffs were entitled to UIM coverage under the State Farm policy insuring the Dodge Neon, the plaintiffs as Class II insureds with regard to that policy would not be entitled to stack UIM coverage from the State Farm policy on UIM coverage under the Plaza policy insuring the tow truck. Stacking refers to an insured's recovery of damages under more than one insurance policy in succession until all damages are satisfied or until the total limits of all policies are exhausted. Nakatsu v. Encompass Indemnity Company, 700 S.E.2d 283, 286 (S.C. App. 2010); Nationwide Mutual Insurance Company v. Rhoden, 728 S.E.2d 477; 481 (S.C. 2012) The right to stack coverages is available only to a Class I insured. A Class I insured is a named insured, his spouse and relatives residing in his household. Richardson v. South Carolina Farm Bureau, 519 S.E.2d 120, 121 (S.C. App. 1999) One who is not a resident relative of the named insured's household is not a Class I insured entitled to stack UIM benefits. Auto Owners Insurance Company v. Horne, 586 S.E.2d 865, 874 (S.C. 2003) One who is not the named insured or the named insured's spouse or a resident relative and is only using the vehicle with the named insured's permission is a Class II insured and is not entitled to stack coverage. Ex Parte: United Services Automobile Association; In Re Smith v. Moore, 614 S.E.2d 652 (S.C. App. 2005)

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Because James Plemmons was not a named insured under the State Farm policy, was not a spouse of the named insured under the State Farm policy nor was a resident relative of the named insured under the State Farm policy, Plemmons is a Class II insured with respect to that policy. The plaintiffs do not dispute Plemmons' classification as a Class II insured under the State Farm policy as a report filed by the plaintiffs in Federal Court concedes that in regard to the Carson vehicle insured with

State Farm "plaintiffs believe Mr. Plemmons was a Class II user of the vehicle." As such, Plemmons is not entitled to stack coverage from a policy under which he is a Class II insured on his UIM coverage with Plaza Insurance Company under which he was a Class I insured.

State Farm has also moved for summary judgment on the plaintiffs' claim of bad faith. State Farm's motion for summary judgment as to this cause of action is granted. State Farm's alleged failure to communicate with the plaintiff was not bad faith as no insurance coverage existed for the plaintiffs' claim against State Farm.

State Farm is also entitled to summary judgment on the plaintiffs' claim for attorney's fees under § 38-59-40. This statute requires as a basis for an award of attorney's fees a finding both that the claim is covered by the contract of insurance and that the insurer's refusal to pay the claim was without reasonable cause or in bad faith. Because this Court has ruled the plaintiffs' claim against State Farm is not covered, it necessarily follows that State Farm is entitled to summary judgment on the plaintiffs' claim for attorney's fees under § 38-59-40.

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It is therefore ordered that State Farm is entitled to summary judgment on all of the plaintiffs' claims against State Farm, that the plaintiffs' motion for

summary judgment is denied and the plaintiffs' lawsuit against State Farm is dismissed with prejudice. All of which is so ORDERED.

J. Mark Hayes, II, Presiding Judge

Spartanburg, South Carolina
May 22, 2013

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