

FORM 4

STATE OF SOUTH CAROLINA
 COUNTY OF GEORGETOWN
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2012CP2200365

State Auto Insurance Companies	Loretta Eason Phillip Eason Jr Barbara Lane Shirley Murphy Columbia Insurance Company	Lyrah Eason Victoria Eason Christina Lane Jerry Clark
PLAINTIFF(S)		DEFENDANT(S)

Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant
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DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:
 Case Heard; Taken Under Advisement
 Each Attorney To Prepare Detailed Proposed Orders Within 30 Days

This order ends does not end the case.

ORDER INFORMATION

Additional Information for the Clerk:

FILED
 GEORGETOWN COUH. Y. S.C.
 2012 NOV 29 PM 1:27
 ALMA Y. WHITE
 CLERK OF COURT

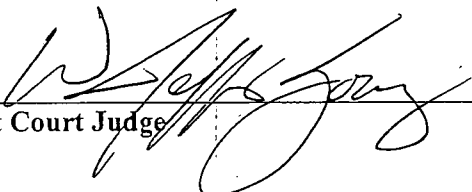
INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

	2156	11/29/2012
Circuit Court Judge	Judge Code	Date

For Clerk of Court Office Use Only

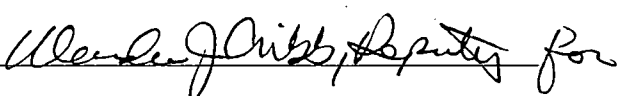
This judgment was entered on November 29, 2012, and a copy mailed first class or placed in the appropriate attorney's box on November 30, 2012, to attorneys of record or to parties (when appearing pro se) as follows:

James Patrick Sullivan 215 East Bay St. Ste 303 Charleston, SC 29401

Rodney C. Jernigan Jr. PO Box 2130 Florence, SC 295032130
 James M. Saleeby Jr. PO Drawer 1931 Florence, SC 29503
 John S. Nichols 1614 Taylor St. Columbia, SC 29202
 Gerald Eugene Reardon PO Box 1505 Columbia, SC 29202

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)


 Alma Y. White - Clerk of Court

Court Reporter *Kay H. Richardson*

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NUMBER: 2012-CP-22-00365

State Auto Insurance Companies,

Plaintiff,

vs.

Loretta Eason, Lyrah Eason, Phillip Eason,
Jr., Victoria Eason, Barbara Lane,
individually, and as Guardian Ad Litem for
Christina Lane and Shirley Murphy, Jerry
Clark, Rufus Hough, Catoe's Chapel,
Mason Temple Church of God in Christ,
Columbia Insurance Company, and
Southern Mutual Church Insurance
Company,

Defendants.

ORDER

**(DECLARATORY JUDGMENT
ACTION)**

FILED
GEORGETOWN COUNTY, S.C.
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CLERK OF COURT

INTRODUCTION

The above-referenced nonjury declaratory judgment action was tried on its merits before this Court on November 29, 2012. The declaratory action was brought by Plaintiff State Auto Insurance Companies (State Auto) pursuant to S.C. Code Ann. Section 15-53-10 *et seq.*, requesting the Court issue an order declaring that State Auto Business Auto Policy No. BAP 2151727-01 (State Auto Policy) does not provide Underinsured Motorists (UIM) coverage for the individual Defendants Loretta Eason, Lyrah Eason, Phillip Eason, Jr., Victoria Eason, Barbara Lane, individually, and as Guardian Ad Litem for Christina Lane and Shirley Murphy, and Jerry Clark (Underlying Plaintiffs) for any damages that may be awarded to them in suits filed related to a motor vehicle accident that occurred on July 25, 2006 (Underlying Lawsuits).

Pretrial Briefs were submitted on behalf of all parties pursuant to Rule 16(c) of the South



Carolina Rules of Civil Procedure and oral arguments on behalf of all parties were presented to this Court. After reviewing all parties' briefs and hearing oral arguments, this Court grants Plaintiff's request and finds that the State Auto Policy provides no coverage under its UIM provisions for any damages that may be awarded to the Underlying Plaintiffs in the Underlying Lawsuits.

FACTUAL AND PROCEDURAL BACKGROUND

The parties agree as to the following undisputed facts:

Defendant Catoe's Chapel Church (Catoe's Chapel) is a defendant in the Underlying Lawsuits pending in Georgetown County, South Carolina. State Auto issued to Catoe's Chapel as a named insured the State Auto Policy with effective dates of May 14, 2006, to May 14, 2007. The State Auto Policy provided automobile insurance coverage to Catoe's Chapel. The State Auto Policy was issued to and delivered to Catoe's Chapel in South Carolina. The State Auto Policy's Item Two: Schedule of Coverages and Covered Autos provides UIM Coverage for Autos in the 07 category as defined by the State Auto Policy. The State Auto Policy defines 07 autos as "Specifically described Autos": "Only those autos described in Item Three of the Declarations for which a premium charge is shown." The State Auto Policy's Item Three: Schedule of Covered Autos You Own lists a single vehicle: a 1994 Ford SW Van, Vehicle Identification Number 1FDJE30HXRHA45390 (Catoe's Chapel Van) with a UIM premium of \$63.00. The State Auto Policy's Item Three: Schedule of Covered Autos You Own lists no other covered autos. The Catoe's Chapel Van has a seating capacity for no more than fifteen (15) persons.

Mason Temple Church of God in Christ (Mason Temple) is also a defendant in the Underlying Lawsuits pending in Georgetown County, South Carolina. Sometime prior to July 25, 2006, Mason Temple loaned a 1984 MCI Bus, Vehicle Identification Number

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1M89CM6AXEPO38857, (Mason Temple Bus) to Catoe's Chapel to be used to transport church members to a church event in Georgetown County. The Mason Temple Bus was insured by Southern Mutual Church Insurance Company under Business Auto Policy No. BA 3906689 00 (Southern Mutual Policy) with a coverage period of June 27, 2006 to June 27, 2007. The Southern Mutual Policy provided Liability and UIM Coverage for Mason Temple as the Named Insured.

The subject church event is a yearly event held at Greater Bibleway Church in Georgetown (Greater Bibleway). According to sworn testimony from Deacon Joe Mungo, a representative from Catoe's Chapel, the church had never used its van to transport members to the yearly event at Greater Bibleway. On the day of the accident, Catoe's Chapel used the Mason Temple Bus to transport over forty occupants, including the Underlying Plaintiffs. Deacon Mungo testified that Catoe's Chapel borrowed the Mason Temple Bus because its own 1984 MCI Crusader (Catoe's Chapel Bus) was out of service. On July 25, 2006, the Catoe's Chapel Van insured by State Auto was operable. However, the Catoe's Chapel Van did not have the seating capacity to accommodate the number of church members traveling to Greater Bibleway on July 25, 2006, leading Catoe's Chapel to use the bus borrowed from Mason Temple. The Catoe's Chapel Bus that was out of service was insured by Columbia Insurance Company under Policy No. 71APN365813 (Columbia Policy) with a coverage period of October 4, 2005 to October 4, 2006. The Columbia Policy provided UIM Coverage for Catoe's Chapel.

On July 25, 2006, while being operated by Defendant Rufus Hough, the Mason Temple Bus was involved in a one vehicle accident near the county line dividing Williamsburg and Georgetown Counties. As a result of the injuries allegedly sustained while occupying the Mason Temple Bus as a passenger on July 25, 2006, the Underlying Plaintiffs brought the Underlying Lawsuits against



Hough, Catoe's Chapel, and Mason Temple. The Underlying Lawsuits are currently pending in the Court of Common Pleas for Georgetown County.

As a result of the injuries allegedly sustained while occupying the Mason Temple Bus as passengers on July 25, 2006, the Underlying Plaintiffs have made claims under the Southern Mutual Policy's Liability coverage, under the Southern Mutual Policy's UIM coverage, under the Columbia Policy's UIM coverage, and under the State Auto Policy's UIM coverage. Through legal counsel, the Underlying Plaintiffs for valid consideration have signed Covenants Not to Execute against Hough, Catoe's Chapel, Mason Temple, Southern Mutual, and Columbia.

The State Auto Policy provides that State Auto "will pay in accordance with the South Carolina (UIM) Law all sums the 'insured' is legally entitled to recover as damages from the owner or driver of a[] '[UIM] vehicle'." According to the State Auto Policy, if "the Named Insured is designated in the Declarations as: [a] partnership, limited liability company, corporation or any other form of organization," the State Auto Policy defines an "insured" as "[a]nyone 'occupying' a covered 'auto' or a temporary substitute for a covered 'auto'."

According to the Columbia Policy, if "the Named Insured is designated in the Declarations as: [a] partnership, limited liability company, corporation or any other form of organization," the Columbia Policy defines an "insured" as "[a]nyone 'occupying' a covered 'auto' or a temporary substitute for a covered 'auto'. The covered 'auto' must be out of service because of its breakdown, repair, 'loss' or destruction."

Finally, although not covered in the Stipulation of Facts, this Court finds the following testimony relevant to its analysis as discussed below:

Q. Is there any particular reason that Mr. Thaxton recommended to use two separate insurance companies? You understand that the van is State Auto and then Columbia?



A. Yes. When we got the 47-passenger, he went to State Auto, whatever, and he come back to me and told me he had to get it with the Columbia Insurance Company.

Q. Okay. So it was just State Auto wouldn't insure the bus, but they would the van, so you went with Columbia to get the bus?

A. That was my understanding; yes.

(Mungo Dep. 44:14-21; 45:4-7, Oct. 30, 2012.)

ANALYSIS

In construing insurance policies, South Carolina courts apply the law of the state where the policy was issued. *Gordon v. Colonial Ins. Co. of California*, 342 S.C. 152, 155-56, 536 S.E.2d 376, 378 (2000). As discussed above, all parties agree the State Auto Policy was issued to Catoe's Chapel in South Carolina and therefore South Carolina law applies to the interpretation of the State Auto Policy.

"Insurance policies are subject to the general rules of contract construction." *M & M Corp. of S.C. v. Auto-Owners Ins. Co.*, 390 S.C. 255, 259, 701 S.E.2d 33, 35 (2010). "The cardinal rule of contract interpretation is to ascertain and give legal effect to the parties' intentions as determined by the contract language." *McGill v. Moore*, 381 S.C. 179, 185, 672 S.E.2d 571, 574 (2009). "Courts must enforce, not write, contracts of insurance, and their language must be given its plain, ordinary and popular meaning." *USAA Prop. & Cas. Ins. Co. v. Clegg*, 377 S.C. 643, 655, 661 S.E.2d 791, 797 (2008) (quoting *Sloan Constr. Co. v. Cent. Nat'l Ins. Co. of Omaha*, 269 S.C. 183, 185, 236 S.E.2d 818, 819 (1977)). "Where the contract's language is clear and unambiguous, the language alone determines the contract's force and effect." *McGill*, 381 S.C. at 185, 672 S.E.2d at 574.



"Generally, under a temporary substitute automobile clause, a vehicle cannot qualify as a temporary substitute unless the automobile described in the policy is withdrawn from normal use on the date of the accident." *Nationwide Mut. Ins. Co. v. Douglas*, 273 S.C. 243, 246, 255 S.E.2d 828, 830 (1979) (citing *Pennsylvania T. & F. Mutual Casualty Ins. Co. v. Robertson*, 259 F.2d 389 (4th Cir. 1958); 7 Am.Jur.2d Automobile Insurance, s 103; 34 A.L.R.2d 936, 947-51; *Erickson v. Genisot et al.*, 322 Mich. 303, 33 N.W.2d 803 (1948)).

State Auto argues that according to the plain, unambiguous language of the State Auto Policy, the Underlying Plaintiffs do not qualify as Insureds under the UIM provision contained in the State Auto Policy. This Court agrees.

The undisputed facts as stated in the Stipulation as to Facts and the deposition of the Rule 30(b)(6) designee of Catoe's Chapel show that the Ford Van owned by Catoe's Chapel and insured by State Auto was a 15 passenger van that was in operating condition at the time of the subject accident on July 25, 2006. The involved vehicle was a 47 passenger bus owned by Mason Temple and insured by Southern Mutual. Catoe's Chapel borrowed the Mason Temple bus because its own 47 passenger bus was out of service on July 25, 2006, and Catoe's Chapel needed a bus to accommodate the more than 40 church members that had signed up for the July 25, 2006 trip to Georgetown. Therefore, according to the plain, unambiguous language of the State Auto Policy, the Underlying Plaintiffs are not insureds for purposes of UIM coverage because the Underlying Plaintiffs were not occupying a covered auto and the vehicle they were occupying was not a temporary substitute vehicle for a covered auto under the State Auto Policy.

Moreover, the testimony from Catoe's Chapel indicates State Auto specifically declined insuring the Catoe's Chapel Bus and Catoe's Chapel understood State Auto's decision and

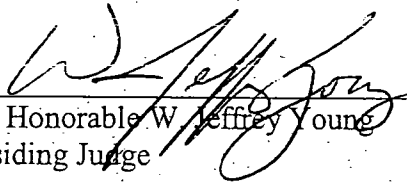


therefore, should not have expected the State Auto Policy to provide UIM coverage for a temporary substitute for its bus.

CONCLUSION

Based on the foregoing reasons, it is hereby ordered that such relief be granted as sought by State Auto in the Complaint filed in this action. More specifically, this Court rules that State Auto Business Auto Policy No. BAP 2151727-01 does not provide Underinsured Motorists coverage to Loretta Eason, Lyrah Eason, Phillip Eason, Jr., Victoria Eason, Barbara Lane, individually, and as Guardian Ad Litem for Christina Lane and Shirley Murphy, and Jerry Clark for any damages that may be awarded to them in suits filed related to a motor vehicle accident that occurred on July 25, 2006.

IT IS SO ORDERED.


The Honorable W. Jeffrey Young
Presiding Judge

Santee, South Carolina

Feb 1, ~~2012~~ 2013