IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM CHESTER COUNTY
Court of Common Pleas

Brian M. Gibbons, Circuit Court Judge

Appellate Case No. 2023-000654
Trial Court Case No. 2020-CP-12-00207

Alexis Jones .....Respondent – Appellant,

v.

Progressive Northern Insurance Company.....Appellant – Respondent.

RECORD ON APPEAL

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INDEX

Page

ORDERS

Form 4 Order of August 10, 2020 002
Order of February 10, 2021 005
Form 4 Order of March 29, 2023 010
Order of April 6, 2023 014

PLEADINGS

Complaint 020
Answer to Complaint 032

MOTIONS

Defendant's Motion to Dismiss filed May 11, 2020 038
Defendant's Memorandum of Law in Support of Motion to Dismiss filed May 11, 2020 039
Ex. A Progressive Policy 053
Plaintiff's Motion in Opposition to Defendant's Motion for Summary Judgment filed June 18, 2020 094
Defendant's Motion to Reconsider filed August 20, 2020 107

TRANSCRIPTS

Bench Trial Transcript dated March 27, 2023 109

OTHER MATERIALS

Stipulation of Fact filed May 28, 2021 138
Ex. A Progressive Policy 141
Ex. B Medical Bill 184
Ex. C Medical Bill 185
Ex. D Medical Bill 186
Ex. E Medical Bill 187
Ex. F Medical Bill 188

Certificate of Counsel 189

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP1200207

Willie Brown et al
PLAINTIFF(S)

Progressive Northern Insurance Company
DEFENDANT(S)

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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **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:

After further review and deliberation Judge Gibbons has granted the Motion to Dismiss in part and denied in part .Granted as to the SCUTPA claim and denied as to the remaining claims.

ORDER INFORMATION

This order ☐ ends ☑ does not end the case. ☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 08/10/2020 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ELECTRONICALLY FILED - 2020 Aug 10 10:52 AM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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ELECTRONICALLY FILED - 2020 Aug 10 10:52 AM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

Chester Common Pleas

Case Caption:	Willie Brown , plaintiff, et al VS Progressive Northern Insurance Company
Case Number:	2020CP1200207
Type:	Order/Electronic Form 4

So Ordered

s/Brian M. Gibbons #2168 Circuit Judge

ELECTRONICALLY FILED - 2021 Feb 10 12:08 PM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF CHESTER	CIVIL ACTION NO: 2020-CP-12-00207
Alexis Jones, Plaintiff, v. Progressive Northern Insurance Company, Defendant.	**ORDER**

This matter comes before the Court on Defendant's Motion to Alter or Amend the prior Order of this Court, dated August 10, 2020, which granted in part and denied in part the Defendant's Motion to Dismiss. For the reasons set forth below, the Motion to Alter or Amend the prior Order is granted in part and denied in part.

This lawsuit arises out of Progressive Northern Insurance Company's ("Progressive Northern") payment of Plaintiff's Medical Payments claim under a Progressive Northern auto policy, Policy No. 930693102, issued to Willie Brown. The Complaint alleges that Plaintiff Alexis Jones incurred medical expenses as a result of an October 8, 2019 automobile accident and timely submitted a Medical Payments claim to Progressive Northern. Plaintiff is a Medicaid recipient. In South Carolina, Medicaid has agreements in place with medical service providers wherein the providers have agreed to accept reduced rates as payment-in-full when treating Medicaid recipients. The Complaint alleges that Progressive Northern paid Jones' Medical Payments claim based on the Medicaid-adjusted rates charged by her medical providers rather than total charges listed on the medical providers' initial bills.

This action concerns whether Medical Payment benefits under the policy are to be paid: (1) based on the Medicaid-adjusted rates accepted by the medical providers as payment-in-full for the services rendered; or (2) based on the stated amounts listed on the initial bills. The Complaint

ELECTRONICALLY FILED - 2021 Feb 10 12:08 PM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

alleges the following causes of action: (1) breach of contract; (2) bad faith/breach of the duty of good faith and fair dealing/breach of fiduciary duty; (3) violation of the South Carolina Unfair Trade Practices Act; (4) violation of South Carolina Code § 38-77-144; and (5) and breach of contract accompanied by a fraudulent act. In the prior Order, the Court dismissed the South Carolina Unfair Trade Practices Act claim and also dismissed Willie Brown as a Plaintiff. That portion of the prior Order is unchanged, and those rulings remain in effect. However, the Court now alters its prior Order and dismisses the remaining causes of action except for the breach of contract cause of action. The Court denies Defendant's Motion to Dismiss with respect to the breach of contract cause of action. This case will proceed only on the breach of contract cause of action.

Under South Carolina law, an insurer who has a meritorious coverage defense is free to litigate the issue without fear of a bad faith or extra contractual claim. *Crossley v. State Farm Mut. Auto. Ins. Co.*, 307 S.C. 354, 359, 415 S.E.2d 393, 396 (1992). Moreover, an insurer is not required to concede a novel issue of law in order to avoid a bad faith lawsuit. *Id.*; *Helena Chem. Co. v. Allianz Underwriters Ins. Co.*, 357 S.C. 631, 645, 594 S.E.2d 455, 462 (2004).

In this case, Progressive Northern submitted legal authority that the term or the phrase "expenses incurred" meant the amount of money which an insured is legally obligated to pay for medical treatment. *Gordon v. Fidelity & Cas. Co. of N. Y.*, 238 S.C. 438, 446, 120 S.E.2d 509, 513 (1961); *Barker v. Washington Nat. Ins. Co.*, 2013 WL 1767620, at *4 (D.S.C. Apr. 24, 2013). Progressive Northern also submitted out of jurisdiction cases supporting this principle of law. In opposition, the Plaintiff contends that the reduction of the medical invoices pursuant to an agreement between South Carolina Medicaid and the medical provider constitutes a setoff under South Carolina Code Section 38-77-144. As such, she contends that the reduction is improper, and

ELECTRONICALLY FILED - 2021 Feb 10 12:08 PM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

she should be entitled to the full policy limits of medical payments coverage. *See* S.C. Code § 38-77-144; *Cothran v. State Farm Mut. Auto. Ins. Co.*, 427 S.C. 545, 831 S.E.2d 919 (2019). Based on this, the Court declines to alter its earlier ruling and dismiss the cause of action for breach of contract. However, the Court finds that based on the allegations of the Complaint, and the legal positions of the parties, that South Carolina law would not recognize a cause of action for bad faith, breach of the duty of good faith and fair dealing (which is duplicative), breach of fiduciary duty (which is also duplicative) or breach of contract accompanied by a fraudulent act under these circumstances. Therefore, those causes of action in the Plaintiff's Complaint, are hereby dismissed. Plaintiff's violation of South Carolina Code § 38-77-144 claim is also dismissed. The statute creates no private cause of action. *See Dorman v. Aiken Commc'ns, Inc.*, 303 S.C. 63, 67, 398 S.E.2d 687, 689 (1990) ("[T]he general rule is that a statute which does not purport to establish a civil liability, but merely makes provision to secure the safety or welfare of the public as an entity is not subject to a construction establishing a civil liability."). "However, statutes relating to an insurance contract are generally part of the contract as a matter of law." *Lincoln Gen. Ins. Co. v. Progressive N. Ins. Co.*, 406 S.C. 534, 539, 753 S.E.2d 437, 439 (Ct. App. 2013). Therefore, a violation of this statute may constitute a breach of the insurance contract.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:

The prior ruling dismissing the Plaintiff Willie Brown and the South Carolina Unfair Trade Practices Act claim is reaffirmed. The causes of action for bad faith, breach of the duty of good faith and fair dealing, breach of fiduciary duty, and breach of contract accompanied by a fraudulent act are also dismissed.

The only remaining cause of action in this case will be the Plaintiff's cause of action for breach of contract. Nothing in this Order should be construed as a ruling on whether the

reimbursement of the reduced amounts of the bills of the medical providers, pursuant to an agreement with South Carolina Medicaid by the providers, constitutes a setoff under South Carolina law. That issue is subject to further argument after discovery is completed.

IT IS SO ORDERED.

_____
The Honorable Brian M. Gibbons

Chester, South Carolina

Dated:_____

ELECTRONICALLY FILED - 2021 Feb 10 12:08 PM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

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Chester Common Pleas

Case Caption:	Alexis Jones , plaintiff, et al VS Progressive Northern Insurance Company
Case Number:	2020CP1200207
Type:	Order/Amend

So Ordered

s/Brian M. Gibbons #2168 Circuit Judge

ELECTRONICALLY FILED - 2023 Mar 29 4:04 PM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	
COUNTY OF CHESTER	)	**FOR THE SIXTH JUDICIAL CIRCUIT**
	)	
Alexis Jones, Plaintiff,	)	**CIVIL ACTION NUMBER: 2020-CP12-00207**
v.	)	
	)	**FORM 4 ORDER**
Progressive Northern Insurance Co., Defendant.	)	
	)	

This matter came before the court for a bench trial on a breach of contract claim disputing the definition of 'incurred' within the policy. The parties stipulated to the following: Plaintiff was injured in an automobile accident while riding as a passenger in a vehicle insured by the defendant; The policy includes a $10,000 medical payments coverage limit for "reasonable expenses incurred" as a result of an accident; Plaintiff was treated for her injuries with the total medical expenses being in excess of the policy limits; Subsequently, medical providers agreed to accept less than the original amount charged from Medicaid as required by law and/or its agreement; Defendant made payments to Plaintiff for the amount Medicaid paid to satisfy the medical bills.

The issue before the court is whether the Plaintiff "incurred" the full amount charged by her medical providers or the amount her providers got paid by Medicaid. The Defendant and Medicaid do not have contractual relationship. Plaintiff argues she "incurred" the full expense of the bill irrespective of how the expenses were paid by Medicaid and thus the Defendant's failure to reimburse her the expenses "incurred" is a breach of contract. Plaintiff seeks judgment in the amount of $8,676.40, policy limits minus the amount already paid to Medicaid, as well as attorney's fees in the amount of $14,000.

Defendant argues Plaintiff "incurred" only the expenses at the reduced rate and therefore cannot establish a breach of contract claim. Defendant asserts that under *Gordon v. Fidelity Cas. Co. of N.Y.* plaintiff "incurs" no expense above the reduced rates negotiated with the providers, and the insurer has no duty to pay the amounts the insured did not actually pay. 238 S.C. 438, 444, 120 S.E.2d 509, 512 (1961). Additionally, the Defendant points to *Barker v. Washington Nat. Ins. Co.*, a factually similar case, where the Court held that under South Carolina law, the insured was never obligated to pay more than the amount that the hospital has agreed to accept as full payment under Medicare. No. 9:12-CV-1901-PMD, 2013 WL 1767620 (D.S.C. Apr. 24, 2013).

ELECTRONICALLY FILED - 2023 Mar 29 4:04 PM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

Following the presentation of evidence, the court took this matter under advisement. After further review and deliberation, the court respectfully finds the Plaintiff "incurred" the full amount charged at the time services were rendered and thus became entitled to the full amount of reimbursement coverage under the policy. An insurer's obligation under an insurance policy is defined by the terms of the policy and cannot be enlarged by judicial construction. *South Carolina Ins. Co. v. White*, 301 S.C. 133, 137 (Ct. App. 1990). The terms of the insurance policy must be construed most liberally in favor of the insured and where the words of a policy are ambiguous, or where they are capable of two reasonable interpretations, that construction will be adopted which is most favorable to the insured. *Pitts v. Glens Falls Indemnity Company*, 222 S.C 133 72 S.E.2d 174 (1952). Here, the term "incurred" is not defined within the policy and both parties have offered reasonable interpretations, therefore the term "incurred" is ambiguous.

The dictionary definition of "incurred" means "[t]o become liable or subject to." *Black's Law Dictionary* 768 (6th Ed. 1990). The Court finds that a patient is responsible for any charges incurred regardless of whether insurance or some other party ultimately pays it or negotiated for a reduced rate. Therefore, Plaintiff incurred the full cost of her medical treatment at the time services was rendered as she became obligated for that amount irrespective of Medicaid. The court finds *Gordon* to be distinguishable from the case at bar. In *Gordon*, the Court found that since the parties to the action stipulated the veteran plaintiff incurred no expenses, made no cash outlay, and there being no obligation on the insured to pay for the hospitalization he received at the Fort Jackson government hospital as the treatment was provided at no cost or expense to him, he 'incurred' no expenses within the meaning of the policy. 238 S.C. at 446. Unlike *Gordon*, the Plaintiff in this case was in fact charged for the services rendered at the time they were rendered thereby incurring those expenses notwithstanding Medicaid. For the same reason, this Court respectfully disagrees with the *Barker* Court and declines to follow.

As to attorney's fees, the court finds the plaintiff is not entitled to such. As a general rule, attorney's fees are not recoverable unless authorized by contract or statute. *Keeney's Metal Roofing, Inc. v. Palmieri*, 345 S.C. 550, 553, 548 S.E.2d 900, 902 (Ct. App. 2001). Under S.C. Code Ann. §38-59-40, the insurer is liable to pay all reasonable attorney's fees for the prosecution of the case where the trial judge makes a finding "that the refusal was without reasonable cause or in bad faith." The court previously dismissed the bad faith cause of action in this matter finding the insurer denial of the full amount was not in bad faith, and made no finding at trial or in its review of the record that would suggest the refusal was made in bad faith or without reasonable cause. Additionally, a review of the policy shows no inclusion of such a provision entitling the plaintiff to attorney's fee. Therefore, the court respectfully denies the plaintiff's request for attorney's fees.

Plaintiff is entitled to judgement in the amount of $8676.40.

Plaintiff's attorney Mr. Logan Cannon to prepare a more formal order in its proper format.

IT IS SO ORDERED

ELECTRONICALLY FILED - 2023 Mar 29 4:04 PM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

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Chester Common Pleas

Case Caption:	Alexis Jones , plaintiff, et al VS Progressive Northern Insurance Company
Case Number:	2020CP1200207
Type:	Order/Form 4

So Ordered

s/Brian M. Gibbons #2168 Circuit Judge

STATE OF SOUTH CAROLINA COUNTY OF CHESTER Alexis Jones and Willie Brown, Plaintiffs, -vs- Progressive Northern Insurance Company, Defendant.	IN THE COURT OF COMMON PLEAS FOR THE SIXTH JUDICIAL CIRCUIT Civil Case #: 2020-CP-12-00207 **ORDER**

This matter was heard by the Court as a bench trial on March 27, 2023. After hearing testimony, reviewing the evidence and hearing the arguments of the parties, the Court submitted a verdict on March 29, 2023 that found for the Plaintiff Alexis Jones on her breach of contract claim. This Order accompanies that verdict pursuant to Rules 52 and 58, SCRCP.

FACTS / BACKGROUND

This action arose out of Progressive's failure to pay Plaintiff Alexis Jones the full $10,000 in medical payments coverage owed to her under Willie Brown's auto policy as a result of an auto accident on October 8, 2019. The policy includes a $10,000.00 medical payments coverage limit for "reasonable expenses incurred for necessary medical services" sustained by an insured as a result of an auto accident. Plaintiff Jones is a listed driver on the policy. As a result of the accident, Plaintiff Jones sought medical care and treatment with total billing that amounted to $27,786.17. Plaintiff Jones submitted a demand to Progressive for full payment of the $10,000.00 medical payment coverage in light of the total medical bill amount.

Progressive was made aware that Plaintiff Jones is a Medicaid recipient. After receiving Plaintiff's demand, Progressive disagreed and only made payment to Plaintiff Jones for the amount Medicaid paid to satisfy the medical bills ($1,323.60) rather than the medical payment coverage limit.

ELECTRONICALLY FILED - 2023 Apr 06 12:18 PM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

ELECTRONICALLY FILED - 2023 Apr 06 12:18 PM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

This suit for breach of contract followed the dispute. At trial, Plaintiff sought full payment of the medical payments coverage that was owed under the insurance policy with Defendant Progressive. Defendant Progressive argued that Plaintiff Jones was only entitled to reimbursement for the amount paid by Medicaid. This Court was presented with the issue of determining the amount of reasonable expenses "incurred" by the Plaintiff.

The parties stipulated to facts before trial and no further objections were raised at trial. Plaintiff presented testimony from herself and Willie Jones.

LAW /ANALYSIS

This matter came before the court for a bench trial on a breach of contract claim disputing the definition of 'incurred' within the policy. The parties stipulated to the following: Plaintiff was injured in an automobile accident while riding as a passenger in a vehicle insured by the defendant; The policy includes a $10,000 medical payments coverage limit for "reasonable expense incurred" as a result of an accident; Plaintiff was treated for her injuries with the total medical expenses being in excess of the policy limits; Subsequently, medical providers agreed to accept less than the original amount charged from Medicaid as required by law and/or its agreement; Defendant made payments to Plaintiff for the amount Medicaid paid to satisfy the medical bills.

The issue before the court is whether the Plaintiff "incurred" the full amount charged by her medical providers or the amount her providers got paid by Medicaid. The Defendant and Medicaid do not have a contractual relationship. Plaintiff argues she "Incurred" the full expense of the bill irrespective of how the expenses were paid by Medicaid and thus the Defendant's failure to reimburse her the expenses "incurred" is a breach of contract. Plaintiff seeks judgment in the amount of $8,676.40, policy limits minus the amount already paid to Medicaid, as well as attorney's fees in the amount of $14,000.00

ELECTRONICALLY FILED - 2023 Apr 06 12:18 PM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

Defendant argues Plaintiff "incurred" only the expenses at the reduced rate and therefore cannot establish a breach of contract claim. Defendant asserts that under *Gordon v. Fidelity Cas. Co. of N.Y.* plaintiff "incurs no expense above the reduced rates negotiated with the providers, and the insurer has no duty to pay the amounts the insured did not actually pay. 238 S.C. 438, 444, 120 S.E.2d 509, 512 (1961). Additionally, the Defendant points to *Barker v. Washington Nat. Ins. Co.*, a factually similar case, where the Court held that under South Carolina law, the insured was never obligated to pay more than the amount that the hospital has agreed to accept as full payment under Medicare. No. 9:12-CV-1901-PMD, 2013 WL 1767620 (D.S.C. Apr. 24, 2013).

Following the presentation of evidence, the court took this matter under advisement. After further review and deliberation, the court respectfully finds the Plaintiff "incurred" the full amount charged at the time services were rendered and thus became entitled to the full amount of reimbursement coverage under the policy. An insurer's obligation under an insurance policy is defined by the terms of the policy and cannot be enlarged by judicial construction. *South Carolina Ins. Co. v. White*, 301 S.C. 133, 137 (Ct. App. 1990). The terms of the insurance policy must be construed most liberally in favor of the insured and where the words of a policy are ambiguous, or where they are capable of two reasonable interpretations, that construction will be adopted which is most favorable to the insured. *Pitts v. Glens Falls Indemnity Company*, 222 S.C 133 72 S.E.2d 174 (1952). Here, the term "incurred" is not defined within the policy and both parties have offered reasonable interpretations, therefore the term "incurred" is ambiguous.

The dictionary definition of "incurred" means "[t]o become liable or subject to." *Black's Law Dictionary* 768 (6th Ed. 1990). The Court finds that a patient is responsible for any charges incurred regardless of whether insurance or some other party ultimately pays it or negotiated for a reduced rate. Therefore, Plaintiff incurred the full cost of her medical treatment at the time

ELECTRONICALLY FILED - 2023 Apr 06 12:18 PM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

services was rendered as she became obligated for that amount irrespective of Medicaid. The court finds *Gordon* to be distinguishable from the case at bar. In *Gordon*, the Court found that since the parties to the action stipulated the veteran plaintiff incurred no expenses, made no cash outlay, and there being no obligation on the insured to pay for the hospitalization he received at the Fort Jackson government hospital as the treatment was provided at no cost or expense to him, he 'incurred' no expenses within the meaning of the policy. 238 S.C. at 446. Unlike *Gordon*, the Plaintiff in this case was in fact charged for the services rendered at the time they were rendered thereby incurring those expenses notwithstanding Medicaid. For the same reason, this Court respectfully disagrees with the *Barker* Court and declines to follow.

As to attorney's fees, the court finds the plaintiff is not entitled to such. As a general rule, attorney's fees are not recoverable unless authorized by contract or statute. Keeney's Metal *Roofing, Inc. v. Palmieri*, 345 S.C. 550, 553, 548 S.E.2d 900, 902 (Ct. App. 2001). Under S.C. Code Ann. §38-59-40, the insurer is liable to pay all reasonable attorney's fees for the prosecution of the case where the trial judge makes a finding "that the refusal was without reasonable cause or in bad faith." The court previously dismissed the bad faith cause of action in this matter finding the insurer denial of the full amount was not in bad faith, and made no finding at trial or in its review of the record that would suggest the refusal was made in bad faith or without reasonable cause. Additionally, a review of the policy shows no inclusion of such a provision entitling the plaintiff to attorney's fee. Therefore, the court respectfully denies the plaintiff's request for attorney's fees. Plaintiff is entitled to judgement in the amount of **$8,676.40.**

CONCLUSION

Based on the foregoing analysis, this Court finds that the Defendant Progressive Northern Insurance Company owed a contractual obligation to Plaintiff Jones, that Progressive Northern

Insurance Company breached that contract, and that Plaintiff experienced damages as a proximate cause of said breach.

THEREFORE, this Court hereby finds for the Plaintiff as stated on the verdict that has been filed and orders that a judgment be entered in the amount of **$8,676.40** against the Defendant.

IT IS SO ORDERED.

April __, 2023
Chester, South Carolina

_____
Judge Brian M. Gibbons
Sixth Judicial Circuit

ELECTRONICALLY FILED - 2023 Apr 06 12:18 PM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

ELECTRONICALLY FILED - 2023 Apr 06 12:18 PM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

Chester Common Pleas

Case Caption:	Alexis Jones , plaintiff, et al VS Progressive Northern Insurance Company
Case Number:	2020CP1200207
Type:	Order/Other

So Ordered

s/Brian M. Gibbons #2168 Circuit Judge

Electronically signed on 2023-04-06 11:54:05 page 6 of 6

ELECTRONICALLY FILED - 2020 Mar 30 10:34 AM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

STATE OF SOUTH CAROLINA COUNTY OF CHESTER	IN THE COURT OF COMMON PLEAS FOR THE SIXTH JUDICIAL CIRCUIT
Alexis Jones and Willie Brown, Plaintiff, -vs- Progressive Northern Insurance Company, Defendant.	Civil Case #: 2020-CP-12- **SUMMONS**

TO THE ABOVE NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED and required to appear and defend the within action and 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 the Said Complaint on the subscribers at their office located at 1169 Ebenezer Road, Rock Hill, South Carolina 29732 OR Post Office Drawer 36250, Rock Hill, South Carolina 29732, within thirty (30) days after the service thereof, exclusive of the day of such service; and if you fail to appear and defend the within action within the time aforementioned, then judgment by default will be rendered against you for the relief demanded in the Complaint.

Dated this 30 day of March 2020.

Respectfully submitted,

s/J. Logan Cannon
J. Logan Cannon, SC Bar #101688
Shaw Law Firm
Post Office Drawer 36250
Rock Hill, South Carolina 29732
(803) 329-4200
Attorney for the Plaintiff

ELECTRONICALLY FILED - 2020 Mar 30 10:34 AM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

STATE OF SOUTH CAROLINA COUNTY OF CHESTER	IN THE COURT OF COMMON PLEAS FOR THE SIXTH JUDICIAL CIRCUIT
Alexis Jones and Willie Brown, Plaintiff, -vs- Progressive Northern Insurance Company, Defendant.	Civil Case #: 2020-CP-12- **BAD FAITH COMPLAINT AND DECLARATORY JUDGMENT**

Now come the Plaintiffs complaining of the Defendant herein, and would respectfully allege and show the following:

PARTIES AND JURISDICTION

1. Plaintiffs are citizens and residents of Chester County, South Carolina.

2. Defendant is a corporation organized and existing under the laws of one of the states of the United States and maintains agents and servants in the county and state aforesaid for the purpose of carrying on its business.

3. At all relevant times herein, Defendant Progressive, regularly and repeatedly conducted business within Chester County, South Carolina. As such, Defendant, its agents, servants, adjusters, counsel and employees are charged with the knowledge of those laws and regulations as they relate to the evaluation, processing and handling of insurance claims, including but not limited to medical payments, and/or personal injury protection coverage and claims.

4. Defendant and Plaintiff Brown entered into an insurance contract in Chester County, South Carolina.

ELECTRONICALLY FILED - 2020 Mar 30 10:34 AM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

5. This Court has jurisdiction over the subject matter and the parties, and venue is appropriate in the Chester County Court of Common Pleas.

FACTS AND COMPLAINT FOR DAMAGES

6. Plaintiffs repeat and reiterate their foregoing paragraphs as if fully set forth herein verbatim.

7. At all relevant times herein, Defendant acted by and through its agents, servants, adjusters, counsel and/or employees, all of whom acted within the course and scope of their agency and/or employment.

8. At all relevant times herein, Plaintiff Brown's insurance policy (policy no. 930693102) included a provision for Medical Payments and/or Personal Injury Protection (hereinafter "MedPay") in the amount of ten thousand ($10,000.00) dollars.

9. At all relevant times herein, Plaintiff paid in full all premiums requested by Defendant with respect to the policy, and the policy was in full force and effect on or before October 8, 2019.

10. On or about October 8, 2019, Plaintiff Jones was driving Plaintiff Brown's vehicle which was insured by Defendant.

11. On or about the same date, Plaintiff Jones was struck in the rear by a motor vehicle owned and operated by Corissia Lakathern on Great Falls Highway in Lancaster County, South Carolina.

12. That, as a direct proximate result of the collision, Plaintiff Jones suffered bodily injuries and Plaintiff's medical providers submitted billing statements in excess of the MedPay coverage limits of $10,000.00.

ELECTRONICALLY FILED - 2020 Mar 30 10:34 AM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

13. Thereafter, Plaintiff Jones provided the medical provider billing statements to Defendant and made a claim for MedPay pursuant to Plaintiff Brown's insurance policy.

14. The Defendant, pursuant to its established institutional practices and procedures, unreasonably and unjustifiably denied payment in full of the MedPay claim by:

a. Deliberately and/or recklessly ignoring the medical reports, records, and medical information already in Defendant's possession and information which had been fully review by Defendant's claim personnel;

b. Repeatedly failing to review for completeness Defendant's own files that referred or related to the Plaintiff's MedPay claim, to the accident and the injuries suffered;

c. Failing to issue payment without justification or basis; and

d. Such other particulars as the evidence at trial may show.

15. At all relevant times, Defendant reaped a financial benefit from its denial in resolving the MedPay claim.

16. As a result of Defendant's wrongful actions, Plaintiff Jones has not received the benefits to which she is entitled to recover under Defendant's policy and has suffered monetary damages.

17. Defendant's conduct was in bad faith in the *inter alia*:

a. Defendant misrepresented the benefits, advantages, conditions or terms of its insurance policy;

b. Defendant misrepresented pertinent facts or contract provisions relating to coverages at issue;

ELECTRONICALLY FILED - 2020 Mar 30 10:34 AM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

c. Defendant failed to acknowledge and act promptly upon written or oral communications with respect to claims arising under insurance policies;

d. Defendant failed to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies;

e. Defendant refused to pay claims without conducting a reasonable investigation based upon all available information;

f. Defendant did not attempt in good faith to effectuate prompt, fair, and equitable settlement of claims in which the company's liability to pay under the MedPay policy has become reasonably clear;

g. Defendant acted to compel Plaintiff to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amount due;

h. Defendant invoked and/or threatened to invoke policy defenses not in good faith and with a reasonable expectation of prevailing with respect to the policy defense, but for the primary purpose of discouraging or reducing a claim;

i. Defendant engaged in the improper claims practices as set forth in S.C. Code Ann. Section 38-59-20 (1976 as amended).

18. The actions taken by Defendant were committed in wanton, malicious, and/or reckless disregard to the rights of the Plaintiffs and without a reasonable basis, the lack of which reasonable basis Defendant knew or recklessly disregarded, thereby justifying an award of punitive damages and attorney's fees.

19. Defendant conduct was in breach of contract in the *inter alia*:

ELECTRONICALLY FILED - 2020 Mar 30 10:34 AM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

a. Defendant entered into a contractual relationship with Plaintiff Brown whereby it agreed in consideration for premiums paid, to pay for reasonable and necessary healthcare and MedPay incurred by 'an insured person's' injuries in auto collisions;

b. To the extent there are any, Plaintiffs have performed all conditions precedent to Defendant's obligations to pay the full amount of all reasonable and necessary health care and other MedPay benefits;

c. As a direct and proximate result of these breaches of contract, Defendant has damaged the Plaintiffs in the amount to be determined by a jury at trial.

20. Defendant's conduct as averred hereinabove was in breach of fiduciary duty in the *inter alia*:

a. At all relevant times, Defendant acting through its agents and employees, owed to the Plaintiffs fiduciary duties in the adjustment of MedPay claims;

b. Additionally, at all relevant times, Defendant acting through its agents and employees, owed to the Plaintiffs fiduciary duties to fairly, accurately and fully represent the terms and conditions of insurance policies sold to the Plaintiffs, including without limitation, any restrictions, omissions, or limitations, thereto;

c. Defendant breached its fiduciary duties by its actions and conduct alleged herein;

ELECTRONICALLY FILED - 2020 Mar 30 10:34 AM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

d. As a direct and proximate result of the breaches of these duties the Plaintiffs suffered damages in an amount to be determined by a jury;

21. Defendant's conduct was in breach of the Covenant of Good Faith and Fair Dealing in the, *inter alia*:

a. Defendant is subject to the duty of good faith and fair dealing, and owes its insured the fiduciary duty both to disclose relevant matters arising from their relation, and to inform the insured about any limitation on benefits in clear and explicit language in its policies.

b. That Defendant's actions are in violation of its duty of good faith and fair dealing that all its actions be actuated by good faith, to abstain from deception, and practice honesty and equity in all matters related to the business of insurance.

c. At the time Defendant sold Plaintiff Brown the policy of insurance, the Defendant knew of and intended to implement its secretly disclosed policy and practice in the events its insured were injured in auto collisions.

d. The special relationship between the parties made the injury from the malicious breach of the implied covenant of good faith and fair dealing relating to MedPay coverage foreseeable, and thereby tortious. Defendant and the Plaintiffs are parties to a contract of policy of insurance, such that:

i. Defendant owed the Plaintiffs a duty to exercise reasonable care to avoid misrepresenting facts;

ELECTRONICALLY FILED - 2020 Mar 30 10:34 AM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

ii. Defendant is subject to a standard of care independent of the contract, pursuant to the special relationship between the Plaintiffs and their insurer;

iii. Defendant's conduct, including its failure to perform in accordance with the reasonable expectation of its insured, and its other acts as herein alleged, destroyed the Plaintiffs' right to receive the benefits of the contract, and resulted in other damages in an amount to be determined at or prior to trial.

22. Defendant's conduct was in breach of contract accompanied by a fraudulent act in the, *inter alia*:

a. Defendant entered into a contractual relationship with Plaintiff Brown whereby it agreed in consideration for premiums paid, to pay for reasonable and necessary health care and other MedPay benefits incurred by its insured's injuries in auto collisions;

b. To extent there are any, Plaintiffs have performed all conditions precedent to Defendant's obligation to pay the full amount of all reasonable and necessary health care and other PIP benefits;

c. Defendant had fraudulent intent relating to breach of contract;

d. Defendant committed a fraudulent act accompanying its breach of contract.

23. Defendant's actions were motivated by its own financial interests and done with indifference to the rights and interests of the Plaintiffs, or conducted with reckless, willful or wanton disregard under the laws of this state where the Defendant's decisions, policies or acts

ELECTRONICALLY FILED - 2020 Mar 30 10:34 AM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

were decided entitling the Plaintiffs to punitive damages in an amount to be determined by a jury.

24. Defendant's conduct was in violation of the South Carolina Unfair Trade Practice Act in that, *inter alia*:

a. Section 39-5-20 of the South Carolina Code of Laws ("South Carolina Unfair Trade Practice Act) states that "[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.";

b. Defendant willfully and knowingly violated Section 39-5-20 by engaging in both unfair and deceptive acts;

c. That such act is capable of repetition and against public policy;

d. As of October 8, 2019, Plaintiffs have suffered damages in the amount of ten thousand and 00/100 dollars ($10,000.00) from Defendant's bad faith, fraud, and breach of fiduciary duty;

e. Plaintiffs would have not been damaged but for the unfair and deceptive act of the Defendant;

f. That S.C. Code 39-5-140 provides that the Court shall award any person who suffers an ascertainable loss by another person for an unfair or deceptive method three times the actual damages sustained, reasonable attorney's fees and costs and other relief as the Court deems necessary.

g. By reason of the Defendant's violation of the South Carolina Unfair Trade Practice Act, Plaintiffs are informed and believes he is entitled to

judgment against Defendant in an amount of $30,000.00 and reasonable attorney's fees and costs.

25. Defendant's conduct was in violation of the South Carolina Code of Laws Section 38-77-144, *inter alia*:

a. Section 38-77-144 of the South Carolina Code of Laws states that "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.";

b. Defendant willfully and knowingly violated Section 38-77-144 by refusing to pay Plaintiff any amount above what Medicaid paid to Plaintiff Jones's health care providers;

c. That such act is a setoff and in direct violation of the statute;

d. Defendant owes Plaintiff Jones $8,676.40 in outstanding Medpay coverage;

26. That the Plaintiffs are informed and believe they are entitled to judgment against the Defendant for actual damages in an amount to be determined by a jury; an appropriate amount of punitive damages; and reasonable attorney's fees.

27. That the total amount in controversy, including fees and costs, does not exceed seventy-five thousand ($75,000.00) Dollars.

28. That Plaintiffs are not now seeking, nor will she ever seek, in excess of seventy-five Thousand ($75,000.00) as a result of the allegations alleged in the Complaint, inclusive of actual and punitive damages.

ELECTRONICALLY FILED - 2020 Mar 30 10:34 AM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

ELECTRONICALLY FILED - 2020 Mar 30 10:34 AM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

29. That the Plaintiffs hereby agree to and stipulates that the amount in controversy for the aggregate total of Plaintiffs, under no circumstances will exceed seventy-five thousand ($75,000.00) inclusive of both actual and punitive damages, fees and costs, and that PlaintiffS will not attempt to plead, prove, or recover damages in excess of $75,000.00.

WHEREFORE, Plaintiffs pray for the following:

A. Judgment against the Defendant for actual damages in an amount to be determined by a jury, an appropriate amount of punitive damages; reasonable attorney's fees, for the costs of this action, for pre-judgment interest on all special damages, for post-judgment interest, and for such other and further relief as this court may deem just and proper not to exceed Seventy-five thousand dollars ($75,000.00).

B. A declaratory judgment finding and declaring that:

i. Defendant's policy was valid and in effect on or about October 8, 2019.

ii. That Defendant's policy contained MedPay coverage in the amount of $10,000.00.

iii. That Plaintiff Jones had medical bills as of October 8, 2019 exceeding the $10,000.00 Medpay limit.

iv. That Defendant issue a medical payments check in the amount of $8,676.40, the amount owed and due to Plaintiff Jones.

Respectfully submitted,

s/J. Logan Cannon_____
J. Logan Cannon, SC Bar #101688
Shaw Law Firm
Post Office Drawer 36250
Rock Hill, South Carolina 29732
(803) 329-4200
Attorney for the Plaintiff

March 30, 2020

ELECTRONICALLY FILED - 2020 Mar 30 10:34 AM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

ELECTRONICALLY FILED - 2020 Apr 29 9:20 AM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF CHESTER	CIVIL ACTION NO: 2020-CP-12-00207
Alexis Jones and Willie Brown, Plaintiffs, v. Progressive Northern Insurance Company, Defendant.	**ANSWER ON BEHALF OF DEFENDANT**

TO: J. LOGAN CANNON, ESQUIRE, ATTORNEY FOR PLAINTIFFS AND TO PLAINTIFFS ABOVE-NAMED:

The Defendant, Progressive Northern Insurance Company (hereinafter "Progressive"), answering the Plaintiffs' Complaint herein, would respectfully show unto the Court that:

FOR A FIRST DEFENSE

1. The Defendant denies each and every allegation of the Plaintiffs' Complaint not hereinafter specifically admitted.

2. Paragraphs one (1) of Plaintiffs' Complaint is admitted upon information and belief.

3. As to paragraphs two (2) and three (3) of Plaintiffs' Complaint, Progressive would show that it is a corporation organized and existing under the laws of the State of Wisconsin with its principal place of business in the State of Ohio but that it is authorized to transact business and sell insurance policies in South Carolina; otherwise, paragraphs two (2) and three (3) are denied.

4. As to paragraph four (4) of Plaintiffs' Complaint, Progressive admits that it issued a personal auto policy, Policy No. 930693102, to Willie Brown, and Progressive craves reference to the policy for all terms, conditions and provisions therein; otherwise, paragraph (4) is denied.

5. Paragraph five (5) of Plaintiffs' Complaint is admitted.

ELECTRONICALLY FILED - 2020 Apr 29 9:20 AM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

6. In response to paragraph six (6) of Plaintiffs' Complaint, Progressive repeats its responses to paragraphs one (1) through five (5) above as if fully set forth verbatim herein.

7. As to paragraphs seven (7), eight (8) and nine (9) of Plaintiffs' Complaint, Progressive issued a personal auto policy, Policy No. 930693102, to Willie Brown and Progressive craves reference to the policy for all terms, conditions and provisions therein; Progressive admits such policy includes a Medical Payments coverage limit of $10,000 each person and all premiums were paid and the policy was in effect at the time of the events described in the Complaint; otherwise, paragraphs seven (7), eight (8) and nine (9) are denied.

8. As to paragraphs ten (10) and eleven (11) of Plaintiffs' Complaint, Progressive is without sufficient knowledge and information to either admit or deny the allegations of paragraphs ten (10) and eleven (11), and therefore, paragraphs ten (10) and eleven (11) are denied.

9. As to paragraphs twelve (12), thirteen (13), fourteen (14), fifteen (15) and sixteen (16) of Plaintiffs' Complaint, Progressive would show that the policy issued to Willie Brown, Policy No. 930693102, provides Medical Payments coverage for certain "reasonable expenses **incurred**" by an "insured person" for necessary medical services; prior to Plaintiff Jones submitting a claim to Progressive for Medical Payments coverage, Medicaid paid a portion of Jones' medical bills and negotiated with the providers for a large reduction in the amount Jones owed for such bills; Progressive paid Jones $1,323.60 in Medical Payments coverage, which represents the full amount required to reimburse Medicaid for the payments made on behalf of Jones and the amount required to pay the outstanding amounts owed on Jones' submitted medical bills (after the medical provider's reductions and Medicaid's payment) – i.e. all medical expense amounts actually incurred by Jones; Plaintiff Jones has submitted no additional medical

bills showing outstanding balances owed by her; consequently, Progressive has paid Jones all amounts due and owing under the Progressive policy's Medical Payments coverage as a result of the October 8, 2019 accident; otherwise, paragraphs twelve (12), thirteen (13), fourteen (14), fifteen (15) and sixteen (16) are denied.

10. Paragraphs seventeen (17) and eighteen (18) of Plaintiffs' Complaint are denied.

11. As to paragraph nineteen (19) of Plaintiffs' Complaint, Progressive would show that Policy No. 930693102 only provides Medical Payments coverage for certain medical expenses actually incurred by insureds and, according to the medical bills Plaintiff Jones has submitted, she has only actually incurred medical expenses of $1,323.60, which Progressive has paid; any other amounts initially billed by Jones' medical providers were reduced by such medical providers to total $1,323.60 and, consequently, Progressive has paid all amounts due and owing under its Medical Payments coverage as a result of the October 8, 2019 accident; otherwise paragraph nineteen (19) is denied.

12. Paragraphs twenty (20), twenty-one (21), twenty-two (22), and twenty-three (23) of Plaintiffs' Complaint are denied.

13. As to Paragraph twenty-four (24) of Plaintiffs' Complaint, the South Carolina Unfair Trade Practices Act, South Carolina Code §§ 39-5-10, et seq., is inapplicable to the business of insurance, and paragraph twenty-four (24) based on the same is denied.

14. Paragraphs twenty-five (25) and twenty-six (26) of Plaintiffs' Complaint are denied.

15. It does not appear that any response is required to paragraphs twenty-seven (27), twenty-eight (28), and twenty-nine (29) of Plaintiffs' Complaint, but to the extent a response is required, those paragraphs are denied.

ELECTRONICALLY FILED - 2020 Apr 29 9:20 AM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

16. The "Wherefore" paragraph in Plaintiffs' Complaint is denied.

FOR A SECOND DEFENSE

17. Progressive would show, upon information and belief, that the Complaint fails to state facts sufficient to constitute a cause of action pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure and, therefore, the Plaintiff's Complaint should be dismissed with costs.

FOR A THIRD DEFENSE

18. Progressive would show that Plaintiff Willie Brown is not a real party in interest in that he has not asserted any claim for coverage under the policy related to the October 8, 2019 accident and therefore, Plaintiff Willie Brown lacks standing to maintain this action and should be dismissed as a plaintiff with costs.

FOR A FOURTH DEFENSE

19. Any award of punitive damages should not exceed the greater of three (3) times the amount of compensatory damages as provided for in S.C. Code Ann. §15-32-530.

FOR A FIFTH DEFENSE

20. Pursuant to S.C. Code Ann. §15-32-520, any proceeding to determine punitive damages should be bifurcated from any trial to determine liability and compensatory damages.

FOR A SIXTH DEFENSE

21. This Defendant would show, upon information and belief, that the Plaintiffs' claims for punitive damages violate the Fifth, Sixth, Seventh, Eighth and Fourteenth Amendments to the Constitution of the United States of America in that it violates the double jeopardy clause in that this Defendant could be subjected to multiple awards of punitive damages for the same set of facts; the self-incrimination clause is being violated because this Defendant

ELECTRONICALLY FILED - 2020 Apr 29 9:20 AM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

ELECTRONICALLY FILED - 2020 Apr 29 9:20 AM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

can be compelled to give testimony against itself in a penalty situation such as punitive damages; the assessment of punitive damages by a burden of proof less than beyond a reasonable doubt is violative of the Sixth and Fourteenth Amendments in that punitive damages are a fine or penalty and are, therefore, quasi-criminal in nature; Plaintiffs' claims for punitive damages violate this Defendant's right to access the courts as guaranteed by the Seventh and Fourteenth Amendments because the threat of an award of punitive damages chills this Defendant's exercise of that right; the Plaintiff's claim for punitive damages violates the Eighth Amendment's guarantee that excessive fines shall not be imposed, the Plaintiffs' claim for punitive damages violates both the due process and equal protection clauses of the Fourteenth Amendment in that the standard for awarding either punitive damages is unduly vague and, therefore, violates both procedural and substantive due process safeguards; therefore, the Plaintiffs' claims for punitive damages should be dismissed.

FOR A SEVENTH DEFENSE

22. The South Carolina Unfair Trade Practices Act, South Carolina Code §§ 39-5-10, et seq., is inapplicable to the business of insurance, and Plaintiffs' claim based on such Act should be dismissed with costs.

FOR AN EIGTH DEFENSE

23. South Carolina Code § 38-59-20 does not create a private cause of action, and Plaintiffs' claim based on such statute should be dismissed with costs.

WHEREFORE, Defendant Progressive prays that the Court inquire into this matter and issue a declaratory judgment that the Plaintiffs are not entitled to any additional Medical Payments coverage under the policy issued to Willie Brown as a result of the October 8, 2019

accident, together with the costs of this action and such other and further relief as the Court may deem just and proper.

MURPHY & GRANTLAND, P.A.

s/J.R. Murphy, Esquire
J.R. Murphy, Esquire (SC Bar #7941)
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Attorneys for Defendant Progressive Northern Insurance Company

Columbia, South Carolina
April 28, 2020

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ELECTRONICALLY FILED - 2020 May 11 3:24 PM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF CHESTER	CIVIL ACTION NO: 2020-CP-12-00207
Alexis Jones and Willie Brown, Plaintiffs, v. Progressive Northern Insurance Company, Defendant.	**MOTION TO DISMISS**

TO: J. LOGAN CANNON, ESQUIRE, ATTORNEY FOR PLAINTIFFS AND TO PLAINTIFFS ABOVE-NAMED:

YOU WILL PLEASE TAKE NOTICE that the Defendant, Progressive Northern Insurance Company, by its undersigned attorney will move before the Presiding Judge of the County Court of Common Pleas at the Chester County Courthouse at 10:00 a.m. on the tenth (10th) day after service hereof, or as soon thereafter as counsel may be heard for an Order dismissing the Plaintiff's Complaint pursuant to South Carolina Rules of Civil Procedure 12(b)(6) on the grounds that the Plaintiff's Complaint fails to state facts sufficient to constitute a cause of action against this Defendant. The basis for this motion is more clearly set out in the attached memorandum of law.

MURPHY & GRANTLAND, P.A.

s/J.R. Murphy
J.R. Murphy, Esquire (SC Bar #7941)
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(803) 782-4100
Attorneys for Defendant Progressive Northern Insurance Company

Columbia, South Carolina
May 11, 2020

ELECTRONICALLY FILED - 2020 May 11 3:45 PM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF CHESTER	CIVIL ACTION NO: 2020-CP-12-00207
Alexis Jones and Willie Brown, Plaintiffs, v. Progressive Northern Insurance Company, Defendant.	**DEFENDANT'S MEMORANDUM IN SUPPORT OF ITS MOTION TO DISMISS**

Defendants Progressive Northern Insurance Company ("Progressive"), by and through its undersigned counsel, hereby submits its Memorandum of Law in Support of its Motion to Dismiss Plaintiffs' claims and, in the alternative, to dismiss Plaintiff Willie Brown as a Plaintiff.

SUMMARY

This action arises out of Progressive's payment of Plaintiff Alexis Jones' Medical Payments claim for an alleged October 8, 2019 auto accident. Jones' submitted her Medical Payments claim under a personal auto policy issued to Willie Brown under which Jones is listed as a driver and resident relative. The policy includes a $10,000 Medical Payments coverage limit for certain medical "expenses incurred" by an insured as a result of an accident. Jones is a Medicaid recipient, and Medicaid negotiated reduced rates with her service providers before Jones submitted her Medical Payments coverage claim. Progressive based payment of Jones' Medical Payments claim on the Medicaid-adjusted rates charged by the medical providers rather than total charges listed on the medical providers' initial bills. In their Complaint, Plaintiffs base their various causes of action on Progressive's payment of the Medicaid-adjusted provider rates rather than the providers' "sticker price." Because the policy only provides Medical Payments coverage for certain medical "expenses incurred" by Jones and Jones did not incur expenses beyond the Medicaid-adjusted rates, Plaintiffs' claims fail as a matter of law.

ELECTRONICALLY FILED - 2020 May 11 3:45 PM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

In addition to this being premised on this improper basis, Plaintiffs' statutory claims are improper because those statutes do not apply to the conduct alleged in the Complaint. Therefore, Plaintiffs' common law and statutory claims should be dismissed. In the alternative, Plaintiff Brown is not a proper plaintiff to this action and should be dismissed.

FACTS

A. The Progressive Policy

Progressive issued a personal auto policy, Policy No. 930693102, to Willie Brown with effective dates of June 21, 2019 to December 21, 2019 (the "Policy"). (Compl. ¶ 8); (Ex. A, Policy).[1] The Policy includes a Medical Payments coverage limit of $10,000 each person. (Compl. ¶ 8); (Ex. A, Policy). The Policy only provides Medical Payments coverage for certain medical expenses actually incurred by an insured person. The Policy provides in pertinent part:

PART II – MEDICAL PAYMENTS COVERAGE

INSURING AGREEMENT

If **you** pay the premium for this coverage, **we** will pay the reasonable expenses incurred for necessary **medical services** received within three years from the date of a **motor vehicle** accident because of **bodily injury**:

1. Sustained by an **insured person**; and
2. Caused by that **motor vehicle** accident.

(Ex. A, Policy, p. 14). Thus, the Policy only provides Medical Payments coverage for certain "expenses **incurred** for necessary medical services."

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[1] Without converting a motion to dismiss into a motion for summary judgment, the Court may "consider documents that are incorporated by reference in the complaint but not actually attached thereto." *Brazell v. Windsor*, 384 S.C. 512, 516, 682 S.E.2d 824, 826 (2009). This "prevents a plaintiff from benefitting from his own oversight or from surviving a motion to dismiss by intentionally omitting documents upon which their claims are based." *Id.* The Progressive Policy is incorporated by reference in Plaintiffs' Complaint, particularly since Plaintiffs allege Progressive breached the insurance contract and seek additional coverage under the policy. *See, e.g.*, (Compl. ¶¶ 4, 8, 12-14, 16-17, 19). Therefore, Defendant has relied upon and attached the policy herein.

ELECTRONICALLY FILED - 2020 May 11 3:45 PM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

B. The October 8, 2019 Accident and Jones' Resulting Medical Payments Claim

Plaintiffs' allege that Plaintiff Jones was involved in an auto accident on October 8, 2019. (Compl. ¶ 11). Plaintiff Jones made a claim for Medical Payments coverage under the Progressive Policy. (Compl. ¶ 13). With her claim, Jones submitted medical provider billing statements in excess of $10,000. (Compl. ¶¶ 12-13). However, Jones is a Medicaid beneficiary, and the Complaint does not allege what amount of medical expenses Jones has paid or become liable to pay to her medical providers. *See* (Compl. ¶ 25.b.). Specifically, the Complaint does not allege that Jones has paid or has become legally obligated to pay the charges on the submitted bills rather than her providers' Medicaid-adjusted rates. *See* (Compl.).

The Complaint alleges Jones is owed the full $10,000 Medical Payments coverage limit and that Progressive still "owes Plaintiff Jones $8,676.40 in outstanding Medpay coverage." (Compl. ¶¶ 14, 16, 25, Wherefore B.) Thus, Progressive has paid Jones Medical Payments coverage of $1,323.60 ($10,000 - $8,676.40 = $1,323.40). *See* (Compl. ¶¶ 17, 25, Wherefore B). At a minimum, such amount is equal to the amount Medicaid paid to Jones' healthcare providers. *See* (Compl. ¶ 25.d. (alleging Progressive refused "to pay Plaintiff ***any amount above*** what Medicaid paid to Plaintiff Jones's health care providers" (emphasis added)). The Complaint asserts the following causes of action related to Jones' Medical Payments coverage claim: (1) bad faith; (2) breach of contract; (3) breach of fiduciary duty; (4) breach of the covenant of good faith and fair dealing; (5) breach of contract accompanied by a fraudulent act; (6) violation of the South Carolina Unfair Trade Practice Act; and (7) violation of South Carolina Code § 38-77-144. (Compl.).

ARGUMENT

Plaintiffs assert two statutory claims: (1) violation of the South Carolina Unfair Trade Practice Act (the "SCUTPA"); and (2) violation of South Carolina Code § 38-77-144. Both statutory causes of action must be dismissed because such statutes are inapplicable to the conduct alleged. Plaintiff

ELECTRONICALLY FILED - 2020 May 11 3:45 PM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

also asserts numerous common-law causes of action, all of which are premised on Progressive's payment of Jones' medical payments claim at the Medicaid-reduced provider rates. Because the Progressive Policy only provides Medical Payments coverage for "expenses incurred," such claims must be dismissed. Under both federal and state Medicaid provisions, Jones never incurred expenses beyond her medical providers' Medicaid-adjusted rates. Alternatively, Plaintiff Brown is not a proper plaintiff to this action and he should be dismissed.

I. Plaintiffs' "violation of the South Carolina Unfair Trade Practice Act" claim must be dismissed because the Act is not applicable to the business of insurance.

In the Complaint, Plaintiffs allege as a cause of action "violation of the South Carolina Unfair Trade Practices Act." (Compl. ¶ 24). Such claim must be dismissed because the South Carolina Unfair Trade Practices Act, South Carolina Code §§ 39-5-10, et seq. ("SCUTPA"), does not regulate and is inapplicable to the business of insurance. *See, e.g., Trustees of Grace Reformed Episcopal Church v. Charleston Ins. Co.*, 868 F. Supp. 128, 131 (D.S.C. 1994) (stating S.C. Code "§ 39–5–40(c) exempts from the coverage of SCUTPA all unfair trade practices in the business of insurance"); *Lewis v. Omni Indemnity Co.*, 970 F. Supp. 2d 437, 451 (D.S.C. 2013); *Hicklin v. State Farm Fire & Cas. Co.*, No. 5:17-CV-03463-SAL, 2020 WL 1244631, at *10 (D.S.C. Mar. 13, 2020) (granting insurer judgment as a matter of law on SCUPTA claim against it).[2]

As the Court in *Thomas v. Tramaine-Frost* thoroughly explained:

> [I]nsurance providers are separately regulated under South Carolina law and are not subject to the SCUTPA. SCUTPA does not create a private right of action against insurers and/or agents of insurers. Section 39–5–40(c) of the SCUTPA provides that "[t]his article does not supersede or apply to unfair trade practices covered and regulated under Title 38, Chapter 57, §§ 38-57-10 through 38-55-320." S.C. Code Ann. § 39–5–40(c). Chapter 57 "clearly is intended to define and regulate all unfair

[2] *See also Whitehead v. Travelers Indem. Co. of Am.*, No. 3:15-CV-04200-JMC, 2016 WL 5920857, at *2 (D.S.C. Oct. 11, 2016); *Tapp v. Minnesota Life Ins. Co.*, No. CV 3:15-4799-MBS, 2017 WL 2839636, at *4 (D.S.C. June 29, 2017); *Colter v. Omni Ins. Co.*, No. 3:15-CV-04171-JMC, 2016 WL 3690123, at *3 n.1 (D.S.C. July 12, 2016) (dismissing plaintiff's SCUPTA claim against insurer); *Meadows v. Nationwide Mut. Ins. Co.*, No. 1:14-CV-04531-JMC, 2015 WL 3490062, at *4 (D.S.C. June 3, 2015).

ELECTRONICALLY FILED - 2020 May 11 3:45 PM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

> trade practices in the business of insurance" and "SCUTPA, through § 39–5–40(c), provides a clear exemption for the practices covered by Chapter 57." *Trustees of Grace Reformed Episcopal Church v. Charleston Ins. Co.*, 868 F. Supp. 128, 130 (D.S.C. 1994). Accordingly, "all unfair trade practices regarding the insurance business are regulated by the Insurance Trade Practices Act, §§ 38–57–10 et seq., and are exempt from the coverage of SCUTPA." *Id.* at 130-31; *see also Advanced Pain Therapies, LLC v. Hartford Fin. Servs. Grp., Inc.*, No. 3:14-cv-00050-MGL, 2014 WL 4402800, at *4 (D.S.C. Sept. 3, 2014) (finding that a plaintiff's SCUTPA claim failed as a matter of law because the claim pertained to the business of insurance and such a claim is "not regulated under SCUTPA"); *K & M Merch., LLC v. Am. W. Home Ins. Co.*, No. 4:09-cv-1943-TLW, 2010 WL 597217, at *2 (D.S.C. Feb. 16, 2010) (granting a defendant's motion to dismiss a claim under the SCUTPA where the claim related to a dispute over insurance coverage and thus was "not supported by the terms of the [SCUTPA] itself nor by the relevant case law interpreting the [SCUTPA]"); *Ray v. Gen. Ins. Co. of Am.*, No. 3:11-CV-449-JFA, 2011 WL 1254106, at *2 (D.S.C. Apr. 4, 2011) (dismissing a plaintiff's claim under the SCUTPA with prejudice where the claim involved "conduct concerning the business of insurance"). Furthermore, the Insurance Trade Practices Act (ITPA), S.C. Code Ann. § 38-57-10, et seq., "clearly manifests legislative intent to create an administrative remedy and not a private right of action." *Masterclean, Inc. v. Star Ins. Co.*, 347 S.C. 405, 556 S.E.2d 371 (2001). Thus, any claim under the ITPA is not properly before the court. For these reasons, Plaintiff has failed to state a claim against the GEICO Defendants upon which relief may be granted and dismissal is appropriate.

No. 4:16-CV-1266-TLW-TER, 2017 WL 9287004, at *5 (D.S.C. Jan. 12, 2017), *report and recommendation adopted*, No. 4:16-CV-1266-TLW, 2017 WL 781071 (D.S.C. Feb. 28, 2017). Accordingly, Plaintiffs' SCUPTA claim against Progressive must be dismissed because the Act exempts the business of insurance from its coverage and is inapplicable to the same.

II. Plaintiffs' "violation of South Carolina Code of Laws Section 38-77-144" claim must be dismissed because the "violation" alleged by Plaintiffs is not the conduct prohibited by the statute.

South Carolina Code § 38-77-144 provides that "medical payments coverage…is not subject to a setoff." S.C. Code § 38-77-144. Plaintiffs' allege that Progressive's payment of medical payments coverage at the Medicaid-adjusted provider rates constitutes a setoff under § 38-77-144, but it does not. *See* (Compl. ¶ 25). The South Carolina Supreme Court recently described what constitutes a "setoff" under South Carolina Code § 38-77-144. In *Cothran v. State Farm Mut. Auto. Ins. Co.*, a provision in the insurance policy purported to reduce the insurer's obligation to pay PIP coverage to

the insured by the amount the workers compensation carrier paid for the insured's medical expenses. 427 S.C. 545, 550, 831 S.E.2d 919, 922 (2019). The Court held that this was a "setoff" in violation of § 38-77-144. *Id.* As the Court explained: "The term 'setoff' is used universally to describe the reduction of PIP benefits by the amount of a third-party payment." *Id.* at 550 n.3, 831 S.E.2d at 922 n.3.

Thus, a "setoff," as that term has been defined by the South Carolina Supreme Court, would occur if Progressive attempted to reduce its medical payments coverage by the amounts paid by Medicaid. That is not what Plaintiffs have alleged. Plaintiffs' Complaint does not allege that Progressive has reduced its Medical Payments benefits by the amount of the Medicaid payment. *See* (Compl. ¶ 25). Rather, Plaintiffs allege Progressive has "violated Section 38-77-144 by refusing to pay Plaintiff ***any amount above*** what Medicaid paid to Plaintiff Jones's health care providers." (Compl. ¶ 25) (emphasis added). Paying medical payments coverage at a Medicaid-adjusted provider rate does not constitute a "reduction of PIP benefits by the amount of a third-party payment." *Id.* at 550 n.3, 831 S.E.2d at 922 n.3. Because this does not constitute a "setoff" under South Carolina Code § 38-77-144, Plaintiffs' "violation of South Carolina Code of Laws Section 38-77-144" claim must be dismissed.

Moreover, nothing in South Carolina Code § 38-77-144 requires Medical Payments coverage for amounts greater than those actually incurred by the insured – i.e. amounts greater than the reduced rates negotiated between Medicaid and medical providers. Such a requirement would be contrary to prior South Carolina Supreme Court precedent.

In a similar case, *Gordon v. Fidelity & Cas. Co. of N. Y.*, the insured had an insurance policy that included medical expense coverage under which the insurer "agreed 'to pay all reasonable expense incurred' for necessary medical and surgical service." 238 S.C. 438, 444, 120 S.E.2d 509, 512 (1961). The Court held the insurer was not required to provide any medical expense coverage to

ELECTRONICALLY FILED - 2020 May 11 3:45 PM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

ELECTRONICALLY FILED - 2020 May 11 3:45 PM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

the insured because the insured did not incur any expenses for medical treatment. *Id.* at 446, 120 S.E.2d at 513. The insured was a soldier and received free medical treatment at an army hospital for injuries he sustained in a motor vehicle accident. *Id.* at 441, 120 S.E.2d at 510. Thus, the insured incurred no expense for his treatment. As the Court explained:

> [T]he [insured] incurred no expense and made no cash outlay for the treatment he received at the Fort Jackson hospital, the [insurer] was not liable to the [insured] for the reasonable cost of his hospitalization, because the [insurer] had limited its liability to pay only 'all reasonable expenses incurred' by the [insured]. There being no obligation on the part of the [insured] to pay for the hospitalization he received at Fort Jackson hospital, he 'incurred' no expense within the meaning of the provision of the policy of insurance issued by the [insurer].

Id. at 446, 120 S.E.2d at 513. Likewise, when Medicaid negotiates with medical providers for reduced rates for medical services, the insured incurs no expense above the reduced rates negotiated with the providers, and the insurer has no duty to pay amounts the insured did not actually incur.

III. Plaintiffs' breach of contract, breach of contract accompanied by a fraudulent act, bad faith, breach of the covenant of good faith and fair dealing, and breach of fiduciary duty claims should be dismissed because Progressive's alleged actions at issue were in accordance with the terms of the insurance contract and South Carolina law.

Like the foregoing claims, each of these claims are also premised on Progressive paying the reduced rates Medicaid negotiated with Plaintiff Jones' medical providers rather than "sticker prices" on the providers' bills. *See* (Compl. ¶¶ 12-13, 20.c, 21.d.iii., 25.d., Wherefore B.). These actions were taken in accordance with the policy terms and allowed under South Carolina law.[3] Therefore, all of the remaining causes of action should also be dismissed.

An insurer's obligation under an insurance policy is defined by the terms of the policy and cannot be enlarged by judicial construction. *South Carolina Ins. Co. v. White*, 301 S.C. 133, 137, 390 S.E.2d 471, 474 (Ct. App. 1990). "[I]f the intention of the parties is clear, courts have no

[3] Under South Carolina law, there is no statutorily mandated medical payments/personal injury protection coverage. S.C. Code § 38-77-144; *State Farm Mut. Auto. Ins. Co. v. Richardson*, 313 S.C. 58, 60, 437 S.E.2d 43, 45 (1993).

ELECTRONICALLY FILED - 2020 May 11 3:45 PM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

authority to torture the meaning of policy language to extend or defeat coverage that was never intended by the parties." *Kay v. State Farm Mut. Auto. Ins. Co.*, 349 S.C. 446, 450, 562 S.E.2d 676, 679 (Ct. App. 2002). The Policy provides Medical Payments coverage for certain "reasonable expenses incurred for necessary medical services." (Ex. A, Policy, p. 14). For medical payments coverage purposes, South Carolina law defines the phrase "expense incurred" as meaning there is an obligation on the part of the insured to pay for the medical treatment or service he received. *Gordon*, 238 S.C. at 446, 120 S.E.2d at 513. "[A] thing for which there exists no obligation to pay, either express or implied, cannot in law be claimed to constitute an 'expense incurred'." *Id.* at 445, 120 S.E.2d at 512.

In Plaintiffs' Complaint, the "breach of contract" and "breach of contract accompanied by a fraudulent act" sections do not set forth any alleged breach of the insurance contract, a required element of each claim. *See* (Compl. ¶ 19); *Branche Builders, Inc. v. Coggins*, 386 S.C. 43, 48, 686 S.E.2d 200, 202 (Ct. App. 2009) ("The elements for breach of contract are the existence of the contract, its breach, and the damages caused by such breach."); see *also* (Compl. ¶ 22); *Conner v. City of Forest Acres*, 348 S.C. 454, 465, 560 S.E.2d 606, 612 (2002) ("In order to have a claim for breach of contract accompanied by a fraudulent act, the plaintiff must establish three elements: (1) a breach of contract....").

From the remainder of the Complaint, it appears the only potential breach Plaintiffs are alleging is failure to pay Medical Payments coverage based on the total charges on the medical bills rather than the Medicaid-adjusted amounts for services rendered. *See* (Compl. ¶¶ 12-13, 25, Wherefore B.). This conduct also appears to be the basis for Plaintiffs' other claims.[4] As stated above,

[4] In the Complaint, Plaintiffs' "breach of fiduciary duty" and "breach of the covenant of good faith and fair dealing" claim sections do not set forth any specific "breach" but merely state that that Progressive breached its duties by its actions and conduct alleged elsewhere in the Complaint.

ELECTRONICALLY FILED - 2020 May 11 3:45 PM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

the Policy provides Medical Payments coverage for certain "reasonable **expenses incurred** for necessary medical services." (Ex. A, Policy, p. 14) (emphasis added).[5] Consequently, the act of paying Medical Payments coverage based on medical providers' adjusted rates for a Medicaid patient rather than amounts listed on a bill is not a breach of the Progressive insurance contract. Therefore, Plaintiffs' breach of contract, breach of contract accompanied by a fraudulent act, bad faith, breach of the duty of good faith and fair dealing, and breach of fiduciary duty claims based on such act must be dismissed. *See Crossley v. State Farm Mut. Auto. Ins. Co.*, 307 S.C. 354, 359, 415 S.E.2d 393, 396 (1992) ("The elements of a cause of action for bad faith refusal to pay first party benefits under a contract of insurance are… (2) refusal by the insurer to pay benefits due under the contract….").[6]

In a factually similar case, *Barker v. Washington Nat. Ins. Co.*, the insured had a policy that provided coverage for "the expenses incurred" for certain medical services and materials. No. 9:12-CV-1901-PMD, 2013 WL 1767620, at *4 (D.S.C. Apr. 24, 2013). The insured was a Medicare

---

(Compl. ¶¶ 20-21). Plaintiffs' bad faith section alleges Progressive acted in bad faith by "offering substantially less than the amount due" under the policy. (Compl. ¶ 17.g.).

[5] Nowhere in the Complaint do Plaintiffs allege the amount of Plaintiff Jones' medical "expenses incurred" – as that term has been defined by the South Carolina Supreme Court. *See* (Compl.); *Gordon*, 238 S.C. at 446, 120 S.E.2d at 513. The Complaint fails to plausibly allege that Jones has paid or has become legally obligated to pay the initial charges listed on the submitted bills rather than her providers' Medicaid-adjusted rates.

[6] Plaintiffs' bad faith, breach of the duty of good faith and fair dealing and breach of fiduciary duty claims amount to a single bad faith claim. First, bad faith and breach of an implied duty of good faith and fair dealing are not separate causes of action. *Ocean Winds Council of Co-Owners, Inc. v. Auto-Owners Ins. Co.*, 241 F. Supp. 2d 572, 577 (D.S.C. 2002) ("[B]ad faith refusal to pay benefits and breach of implied warranty of good faith and fair dealing are not separate causes of action."); *Sentry Select Ins. Co. v. Guess Farm Equip., Inc.*, No. CIV.A. 5:12-03504-JM, 2013 WL 5797742, at *10 (D.S.C. Oct. 25, 2013) (dismissing counterclaim for bad faith "because it is duplicative" of claim for breach of duty of good faith and fair dealing). Moreover, when a party's breach of fiduciary duty claim is based on the same duty and arising out of the same factual allegations upon which another claim is based, it is duplicative and should be dismissed. *See RFT Mgmt. Co. v. Tinsley & Adams L.L.P.*, 399 S.C. 322, 336, 732 S.E.2d 166, 173 (2012) (dismissing breach of fiduciary duty claim because duplicative of legal malpractice claim based on same attorney-client relationship and factual allegations).

ELECTRONICALLY FILED - 2020 May 11 3:45 PM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

beneficiary, and the insurer adjusted his claim "by paying benefits based only on the debt [the insured] owed to the medical provider." *Id.* at *2. The insured brought a breach of contract claim and bad faith claim against the insurer arguing that the insurer was obligated to pay him the "total charges" on the medical bills "prior to any reductions resulting from any prior agreement between Medicare and the hospital." *Id.* at *4. The insured argued that the insurer's "use of Medicare adjustments was improper." *Id.* at *2. The Court rejected the insured's arguments and explained:

> As a Medicare recipient, Barker at no time was obligated to pay the total charges listed on the hospital's bill, i.e., $55,241. Under 42 U.S.C. § 1395cc(a)(1)(A), a provider of services can participate in Medicare only if the provider files an agreement with the Secretary of Health and Human Services. Pursuant to this agreement, the participant accepts "assignment" of the Medicare payment, meaning that the provider must accept the Medicare approved charge as the full charge for the covered service and "shall not collect from the beneficiary ... more than the applicable deductible and coinsurance." Medicare Participating Physician or Supplier Agreement, Form CMS–460 (04/10), available at http://www.cms.gov/Medicare/ CMS–Forms/CMS–Forms/CMS–Forms–Items/CMS–007566.html; see Costs & Assignment, Medicare.gov, ht tp:// www.medicare.gov/your-me dicare-costs/part-a-costs/assignment/costs-and-assignment.html (last visited Apr. 24, 2013) (explaining that, under Medicare Part A, "Assignment means that your ... provider ... agrees (or is required by law) to accept the Medicare-approved amount as full payment for covered services" and can "charge you only the Medicare deductible and coinsurance amount"). The Southern District of New York recently addressed the issue of whether a Medicare recipient can "incur" the full fee a medical provider lists on its bill prior to applying the agreed-upon Medicare reductions, concluding that "[w]here Medicare contracts with a medical provider to set fees for a given service, the Medicare beneficiary is never liable for the amount forgone by a doctor under that agreement." *Metz v. U.S. Life Ins. Co.*, No. 09 Civ. 10250(BSJ), 2010 WL 3703810, at *3 (S.D.N.Y. Sept.21, 2010). The court further explained:
>
> > A doctor who accepts Medicare assignment has signed an agreement with Medicare to accept the Medicare-approved amount as full payment for covered services. [He] agree[s] to ... charge [the beneficiary only] the Medicare deductible and coinsurance amount and wait for Medicare to pay its share. Given this agreement, it is essentially impossible that Plaintiff would ever face liability for a provider's hypothetical full fee.
>
> *Id.* (internal quotations and citations omitted). The Second Circuit Court of Appeals affirmed, concluding that under New York law, the Medicare recipient "did not incur more than the amounts that her physicians had agreed ahead of time they would seek from her." *Metz v. U.S. Life Ins. Co.*, 662 F.3d 600, 602 (2d Cir.2011). Similarly, **this Court concludes that under South Carolina law, Barker was never obligated to**

ELECTRONICALLY FILED - 2020 May 11 3:45 PM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

> **pay more than the amount that the hospital had agreed to accept as full payment under Medicare**, which amount appears to be about $15,929.29.

Id. at *5-6 (emphasis added). As a result, the Court granted the insurer summary judgment on the insured's bad faith and breach of contract claims. *Id.* at *9.

Medicaid works the same way as Medicare. A Medicaid provider is also required to accept the Medicaid payment as "payment in full." 42 C.F.R. § 447.15 (requiring state Medicaid agency to "limit participation in the Medicaid program to providers who accept, as payment in full, the amounts paid by the agency plus any deductible, coinsurance or copayments required by the plan to be paid by the individual"). Pursuant to the South Carolina Medicaid provider agreement, the provider agrees "that Medicaid reimbursement is payment in full…for care or services to a recipient/patient" and "that the provider shall not bill, request, demand, solicit, or in any manner receive or accept payment from the recipient…." Medicaid Participation and Payment Agreement, Form (07/17), available at https://www.scdhhs.gov/sites/default/files/Participation%20%26%20Payment%20Agreement%20July%202017.pdf.

Therefore, like in the *Barker* case, Plaintiff Jones never "incurred" expenses for medical services beyond the Medicaid-adjusted rates. *See State Farm Mut. Auto. Ins. Co. v. Bowers*, 255 Va. 581, 585-586, 500 S.E.2d 212, 214 (1998) (holding insured did not "incur" expenses for medical payments coverage beyond those reduced rates negotiated between health insurance carrier and medical providers).[7] Consequently, Plaintiffs' remaining claims also based on this conduct must be

[7] *See also Evans v. Liberty Nat. Life Ins. Co.*, No. 13-CV-0390-CVE-PJC, 2015 WL 1650192, at *6 (N.D. Okla. Apr. 14, 2015) (stating "[a] number of courts in other jurisdictions have found 'expenses incurred' to mean the amount actually paid, as opposed to the amount charged by the care provider" and holding "expenses incurred" meant amount insured actually paid to satisfy medical providers after "other insurance coverage…negotiated a lower rate of payment"); *Metz v. U.S. Life Ins. Co. in City of New York*, 662 F.3d 600, 602 (2d Cir. 2011) (holding "incurred" for insurance coverage meant reduced rates negotiated by Medicare because insured "did not incur more than the amounts that her physicians had agreed ahead of time they would seek from her"); *Woodrich v. Farmers Ins. Co .*, 405 F.Supp.2d 1276, 1279 (N.D.Okla.2004).

dismissed. *See Grimes v. Gov't Employees Ins. Co.*, No. 1:18-CV-798, 2019 WL 3425227, at *9 (M.D.N.C. July 30, 2019) (dismissing breach of contract, breach of implied covenant of good faith and fair dealing, unfair trade practices, bad faith, and tortious breach of contract claims based on the same theory alleged in Plaintiffs' Complaint).

IV. In the alternative, Plaintiff Willie Brown is not a proper plaintiff to this action and should be dismissed.

Because Plaintiff Willie Brown is not a real party in interest to this suit and lacks standing to bring the claims asserted in the Complaint, he should be dismissed from being a plaintiff in this action. Under Rule 17(a) of the South Carolina Rules of Civil Procedure, "Every action shall be prosecuted in the name of the real party in interest." Rule 17(a), SCRCP. "[T]he real party in interest is the party who, by the substantive law, has the right sought to be enforced. It is ownership of the right sought to be enforced which qualifies one as a real party in interest." *Fisher on behalf of estate of Shaw-Baker v. Huckabee*, 422 S.C. 234, 238, 811 S.E.2d 739, 741 (2018), *reh'g denied* (Apr. 17, 2018) (citation omitted). "A real party in interest is one who has a real, material, or substantial interest in the subject matter of the action, as opposed to one who has only a nominal or technical interest in the action." *Sea Pines Ass'n for Prot. of Wildlife, Inc. v. S.C. Dep't of Nat. Res.*, 345 S.C. 594, 600, 550 S.E.2d 287, 291 (2001); *Hill v. South Carolina Dep't of Health & Envtl. Control*, 389 S.C. 1, 22, 698 S.E.2d 612, 623 (2010) ("A real party in interest is a party with a real, material, or substantial interest in the outcome of the litigation."). "The purpose of a real party in interest provision is to assure that a defendant is required only to defend an action brought by a proper party...." *Bardoon Properties, NV v. Eidolon Corp.*, 326 S.C. 166, 169, 485 S.E.2d 371, 373 (1997).

Moreover, "to have standing, a litigant must have a personal stake in the subject matter of the litigation." *Powell ex rel. Kelley v. Bank of Am.*, 379 S.C. 437, 445, 665 S.E.2d 237, 241 (Ct. App. 2008). Standing "is concerned with whether a particular person may raise legal arguments or claims." *Id.* at 444, 665 S.E.2d at 241. "The party seeking to establish standing carries the burden of

ELECTRONICALLY FILED - 2020 May 11 3:45 PM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

ELECTRONICALLY FILED - 2020 May 11 3:45 PM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

demonstrating each of the three elements" – (1) "the plaintiff must have suffered an 'injury in fact'"; (2) "there must be a causal connection between the injury and conduct complained of"; and (3) it must be likely that the injury will be redressed by a favorable decision. *Id.* Plaintiff Brown cannot meet this burden.

The Complaint concerns the payment of Alexis Jones' Medical Payments claim arising out of an alleged October 8, 2019 auto accident. (Compl. "Facts" section, ¶¶ 6-16). Although the Progressive policy at issue was issued to Plaintiff Willie Brown, this fact does not give him standing to be joined as a Plaintiff to this action. According to the Complaint, only Plaintiff Alexis Jones was involved in the October 8, 2019 accident and only Plaintiff Alexis Jones submitted a Medical Payments claim under the Progressive policy. (Compl. ¶¶ 11-13). Therefore, Jones is the only proper plaintiff to this action, and Brown should be dismissed.

Under Rule 21 of the South Carolina Rules of Civil Procedure, "[p]arties may be dropped…by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just." Rule 21, SCRCP. Plaintiff Brown is not a real party in interest to this action as required by Rule 17(a) of the South Carolina Rules of Civil Procedure because he lacks any substantial interest in the subject matter of the action – Jones' Medical Payments claim. He also lacks standing because he has no personal stake in the subject matter of the litigation. Therefore, Progressive respectfully requests that he be dismissed from being a plaintiff to this action.

CONCLUSION

For the foregoing reasons, Plaintiffs' claims against Progressive should be dismissed. The Progressive Policy provides medical payments coverage for certain medical ***expenses incurred*** by insured persons. As a result of the October 8, 2019 auto accident, Plaintiff Jones only incurred medical expenses at the reduced rates negotiated between Medicaid and her medical providers – not the amounts initially billed. Therefore, Plaintiffs have no cause of action based on Progressive paying

medical payments coverage based on such reduced rates. Additionally, Plaintiffs' "violation of the South Carolina Unfair Trade Practice Act" claim must be dismissed because the Act is not applicable to the business of insurance, and Plaintiffs' "violation of South Carolina Code of Laws Section 38-77-144" claim must be dismissed because the Complaint does not allege conduct prohibited by the statute. In the alternative, Plaintiff Brown is not a proper plaintiff to this action and should be dismissed. Progressive respectfully requests that this Court grant its Motion to Dismiss.

MURPHY & GRANTLAND, P.A.

s/J.R. Murphy
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Attorneys for Defendant Progressive Northern Insurance Company

Columbia, South Carolina
May 11, 2020

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AUTO PLUS INS GRP
PO BOX 10
LANCASTER, SC 29721

PROGRESSIVE AUTO

Policy Number: 930693102
Underwritten by:
Progressive Northern Insurance Co
October 2, 2019
Policy Period: Jun 21, 2019 - Dec 21, 2019

1-803-289-1169
AUTO PLUS INS GRP
Contact your agent for personalized service.

progressiveagent.com
Online Service
Make payments, check billing activity, update policy information or check status of a claim.

1-800-274-4499
To report a claim.

WILLIE BROWN
2663 GEORGETOWN ROAD
GREAT FALLS, SC 29055

Auto Insurance Coverage Summary

This is your Declarations Page
Your policy information has changed

Your coverage began on June 21, 2019 at the later of 12:01 a.m. or the effective time shown on your application. This policy period ends on December 21, 2019 at 12:01 a.m.

This coverage summary replaces your prior one. Your insurance policy and any policy endorsements contain a full explanation of your coverage. The policy contract is form 9611A SC (10/14). The contract is modified by form A048 SC (07/11).

Policy changes effective October 1, 2019

Changes requested on:	Oct 1, 2019 12:34 p.m.
Requested by:	WILLIE BROWN
Premium change:	-$429.71
Changes:	The 2001 GMC SIERRA C1500/K1500 has been removed. The Multi-Car discount has been removed from your policy.

The changes take effect as of the date and time requested shown above.

Underwriting Company

Progressive Northern Insurance Co
P.O. Box 6807
Cleveland, OH 44101
1-800-876-5581

Drivers and resident relatives

	Additional information
WILLIE BROWN	Named insured
ALEXIS JONES	



Continued

ELECTRONICALLY FILED - 2020 May 11 3:45 PM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

Outline of coverage

2005 CHEVROLET TAHOE C1500/K1500 4 DOOR WAGON
VIN: **1GNEK13TX5R101102**
Garaging ZIP Code: 29055
Primary use of the vehicle: Commute
Length of vehicle ownership when policy started or vehicle added: At least 3 years but less than 5 years

	Limits	Deductible	Premium
Liability To Others			$1,030
Bodily Injury Liability	$25,000 each person/$50,000 each accident		
Property Damage Liability	$25,000 each accident		
Uninsured Motorist			44
Bodily Injury	$25,000 each person/$50,000 each accident		
Property Damage	$25,000 each accident	$200	
Underinsured Motorist Bodily Injury	Rejected		--
Medical Payments	$10,000 each person		480
Subtotal policy premium			**$1,554.00**
South Carolina Uninsured Motorist Fund charge			1.00
Total 6 month policy premium and fees			**$1,555.00**

Premium discount

Policy	
930693102	Continuous Insurance: Gold

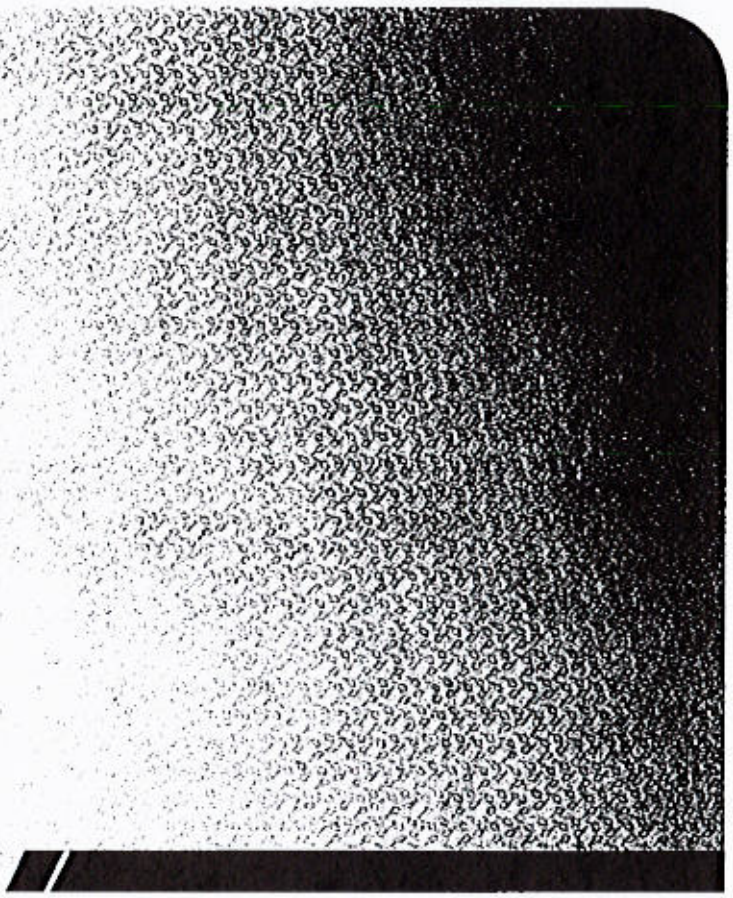
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9611A SC 1014

SOUTH CAROLINA

AUTO POLICY



Form 9611A SC (10/14)
version 2.0

PROGRESSIVE
AUTO

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IMPORTANT NOTICE

IN ADDITION TO THE INSURANCE COVERAGE REQUIRED BY LAW TO PROTECT YOU AGAINST A LOSS CAUSED BY AN UNINSURED MOTORIST, IF YOU HAVE PURCHASED LIABILITY INSURANCE COVERAGE THAT IS HIGHER THAN THAT REQUIRED BY LAW TO PROTECT YOU AGAINST LIABILITY ARISING OUT OF THE OWNERSHIP, MAINTENANCE, OR USE OF THE MOTOR VEHICLES COVERED BY THIS POLICY, AND YOU HAVE NOT ALREADY PURCHASED UNINSURED MOTORIST INSURANCE COVERAGE EQUAL TO YOUR LIABILITY INSURANCE COVERAGE:

1. YOUR UNINSURED AND UNDERINSURED MOTORIST INSURANCE COVERAGE HAS INCREASED TO THE LIMITS OF YOUR LIABILITY COVERAGE AND THIS INCREASE WILL COST YOU AN EXTRA PREMIUM CHARGE; AND

2. YOUR TOTAL PREMIUM CHARGE FOR YOUR MOTOR VEHICLE INSURANCE COVERAGE WILL INCREASE IF YOU DO NOT NOTIFY YOUR AGENT OR INSURER OF YOUR DESIRE TO REDUCE COVERAGE WITHIN TWENTY DAYS OF THE MAILING OF THE POLICY OR THE PREMIUM NOTICE, AS THE CASE MAY BE;

3. IF THIS IS A NEW POLICY AND YOU HAVE ALREADY SIGNED A WRITTEN REJECTION OF SUCH HIGHER LIMITS IN CONNECTION WITH IT, PARAGRAPHS (1) AND (2) OF THIS NOTICE DO NOT APPLY.

ELECTRONICALLY FILED - 2020 May 11 3:45 PM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

CONTENTS

INSURING AGREEMENT 1

GENERAL DEFINITIONS 1

PART I—LIABILITY TO OTHERS

Insuring Agreement 3
Additional Definition 3
Additional Payments 3
Exclusions 4
Limits of Liability 5
Financial Responsibility Laws 6
Other Insurance 6
Out-of-State Coverage 6
Arbitration of Property Damage Liability Claims 7

PART II—MEDICAL PAYMENTS COVERAGE

Insuring Agreement 7
Additional Definitions 7
Exclusions 8
Limits of Liability 9
Unreasonable or Unnecessary Medical Expenses 9
Other Insurance 10

PART III—UNINSURED/UNDERINSURED MOTORIST COVERAGE

Insuring Agreement—Uninsured Motorist Coverage 10
Insuring Agreement—Underinsured Motorist Coverage 10
Notice Requirement 11
Additional Definitions 11
Exclusions 12
Limits of Liability 13
Other Insurance 15
Arbitration for Bodily Injury Claims 15
Arbitration for Property Damage Claims 16

PART IV—DAMAGE TO A VEHICLE

Insuring Agreement—Collision Coverage 16
Insuring Agreement—Comprehensive Coverage 16
Insuring Agreement—Additional Custom Parts or Equipment Coverage 17
Insuring Agreement—Rental Reimbursement Coverage 17
Insuring Agreement—Loan/Lease Payoff Coverage 18
Insuring Agreement—Pet Injury Coverage 19
Additional Definitions 19
Exclusions 19

Limits of Liability....21
Payment of Loss....22
No Benefit to Bailee....23
Loss Payable Clause....23
Other Sources of Recovery....23
Appraisal....23

PART V—ROADSIDE ASSISTANCE COVERAGE
Insuring Agreement....24
Additional Definitions....24
Exclusions....24
Unauthorized Service Provider....25
Other Insurance....25

PART VI—DUTIES IN CASE OF AN ACCIDENT OR LOSS....25

PART VII—GENERAL PROVISIONS
Policy Period and Territory....26
Changes....26
Duty to Report Changes....27
Settlement of Claims....27
Terms of Policy Conformed to Statutes....27
Transfer of Interest....28
Fraud or Misrepresentation....28
Payment of Premium and Fees....29
Cancellation....29
Cancellation Refund....30
Nonrenewal....30
Legal Action Against Us....30
Our Rights to Recover Payment....31
Joint and Individual Interests....31
Bankruptcy....32

ELECTRONICALLY FILED - 2020 May 11 3:45 PM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

ELECTRONICALLY FILED - 2020 May 11 3:45 PM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

SOUTH CAROLINA AUTO POLICY

INSURING AGREEMENT

In return for **your** payment of the premium, **we** agree to insure **you** subject to all the terms, conditions and limitations of this policy. **We** will insure **you** for the coverages and the limits of liability shown on this policy's **declarations page**. **Your** policy consists of the policy contract, **your** insurance application, the **declarations page**, and all endorsements to this policy.

GENERAL DEFINITIONS

The following definitions apply throughout the policy. Defined terms are printed in boldface type and have the same meaning whether in the singular, plural, or any other form.

1. "**Additional auto**" means an **auto you** become the owner of during the policy period that does not permanently replace an **auto** shown on the **declarations page** if:
   a. **we** insure all other **autos you** own;
   b. the **additional auto** is not covered by any other insurance policy;
   c. **you** notify **us** within 30 days of becoming the owner of the **additional auto**; and
   d. **you** pay any additional premium due.

   An **additional auto** will have the broadest coverage **we** provide for any **auto** shown on the **declarations page**. If **you** ask **us** to insure an **additional auto** more than 30 days after **you** become the owner, any coverage **we** provide will begin at the time **you** request coverage.
2. "**Auto**" means a land motor vehicle:
   a. of the private passenger, pickup body, or cargo van type;
   b. designed for operation principally upon public roads;
   c. with at least four wheels; and
   d. with a gross vehicle weight rating of 12,000 pounds or less, according to the manufacturer's specifications.

   However, "**auto**" does not include step-vans, parcel delivery vans, or cargo cutaway vans or other vans with cabs separate from the cargo area.
3. "**Auto business**" means the business of selling, leasing, repairing, parking, storing, servicing, delivering or testing vehicles.
4. "**Bodily injury**" means bodily harm, sickness, or disease, including death that results from bodily harm, sickness, or disease.
5. "**Covered auto**" means:
   a. any **auto** or **trailer** shown on the **declarations page** for the coverages applicable to that **auto** or **trailer**;
   b. any **additional auto**;
   c. any **replacement auto**; or
   d. a **trailer** owned by **you**.
6. "**Declarations page**" means the document showing **your** coverages, limits of liability, **covered autos**, premium, and other policy-related information. The **declarations page** may also be referred to as the Auto Insurance Coverage Summary.

ELECTRONICALLY FILED - 2020 May 11 3:45 PM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

7. "**Occupying**" means in, on, entering or exiting.
8. "**Personal vehicle sharing program**" means a system or process, operated by a business, organization, network, group, or individual, that facilitates the sharing of private passenger motor vehicles for use by individuals, businesses, or other entities.
9. "**Property damage**" means physical damage to, destruction of, or loss of use of, tangible property.
10. "**Rated resident**" means a person residing in the same household as **you** at the time of the loss who is not a **relative**, but only if that person is both:
    a. listed in the "Drivers and household residents" section on the **declarations page**; and
    b. not designated as either an "Excluded" or a "List Only" driver.
11. "**Relative**" means a person residing in the same household as **you**, and related to **you** by blood, marriage or adoption, and includes a ward, stepchild, or foster child. **Your** unmarried dependent children temporarily away from home will qualify as a **relative** if they intend to continue to reside in **your** household.
12. "**Replacement auto**" means an **auto** that permanently replaces an **auto** shown on the **declarations page**. A **replacement auto** will have the same coverage as the **auto** it replaces if the **replacement auto** is not covered by any other insurance policy. However, if the **auto** being replaced had coverage under Part IV—Damage To A Vehicle, such coverage will apply to the **replacement auto** only during the first 30 days after **you** become the owner unless **you** notify **us** within that 30-day period that **you** want **us** to extend coverage beyond the initial 30 days. If the **auto** being replaced did not have coverage under Part IV—Damage To A Vehicle, such coverage may be added, but the **replacement auto** will have no coverage under Part IV until **you** notify **us** of the **replacement auto** and ask **us** to add the coverage.
13. "**Ride-sharing activity**" means the use of any vehicle to provide transportation of persons or property in connection with a **transportation network company** from the time a user logs on to, or signs in to, any online-enabled application, software, website or system until the time the user logs out of, or signs off of, any such online-enabled application, software, website or system, whether or not the user has accepted any passenger(s) or delivery assignment, including the time the user is on the way to pick up any passenger(s) or property, or is transporting any passenger(s) or property.
14. "**Trailer**" means a non-motorized trailer, including a farm wagon or farm implement, designed to be towed on public roads by an **auto** and not being used:
    a. for commercial purposes;
    b. as an office, store, or for display purposes; or
    c. as a passenger conveyance.
15. "**Transportation network company**" means a corporation, partnership, sole proprietorship, or other entity that uses any online-enabled application, software, website or system to connect drivers with clients or passengers to facilitate and/or provide transportation or delivery services for compensation or a fee.
16. "**We**," "**us**" and "**our**" mean the underwriting company providing the insurance, as shown on the **declarations page**.

17. "**You**" and "**your**" mean:
    a. a person shown as a named insured on the **declarations page**; and
    b. the spouse of a named insured if residing in the same household at the time of the loss.

PART I—LIABILITY TO OTHERS

INSURING AGREEMENT

If **you** pay the premium for this coverage, **we** will pay damages for **bodily injury** and **property damage** for which an **insured person** becomes legally responsible because of an accident.

Damages include prejudgment interest awarded against an **insured person**.

We will settle or defend, at **our** option, any claim for damages covered by this Part I.

ADDITIONAL DEFINITION

When used in this Part I:
"**Insured person**" means:

a. **you**, a **relative**, or a **rated resident** with respect to an accident arising out of the ownership, maintenance or use of an **auto** or a **trailer**;
b. any person with respect to an accident arising out of that person's use of a **covered auto** with the permission of **you**, a **relative**, or a **rated resident**;
c. any person or organization with respect only to vicarious liability for the acts or omissions of a person described in a. or b. above; and
d. any "Additional Interest" shown on the **declarations page** with respect only to its liability for the acts or omissions of a person described in a. or b. above.

ADDITIONAL PAYMENTS

In addition to **our** limit of liability, **we** will pay for an **insured person**:

1. all expenses **we** incur in the settlement of any claim or defense of any lawsuit;
2. interest accruing after entry of judgment, until **we** have paid, offered to pay, or deposited in court, that portion of the judgment which does not exceed **our** limit of liability. This does not apply if **we** have not been given notice of suit or the opportunity to defend an **insured person**;
3. the premium on any appeal bond or attachment bond required in any lawsuit **we** defend. **We** have no duty to purchase a bond in an amount exceeding **our** limit of liability, and **we** have no duty to apply for or furnish these bonds;
4. up to $250 for a bail bond required because of an accident resulting in **bodily injury** or **property damage** covered under this Part I. **We** have no duty to apply for or furnish this bond; and
5. reasonable expenses, including loss of earnings up to $200 per day, incurred at **our** request.

ELECTRONICALLY FILED - 2020 May 11 3:45 PM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

ELECTRONICALLY FILED - 2020 May 11 3:45 PM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

EXCLUSIONS—READ THE FOLLOWING EXCLUSIONS CAREFULLY. IF AN EXCLUSION APPLIES, COVERAGE WILL NOT BE AFFORDED UNDER THIS PART I.

Coverage under this Part I, including **our** duty to defend, will not apply to any **insured person** for:

1. **bodily injury** or **property damage** arising out of the ownership, maintenance or use of any vehicle or trailer while being used:
   a. to carry persons or property for compensation or a fee; or
   b. for retail or wholesale delivery, including, but not limited to, the pickup, transport or delivery of magazines, newspapers, mail or food.

   For damages arising out of the ownership, maintenance, or use of a **covered auto,** this exclusion applies only to those damages in excess of the minimum limit mandated by the motor vehicle financial responsibility law of South Carolina. This exclusion does not apply to shared-expense car pools;
2. any liability assumed under any contract or agreement by **you**, a **relative**, or a **rated resident**;
3. **bodily injury** to an employee of that **insured person** arising out of or within the course of employment. This exclusion does not apply to domestic employees if benefits are neither paid nor required to be provided under workers' compensation, disability benefits, or similar laws;
4. **bodily injury** or **property damage** arising out of an accident involving any vehicle while being maintained or used by a person while employed or engaged in any **auto business.** For damages arising out of the ownership, maintenance, or use of a **covered auto**, this exclusion applies only to those damages in excess of the minimum limit mandated by the motor vehicle financial responsibility law of South Carolina. This exclusion does not apply to **you**, a **relative**, a **rated resident**, or an agent or employee of **you**, a **relative**, or a **rated resident**, when using a **covered auto**;
5. **bodily injury** or **property damage** resulting from, or sustained during practice or preparation for:
   a. any pre-arranged or organized racing, stunting, speed or demolition contest or activity; or
   b. any driving activity conducted on a permanent or temporary racetrack or racecourse;
6. **bodily injury** or **property damage** due to a nuclear reaction or radiation;
7. **bodily injury** or **property damage** for which insurance:
   a. is afforded under a nuclear energy liability insurance contract; or
   b. would be afforded under a nuclear energy liability insurance contract but for its termination upon exhaustion of its limit of liability;
8. any obligation for which the United States Government is liable under the Federal Tort Claims Act;
9. **bodily injury** or **property damage** caused by an intentional act of that **insured person**, or at the direction of that **insured person**, even if the actual injury or damage is different than that which was intended or expected. For damages arising out of the ownership, maintenance, or use of a **covered auto**, this exclu-

ELECTRONICALLY FILED - 2020 May 11 3:45 PM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

sion applies only to those damages in excess of the minimum limit mandated by the motor vehicle financial responsibility law of South Carolina;

10. **property damage** to any property owned by, rented to, being transported by, or in the charge of that **insured person**. This exclusion does not apply to a rented residence or a rented garage;
11. **bodily injury** or **property damage** arising out of the ownership, maintenance or use of any vehicle owned by **you** or furnished or available for **your** regular use, other than a **covered auto** for which this coverage has been purchased;
12. **bodily injury** or **property damage** arising out of the ownership, maintenance or use of any vehicle owned by a **relative** or a **rated resident** or furnished or available for the regular use of a **relative** or a **rated resident**, other than a **covered auto** for which this coverage has been purchased. This exclusion does not apply to **your** maintenance or use of such vehicle;
13. **bodily injury** or **property damage** arising out of **your**, a **relative's**, or a **rated resident's** use of a vehicle, other than a **covered auto**, without the permission of the owner of the vehicle or the person in lawful possession of the vehicle;
14. **bodily injury** or **property damage** arising out of the use of a **covered auto** while leased or rented to others or given in exchange for any compensation, including while being used in connection with a **personal vehicle sharing program**. This exclusion does not apply to the operation of a **covered auto** by **you**, a **relative**, or a **rated resident**;
15. **bodily injury** or **property damage** caused by, or reasonably expected to result from, a criminal act or omission of that **insured person**. This exclusion applies regardless of whether that **insured person** is actually charged with, or convicted of, a crime. However, this exclusion will apply only to those damages in excess of the minimum limit mandated by the motor vehicle financial responsibility law of South Carolina. For purposes of this exclusion, criminal acts or omissions do not include traffic violations; or
16. **bodily injury** or **property damage** arising out of the ownership, maintenance or use of any vehicle or trailer while being used for **ride-sharing activity**. This exclusion does not apply to shared-expense car pools.

LIMITS OF LIABILITY

The limit of liability shown on the **declarations page** for liability coverage is the most **we** will pay regardless of the number of:

1. claims made;
2. **covered autos**;
3. **insured persons**;
4. lawsuits brought;
5. vehicles involved in the accident; or
6. premiums paid.

If **your declarations page** shows a split limit:

1. the amount shown for "each person" is the most **we** will pay for all damages due to **bodily injury** to one person resulting from any one accident;

2. subject to the "each person" limit, the amount shown for "each accident" is the most **we** will pay for all damages due to **bodily injury** sustained by two or more persons in any one accident; and
3. the amount shown for "property damage" is the most **we** will pay for the total of all **property damage** resulting from any one accident.

The "each person" limit of liability applies to the total of all claims made for **bodily injury** to a person and all claims of others derived from such **bodily injury**, including, but not limited to, loss of society, loss of companionship, loss of services, loss of consortium, and wrongful death.

If the **declarations page** shows that "combined single limit" or "CSL" applies, the amount shown is the most **we** will pay for the total of all damages resulting from any one accident. However, without changing this limit of liability, **we** will comply with any law that requires **us** to provide any separate limits.

The limits of liability under this Part I shall not be reduced by payments made under Part II—Medical Payments Coverage. However, no one is entitled to duplicate payments for the same elements of damages.

We will not pay under this Part I any expenses paid or payable under Part II—Medical Payments Coverage.

If multiple auto policies issued by **us** are in effect for **you**, **we** will pay no more than the highest limit of liability for this coverage available under any one policy.

An **auto** and attached **trailer** are considered one **auto**. Therefore, the limits of liability will not be increased for an accident involving an **auto** that has an attached **trailer**.

FINANCIAL RESPONSIBILITY LAWS

When **we** certify this policy as proof of financial responsibility, this policy will comply with the law to the extent required. The **insured person** must reimburse **us** if **we** make a payment that **we** would not have made if this policy was not certified as proof of financial responsibility.

OTHER INSURANCE

If there is any other applicable liability insurance or bond, **we** will pay only **our** share of the damages. **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 or trailer, other than a **covered auto**, will be excess over any other collectible insurance, self-insurance, or bond.

OUT-OF-STATE COVERAGE

If an accident to which this Part I applies occurs in any state, territory or possession of the United States of America or any province or territory of Canada, other than the

ELECTRONICALLY FILED - 2020 May 11 3:45 PM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

one in which a **covered auto** is principally garaged, and the state, province, territory or possession has:

1. a financial responsibility or similar law requiring limits of liability for **bodily injury** or **property damage** higher than the limits shown on the **declarations page**, this policy will provide the higher limits; or
2. a compulsory insurance or similar law requiring a non-resident to maintain insurance whenever the non-resident uses an **auto** in that state, province, territory or possession, this policy will provide the greater of:
   a. the required minimum amounts and types of coverage; or
   b. the limits of liability under this policy.

ARBITRATION OF PROPERTY DAMAGE LIABILITY CLAIMS

Any party to a disputed **property damage** liability claim may submit the claim to arbitration in accordance with South Carolina law.

PART II—MEDICAL PAYMENTS COVERAGE

INSURING AGREEMENT

If **you** pay the premium for this coverage, **we** will pay the reasonable expenses incurred for necessary **medical services** received within three years from the date of a **motor vehicle** accident because of **bodily injury**:

1. sustained by an **insured person**; and
2. caused by that **motor vehicle** accident.

We, or someone on **our** behalf, will determine:

1. whether the expenses for **medical services** are reasonable; and
2. whether the **medical services** are necessary.

ADDITIONAL DEFINITIONS

When used in this Part II:

1. "**Insured person**" means:
   a. **you**, a **relative**, or a **rated resident**:
      (i) while **occupying** an **auto**; or
      (ii) when struck by a **motor vehicle** or a trailer while not **occupying** a self-propelled motorized vehicle; and
   b. any other person while **occupying** a **covered auto** with the permission of **you**, a **relative**, or a **rated resident**.
2. "**Medical services**" means medical, surgical, dental, x-ray, ambulance, hospital, professional nursing, and funeral services, and includes the cost of eyeglasses, hearing aids, pharmaceuticals, orthopedics, and prosthetic devices.
3. "**Motor vehicle**" means a land motor vehicle designed for use principally on public roads.

ELECTRONICALLY FILED - 2020 May 11 3:45 PM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

ELECTRONICALLY FILED - 2020 May 11 3:45 PM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

EXCLUSIONS—READ THE FOLLOWING EXCLUSIONS CAREFULLY. IF AN EXCLUSION APPLIES, COVERAGE WILL NOT BE AFFORDED UNDER THIS PART II.

Coverage under this Part II will not apply to **bodily injury**:

1. sustained by any person while **occupying a covered auto** while it is being used:
   a. to carry persons or property for compensation or a fee;
   b. for retail or wholesale delivery, including, but not limited to, the pickup, transport or delivery of magazines, newspapers, mail or food; or
   c. for **ride-sharing activity**.

   This exclusion does not apply to shared-expense car pools;
2. arising out of an accident involving a vehicle while being maintained or used by a person while employed or engaged in any **auto business**. This exclusion does not apply to **you**, a **relative**, a **rated resident**, or an agent or employee of **you**, a **relative**, or a **rated resident**, when using a **covered auto**;
3. to any person resulting from, or sustained during practice or preparation for:
   a. any pre-arranged or organized racing, stunting, speed or demolition contest or activity; or
   b. any driving activity conducted on a permanent or temporary racetrack or racecourse;
4. due to a nuclear reaction or radiation;
5. for which insurance:
   a. is afforded under a nuclear energy liability insurance contract; or
   b. would be afforded under a nuclear energy liability insurance contract but for its termination upon exhaustion of its limit of liability;
6. for which the United States Government is liable under the Federal Tort Claims Act;
7. sustained by any person while **occupying** any vehicle or trailer while located for use as a residence or premises;
8. if workers' compensation benefits are available for the **bodily injury**;
9. sustained by any person while **occupying** or when struck by any vehicle owned by **you** or furnished or available for **your** regular use, other than a **covered auto** for which this coverage has been purchased;
10. sustained by any person while **occupying** or when struck by any vehicle owned by a **relative** or a **rated resident** or furnished or available for the regular use of a **relative** or a **rated resident**, other than a **covered auto** for which this coverage has been purchased. This exclusion does not apply to **you**;
11. to **you**, a **relative**, or a **rated resident**, while **occupying** any vehicle, other than a **covered auto**, without the permission of the owner of the vehicle or the person in lawful possession of the vehicle;
12. to any person while **occupying a covered auto** while leased or rented to others or given in exchange for any compensation, including while being used in connection with a **personal vehicle sharing program**. This exclusion does not apply to the operation of a **covered auto** by **you**, a **relative**, or a **rated resident**;
13. caused directly or indirectly by:
    a. war (declared or undeclared) or civil war;

b. warlike action by any military force of any government, sovereign or other authority using military personnel or agents. This includes any action taken to hinder or defend against an actual or expected attack; or
c. insurrection, rebellion, revolution, usurped power, or any action taken by a governmental authority to hinder or defend against any of these acts;

14. caused directly or indirectly by:
    a. any accidental or intentional discharge, dispersal or release of radioactive, nuclear, pathogenic or poisonous biological material; or
    b. any intentional discharge, dispersal or release of chemical or hazardous material for any purpose other than its safe and useful purpose; or
15. caused by, or reasonably expected to result from, a criminal act or omission of an **insured person**. This exclusion applies regardless of whether the **insured person** is actually charged with, or convicted of, a crime. For purposes of this exclusion, criminal acts or omissions do not include traffic violations.

LIMITS OF LIABILITY

The limit of liability shown on the **declarations page** for Medical Payments Coverage is the most **we** will pay for each **insured person** injured in any one accident, regardless of the number of:

1. claims made;
2. **covered autos**;
3. **insured persons**;
4. lawsuits brought;
5. vehicles involved in the accident; or
6. premiums paid.

No one will be entitled to duplicate payments under this policy for the same elements of damages.

Any amount payable to an **insured person** under this Part II will be reduced by any amount paid or payable for the same expense under Part I—Liability To Others or Part III—Uninsured/Underinsured Motorist Coverage.

If multiple auto policies issued by **us** are in effect for **you**, **we** will pay no more than the highest limit of liability for this coverage available under any one policy.

UNREASONABLE OR UNNECESSARY MEDICAL EXPENSES

If an **insured person** incurs expenses for **medical services** that **we** deem to be unreasonable or unnecessary, **we** may refuse to pay for those expenses and contest them.

If the medical service provider sues the **insured person** because **we** refuse to pay expenses for **medical services** that **we** deem to be unreasonable or unnecessary, **we** will pay any resulting defense costs, and any resulting judgment against the

ELECTRONICALLY FILED - 2020 May 11 3:45 PM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

insured person, subject to the limit of liability for this coverage. **We** will choose the counsel. **We** will also pay reasonable expenses, including loss of earnings up to $200 per day, incurred at **our** request.

The **insured person** may not sue **us** for expenses for **medical services we** deem to be unreasonable or unnecessary unless the **insured person** paid the entire disputed amount to the medical service provider or the medical service provider has initiated collection activity against the **insured person** for the unreasonable or unnecessary expenses.

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 for an **insured person occupying** a vehicle or trailer, other than a **covered auto**, will be excess over any other **auto** insurance providing payments for **medical services**.

PART III—UNINSURED/UNDERINSURED MOTORIST COVERAGE

INSURING AGREEMENT—UNINSURED MOTORIST COVERAGE

If **you** pay the premium for this coverage, **we** will pay for damages that an **insured person** is legally entitled to recover from the owner or operator of:

1. an **uninsured motor vehicle** because of **bodily injury**:
   a. sustained by an **insured person**;
   b. caused by an accident; and
   c. arising out of the ownership, maintenance or use of an **uninsured motor vehicle**; or
2. an **uninsured motor vehicle** because of **property damage**:
   a. caused by an accident; and
   b. arising out of the ownership, maintenance, or use of an **uninsured motor vehicle**.

INSURING AGREEMENT—UNDERINSURED MOTORIST COVERAGE

If **you** pay the premium for this coverage, **we** will pay for damages that an **insured person** is legally entitled to recover from the owner or operator of:

1. an **underinsured motor vehicle** because of **bodily injury**:
   a. sustained by an **insured person**;
   b. caused by an accident; and
   c. arising out of the ownership, maintenance, or use of an **underinsured motor vehicle**; or
2. an **underinsured motor vehicle** because of **property damage**:
   a. caused by an accident; and
   b. arising out of the ownership, maintenance, or use of an **underinsured motor vehicle**.

ELECTRONICALLY FILED - 2020 May 11 3:45 PM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

We will pay under this Part III only after the limits of liability under all applicable liability bonds and policies have been exhausted by payment of judgments or settlements.

NOTICE REQUIREMENT

Any judgment or settlement for damages against an owner or operator of an **uninsured motor vehicle** or an **underinsured motor vehicle** that arises out of a lawsuit brought for which **we** have not received notice in accordance with South Carolina law is not binding on **us.**

ADDITIONAL DEFINITIONS

When used in this Part III:

1. "**Insured person**" means:
   a. **you**, a **relative**, or a **rated resident**;
   b. any person while operating a **covered auto** with the permission of **you**, a **relative**, or a **rated resident**;
   c. any person **occupying**, but not operating, a **covered auto**; and
   d. any person who is entitled to recover damages covered by this Part III because of **bodily injury** sustained by a person described in a., b. or c. above.
2. "**Underinsured motor vehicle**" means a land motor vehicle or trailer of any type to which liability insurance or a bond applies at the time of the accident with limits of liability that equal or exceed the minimum amounts required by the South Carolina motor vehicle financial responsibility law, but which are less than the amount of the damages sustained by the **insured person** in the accident.
   An "**underinsured motor vehicle**" does not include any vehicle or equipment:
   a. operated on rails or crawler treads;
   b. designed mainly for use off public roads, while not on public roads;
   c. while located for use as a residence or premises; or
   d. that is an **uninsured motor vehicle**.
3. "**Uninsured motor vehicle**" means a land motor vehicle or trailer of any type:
   a. to which no liability bond, cash deposit, security, or liability policy in at least the amounts of coverage required by South Carolina law applies at the time of the accident;
   b. to which a liability bond or policy applies at the time of the accident, but the bonding or insuring company:
      (i) denies coverage;
      (ii) is or becomes insolvent;
      (iii) is in delinquency proceedings, suspension, or receivership; or
      (iv) is financially unable to fully satisfy a judgment rendered in favor of an insured person;
   c. to which a liability bond or policy applies at the time of the accident, but its limit of liability is less than the minimum limit of liability specified by the financial responsibility law of the state in which the **covered auto** is principally garaged; or

ELECTRONICALLY FILED - 2020 May 11 3:45 PM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

d. that is a hit-and-run vehicle whose owner or operator cannot be identified and which causes an accident resulting in **bodily injury** to an **insured person**, or **property damage** to the property of an **insured person**, provided:
   (i) the **insured person**, or someone on his or her behalf, reports the accident to the police or civil authority within 24 hours or as soon as practicable after the accident; and
   (ii) if the **bodily injury** or **property damage** was not caused by physical contact between the vehicle operated by the unidentified operator and the **insured person**, or a vehicle occupied by the **insured person**, there must be independent corroborative evidence by a witness to the accident who executes a signed affidavit attesting to the truth of the accident to prove that the **bodily injury** or **property damage** was proximately caused by the negligent or intentional actions of the unidentified operator of the motor vehicle. The testimony of the owner or operator of the **covered auto** shall not constitute independent corroborative evidence. No recovery will be provided under this Part III if the **insured person** was negligent in failing to determine the identity of the other motor vehicle and its driver at the time of the accident.

An "**uninsured motor vehicle**" does not include any vehicle or equipment:

a. owned or operated by a self-insurer under any applicable motor vehicle law, except a self-insurer that:
   (i) is or becomes insolvent; or
   (ii) fails to qualify as a self-insurer under South Carolina law;
b. owned by any governmental unit or agency, except when:
   (i) operated by a person without property authorization; or
   (ii) a cause of action against that governmental unit or agency arising out of a motor vehicle accident is barred by the Tort Claims Act of South Carolina;
c. operated on rails or crawler treads;
d. designed mainly for use off public roads, while not on public roads;
e. while located for use as a residence or premises;
f. that is an **underinsured motor vehicle**; or
g. that is a **covered auto**.

EXCLUSIONS—READ THE FOLLOWING EXCLUSIONS CAREFULLY. IF AN EXCLUSION APPLIES, COVERAGE WILL NOT BE AFFORDED UNDER THIS PART III.

Coverage under this Part III will not apply:

1. to **bodily injury** sustained by any person while using or **occupying** a **covered auto** while being used:
   a. to carry persons or property for compensation or a fee;
   b. or retail or wholesale delivery, including, but not limited to, the pickup, transport or delivery of magazines, newspapers, mail or food; or
   c. for **ride-sharing activity**.

   This exclusion does not apply to shared-expense car pools;

ELECTRONICALLY FILED - 2020 May 11 3:45 PM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

2. to **bodily injury** sustained by the owner of a motor vehicle if:
   a. the **bodily injury** is sustained while using or **occupying** that owned motor vehicle; and
   b. if uninsured motorist coverage or underinsured motorist coverage, as the case may be, has not been purchased for that motor vehicle;
3. to **bodily injury** sustained by **you**, a **relative**, or a **rated resident** while using any vehicle, other than a **covered auto**, without the permission of the owner of the vehicle or the person in lawful possession of the vehicle;
4. to **bodily injury** arising out of the use of a **covered auto** while being used in connection with a **personal vehicle sharing program**. This exclusion does not apply to the operation of a **covered auto** by **you**, a **relative**, or a **rated resident**; or
5. directly or indirectly to benefit any insurer or self-insurer under any of the following or similar laws:
   a. workers' compensation law; or
   b. disability benefits law.

Coverage under this Part III will not apply to **property damage**:

1. sustained while a **covered auto** is being used:
   a. to carry persons or property for compensation or a fee;
   b. for retail or wholesale delivery, including but not limited to, the pickup, transport, or delivery of magazines, newspapers, mail, or food; or
   c. for **ride-sharing activity.**

   This exclusion does not apply to shared-expense car pools;
2. resulting from, or sustained during practice or preparation for:
   a. any pre-arranged or organized racing, stunting, speed, or demolition contest or activity; or
   b. any driving activity conducted on a permanent or temporary racetrack or racecourse;
3. to a **covered auto** for which insurance:
   a. is afforded under a nuclear energy liability insurance contract; or
   b. would be afforded under a nuclear energy liability insurance contract but for its termination upon exhaustion of its limit of liability;
4. to a trailer;
5. to any motor vehicle owned by **you**, a **relative**, or a **rated resident** if uninsured motorist coverage or underinsured motorist coverage, as the case may be, has not been purchased for that motor vehicle; or
6. sustained while a **covered auto** is being used in connection with a **personal vehicle sharing program**. This exclusion does not apply to the operation of a **covered auto** by **you**, a **relative**, or a **rated resident**.

LIMITS OF LIABILITY

The limit of liability shown on the **declarations page** for Uninsured Motorist Coverage or Underinsured Motorist Coverage, as the case may be, is the most **we** will pay regardless of the number of:

1. claims made;

ELECTRONICALLY FILED - 2020 May 11 3:45 PM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

2. **covered autos**, but only with respect to **insured persons** other than **you**, a **relative**, or a **rated resident**;
3. **insured persons**;
4. lawsuits brought;
5. vehicles involved in the accident; or
6. premiums paid, but only with respect to **insured persons** other than **you**, a **relative**, or a **rated resident**.

When **you**, a **relative**, or a **rated resident** are not **occupying** an **auto** and sustain **bodily injury** caused by the owner or operator of an **uninsured motor vehicle** or **underinsured motor vehicle**, **our** limit of liability shall not exceed the limit of liability shown on the **declarations page** for any one **covered auto**.

If **your declarations page** shows a split limit:
1. the amount shown for "each person" for "bodily injury" is the most **we** will pay for all damages due to **bodily injury** to one person;
2. subject to the "each person" limit, the amount shown for "each accident" is the most **we** will pay for all damages due to **bodily injury** sustained by two or more persons in any one accident; and
3. the amount shown for "property damage" is the most we will pay for the aggregate of all **property damage** caused by any one accident.

The "each person" limit of liability includes the total of all claims made for **bodily injury** to an **insured person** and all claims of others derived from such **bodily injury**, including, but not limited to, loss of society, loss of companionship, loss of services, loss of consortium, and wrongful death.

If the **declarations page** shows that "combined single limit" or "CSL" applies, the amount shown is the most **we** will pay for the total of all **bodily injury** damages resulting from any one accident. However, without changing this total limit of liability, **we** will comply with any law that requires **us** to provide any separate limits.

The amount of damages payable for **bodily injury** under this Part III will be reduced by all sums:
1. paid because of **bodily injury** by or on behalf of any persons or organizations that may be legally responsible;
2. paid under Part I—Liability To Others; and
3. paid or payable because of **bodily injury** under any disability benefits law or similar law.

We will not pay under this Part III any expenses paid or payable under Part II—Medical Payments Coverage.

The limit of liability for **property damage** to a **covered auto** is the lowest of:
1. the actual cash value of the **covered auto** at the time of the accident;
2. the amount necessary to replace the **covered auto**;

ELECTRONICALLY FILED - 2020 May 11 3:45 PM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

3. the amount necessary to repair the **covered auto** to its pre-loss condition; or
4. the limit of liability shown on the **declarations page** for Uninsured Motorist Property Damage or Underinsured Motorist Property Damage, whichever applies.

The amount of damages payable for **property damage** under this Part III will be reduced by all sums paid because of **property damage** by or on behalf of any persons or organizations that may be legally responsible, including, but not limited to, all sums paid under Part I—Liability To Others.

We shall not pay for **property damage** to the extent that such damages are paid or payable under any other property damage or physical damage insurance, including all sums paid or payable under Part IV—Damage To A Vehicle.

Payments for **property damage** under this Part III are subject to the following provisions:
1. any amount payable under this Part III for **property damage** shall be subject to the applicable deductible shown on the **declarations page**; and
2. no more than one deductible shall be applied to any one accident.

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

OTHER INSURANCE

If there is other applicable uninsured or underinsured motorist coverage, **we** will pay only **our** share of the damages. **Our** share is the proportion that **our** limit of liability bears to the total of all available coverage limits. However, when **you**, a **relative**, or a **rated resident** are **occupying** a motor vehicle other than a **covered auto** and sustain **bodily injury** covered under this Part III, **our** coverage shall be excess to the coverage applicable to the motor vehicle that **you**, the **relative**, or the **rated resident** are **occupying**, and **our** total limit of liability under this policy shall not exceed **our** limit of liability for one **auto**.

However, when **you**, a **relative**, or a **rated resident** are operating, or **occupying**, a motor vehicle that is owned by **you**, a **relative**, or a **rated resident** but is not a **covered auto**, in that case, **our** total limit of liability will be the lesser of the limit of liability listed on the **declarations page** or the amount of Uninsured Motorist Coverage or Underinsured Motorist Coverage, as the case may be, on the vehicle involved in the accident.

ARBITRATION FOR BODILY INJURY CLAIMS

If **we** and an **insured person** cannot agree on:
1. the legal liability of the operator or owner of an **uninsured motor vehicle** or **underinsured motor vehicle**; or
2. the amount of the damages sustained by the **insured person**;

this will be determined by arbitration if **we** and the **insured person** mutually agree to arbitration prior to the expiration of the bodily injury statute of limitations in the state in which the accident occurred.

ELECTRONICALLY FILED - 2020 May 11 3:45 PM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

If **we** and the **insured person** mutually agree to arbitration, each party will select an arbitrator. The two arbitrators will select a third. If the two arbitrators cannot agree on a third arbitrator within 30 days, then on joint application by the **insured person** and **us**, the third arbitrator will be appointed by a court having jurisdiction.

Each party will pay the costs and fees of its arbitrator and any other expenses it incurs. The costs and fees of the third arbitrator will be shared equally.

Unless both parties agree otherwise, arbitration will take place in the county in which the **insured person** resides. Local rules of procedure and evidence will apply.

A decision agreed to by two of the arbitrators will be binding with respect to a determination of:

1. the legal liability of the operator or owner of an **uninsured motor vehicle** or **underinsured motor vehicle**; and
2. the amount of the damages sustained by the **insured person**.

The arbitrators will have no authority to award an amount in excess of the limit of liability.

We and an **insured person** may agree to an alternate form of arbitration.

ARBITRATION FOR PROPERTY DAMAGE CLAIMS

An **insured person** may submit a disputed **property damage** claim to arbitration in accordance with South Carolina law.

PART IV—DAMAGE TO A VEHICLE

INSURING AGREEMENT—COLLISION COVERAGE

If **you** pay the premium for this coverage, **we** will pay for sudden, direct and accidental loss to a:

1. **covered auto**, including an attached **trailer**; or
2. **non-owned auto**;

and its **custom parts or equipment**, resulting from **collision**.

In addition, **we** will pay the reasonable cost to replace any child safety seat damaged in an accident to which this coverage applies.

INSURING AGREEMENT—COMPREHENSIVE COVERAGE

If **you** pay the premium for this coverage, **we** will pay for sudden, direct and accidental loss to a:

1. **covered auto**, including an attached **trailer**; or
2. **non-owned auto**;

and its **custom parts or equipment**, that is not caused by **collision**.

ELECTRONICALLY FILED - 2020 May 11 3:45 PM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

A loss not caused by **collision** includes:

1. contact with an animal (including a bird);
2. explosion or earthquake;
3. fire;
4. malicious mischief or vandalism;
5. missiles or falling objects;
6. riot or civil commotion;
7. theft or larceny;
8. windstorm, hail, water or flood; or
9. breakage of glass not caused by **collision**.

In addition, **we** will pay for:

1. reasonable transportation expenses incurred by **you** if a **covered auto** is stolen; and
2. loss of use damages that **you** are legally liable to pay if a **non-owned auto** is stolen.

A combined maximum of $900, not exceeding $30 per day, will apply to these additional benefits. The additional benefit for transportation expenses will not apply if **you** purchased Rental Reimbursement Coverage for the stolen **covered auto**.

Coverage for transportation expenses and loss of use damages begins 48 hours after **you** report the theft to **us** and ends the earliest of:

1. when the **auto** has been recovered and returned to **you** or its owner;
2. when the **auto** has been recovered and repaired;
3. when the **auto** has been replaced; or
4. 72 hours after **we** make an offer to settle the loss if the **auto** is deemed by **us** to be a total loss.

We must receive written proof of transportation expenses and loss of use damages.

INSURING AGREEMENT—ADDITIONAL CUSTOM PARTS OR EQUIPMENT COVERAGE

We will pay for sudden, direct and accidental loss to **custom parts or equipment** on a **covered auto** for which this coverage has been purchased. This coverage applies only if **you** have purchased both Comprehensive Coverage and Collision Coverage for that **covered auto** and the loss is covered under one of those coverages. This coverage applies in addition to any coverage automatically provided for **custom parts or equipment** under Comprehensive Coverage or Collision Coverage.

INSURING AGREEMENT—RENTAL REIMBURSEMENT COVERAGE

We will reimburse rental charges incurred when **you** rent an **auto** from a rental agency or auto repair shop due to a loss to a **covered auto** for which Rental Reimbursement Coverage has been purchased. This coverage applies only if **you** have

ELECTRONICALLY FILED - 2020 May 11 3:45 PM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

purchased both Comprehensive Coverage and Collision Coverage for that **covered auto** and the loss is covered under one of those coverages.

Additional fees or charges for insurance, damage waivers, optional equipment, fuel, or accessories are not covered.

This coverage is limited to the each day limit shown on the **declarations page** for a maximum of 30 days.

If Rental Reimbursement Coverage applies, no other coverage under this policy for rental expenses will apply.

Rental charges will be reimbursed beginning:
1. when the **covered auto** cannot be driven due to a loss; or
2. if the **covered auto** can be driven, when **you** deliver the **covered auto** to an auto repair shop or one of **our** Service Centers for repairs due to the loss;

and ending the earliest of:
1. when the **covered auto** has been returned to **you**;
2. when the **covered auto** has been repaired;
3. when the **covered auto** has been replaced;
4. 72 hours after **we** make an offer to settle the loss if the **covered auto** is deemed by **us** to be a total loss; or
5. when **you** incur 30 days worth of rental charges.

You must provide **us** written proof of **your** rental charges to be reimbursed.

INSURING AGREEMENT—LOAN/LEASE PAYOFF COVERAGE

If **you** pay the premium for this coverage, and the **covered auto** for which this coverage was purchased is deemed by **us** to be a total loss, **we** will pay, in addition to any amounts otherwise payable under this Part IV, the difference between:
1. the actual cash value of the **covered auto** at the time of the total loss; and
2. any greater amount the owner of the **covered auto** is legally obligated to pay under a written loan or lease agreement to which the **covered auto** is subject at the time of the total loss, reduced by:
   a. unpaid finance charges or refunds due to the owner for such charges;
   b. excess mileage charges or charges for wear and tear;
   c. charges for extended warranties or refunds due to the owner for extended warranties;
   d. charges for credit insurance or refunds due to the owner for credit insurance;
   e. past due payments and charges for past due payments; and
   f. collection or repossession expenses.

However, **our** payment under this coverage shall not exceed the limit of liability shown on the **declarations page**. The limit of liability is a percentage of the actual cash value of the **covered auto** at the time of the loss.

ELECTRONICALLY FILED - 2020 May 11 3:45 PM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

ELECTRONICALLY FILED - 2020 May 11 3:45 PM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

This coverage applies only if **you** have purchased both Comprehensive Coverage and Collision Coverage for that **covered auto** and the loss is covered under one of those coverages.

INSURING AGREEMENT—PET INJURY COVERAGE

If **you** have purchased Collision coverage for at least one **covered auto** under **your** policy, and if **your pet** sustains injury or death while inside a **covered auto** or **non-owned auto** at the time of a loss covered under Collision or Comprehensive coverage, **we** will provide:

1. up to $1,000 for reasonable and customary veterinary fees incurred by **you**, a **relative**, or a **rated resident** if **your pet** is injured in, or as a direct result of, the covered loss; or
2. a $1,000 death benefit if **your pet** dies in, or as a direct result of, the covered loss, less any payment **we** made toward veterinary expenses for **your pet**.

In the event of a covered loss due to the theft of a **covered auto** or **non-owned auto**, **we** will provide the death benefit provided **your pet** is inside that auto at the time of the theft and **your pet** is not recovered.

ADDITIONAL DEFINITIONS

When used in this Part IV:

1. "**Collision**" means the upset of a vehicle or its impact with another vehicle or object.
2. "**Custom parts or equipment**" means equipment, devices, accessories, enhancements and changes, other than those that are offered by the manufacturer specifically for that **auto** model, or that are installed by the auto dealership as part of the original sale of a new **auto**, that:
   a. are permanently installed or attached; and
   b. alter the appearance or performance of the **auto**.
3. "**Mechanical parts**" means operational parts on a vehicle that wear out over time or have a finite useful life or duration typically shorter than the life of the vehicle as a whole. **Mechanical parts** do not include external crash parts, wheels, paint, or windshields and other glass.
4. "**Non-owned auto**" means an **auto** that is not owned by or furnished or available for the regular use of **you**, a **relative**, or a **rated resident** while in the custody of or being operated by **you**, a **relative**, or a **rated resident** with the permission of the owner of the **auto** or the person in lawful possession of the **auto**.
5. "**Your pet**" means any dog or cat owned by **you**, a **relative**, or a **rated resident**.

EXCLUSIONS—READ THE FOLLOWING EXCLUSIONS CAREFULLY. IF AN EXCLUSION APPLIES, COVERAGE WILL NOT BE AFFORDED UNDER THIS PART IV.

Coverage under this Part IV will not apply for loss:

1. to any vehicle while being used:
   a. to carry persons or property for compensation or a fee;

ELECTRONICALLY FILED - 2020 May 11 3:45 PM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

b. for retail or wholesale delivery, including, but not limited to, the pickup, transport or delivery of magazines, newspapers, mail or food; or
c. for **ride-sharing activity**.

This exclusion does not apply to shared-expense car pools;

2. to a **non-owned auto** while being maintained or used by a person while employed or engaged in any **auto business**;
3. to any vehicle resulting from, or sustained during practice or preparation for:
   a. any pre-arranged or organized racing, stunting, speed or demolition contest or activity; or
   b. any driving activity conducted on a permanent or temporary racetrack or racecourse;
4. to any vehicle for which insurance:
   a. is afforded under a nuclear energy liability insurance contract; or
   b. would be afforded under a nuclear energy liability insurance contract but for its termination upon exhaustion of its limit of liability;
5. to any vehicle caused by an intentional act committed by or at the direction of **you**, a **relative**, a **rated resident**, or the owner of a **non-owned auto**, even if the actual damage is different than that which was intended or expected;
6. to a **covered auto** while it is leased or rented to others or given in exchange for compensation, including while being used in connection with a **personal vehicle sharing program**. This exclusion does not apply to the operation of a **covered auto** by **you**, a **relative**, or a **rated resident**;
7. due to destruction or confiscation by governmental or civil authorities of any vehicle because **you**, any **relative**, or any **rated resident** engaged in illegal activities;
8. to any vehicle that is due and confined to:
   a. wear and tear;
   b. freezing;
   c. mechanical, electrical or electronic breakdown or failure; or
   d. road damage to tires.

   This exclusion does not apply if the damage results from the theft of a vehicle;
9. to portable equipment, devices, accessories, and any other personal effects that are not permanently installed. This includes, but is not limited to:
   a. tapes, compact discs, cassettes, DVDs, and other recording or recorded media;
   b. any case or other container designed for use in storing or carrying tapes, compact discs, cassettes, DVDs, or other recording or recorded media;
   c. any device used for the detection or location of radar, laser, or other speed measuring equipment or its transmissions; and
   d. CB radios, telephones, two-way mobile radios, DVD players, personal computers, personal digital assistants, or televisions;
10. to any vehicle for diminution of value;
11. to any vehicle caused directly or indirectly by:
    a. war (declared or undeclared) or civil war;
    b. warlike action by any military force of any government, sovereign, or other authority using military personnel or agents. This includes any action taken to hinder or defend against an actual or expected attack; or

c. insurrection, rebellion, revolution, usurped power, or any action taken by a governmental authority to hinder or defend against any of these acts;

12. to any vehicle caused directly or indirectly by:
    a. any accidental or intentional discharge, dispersal or release of radioactive, nuclear, pathogenic or poisonous biological material; or
    b. any intentional discharge, dispersal or release of chemical or hazardous material for any purpose other than its safe and useful purpose; or
13. to any vehicle caused by, or reasonably expected to result from, a criminal act or omission of **you**, a **relative**, a **rated resident**, or the owner of a **non-owned auto**. This exclusion applies regardless of whether **you**, the **relative**, the **rated resident**, or the owner of the **non-owned auto** is actually charged with, or convicted of, a crime. For purposes of this exclusion, criminal acts or omissions do not include traffic violations.

LIMITS OF LIABILITY

1. The limit of liability for loss to a **covered auto**, **non-owned auto**, or **custom parts or equipment** is the lowest of:
    a. the actual cash value of the stolen or damaged property at the time of the loss reduced by the applicable deductible;
    b. the amount necessary to replace the stolen or damaged property reduced by the applicable deductible;
    c. the amount necessary to repair the damaged property to its pre-loss condition reduced by the applicable deductible; or
    d. the Stated Amount shown on the **declarations page** for that **covered auto**.

    However, the most **we** will pay for loss to:
    a. **custom parts or equipment** is $1,000 unless **you** purchased Additional Custom Parts or Equipment Coverage ("ACPE"). If **you** purchased ACPE, the most **we** will pay is $1,000 plus the amount of ACPE **you** purchased.
    b. a **trailer** is the limit of liability shown on the **declarations page** for that **trailer**. If the **trailer** is not shown on the **declarations page**, the limit of liability is $500.
2. Payments for loss to a **covered auto**, **non-owned auto**, or **custom parts or equipment** are subject to the following provisions:
    a. If coverage applies to a **non-owned auto**, **we** will provide the broadest coverage applicable to any **covered auto** shown on the **declarations page**.
    b. If **you** have elected a Stated Amount for a **covered auto**, the Stated Amount is the most **we** will pay for all loss to that **covered auto**, including its **custom parts or equipment**.
    c. Coverage for **custom parts or equipment** will not cause **our** limit of liability for loss to an **auto** under this Part IV to be increased to an amount in excess of the actual cash value of the **auto**, including its **custom parts or equipment**.
    d. In determining the amount necessary to repair damaged property to its pre-loss condition, the amount to be paid by **us**:
        (i) will not exceed the prevailing competitive labor rates charged in the area where the property is to be repaired and the cost of repair or replacement parts and equipment, as reasonably determined by **us**; and

ELECTRONICALLY FILED - 2020 May 11 3:45 PM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

(ii) will be based on the cost of repair or replacement parts and equipment which may be new, reconditioned, remanufactured or used, including, but not limited to:
(a) original manufacturer parts or equipment; and
(b) nonoriginal manufacturer parts or equipment.

e. To determine the amount necessary to repair or replace the damaged property as referred to in subsection 1., the total cost of necessary repair or replacement may be reduced by unrepaired prior damage. Unrepaired prior damage includes broken, cracked or missing parts; rust; dents; scrapes; gouges; and peeling paint. The reduction for unrepaired prior damage is the cost of labor, parts and materials necessary to repair or replace damage, deterioration, defects, or wear and tear on exterior body parts, windshields and other glass, wheels, and paint, that existed prior to the accident and that is eliminated as a result of the repair or replacement of property damaged in the loss.

f. To determine the amount necessary to repair or replace the damaged property as referred to in subsection 1., an adjustment may be made for betterment or depreciation and physical condition on:
(i) batteries;
(ii) tires;
(iii) engines and transmissions, if the engine has greater than 80,000 miles; and
(iv) any other **mechanical parts** that are nonfunctioning or inoperative.
We will not make an adjustment for the labor costs associated with the replacement or repair of these parts.

g. The actual cash value is determined by the market value, age, and condition of the vehicle at the time the loss occurs.

3. No deductible will apply with respect to damage to automobile safety glass.
4. Duplicate recovery for the same elements of damages is not permitted.
5. Any amount paid or payable to a person under this Part IV for **property damage** to an **auto** shall be reduced by any amount paid for that **property damage** to the **auto** under Part III—Uninsured/Underinsured Motorist Coverage.
6. The following additional limits of liability apply to Pet Injury coverage:
   a. The most **we** will pay for all damages in any one loss is a total of $1,000 regardless of the number of dogs or cats involved.
   b. If **your pet** dies in, or as a direct result of, a covered loss, **we** will provide a death benefit of $1,000, less any payment **we** made toward veterinary expenses for **your pet**.
   c. No deductible shall apply to this coverage.

PAYMENT OF LOSS

We may, at **our** option:
1. pay for the loss in money; or
2. repair or replace the damaged or stolen property.

ELECTRONICALLY FILED - 2020 May 11 3:45 PM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

At **our** expense, **we** may return any recovered stolen property to **you** or to the address shown on the **declarations page**, with payment for any damage resulting from the theft. **We** may keep all or part of the property at the agreed or appraised value.

We may settle any loss with **you** or the owner or lienholder of the property.

NO BENEFIT TO BAILEE

Coverage under this Part IV will not directly or indirectly benefit any carrier or other bailee for hire.

LOSS PAYABLE CLAUSE

Payment under this Part IV for a loss to a **covered auto** will be made according to **your** interest and the interest of any lienholder shown on the **declarations page** or designated by **you**. At **our** option, payment may be made to both jointly, or to either separately. However, if the **covered auto** is not a total loss, **we** may make payment to **you** and the repairer of the **auto**.

The lienholder's interest will not be protected:

1. where fraud, misrepresentation, material omission, or intentional damage resulting in a denial of coverage by **us** has been committed by or at the direction of **you** or any person seeking coverage; or
2. where the loss is otherwise not covered under the terms of this policy.

If this policy is cancelled, nonrenewed or voided, the interest of any lienholder under this agreement will also terminate.

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 for a **non-owned auto**, or **trailer** not shown on the **declarations page**, will 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** or **trailer**;
2. any other applicable physical damage insurance; and
3. any other source of recovery applicable to the loss.

APPRAISAL

If **we** cannot agree with **you** on the amount of a loss, then **we** or **you** may demand an appraisal of the loss. Within 30 days of any demand for an appraisal, each party shall appoint a competent appraiser and shall notify the other party of that appraiser's identity. The appraisers will determine the amount of loss. If they fail to agree, the disagreement will be submitted to a qualified umpire chosen by the appraisers.

ELECTRONICALLY FILED - 2020 May 11 3:45 PM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

ELECTRONICALLY FILED - 2020 May 11 3:45 PM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

If the two appraisers are unable to agree upon an umpire within 15 days, **we** or **you** may request that a judge of a court of record, in the county where **you** reside, select an umpire. The appraisers and umpire will determine the amount of loss. The amount of loss agreed to by both appraisers, or by one appraiser and the umpire, will be binding. **You** will pay **your** appraiser's fees and expenses. **We** will pay **our** appraiser's fees and expenses. All other expenses of the appraisal, including payment of the umpire if one is selected, will be shared equally between **us** and **you**. Neither **we** nor **you** waive any rights under this policy by agreeing to an appraisal.

PART V—ROADSIDE ASSISTANCE COVERAGE

INSURING AGREEMENT

If **you** pay the premium for this coverage, **we** will pay for **our** authorized service representative to provide the following services when necessary due to a **covered emergency**:

1. towing of a **covered disabled auto** to the nearest qualified repair facility; and
2. labor on a **covered disabled auto** at the place of disablement.

If a **covered disabled auto** is towed to any place other than the nearest qualified repair facility, **you** will be responsible for any additional charges incurred.

ADDITIONAL DEFINITIONS

When used in this Part V:

1. "**Covered disabled auto**" means a **covered auto** for which this coverage has been purchased that sustains a **covered emergency**.
2. "**Covered emergency**" means a disablement that is a result of:
   a. mechanical or electrical breakdown;
   b. battery failure;
   c. insufficient supply of fuel, oil, water, or other fluid;
   d. flat tire;
   e. lock-out; or
   f. entrapment in snow, mud, water or sand within 100 feet of a road or highway.

EXCLUSIONS—READ THE FOLLOWING EXCLUSIONS CAREFULLY. IF AN EXCLUSION APPLIES, COVERAGE WILL NOT BE AFFORDED UNDER THIS PART V.

Coverage under this Part V will not apply to:

1. more than three **covered emergencies** for any single **covered auto** in a six-month period;
2. the cost of purchasing parts, fluid, lubricants, fuel, or replacement keys, or the labor to make replacement keys;
3. installation of products or material not related to the disablement;

4. labor not related to the disablement;
5. labor on a **covered disabled auto** for any time period in excess of 60 minutes per disablement;
6. towing or storage related to impoundment, abandonment, illegal parking, or other violations of law;
7. assistance with jacks, levelers, airbags or awnings;
8. labor or repair work performed at a service station, garage, or repair shop;
9. auto storage charges;
10. disablement that occurs on roads not regularly maintained, sand beaches, open fields, or areas designated as not passable due to construction, weather, or earth movement;
11. mounting or removing of snow tires or chains;
12. tire repair;
13. disablement that results from an intentional or willful act or action by **you**, a **relative**, or the operator of a **covered disabled auto**;
14. any **covered auto** while being used in connection with **ride-sharing activity**;
15. any **covered auto** while being used in connection with a **personal vehicle sharing program**; or
16. a trailer.

UNAUTHORIZED SERVICE PROVIDER

When service is rendered by a provider in the business of providing roadside assistance and towing services, other than one of **our** authorized service representatives, **we** will pay only reasonable charges, as determined by **us**, for:

1. towing of a **covered disabled auto** to the nearest qualified repair facility; and
2. labor on a **covered disabled auto** at the place of disablement;

which is necessary due to a **covered emergency**.

OTHER INSURANCE

Any coverage provided under this Part V for service rendered by an unauthorized service provider will be excess over any other collectible insurance or towing protection coverage.

PART VI—DUTIES IN CASE OF AN ACCIDENT OR LOSS

For coverage to apply under this policy, **you** or the person seeking coverage must promptly report each accident or loss even if **you** or the person seeking coverage is not at fault. **You** or the person seeking coverage must provide **us** with all accident or loss information, including time, place, and how the accident or loss happened. **You** or the person seeking coverage must also obtain and provide **us** the names and addresses of all persons involved in the accident or loss, the names and addresses of any witnesses, and the license plate numbers of the vehicles involved.

If **you** or the person seeking coverage cannot identify the owner or operator of a vehicle involved in the accident, or if theft or vandalism has occurred, **you** or the

ELECTRONICALLY FILED - 2020 May 11 3:45 PM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

person seeking coverage must notify the police within 24 hours or as soon as practicable.

A person seeking coverage must:

1. cooperate with **us** in any matter concerning a claim or lawsuit;
2. provide any written proof of loss **we** may reasonably require;
3. allow **us** to take signed and recorded statements, including sworn statements and examinations under oath, which **we** may conduct outside the presence of **you** or any other person seeking coverage, and answer all reasonable questions **we** may ask as often as **we** may reasonably require;
4. promptly call to notify **us** about any claim or lawsuit and send **us** any and all legal papers relating to the claim or suit;
5. attend hearings and trials as **we** require;
6. take reasonable steps after a loss to protect the **covered auto**, or any other vehicle for which coverage is sought, from further loss. **We** will pay reasonable expenses incurred in providing that protection. If failure to provide such protection results in further loss, any additional damages will not be covered under this policy;
7. allow **us** to have the damaged **covered auto**, or any other damaged vehicle for which coverage is sought, inspected and appraised before its repair or disposal;
8. submit to medical examinations at **our** expense by doctors **we** select as often as **we** may reasonably require; and
9. authorize **us** to obtain medical and other records.

PART VII—GENERAL PROVISIONS

POLICY PERIOD AND TERRITORY

This policy applies only to accidents and losses occurring during the policy period shown on the **declarations page** and that occur within a state, territory or possession of the United States of America, or a province or territory of Canada, or while a **covered auto** is being transported between their ports.

CHANGES

This policy contract, **your** insurance application (which is made a part of this policy as if attached hereto), the **declarations page**, and all endorsements to this policy issued by **us**, contain all the agreements between **you** and **us**. Subject to the following, the terms of this policy may not be changed or waived except by an endorsement issued by **us**.

The premium for this policy is based on information **we** received from **you** and other sources. **You** agree to cooperate with **us** in determining if this information is correct and complete, and to promptly notify **us** if it changes during the policy period. If this information is determined by **us** to be incorrect, incomplete, or if it changes during the policy period, **you** agree that **we** may adjust **your** policy information and premi-

ELECTRONICALLY FILED - 2020 May 11 3:45 PM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

ELECTRONICALLY FILED - 2020 May 11 3:45 PM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

um accordingly. Changes that may result in a premium adjustment are contained in **our** rates and rules. These include, but are not limited to, **you**, a **relative**, or a **rated resident** obtaining a driver's license or operator's permit, or changes in:

1. the number, type or use classification of **covered autos**;
2. the persons who regularly operate a **covered auto**;
3. the persons of legal driving age residing in **your** household;
4. the residents in **your** household;
5. an operator's marital status;
6. **your** mailing address and **your** residence address;
7. the principal garaging address of any **covered auto**;
8. coverage, deductibles, or limits of liability; or
9. rating territory or discount eligibility.

The coverage provided in **your** policy may be changed only by the issuance of a new policy or an endorsement by **us**. However, if during the policy period **we** broaden any coverage afforded under the current edition of **your** policy without additional premium charge, that change will automatically apply to **your** policy as of the date the coverage change is implemented in **your** state.

If **you** ask **us** to delete a vehicle from this policy, no coverage will apply to that vehicle as of the date and time **you** ask **us** to delete it.

DUTY TO REPORT CHANGES

You must promptly report to **us** all changes, including additions and deletions, in policy information. This includes, but is not limited to, changes in:

1. **your** mailing address or **your** residence address;
2. the principal garaging address of any **covered auto**;
3. the residents in **your** household;
4. the persons of legal driving age residing in **your** household;
5. the persons who regularly operate a **covered auto**;
6. an operator's marital status; or
7. the driver's license or operator's permit status of **you**, a **relative**, or a **rated resident.**

SETTLEMENT OF CLAIMS

We may use estimating, appraisal, or injury evaluation systems to assist **us** in adjusting claims under this policy and to assist **us** in determining the amount of damages, expenses, or loss payable under this policy. Such systems may be developed by **us** or a third party and may include computer software, databases, and specialized technology.

TERMS OF POLICY CONFORMED TO STATUTES

If any provision of this policy fails to conform to the statutes of the state listed on **your** application as **your** residence, the provision shall be deemed amended to conform

ELECTRONICALLY FILED - 2020 May 11 3:45 PM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

to such statutes. All other provisions shall be given full force and effect. Any disputes as to the coverages provided or the provisions of this policy shall be governed by the law of the state listed on **your** application as **your** residence.

TRANSFER OF INTEREST

The rights and duties under this policy may not be transferred to another person without **our** written consent. However, if a named insured shown on the **declarations page** dies, this policy will provide coverage until the end of the policy period for the legal representative of the named insured, while acting as such, and for persons covered under this policy on the date of the named insured's death.

FRAUD OR MISREPRESENTATION

This policy was issued in reliance upon the information provided on **your** insurance application. **We** may void this policy at any time, including after the occurrence of an accident or loss, if **you**:

1. made incorrect statements or representations to **us** with regard to any material fact or circumstance;
2. concealed or misrepresented any material fact or circumstance; or
3. engaged in fraudulent conduct;

at the time of application. This means that **we** will not be liable for any claims or damages that would otherwise be covered unless **we** have certified this policy as proof of financial responsibility. If **we** have certified this policy as proof of financial responsibility, nothing in this provision shall affect coverage under Part I—Liability To Others up to the minimum limit mandated by the motor vehicle financial responsibility law of South Carolina for an accident that occurs before **we** notify **you** that the policy is void. If **we** void this policy, **you** must reimburse **us** if **we** make a payment.

Any changes **we** make at **your** request to this policy after inception will be made in reliance upon information **you** provide. If **you**:

1. make incorrect statements or representations to **us** with regard to any material fact or circumstance;
2. conceal or misrepresent any material fact or circumstance; or
3. engage in fraudulent conduct;

in connection with a requested change **we** may void the policy or reform it as it existed immediately prior to the requested change. **We** may do this at any time, including after the occurrence of an accident or loss.

When **we** have not voided or reformed the policy, **we** may still deny coverage for an accident or loss if **you**, in connection with the policy application, in connection with any requested change, or at any time during the policy period, have concealed or misrepresented any material fact or circumstance or engaged in fraudulent conduct and that concealment, misrepresentation, or fraudulent conduct was material to a risk **we** assumed.

We may deny coverage for an accident or loss if **you** or a person seeking coverage has concealed or misrepresented any material fact or circumstance, or engaged in fraudulent conduct, in connection with the presentation or settlement of a claim. However, this shall not affect coverage under Part I—Liability To Others up to the minimum limit mandated by the motor vehicle financial responsibility law of South Carolina, for any injured person who has not knowingly concealed or misrepresented any material fact or circumstance.

PAYMENT OF PREMIUM AND FEES

If **your** initial premium payment is by check, draft, electronic funds transfer, or similar form of remittance, coverage under this policy is conditioned on payment to **us** by the financial institution. If the financial institution upon presentment does not honor the check, draft, electronic funds transfer, or similar form of remittance, this policy may, at **our** option, be cancelled from its inception by notice of cancellation or rescission. This means **we** will not be liable under this policy for any claims or damages that would otherwise be covered if the check, draft, electronic funds transfer, or similar form of remittance had been honored by the financial institution. Any action by **us** to present the remittance for payment more than once shall not affect **our** right to void this policy.

In addition to premium, fees may be charged on **your** policy. **We** may charge fees for installment payments, late payments, and other transactions. Payments made on **your** policy will be applied first to fees, then to premium due.

CANCELLATION

You may cancel this policy during the policy period by calling or writing **us** and stating the future date **you** wish the cancellation to be effective.

We may cancel this policy during the policy period by mailing a notice of cancellation to the named insured shown on the **declarations page** at the last known address appearing in **our** records, stating the specific reason for cancellation. Notice will be mailed at least 15 days before the date of cancellation.

We may cancel this policy for any of the following reasons within the first 60 days of the initial policy period:

1. a premium payment by check, draft, electronic funds transfer, or similar form of remittance is not honored upon presentment;
2. **you** produce proof that **you** have sold or otherwise disposed of a **covered auto**, or surrendered its tags and registration;
3. **you** have secured another policy that satisfies the financial responsibility laws of the State of South Carolina; or
4. **you** fail to pay when due:
   a. the premium for the policy;
   b. an installment of the premium; or
   c. an installment payment under a premium service contract.

ELECTRONICALLY FILED - 2020 May 11 3:45 PM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

After the policy has been in effect for more than 60 days, but before the policy has been in effect for more than 90 days, **we** may cancel this policy for any reason.

After this policy is in effect for more than 90 days, or if this is a renewal or continuation policy, **we** may cancel only for one or more of the following reasons:

1. nonpayment of premium;
2. loss of driving privileges through suspension or revocation of an operator's license issued to **you**, any driver in **your** household, or any regular operator of a **covered auto**; or
3. any other reason permitted by law.

Proof of mailing will be sufficient proof of notice. If this policy is cancelled, coverage will not be provided as of the effective date and time shown in the notice of cancellation. For purposes of cancellation, this policy is neither severable nor divisible. Any cancellation will be effective for all coverages for all persons and all vehicles.

CANCELLATION REFUND

Upon cancellation, **you** may be entitled to a premium refund. However, **our** making or offering of a refund is not a condition of cancellation.

If this policy is cancelled, any refund due will be computed on a daily pro rata basis. However, if this policy is cancelled at **your** request any refund due will be computed on a 90% of a daily pro rata basis. Earned premium is calculated on a daily basis. **We** will supply a copy of the table to **you** on request.

When **you** renew this policy, **we** will waive **our** right under the policy to calculate cancellation refunds on a 90% of a daily pro rata basis; instead, any refund of premium following a cancellation that may apply to the renewal policy will be calculated on a daily pro rata basis.

NONRENEWAL

If neither **we** nor one of **our** affiliates offers to renew or continue this policy, **we** will mail notice of nonrenewal stating the specific reason for nonrenewal to the named insured shown on the **declarations page** at the last known address appearing in **our** records. Proof of mailing will be sufficient proof of notice. Notice will be mailed at least 15 days before the end of the policy period.

LEGAL ACTION AGAINST US

We may not be sued unless there is full compliance with all the terms of this policy.

We may not be sued for payment under Part I—Liability To Others until the obligation of an insured person under Part I to pay is finally determined either by judgment after trial against that person or by written agreement of the insured person, the

ELECTRONICALLY FILED - 2020 May 11 3:45 PM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

claimant, and **us**. No one will have any right to make **us** a party to a lawsuit to determine the liability of an insured person.

If **we** retain salvage, **we** have no duty to preserve or otherwise retain the salvage for any purpose, including evidence for any civil or criminal proceeding.

OUR RIGHTS TO RECOVER PAYMENT

We are entitled to the rights of recovery that the insured person to whom payment was made has against another, to the extent of **our** payment. That insured person may be required to sign documents related to the recovery and must do whatever else **we** require to help **us** exercise those recovery rights, and do nothing after an accident or loss to prejudice those rights.

However, **we** may not assert rights of recovery:
1. for amounts paid as Underinsured Motorist Coverage benefits; or
2. for amounts paid as Medical Payments Coverage benefits.

When an insured person has been paid by **us** and also recovers from another, the amount recovered will be held by the insured person in trust for **us** and reimbursed to **us** to the extent of **our** payment. If **we** are not reimbursed, **we** may pursue recovery of that amount directly against that insured person.

If an insured person recovers from another without **our** written consent, the insured person's right to payment under any affected coverage will no longer exist.

If **we** elect to exercise **our** rights of recovery against another, **we** will also attempt to recover any deductible incurred by an insured person under this policy unless **we** are specifically instructed by that person not to pursue the deductible. **We** have no obligation to pursue recovery against another for any loss not covered by this policy.

We reserve the right to compromise or settle the deductible and property damage claims against the responsible parties for less than the full amount. **We** also reserve the right to incur reasonable expenses and attorney fees in pursuit of the recovery.

If the total recovery is less than the total of **our** payment and the deductible, **we** will reduce reimbursement of the deductible based on the proportion that the actual recovery bears to the total of **our** payment and the deductible. A proportionate share of collection expenses and attorney fees incurred in connection with these recovery efforts will also reduce reimbursement of the deductible.

These provisions will be applied in accordance with state law.

JOINT AND INDIVIDUAL INTERESTS

If there is more than one named insured on this policy, any named insured may cancel or change this policy. The action of one named insured will be binding on all persons provided coverage under this policy.

ELECTRONICALLY FILED - 2020 May 11 3:45 PM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

ELECTRONICALLY FILED - 2020 May 11 3:45 PM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

BANKRUPTCY

The bankruptcy or insolvency of an insured person will not relieve **us** of any obligations under this policy.

ELECTRONICALLY FILED - 2020 May 11 3:45 PM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

PROGRESSIVE
AUTO

9611A SC 1014



Medical Payments Coverage Endorsement

Your policy is amended as follows:

Part II - Medical Payments Coverage

The following is deleted under the Limits of Liability provision:

No one will be entitled to duplicate payments under this policy for the same elements of damages.

Any amount payable to an **insured person** under this Part II will be reduced by any amount paid or payable for the same expense under Part I - Liability To Others or Part III - Uninsured/Underinsured Motorist Coverage.

All other terms, limits and provisions of this policy remain unchanged.

Form A048 SC (07/11)

ELECTRONICALLY FILED - 2020 May 11 3:45 PM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

ELECTRONICALLY FILED - 2020 Jun 18 11:03 AM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

STATE OF SOUTH CAROLINA COUNTY OF CHESTER	IN THE COURT OF COMMON PLEAS FOR THE SIXTH JUDICIAL CIRCUIT
Alexis Jones and Willie Brown, Plaintiffs, -vs- Progressive Northern Insurance Company, Defendant.	Civil Case #: 2020-CP-12-00207 **PLAINTIFFS' MOTION IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

Now come the Plaintiffs by through the undersigned counsel, hereby submit their Memorandum of Law in Opposition to Defendant's Motion to Dismiss:

SUMMARY OF FACTS

This action arises out of Progressive's failure to pay Plaintiff Alexis Jones the full $10,000 in medical payments coverage owed to her under Plaintiff Willie Brown's auto policy as a result of an auto accident on October 8, 2019. Compl. ¶¶ 10-14. The policy includes a $10,000.00 medical payments coverage limit for "reasonable expenses incurred for necessary medical services" sustained by an insured as a result of an accident. Compl. ¶ 8; Def.'s Mem. In Supp. Of Its Mot. To Dismiss Ex. A, at 14 [hereinafter Def.'s Mot. To Dismiss]. Plaintiff Jones is a Medicaid recipient. Progressive made payments to Plaintiff Jones for the amount Medicaid paid to satisfy the medical bills ($1,323.60) rather than the original listed charges of $27,786.17 which exceeded the $10,000.00 limit. *See* Compl. ¶¶ 12, 25.b. Defendant wrongly argues Plaintiff Jones neither "incurred" the full charges of the bills nor do the state statutes argued in the Complaint apply to the alleged conduct. Def.'s Mot. To Dismiss, at 3-12.

ELECTRONICALLY FILED - 2020 Jun 18 11:03 AM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

STANDARD OF REVIEW

Defendant brought this motion pursuant to Rule 12(b)(6), SCRCP. However, when considering a Rule 12(b)(6) motion, the court is concerned only with whether the allegations of the complaint, which it must accept as true, state a cause of action. Doe v. Bishop of Charleston, 407 S.C. 128, 754 S.E.2d 494 (2014). *See* Chestnut v. AVX Corp., 413 S.C. 224, 227, 776 S.E.2d 82, 84 (2015). Additionally, "[t]he 12(b)(6) motion may not be sustained if the facts alleged and inferences therefrom would entitle the plaintiff to any relief on any theory." Baird v. Charleston Cty., 333 S.C. 519, 527, 511 S.E.2d 69, 73 (1999) (citing Stiles v. Onorato, 318 S.C. 297, 457 S.E.2d 601 (1995)). "If on a motion under 12(b)(6) matters outside the pleadings are presented and not excluded, the motion shall be treated as one for summary judgment." McDonnell v. Consol. Sch. Dist. of Aiken, 315 S.C. 487, 489 n.2, 445 S.E.2d 638, 639 n.2 (1994). "[Rule 12(b)(6)] specifically provides for conversion, provided the parties, upon compliance with the notice provisions of Rule 56, are afforded a reasonable opportunity to introduce evidentiary matters." Johnson v. Dailey, 318 S.C. 318, 321, 457 S.E.2d 613, 615 (1995). The pertinent portion of Rule 12(b) allowing conversion provides:

> If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state facts sufficient to constitute a cause of action, matters outside the pleading are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

Defendant converted its Rule 12(b)(6) motion to a motion for summary judgment the moment it filed its motion based on the insurance policy and attached it as an exhibit for the court's review. Plaintiffs cannot defend the motion without also pointing to evidence outside the

ELECTRONICALLY FILED - 2020 Jun 18 11:03 AM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

pleadings. However, Plaintiffs object to the court hearing Defendant's motion for summary judgment before the parties have had a fair opportunity to conduct discovery.

"Summary judgment is a drastic remedy and must not be granted until the opposing party has had a full and fair opportunity to complete discovery." Dawkins v. Fields, 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003). Plaintiffs served discovery requests on Defendant on May 5, 2020, which have not been answered within thirty (30) days as required by SCRCP 34. Plaintiffs therefore object to proceeding with the motion for summary judgment until they have been given a full and fair opportunity to conduct discovery.

I. Plaintiff concedes there is no violation of the South Carolina Unfair Trade Plaintiff Practices Act and that claim must be dismissed.

II. Defendant's Actions are a clear violation of South Carolina Code Section 38-77-144.

South Carolina Code Section 38-77-144 states, "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." Progressive's attempt to reduce the amount paid to Ms. Jones under the medical payments portion of Mr. Brown's policy based on the amount her Medicaid paid to her healthcare providers is a setoff. This is a clear violation of South Carolina law.

In Cothran v. State Farm Mutual Auto Insurance Co., 427 S.C. 545, 546-47, 831 S.E.2d 919, 920 (2019), State Farm tried to reduce their obligation to pay PIP coverage by the amount a worker's compensation carrier paid for the insured's medical expenses. The Supreme Court in South Carolina found "[w]hen an insurer seeks to reduce its obligation to pay benefits based on a third party's previous payment for the same claim, it is a setoff." Cothran, 427 S.C. at 555, 831

ELECTRONICALLY FILED - 2020 Jun 18 11:03 AM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

S.E.2d at 924. Further, the legislative intent of section 38-77-144 is "to prevent an insurance company that sells [MedPay] coverage from reducing the amount of [MedPay] it is obligated to pay because the insured received a third-party payment for the same expenses." Cothran, 427 S.C. at 550, 831 S.E.2d at 921. Specifically, the Court stated, "Because that is the precise effect of State Farm's "Coordination" provision, section 38-77-144 prohibits the provision from reducing State Farm's obligation to pay PIP benefits to the Cothrans." Cothran, 427 S.C. at 555, 831 S.E.2d at 924. Cothran is analogous to the case at hand. Progressive's attempt to pay benefits for "reasonable expenses incurred" is equal to a setoff because Progressive uses a **third-party payment to determine what defines "reasonable expenses incurred."** This use of a third-party payment goes to the crux of the statute.

Likewise, the Court in Cothran further defined the term "setoff" to mean "any reduction in the amount a[n] . . . insurance company would otherwise be obligated to pay on a claim, when the right to the reduction arises as a result of a payment from a third party." Cothran, 427 S.C. at 548, 831 S.E.2d at 921. The plaintiff in Cothran incurred medical expenses totaling $40,000, which her workers' compensation benefits covered completely; therefore, State Farm declared they had no obligation to pay any PIP benefits. 427 S.C. at 550 n.2, 831 S.E.2d at 921 n.2. Of importance, however, the Court noted that had the plaintiff's workers' compensation benefits only paid $37,500, State Farm would have then owed the plaintiff $2,500. Id. Similarly, Ms. Jones accrued medical expenses in excess of $10,000, while Medicaid paid $1,323.60 to satisfy those expenses. Had Medicaid paid more or less Progressive would have paid that amount. Progressive is using a third party's payment to reduce the amount it owes the Plaintiff, therefore the "reasonable expenses incurred" provision is a setoff.

ELECTRONICALLY FILED - 2020 Jun 18 11:03 AM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

Progressive tries to argue in its brief the Plaintiffs have not alleged Progressive has reduced is medical payments benefits by the amount paid by Medicaid. Defendant hinges on the Plaintiffs specifically alleging Progressive has "violated Sections 38-77-144 by refusing to pay Plaintiff any amount above what Medicaid paid to Plaintiff Jones's heath care providers." Compl. ¶ 25.b. This is simply a repackaging of the same argument. Defendant is correct in that the Plaintiff did not allege Progressive specifically reduced the amount owed by subtracting the amount paid by Medicaid from the policy limit ($10,000 - $1,323.60 = $8,676.40 benefits owed). Rather, Plaintiff alleged Progressive was even *more egregious* in their position by refusing to pay more than the $1,323.60 Medicaid paid. The bottom line is both positions reduce the amount of benefits paid by an amount paid by a third party which is a violation of Section 38-77-144.

III. The Collateral Source Rule prohibits Progressive from basing its payment to Plaintiff on what Medicaid, a wholly independent source, has already paid.

The collateral source rule affirms "that compensation received by an injured party from a source wholly independent of the wrongdoer will not reduce the amount of damages owed by the wrongdoer." In re W.B. Easton Const. Co., Inc., 320 S.C. 90, 92, 463 S.E.2d 317, 318 (1995). This rule has long been followed and is liberally applied in South Carolina. Id. "The only requirement for qualification as a collateral source is that the source be 'wholly independent of the wrongdoer'." Id. A source is wholly independent and, therefore, collateral when "the wrongdoer has not contributed to it and when payments to the injured party were not made on behalf of the wrongdoer." Pustaver v. Gooden, 350 S.C. 409, 413, 566 S.E.2d 199, 201 (Ct. App 2002). Ms. Jones's Medicaid is the very definition of a collateral source. The South Carolina Supreme Court declared that "to hold that the plaintiff is limited to damages in the amount

ELECTRONICALLY FILED - 2020 Jun 18 11:03 AM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

actually paid by Medicaid is contrary to the purposes behind the collateral source rule . . . ." *See* Haselden v. Davis, 353 S.C. 481, 485, 579 S.E.2d 293, 295 (2003)

Additionally, in Covington v. George, 359 S.C. 100, 597 S.E.2d 142 (2004), the question presented to the Court was "whether a [defendant] can introduce evidence of the actual payment amount to challenge the reasonableness of the medical expenses sought by the plaintiff." 359 S.C. at 103, 597 S.E.2d at 144. The Court found that the collateral source was directly implicated, and the actual payment was properly excluded, insofar as inquiry into the payments made would lead to the introduction of contractual arrangements between health insurers and health care providers. 359 S.C. at 103-104, 597 S.E.2d at 144.

By limiting payment to what Medicaid paid, Progressive violated the collateral source rule. Plaintiff submitted bills from her medical providers which exceeded the coverage limit of $10,000. As such, Plaintiff was entitled to $10,000.00. Medicaid's payment of $1,323.60 represents compensation from a wholly independent party and, therefore, meets the requirements to qualify as a collateral source. Accordingly, Progressive is not entitled to reduce the payment it owes the Plaintiff to the amount of expenses paid out by Medicaid. Progressive's assertion that it only owes the Plaintiff $1,323.60 does precisely what the collateral source rule seeks to prevent—a windfall to an insurer.

That windfall results from Progressive taking advantage of the contract between the Plaintiff and Medicaid. The Plaintiff responsibly applied for Medicaid and as such, she received the benefit of lower medical costs; Progressive should not reap the rewards of that decision. As Haselden points out, limiting the Plaintiff's payment to the amount actually paid by Medicaid is contrary to the purposes behind the collateral source rule.

ELECTRONICALLY FILED - 2020 Jun 18 11:03 AM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

Similarly, like the defendant in Covington, Progressive attempts to rely on the actual Medicaid payment amount to challenge the reasonableness of the medical expenses. However, in seeking to reduce its amount to what Medicaid paid, Progressive attempts to benefit from the contractual relationship between Medicaid and the Plaintiff's medical providers. By limiting its payment to the Plaintiff to only what Medicaid paid and ignoring the actual amounts billed for, Progressive has violated the collateral source rule and used a third-party payment to reduce its damages.

IV. Progressive misreads and misapplies Gordon and Barker.

Progressive has misplaced reliance upon Gordon v. Fidelity & Casualty Co. of N.Y., 238 S.C. 438, 120 S.E.2d 509 (1961), and Barker v. Washington National Insurance, No. 9:12-cv-1909-PMD, 2013 WL 1767620 (D.S.C. Apr. 24, 2013), to support its position that Plaintiff Jones incurred no expense above the Medicaid reduced rates, therefore, is not entitled to Progressive's MedPay coverage limits. Progressive does not place any importance on the factual distinctions between Gordon and Barker and this matter and how such factual distinctions are critical to the ultimate outcome. *See* Def.'s Mot. To Dismiss, at 6-7; 9-12. The facts and circumstances of both Gordon and Barker differ substantially from both each other as well as this matter. Even with the critical distinctions, these two cases are useful in showing how Progressive should have unambiguously written its policy to achieve its desire to reduce medical payments to policyholders who had Medicaid.

A. Gordon defines "expense incurred" consistent with Plaintiff's reading of the policy.

Gordon analyzed the meaning of "expense incurred." In Gordon, there were never any expenses because the medical services provided at the military base hospital were always free.

ELECTRONICALLY FILED - 2020 Jun 18 11:03 AM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

Gordon, 238 S.C. at 446, 120 S.E.2d at 513. Hence, an expense was not incurred, ever. Gordon was trying to collect the value of medical services which differs substantially from a bill or charge for medical services. *See* Gordon, 238 S.C. at 441, 120 S.E.2d at 510. Plaintiff Jones, on the other hand, incurred an expense on the date of service because she was charged for the medical services she obtained. By virtue of being billed for the medical services, Plaintiff Jones "incurred" an "expense." This is a key factual distinction between Gordon and Plaintiff Jones' claim which was overlooked in Progressive's brief.

B. Progressive should look to Barker for instruction on how a policy should be written to properly explain to its policyholders its payment methodology.

Progressive failed to consider broad factual distinctions when proclaiming Barker is indistinguishable from this case.[1] Once again when considering Progressive's cited cases, factual distinctions are key.

The facts in Barker cannot be reconciled with the facts of Plaintiff Jones's case. In Barker, the plaintiff obtained a "Limited Benefit Health Coverage" insurance policy. Barker, 2013 WL 1767620, at *1. The policy promised payments to the insured for the "expenses incurred" for medical services. Id. at *4. Early in the life of the policy, the carrier tried to reduce the amount paid to Barker by taking advantage of his health insurance discounts. Id. at *1. Barker complained to the insurance company and ultimately to the South Carolina Department of Insurance, which resolved the issue in Barker's favor. Id. Thereafter, he

[1] Additionally, Barker is a federal district court case and, therefore, any decision in that case is not binding on this Court. *See* Bazzle v. Green Tree Fin. Corp., 351 S.C. 244, 264, 569 S.E2d 349, 359 (2002).

ELECTRONICALLY FILED - 2020 Jun 18 11:03 AM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

continued to receive payments based upon the full amount of the charges by the medical provider.[2] Id.

At a later date, Barker became eligible for Medicare. Id. His policy had a Medicare endorsement which provided a specific formula for payment of benefits that differed from the previous formula. Id. at *7. The policy paid less to the insured because it took advantage of the Medicare write down. *See* id. To compensate the insured for the reduction in benefit, the policy also provided for a premium reduction. Id. In Progressive's policy there is no such written policy provision or reduced premium for those with Medicaid.

Despite a clear policy endorsement which changed the policy payment formula, Barker tried to decline the mandatory policy change. Id. at *1, *7. The insurance company implemented the change despite Barker's protest, so Barker filed suit. Id. at *2. The Barker decision enforced the endorsement's express language which specifically addressed Medicare benefits. Id. at *7. There was no ambiguity in the Barker endorsement language because the insurance carrier took the time to expressly articulate its calculation methodology in its endorsement language. Id. at *7-*8.

Notwithstanding Progressive's assertion that Barker is factually similar to this case, it excludes critical facts which validate the Plaintiff's position. The Barker policy contained a policy endorsement that changed its terms once a policyholder became eligible for Medicare. There is no such endorsement or change in policy terms regarding Medicaid recipients in Progressive' s policy. In fact, the insurance company in Barker, Washington National Insurance

[2] After hearing the appeal, the South Carolina Insurance Commission enforced the contract whereby Barker received payment for the amount of the entire medical bill. The District Court did not provide any additional details about the issue.

ELECTRONICALLY FILED - 2020 Jun 18 11:03 AM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

Company, was astute enough to know that policy interpretation would be held against it as the policy drafter,[3] so it included the change as part of the policy terms. It recognized that some policyholders would eventually qualify for Medicare, so it ensured the policyholder knew when, how, and why they were being treated differently. *See* id. Unlike Washington National Insurance Company, Progressive did not take the time to draft an endorsement. In addition, Progressive did not inform its policyholders when, how, or why they would be treated differently if they had Medicaid. Although Progressive informed policyholders how additional applicable auto MedPay insurance would affect their coverage, they failed to address Medicaid's impact.[4]

Washington National Insurance Company took further steps to make sure its insureds understood the policy terms. It reduced its premiums because it anticipated that reduced benefits would be paid when it took advantage of the Medicare write downs. *See* id. at *7. No such reduced premiums were suggested or mandated by Progressive. Instead, Progressive wants to retain the short-pay benefits it derives from Plaintiff Jones' utilization of Medicaid benefits.

Another distinguishing factor is that Barker tried to reject the mandatory policy endorsement. Id. at *1, *7. Rejecting the endorsement was not an option available to Barker, hence, the determination by the Court that Washington National could, pursuant to the policy terms, take advantage of the Medicare write downs. Id. at *7. The Progressive policy has no such policy terms although, like Washington National, it could have written the terms into the policy.

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[3] Gordon, 238 S.C. at 444, 120 S.E.2d at 512 (noting that "it is a well settled rule that the terms of an insurance policy must be construed most liberally in favor of the insured . . . " (citing Pitts v. Glens Falls Indemnity Co., 222 S.C. 133, 72 S.E.2d 174 (1952))).

[4] *See* Def.'s Mot. To Dismiss Ex. A, at 17.

ELECTRONICALLY FILED - 2020 Jun 18 11:03 AM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

There is one final distinction between Barker and this matter. The Barker insurance policy provided a payment formula within the policy. *See* id. at *7. This formula allowed the policyholder to understand, without any question, the amount of benefit to be paid and the basis for such payments. In this case, however, Progressive offers no such explanatory or unambiguous policy language. Instead, it relies on several non-binding case definitions of "expenses incurred," *see* Def.'s Mot. To Dismiss, at 11 n.7, and it completely omits the reductions in coverage if a policyholder has Medicaid. Once again, Progressive chose not to enlighten its policyholders on its methodology. While Progressive's position that the use of Medicare and Medicaid may make the two cases factually similar, it ignores the fact that the two policies are distinguishably written—a critical fact in determining the outcome of the issue.

Progressive's Motion to Dismiss, to its detriment, misreads and misapplies Gordon and Barker. Barker supports the fact that Progressive should have clearly written its policy to inform it policyholders of its desires to pay less to those who have Medicaid. It should have provided premium reductions for those with such health insurance and informed its insureds of such reductions. It should have provided a payment formula within the policy like in Barker to further its policyholders' understanding. Simply stated, Progressive had every opportunity to write its policy so its insureds would understand its MedPay payment methodology but failed to do so at its own peril.

V. Progressive carried out its insurance policy in a manner violative of South Carolina Code, Section 38-77-144, thereby entitling the Plaintiff to recovery under her Breach of Contract and accompanying claims.

Progressive asserts that the breach Plaintiff complains of was an action taken in accordance with the policy terms and allowed under South Carolina law and, therefore, the breach of

ELECTRONICALLY FILED - 2020 Jun 18 11:03 AM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

contract claims must be dismissed. However, Progressive's action of relying on a third-party payment to determine what is reasonably owed to the Plaintiff equates to a setoff in violation of Section 38-77-144.

Furthermore, Progressive relies on the language in its policy—"reasonable expenses incurred"—to argue that its decision to proffer payment in the amount paid by Medicaid was not a breach of the insurance policy. Def.'s Mot. to Dismiss, at 8-11. Moreover, Progressive avers the Plaintiff sets forth no alleged breach of the insurance contract. Id. at 8. Notwithstanding Progressive's assertion, Plaintiff's Complaint alleges the Defendant unreasonably and unjustifiably denied payment in full of the Medicaid claim, Compl. ¶ 14, despite Plaintiff having performed all conditions precedent to Defendant's obligations to pay the full amount of all reasonable and necessary health care and other MedPay benefits, Id. at ¶ 19 a-c. Progressive failed to live up to its end of the bargain when it refused to pay the Plaintiff the full amount of all reasonable and necessary health care and other MedPay benefits, despite the premiums Plaintiff paid for consideration.

Progressive's policy represents a legal contract when made, but then performed the contract in violation of Section 38-77-144. "[A] remedy may be had by the person who may be damaged by misconduct, but not by one seeking to disaffirm obligations under the fully performed agreement resulting in benefit to that person and without such person suffering damage of any kind." McConnell v. Commonwealth Pictures Corp., 7 N.Y.2d 465, 467-468, 166 N.E.2d 494 (1960). The Court in McConnell held that "a party will be denied recovery even on a contract valid on its face, if it appears that he has resorted to gravely immoral and illegal conduct in accomplishing its performance." 7 N.Y.2d at 471, 166 N.E.2d 494. Although the plaintiff in

McConnell was the party accused of wrongdoing, the underlying premise applies to the case at hand. In performing its portion of the contract, Progressive relied on a third-party payment, in violation of section 38-77-144. Accordingly, the Plaintiff has been damaged in that she did not recover the full amount of her MedPay claim. As a result, Progressive has sustained a benefit because they do not have to pay out the full $10,000; instead, they have limited their payment to $1,323.60. Progressive's decision to perform the contract in violation of South Carolina's statute and in a manner disaffirming its obligation to pay out the Plaintiff's MedPay claim entitles the Plaintiff to recovery under her breach of contract and accompanying claims.

VI. Plaintiffs concede that Willie Brown is not a proper Plaintiff in this lawsuit.

Respectfully submitted,

s/J. Logan Cannon
J. Logan Cannon, SC Bar #101688
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Attorney for the Plaintiff

June 18, 2020

ELECTRONICALLY FILED - 2020 Jun 18 11:03 AM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

ELECTRONICALLY FILED - 2020 Aug 20 4:08 PM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF CHESTER	CIVIL ACTION NO: 2020-CP-12-00207
Alexis Jones and Willie Brown, Plaintiffs, v. Progressive Northern Insurance Company, Defendant.	**MOTION TO RECONSIDER**

TO: J. LOGAN CANNON, ESQUIRE, ATTORNEY FOR PLAINTIFFS AND TO PLAINTIFFS ABOVE-NAMED:

YOU WILL PLEASE TAKE NOTICE that the undersigned, as attorneys for the Defendant, Progressive Northern Insurance Company, will move before the presiding judge of the Chester County Court of Common Pleas at the Chester County Courthouse at 10:00 a.m. on the tenth (10th) day after service hereof, or as soon thereafter as counsel may conveniently be heard, for an Order altering or amending the Order denying the Defendant's Motion to Dismiss in this case on the grounds that the order failed to grant certain relief that was consented to by Plaintiffs and the court failed to follow established precedent from the S.C. Supreme Court in denying the motion in full which constitutes a manifest error of law.

This Motion is made pursuant to Rule 59 of the South Carolina Rules of Civil Procedure and will be based upon the pleadings, case decisions and motions previously filed. Counsel for the undersigned received written notice of the Order denying the motion to dismiss from the Court on August 10, 2020.

Therefore, based on the above, Progressive Northern requests that the Court reconsider its denial of motion to dismiss and alter or amend its ruling and grant judgment in favor of Progressive Northern as to all claims.

MURPHY & GRANTLAND, P.A.

s/J.R. Murphy

J.R. Murphy, Esquire (SC Bar #7941)
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Columbia, South Carolina
August 20, 2020

ELECTRONICALLY FILED - 2020 Aug 20 4:08 PM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

STATE OF SOUTH CAROLINA: COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT: CHESTER COUNTY

ALEXIS JONES and WILLIE BROWN,
PLAINTIFF,

V.

PROGRESSIVE NORTHERN INSURANCE COMPANY,
DEFENDANT,

Docket No.
2020-CP-12-00207

BENCH TRIAL

March 27, 2023
Chester, South Carolina

B-E-F-O-R-E:

THE HONORABLE BRIAN M. GIBBONS

A-P-P-E-A-R-A-N-C-E-S:

JEFFREY CANNON, ESQ.
Attorney for the Plaintiff

JOHN MURPHY, ESQ.
Attorney for the Defendant

Maria DiScioscia, RPR
Official Court Reporter

I N D E X

WITNESS	EXAMINATION BY	PAGE
WILLIE BROWN	DIRECT EXAM - JEFFERY CANNON	9
ALEXIS JONES	DIRECT EXAM - JEFFREY CANNON	13
	CROSS EXAM - JOHN MURPHY	14

E X H I B I T S

COURT'S	DESCRIPTION	PAGE
1	Attorney Affidavit fees	27

THE BAILIFF: All rise.

THE COURT: Good morning, ladies and gentlemen. We'll go ahead and get started with the case. *It's 20-CP-12-0207, Alexis Jones versus Progressive Northern Insurance Company.* Prior to commencing testimony this morning, the parties have filed a stipulation of fact with the Court on May 28, 2021.

Gentlemen, have those facts changed?

MR. CANNON: No, your Honor. They have not.

MR. MURPHY: No, your Honor. Thank you.

THE COURT: And I've received it this morning and I have plaintiff's pretrial brief, as well as, the defense's memorandum as well. I understand there's some witnesses we're going to hear from?

MR. CANNON: Yes, your Honor. There's a total of maybe 30 questions.

THE COURT: Not a problem. This is their day in Court and I'll let y'all make whatever arguments you need to make, make a record and then we'll go from there.

Call your witness.

MR. CANNON: Your Honor, do you mind if I say something beforehand?

THE COURT: No, go head.

MR. CANNON: I just wanted to re-raise my objections to the causes of actions that were previously dismissed in Mr. Murphy's motion to reconsider. But to lay before the Court your Honor, just to reiterate a little bit.

We're here to decide -- left to decide, whether Progressive breach it's contract it had with the insured when it decided to interpret, we think the word "incurred", arbitrarily in a way that it was outside the scope in terms of the contract, your Honor. And we're specifically looking at the phrase on Page 7 of the contract, that says: *"We will pay for reasonable expenses incurred for necessary medical services."* That's on page 7, your Honor, of the policy, which was stipulated -- it was Exhibit A to the stipulation of facts on Page 7 of the policy, your Honor.

We asked the Court, when we move forward today, here, is right under the section that we're looking in, Progressive interestingly enough, says that they will hire someone -- someone on their behalf will determine if those expenses were reasonable and it says that they will determine whether those services were necessary. However, your Honor, nowhere under that does it say that Progressive will determine if someone incurred those expenses.

Your Honor, further, Progressive neglects to define the word "incur" anywhere in the definition section of the policy earlier or in the additional definition section right under the "Med-pay coverage" section right there on Page 7, your Honor.

So to simply put it, your Honor. We believe the Plaintiff incurred the full sticker price of the hospital bill when she received medical services when she walked in the door. Progressive believes that she only incurred what Medicaid paid to satisfy the bill.

Your Honor, the legal argument before the Court is: The term "incurred" is vague and ambiguous, your Honor. And under South Carolina law, vague and ambiguous terms must be construed in favor of the insured and not the insurer. And we believe this will be supported by testimony today.

Your Honor, it's our contention that if Progressive wanted to pay people less because they have health insurance or because they received some sort of gratuitous gift towards the bill, they should put that in their policies, your Honor. As this contract was written, we don't believe Progressive should be allowed to define or redefine executed portions of the policy on the fly after someone has incurred a loss.

So your Honor, we're asking -- we believe that

by denying the full Medicaid coverage, they breached the contract. And we're asking the Court today for the remaining balance of the Med-pay coverage, plus attorneys fee and I did bring an affidavit today. And any interest on, from the day of the accident filed, your Honor.

THE COURT: I got it. I understand your argument as to breach of contract. We're gonna hear testimony on that. I will read the stipulation of fact. And of course, I'll hear from Mr. Murphy in reply.

MR. CANNON: Yes, sir.

THE COURT: But are you -- you started off your argument objecting to the Court's prior decision dismissing the bad faith cause of action.

MR. CANNON: That was just for the record, your Honor.

THE COURT: Okay. You're protected in the record on that.

MR. CANNON: Yes, sir.

THE COURT: I'll respectfully deny that.

MR. CANNON: Right.

THE COURT: Again, I think this is a breach of contract action. I don't know if there's any evidence in the record to sustain a bad faith action going forward when there -- it was a legitimate legal issue

concerning what "expense incurred" means. And that's the basis of the Court's decision previously.

But I understand, you're protected in the record.

MR. CANNON: Yes, sir.

THE COURT: Mr. Murphy, anything from you before we hear testimony?

MR. MURPHY: Yes, sir. Just briefly. It is a pure legal issue. It's on that phrase. The South Carolina Supreme Court answered that question in 1961, the year I was born. It seems ancient, but I don't feel ancient. But apparently, it feels ancient when you read a case from back then.

Basically, you'll hear our arguments. I don't think there's any dispute that there was an amount on the sticker. Those rates were reduced because of Medicaid. I get EOB's all the time and because I'm with Humana now or United Health Care or Blue Cross, they negotiate rates in advance. And the doctor who sees you agrees to that rate instead of the rate the doctor's would like to charge. And in the case law, we believe, will be clear. And the amount that is actually paid or that the insured is legally obligated to pay or the beneficiary, the recipient which could be a deductible if it's private health care. Obviously with Medicaid

there's no deductibles. That's the amount that triggers the reimbursement coverage and expenses incurred. Yes, it's not defined in the policy, but the Gordon case involving a solider who's treated in Fort Jackson clearly defines it. There are other cases that we'll mention at the end, your Honor, in more detail that indicates that.

But it's a twofold aspect of it. One is, the insured actually paid it, which is not in evidence here. And two is, an amount an insured is legally obligated to pay. And with Medicaid, there is no further ongoing legal obligation. Once the provider accepts the Medicaid payment, that's it in terms of what the patient might owe. So that's our legal position on it.

THE COURT: I got it.

Call your first witness.

MR. CANNON: Your Honor, Lee Brown.

THE COURT: All right. Sir, come on around.

W-I-L-L-I-E B-R-O-W-N, the Witness herein, having been sworn by the Clerk of Court, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CANNON:

Q. Mr. Brown, did you purchase an auto policy which covered you and Alexis Jones for a wreck that occurred on October 8, 2019?

A. Yes, sir.

Q. Where you did you purchase this policy?

A. In Lancaster County, South Carolina.

Q. Did you purchase this from an insurance broker?

A. Yes, sir.

Q. Tell us what happened when you went to buy the policy?

A. I walked in, I stated that I wanted to get some auto insurance on a vehicle that I just purchased. I had signed some papers. I paid the money and I had insurance.

Q. Let me ask you. You had to sign and execute some documents right there when you were in the store?

A. Yes, sir.

Q. Were you given an opportunity to write any portions of the policy?

A. No, sir.

Q. Were you given an opportunity to revise or edit any portion of the policy?

A. No, sir.

Q. Was there anyway to dispute any terms of the

policy if you didn't agree to them?

A. No, sir.

Q. And let me ask you. Do you remember purchasing medical payments coverage on this policy?

A. Yes, sir.

Q. What did you think -- when you bought the policy, what did you think Med-pay covered?

A. It cover my hospital expenses incase I were in an accident.

Q. Let me ask you. Did Progressive or the broker who sold you the Progressive policy, ever tell you that you'd be paid for less than the full amount of the medical bills?

A. No, sir.

Q. In your policy, while we're here arguing. We're arguing, as I said, to the Court earlier, for reasonable expenses incurred for medical services for a wreck, yada, yada.

Did the person in the store who sold you that policy, explain to you "what reasonable expenses incurred" ment or could mean?

A. No, sir.

Q. Were you ever told that you'd be paid a different amount for you or Ms. Jones if you had health insurance?

A. No, sir.

Q. Let me ask. When you purchased the policy, did you tell Progressive that you or Alexis had Medicaid?

A. No, sir.

Q. Did they ask if you or Alexis had Medicaid?

A. No, sir.

Q. Did you ever miss a premium payment for your policy during the entire time that you've had the policy?

A. No, sir.

Q. Did you ever miss any premiums before the wreck?

A. No, sir.

MR. CANNON: Your Honor, I don't have anymore questions.

THE COURT: Mr. Murphy?

MR. MURPHY: No questions, your Honor.

THE COURT: Thank you, sir. You can step down.

You may call your next witness.

MR. CANNON: Next and last witness is the plaintiff, Alexis Jones, your Honor.

THE COURT: Ms. Jones.

A-L-E-X-I-S J-O-N-E-S, the Witness herein, having been sworn by the Clerk of Court, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CANNON:

Q. Ms. Jones, you were involved in an accident on October 8, 2019. You were hurt and incurred medical bills; correct?

A. Yes.

Q. Let me ask you. Did you have Medicaid at the time, which paid those bills?

A. Yes.

Q. Let me ask you this. You actually were charged for your medical services, but Medicaid paid them?

A. Yes.

Q. Let me ask you. Is your contract with Medicaid separate than your insurance policy with Progressive?

A. Yes, they're separate.

Q. So Progressive isn't a party to your contract with Medicaid?

A. No.

Q. You have two different contracts with two

different businesses to pay your medical expenses in the event that you have a car wreck?

A. Yes.

Q. And also, injured in that car wreck?

A. Uh-huh.

Q. At any point in time, did you do a joint contract with Medicaid and Progressive to cover your medical expenses incase of car wreck?

A. No.

Q. Did you ever discuss your agreement or the fact that you had Medicaid with Progressive at any time?

A. No.

Q. Ms. Jones, were you charged medical bills which exceeded the Med-pay coverage limit of $10,000?

A. Yes.

Q. Have you received the full $10,000 for this medical payments coverage?

A. No.

Q. Do you believe that Progressive owes you the remaining balance of your Med-pay coverage at this time?

A. Yes.

MR. CANNON: Your Honor, I don't have any questions.

MR. MURPHY: Just briefly, your Honor.

THE COURT: All right.

CROSS-EXAMINATION

MR. MURPHY:

Q. Ms. Jones, as I understand it. Medicaid paid the hospital bill at MUSC and all the other doctors you went to from the accident on your behalf?

A. Yes.

Q. You've paid no money yourself?

A. No.

Q. Is that correct?

A. Correct.

Q. And you're not legally obligated to pay any money to any of those by virtue of you being a Medicaid beneficiary. The hospital and doctors that you saw have agreed to accept what Medicaid paid them for a payment in full?

A. Yes.

Q. And we've agreed to that before we came here today, between your counsel and myself?

A. Uh-huh.

Q. And you had no deductibles, out-of-pockets, nothing. Everything that you owed the doctors have been paid for by Medicaid?

A. Yes,

MR. MURPHY: Thank you.

THE COURT: Any redirect?

MR. CANNON: No, your Honor. No redirect.

THE COURT: Thank you, ma'am. You can step down.

So once Progressive paid, not to her --

MR. MURPHY: Approximately, $1300 was what was paid -- is the full amount of what the Medicaid payments were on her behalf.

MR. CANNON: That's correct, your Honor.

THE COURT: I guess what I'm asking is. If I find in favor of the plaintiff after hearing from arguments and stuff --

MR. MURPHY: -- It's $8,300 and some change. I had it in --

MR. CANNON: -- I thought it was 86.

MR. MURPHY: I might be 86 and change. Yes, your Honor.

THE COURT: Let me hear argument then.

Mr. Cannon, any further argument?

I understand your point and your position that the contract, what reasonable expenses incurred -- I think we talked about this 2 or 3 years ago, whenever we heard this thing.

MR. CANNON: Right.

THE COURT: I understand your argument that

it's vague and ambiguous and as such it should be construed against the insurance company and now facts have been established in the record that the insurance agent who sold the policy to the insured did not explain what that meant to him. Okay.

I understand what you're saying and I understand what you're trying to get me to find. Mr. Murphy in his memorandum sites a South Carolina Supreme Court case, 62 years ago said: "Expenses incurred is already been defined."

MR. CANNON: Right.

THE COURT: What's your response to that?

MR. CANNON: Your Honor, I would also refer back to my memo that I submitted in opposition, is the motion for summery judgment 3 years ago that we redid. He mentioned the Gordon and the Barker case. Specifically, you know, the Gordon case was won on a VA, but that was different because no one ever incurs an expense when they go to the VA. VA -- Army members, you go into the VA you just receive your medical services. That's different then this case. The moment she walked in the door and saw the doctor, Cha-Ching you are charged. She incurs that bill. With her, she just had contracts with two separate companies that paid her bill. She could have chosen not to use her Medicaid,

but she did. She's not precluded from one from using one or the other.

THE COURT: So is that like an unjust enrichment argument you're making? Because she choose to turn it in on Medicaid, Progressive had been unjustly enriched because she could have incurred the full amount in sticking it to them.

MR. CANNON: I think the underlining argument, your Honor. Is that Progressive is using a contract that they're not privy to or a party too, to define and interpret their own policy. They didn't even ask if she had Medicaid, they never did. Until she incurred a loss and made a claim after she had medical services down the road. Now, it's just like, in the policy where it says: "We will define what's reasonable." "We will define what's necessary," which means, they'll tell you your bill is to high if it's not reasonable. They'll tell you if you were referred by your doctor for PT. They'll have another doctor come in and say, "It wasn't necessary." They find ways not to pay. That's all they do. Now, after she's incurred a loss, now, they're redefining their policy based on something she chose outside that policy, to now find another way not to pay. This is just another example of an insurance -- that's the whole reason they can define that they can determine

what's reasonable and necessary. They're doing that so they can pay less. And here, they're defining "incurred" on the fly to pay less.

So I think the argument is, they're using an outside contract that they're not even a party too to redefine they're won policy. If they wanted to do that, put it in the policy. At least ask them before you take out the policy. But instead now, forcing the clients to file a lawsuit three and-a-half years later to get a day in court to interpret that. And once again, going back to the beginning, that we're sitting here arguing what "incurred" means, that shows that the term, I think, is vague and ambiguous and should be construed in their favor.

THE COURT: Thank you. Mr. Murphy?

MR. MURPHY: Your Honor, just briefly. Our case does involve a soldier ^ HOSPITAL. There's a case in Virginia and we follow Virginia statutes and Virginia is very -- we defer to them in auto insurance law before. There is a case in Virginia that we sited in our brief as well, the Bowers case. Statefarm V Bowers. And I'm going to quote from that case. I think it just nails it right on the head. So the Court saying: "An expense can only be incurred when one has paid it or become legally obligated to pay it." And then in the

Bowers case it said, "Bowers would never be liable for any amount greater than which the various health care providers accept it as full payment for their services based on the Blue Cross fee scheduled." Or in this case the Medicaid fee schedule. "Stated differently, the health care providers agreements with Blue Cross prevented them from collecting more than the scheduled fee and any required co-pay. Therefore, we conclude that the medical expenses Bowers incurred were the amounts that the health care providers accepted as full payment for their services rendered to him. Bowers has not paid, nor is he legally obligated to paid the amounts written off by the provider." Then it sites cases from New Hampshire, New Jersey, North Carolina and Louisiana. This is a 1998 case from the Supreme Court of Virginia. "To decide other wise would be to grant Bowers a windfall because he would be receiving an amount greater then which he could ever be legally obligated to pay." And Ms. Jones and in the stipulation confirmed that the amount that has been paid to date is the full amount that she would have ever been legally obligated to pay. If she did not want to take Medicaid then she might habe a judgement against her from MUSC for $23,000 which was the sticker price of that bill far in excess of her medical payments. Most people don't

have $10,000 medical payments coverage. So they're always going to be better off using Medicaid for any charge like this and they have no further ongoing legal obligation to reimburse. This is an incurred expense coverage, it is not a flat price. Send in a bill and if it's reasonable, will do that. So when it's reduced like this by a prior agreement, that is the amount that the insurance is entitled to receive.

And so she got $1300 and some change on the bills, which she did not pay. That was a windfall so to speak. But it represented the amount that had been paid on her behalf by her Medicaid. And that's how incurred is. That's how it's done in every state. There been not one case sited to this court, 3 years ago or today, to say that the word incurred means something other than that or means the sticker price. This is uniformly accepted in courts and in the way that medical payments, PIP payments work. They are incurred expense. They are not just sticker price and that's very clear.

And of course, in the Virginia case was about the same amount of money and they reserved it because they gave -- they granted a judgement for amounts that the insured in that situation would never have been obligated today pay. The write-downs or the write-offs which would have been on the EOB.

So it's not ambiguous. It's been clearly defined by our supreme court. It's followed by many other courts that I would urge this court to give indifference too. And also Judge Duffy's opinion involving a medicare recipient and how he went through something in quite detail. It's not a complex issue. And for that reason, we ask the Court to grant judgment in favor of Progressive, that it fully complied and reimbursed Ms. Jones all the amounts she was entitled to under the contract.

THE COURT: Coming back to you and I'll come back to you Mr. Cannon. This came up 2 years ago. I think y'all, you argued collateral source and you said, if I'm remembering right. No, this isn't collateral source. This is, like you just said, this is incurred expense or reimbursement of coverage.

I wanted the record to be clear on this now. So let's revisit that argument. Typically, in a typical personal injury case, I'll instruct the jury that you go by the actual expense incurred or the cost of services, reasonable service for medical expenses, not what was contracted to be paid. Talk to me about that.

MR. MURPHY: Yes. So this is contract and not tort law, which is the first thing. The second thing is, there is a statute that was talked about earlier.

It's Section 144-38 and I believe 77 and 144 that prohibits a setoff. A setoff would be saying: Because medicaid paid you, we don't even own you the $1,300. That would be a setoff. Progressive is not asserting a setoff. They're not asserting it because some of it was paid, but the collateral source is not the -- does not come into effect because this is a direct party action. This is a contract. She's a beneficiary under this contract. She's a beneficiary under Medicaid. Progressive is not a tortfeasor and therefore, not subject to a collateral source, something that a plaintiff or injured claimant did for themselves. So the collateral source was not applicable.

THE COURT: And that went to the bad faith argument.

MR. MURPHY: Yeah. So the setoff issue, which is statutory would apply to prevent Progressive from saying: Because this collateral source paid, we don't even have to pay you anything. And no. What the collateral source paid determined what the incurred expense was and Progressive reimbursed that amount. So there was a double payment. There was payment by Medicaid to the providers. There was payment of the identical amount from Progressive to Ms. Jones. But the reduction by the providers is on the first issue, which

is: Is it an expanse incurred? And Progressive did not attempt to take a setoff. But the collateral source so to speak. The payment by Medicaid or Blue Cross or Medicare or whoever, that would only go as to determining the amount of the expenses incurred. Once those are incurred, they are owned and in this case, they were paid. To further reduce it because a secondary source paid them would violate the statute on the setoff. But this is all contact law. So a tortfeasor trying to take advantage of a collateral source, that rule of law would not apply in a contract case like this. But even if it did, it's not been violated because they were reimbursed for the full amount of the collateral source.

THE COURT: Mr. Cannon, do you wish to speak to that?

MR. CANNON: Your Honor, I would refer back to my -- and I went through this at length. We went through the statute and went through the Cothran case.

THE COURT: This was back 2 years ago?

MR. CANNON: Yes. About 3 honestly. You know, in speaking of how the setoff would apply. Specifically, I guess we're revisiting one of the actions that you dismissed.

Ms. Jones, when we were here, accrued the

$10,000. Medicaid paid the $1,300 to satisfy the expenses. Had medicaid paid more or less, Progressive would have paid that amount. We argue here it's using a third party payment to reduce it's amount that it owns to the plaintiff. And therefore, we believe the that reasonable expenses incurred provision is a setoff, your Honor.

Progressive argued in it's brief and today, that -- believe that the plaintiff's have not alleged Progressive has reduce it's medical payments by Medicaid. The defendant hinges specific on or alleges that Progressive has violated its section. We believe the defendant is correct in that the plaintiff did not allege that Progressive specifically reduced the amount owned by subtracting the amount paid by Medicaid from it's policy limit. Rather, your Honor, we allege that Progressive was more egregious in their position by refusing to pay more than the $1,323 that it paid.

Your Honor, we believe that both positions reduced the amount of benefits paid by a third party, which is a violation. We think it's still a violation of the statute.

But your Honor, he sited several cases Gordon and Barker. I know we talked about Gordon. The Barker case, which is also reiterated in his brief that he

submitted, Mr. Murphy submitted this morning. That was a medicare case and he made the same argument. A person has medicare, they don't incur the cost. He's making the same argument. The difference here in the Barker case, is that Barker later become eligible for medicare. That policy in there had medicare endorsement which had specific formula for payments and benefits that different from another formula. So basically, the premiums in the Barker case became less if they had medicare. Here, there were no premium difference. That why I'm going back to the fact this is how it differs from Barker, is that they didn't ask them if they had Medicaid. If they had had Medicaid or asked or reduced premiums, there would be a benefit for the bargain exchange in that regard.

In this case, once again, they're choosing to define "incurred" at the very end of the finish line. After they've incurred, based on a contract that they were not even privy to. That's what I'm going back to your Honor and that's all I got.

THE COURT: Gentleman, obviously, I'm going to take the matter under advisement. I appreciate y'all being here today. Sorry it's taken this long to get this thing scheduled. And Ms. Jones, I know you want it over with. It's been a long time going. I promise you

I'm not gonna sit on it for a long time. Okay. I do want to thoroughly read your lawyer's position and do a little bit more legal research, consider Mr. Murphy's position as well, then I'll issue a decision and we'll go from there.

MR. CANNON: Your Honor, I did know I did ask in my -- not to cut you off. I know I did ask at the end for the balance in attorney fees. I did bring the affidavit of attorney fees.

THE COURT: You can hand that up. I'll consider it.

MR. MURPHY: I think you struck all any cause of action that would allow that. It has to be under the statute which --

THE COURT: Let's make that apart of the record.

MR. MURPHY: You can rule on that. I don't know amount. I think statutorily they're limited as well to one-third of the amount.

THE COURT: Go ahead and introduce that now as Court Exhibit 1.

(Court's Exhibit 1, Attorney fees affidavit, was marked for Identification.)

THE COURT: Anything else?

MR. CANNON: No, your Honor.

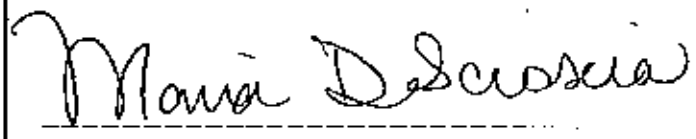
THE COURT: Thank you. That concludes the hearing in this case.

(Whereupon, Bench trial was concluded.)

C E R T I F I C A T E

I, the undersigned Maria DiScioscia, Official Court Reporter for the Sixth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the record of all the proceedings in the captioned case, in the Circuit Court for Chester, South Carolina, on the 27th day of March, 2023.

I do further certify that I am not related, either by blood or marriage, to any of the parties in this action; and that I am in no way interested in the outcome of this matter.



Maria DiScioscia
Official Court Reporter

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STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF CHESTER	CIVIL ACTION NO: 2020-CP-12-00207
Alexis Jones, Plaintiffs, v. Progressive Northern Insurance Company, Defendant.	**STIPULATION OF FACT**

The parties hereby submit this Stipulation of Fact in lieu of deposition or other testimony for purposes of cross-motions for judgment.

1. Alexis Jones was injured in an automobile accident that occurred on October 8, 2019.

2. She was riding in a vehicle owned by Willie Brown and insured by Defendant Progressive Northern Insurance Company under policy number 930693102. The policy provided medical payments coverage of $10,000.00 per person. A complete copy of the policy along with the declarations page is attached to this Stipulation as **Exhibit A**.

3. The Plaintiff received medical treatment from several providers following an automobile accident that occurred on October 8, 2019. Those providers include the Medical University of South Carolina-Lancaster, and Carolina Radiology Associates, LLC.

4. The Plaintiff was a Medicaid recipient and was entitled to benefits pursuant to WellCare of South Carolina Medicaid.

5. On October 8, 2019 Plaintiff was treated at the MUSC facility in Lancaster, South Carolina. The total charges were $23,742.82. MUSC bill is attached hereto as **Exhibit B.**

6. MUSC was required by law and/or its agreement with South Carolina Medicaid to accept the sum of $115.52 for all treatment rendered to Plaintiff on October 8, 2019.

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7. Plaintiff made no payments to MUSC for the treatment received on October 8, 2019 nor is she legally obligated to make any further payment other than the amount accepted by MUSC from South Carolina Medicaid.

8. On October 8, 2019, Plaintiff was treated by physicians in the Emergency Room Department at the MUSC facility in Lancaster, South Carolina. The total charges were $883.63. App of South Carolina ED bill is attached hereto as **Exhibit C.**

9. App of South Carolina ED PPLC was required by law and/or its agreement with South Carolina Medicaid to accept the sum of $89.13 for all treatment rendered to Plaintiff on October 8, 2019 by the MUSC Emergency Room Department physicians.

10. Plaintiff made no payments to App of South Carolina ED PPLC for the treatment she received on October 8, 2019, nor is she legally obligated to may any further payment other than the amount accepted by App of South Carolina ED PPLC from South Carolina Medicaid.

11. On October 9, 2019, Plaintiff was treated at the MUSC facility in Lancaster, South Carolina. The total charges were for MUSC were $1,726.09.00. Bill for this date of service is attached hereto as **Exhibit D.**

12. MUSC was required by law and/or its agreement with South Carolina Medicaid to accept the sum of $165.17 for all treatment rendered to the Plaintiff on October 9, 2019.

13. Plaintiff made no payments to MUSC for the treatment received on October 8, 2019 nor is she legally obligated to make any further payment other than the amount accepted by MUSC from South Carolina Medicaid.

14. On October 9, 2019, Plaintiff underwent diagnostic radiology by Carolina Radiology Associates, LLC. The total charges for Carolina Radiology Associates, LLC were $550.00. Bill is attached hereto as **Exhibit E.**

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15. Carolina Radiology Associates, LLC was required by law and/or its agreement with South Carolina Medicaid to accept the sum of $70.15 for all treatment rendered to Plaintiff on October 9, 2019.

16. Plaintiff made no payments to Carolina Radiology Associates, LLC for the treatment received on October 9, 2019 nor is she legally obligated to make any further payment other than the amount accepted by Carolina Radiology Associates, LLC from South Carolina Medicaid.

17. Plaintiff was a recipient of South Carolina Medicaid which had agreements in place with the medical providers listed above which required the medical providers to accept the total sum of $439.97 for the treatment rendered to the Plaintiff. (Medicaid lien and payment information attached hereto as **Exhibit F**.) The Plaintiff has not paid any additional sums to any of the medical providers, nor is she legally obligated to pay any additional sums to the medical providers. All of the charges for the treatment rendered to her has been paid in full based upon the providers receipt of the Medicaid payments listed above.

s/J. Logan Cannon
J. Logan Cannon, Esquire
Shaw Law Firm
Post Office Drawer 36250
Rock Hill, SC 29732
803-329-4200
Attorney for Plaintiff

s/J.R. Murphy
J.R. Murphy, Esquire
Murphy & Grantland, P.A.
P.O. Box 6648
Columbia, SC 29260
803-782-4100
Attorney for Defendant

Dated: May 28, 2021

AUTO PLUS INS GRP
PO BOX 10
LANCASTER, SC 29721

PROGRESSIVE AUTO

Policy Number: 930693102
Underwritten by:
Progressive Northern Insurance Co
October 2, 2019
Policy Period: Jun 21, 2019 - Dec 21, 2019
Page 1 of 2

1-803-289-1169
AUTO PLUS INS GRP
Contact your agent for personalized service

progressiveagent.com
Online Service
Make payments, check billing activity, update policy information or check status of a claim.

1-800-274-4499
To report a claim.

WILLIE BROWN
2663 GEORGETOWN ROAD
GREAT FALLS, SC 29055

Auto Insurance Coverage Summary

This is your Declarations Page

Your policy information has changed

Your coverage began on June 21, 2019 at the later of 12:01 a.m. or the effective time shown on your application. This policy period ends on December 21, 2019 at 12:01 a.m.

This coverage summary replaces your prior one. Your insurance policy and any policy endorsements contain a full explanation of your coverage. The policy contract is form 9611A SC (10/14). The contract is modified by form A043 SC (07/11).

Policy changes effective October 1, 2019

Changes requested on:	Oct 1, 2019 12:34 p.m.
Requested by	WILLIE BROWN
Premium change:	-$429.71
Changes:	The 2001 GMC SIERRA C1500/K1500 has been removed. The Multi-Car discount has been removed from your policy.

The changes take effect as of the date and time requested shown above.

Underwriting Company

Progressive Northern Insurance Co
P.O. Box 6807
Cleveland, OH 44101
1-800-876-5581

Drivers and resident relatives

	Additional information
WILLIE BROWN	Named insured
ALEXIS JONES	

Form 8489 SC (02/18)

EXHIBIT A 141

PNIC000006

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Outline of coverage

2005 CHEVROLET TAHOE C1500/K1500 4 DOOR WAGON
VIN: **1GNEK13TX5R101102**
Garaging ZIP Code: 29055
Primary use of the vehicle: Commute
Length of vehicle ownership when policy started or vehicle added: At least 3 years but less than 5 years

	Limits	Deductible	Premium
Liability To Others			$1,030
Bodily Injury Liability	$25,000 each person/$50,000 each accident		
Property Damage Liability	$25,000 each accident		
Uninsured Motorist			44
Bodily Injury	$25,000 each person/$50,000 each accident		
Property Damage	$25,000 each accident	$200	
Underinsured Motorist Bodily Injury	Rejected		--
Medical Payments	$10,000 each person		480
Subtotal policy premium			**$1,554.00**
South Carolina Uninsured Motorist Fund charge			1.00
Total 6 month policy premium and fees			**$1,555.00**

Premium discount

Policy	
930693102	Continuous Insurance: Gold

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Medical Payments Coverage Endorsement

Your policy is amended as follows:

Part II - Medical Payments Coverage

The following is deleted under the Limits of Liability provision:

No one will be entitled to duplicate payments under this policy for the same elements of damages.

Any amount payable to an **Insured person** under this Part II will be reduced by any amount paid or payable for the same expense under Part I - Liability To Others or Part III - Uninsured/Underinsured Motorist Coverage.

All other terms, limits and provisions of this policy remain unchanged.

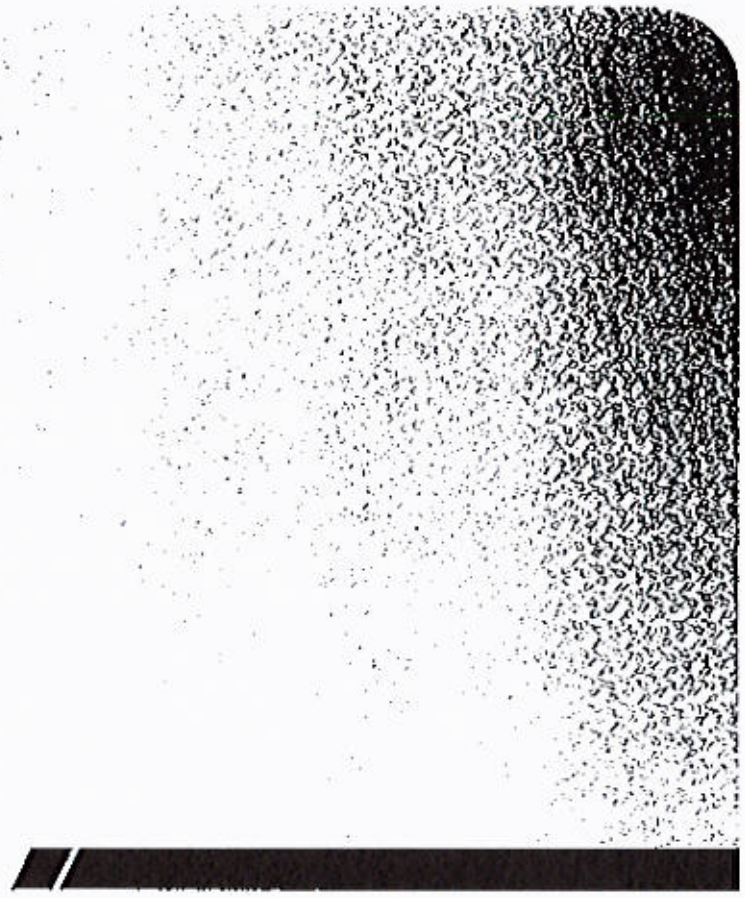
Form A043 SC (07/11)

PNIC000008

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9611A SC 1014

SOUTH CAROLINA
AUTO POLICY



Form 9611A SC (13 07 14)
version 2.0

PROGRESSIVE
AUTO
PNIC000009

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PNIC000010

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IMPORTANT NOTICE

IN ADDITION TO THE INSURANCE COVERAGE REQUIRED BY LAW TO PROTECT YOU AGAINST A LOSS CAUSED BY AN UNINSURED MOTORIST, IF YOU HAVE PURCHASED LIABILITY INSURANCE COVERAGE THAT IS HIGHER THAN THAT REQUIRED BY LAW TO PROTECT YOU AGAINST LIABILITY ARISING OUT OF THE OWNERSHIP, MAINTENANCE, OR USE OF THE MOTOR VEHICLES COVERED BY THIS POLICY, AND YOU HAVE NOT ALREADY PURCHASED UNINSURED MOTORIST INSURANCE COVERAGE EQUAL TO YOUR LIABILITY INSURANCE COVERAGE:

1. YOUR UNINSURED AND UNDERINSURED MOTORIST INSURANCE COVERAGE HAS INCREASED TO THE LIMITS OF YOUR LIABILITY COVERAGE AND THIS INCREASE WILL COST YOU AN EXTRA PREMIUM CHARGE; AND

2. YOUR TOTAL PREMIUM CHARGE FOR YOUR MOTOR VEHICLE INSURANCE COVERAGE WILL INCREASE IF YOU DO NOT NOTIFY YOUR AGENT OR INSURER OF YOUR DESIRE TO REDUCE COVERAGE WITHIN TWENTY DAYS OF THE MAILING OF THE POLICY OR THE PREMIUM NOTICE, AS THE CASE MAY BE;

3. IF THIS IS A NEW POLICY AND YOU HAVE ALREADY SIGNED A WRITTEN REJECTION OF SUCH HIGHER LIMITS IN CONNECTION WITH IT, PARAGRAPHS (1) AND (2) OF THIS NOTICE DO NOT APPLY.

PNIC000011

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CONTENTS

INSURING AGREEMENT 1

GENERAL DEFINITIONS 1

PART I—LIABILITY TO OTHERS

Insuring Agreement 3
Additional Definition 3
Additional Payments 3
Exclusions 4
Limits of Liability 5
Financial Responsibility Laws 6
Other Insurance 6
Out-of-State Coverage 6
Arbitration of Property Damage Liability Claims 7

PART II—MEDICAL PAYMENTS COVERAGE

Insuring Agreement 7
Additional Definitions 7
Exclusions 8
Limits of Liability 9
Unreasonable or Unnecessary Medical Expenses 9
Other Insurance 10

PART III—UNINSURED/UNDERINSURED MOTORIST COVERAGE

Insuring Agreement—Uninsured Motorist Coverage 10
Insuring Agreement—Underinsured Motorist Coverage 10
Notice Requirement 11
Additional Definitions 11
Exclusions 12
Limits of Liability 13
Other Insurance 15
Arbitration for Bodily Injury Claims 15
Arbitration for Property Damage Claims 16

PART IV—DAMAGE TO A VEHICLE

Insuring Agreement—Collision Coverage 16
Insuring Agreement—Comprehensive Coverage 16
Insuring Agreement—Additional Custom Parts or Equipment Coverage 17
Insuring Agreement—Rental Reimbursement Coverage 17
Insuring Agreement—Loan/Lease Payoff Coverage 18
Insuring Agreement—Pet Injury Coverage 19
Additional Definitions 19
Exclusions 19

PNIC000012

Limits of Liability....21
Payment of Loss....22
No Benefit to Bailee....23
Loss Payable Clause....23
Other Sources of Recovery....23
Appraisal....23

PART V—ROADSIDE ASSISTANCE COVERAGE
Insuring Agreement....24
Additional Definitions....24
Exclusions....24
Unauthorized Service Provider....25
Other Insurance....25

PART VI—DUTIES IN CASE OF AN ACCIDENT OR LOSS....25

PART VII—GENERAL PROVISIONS
Policy Period and Territory....26
Changes....26
Duty to Report Changes....27
Settlement of Claims....27
Terms of Policy Conformed to Statutes....27
Transfer of Interest....28
Fraud or Misrepresentation....28
Payment of Premium and Fees....29
Cancellation....29
Cancellation Refund....30
Nonrenewal....30
Legal Action Against Us....30
Our Rights to Recover Payment....31
Joint and Individual Interests....31
Bankruptcy....32

PNIC000013

ELECTRONICALLY FILED - 2021 May 28 1:26 PM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

ELECTRONICALLY FILED - 2021 May 28 1:26 PM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

SOUTH CAROLINA AUTO POLICY

INSURING AGREEMENT

In return for your payment of the premium, we agree to insure you subject to all the terms, conditions and limitations of this policy. We will insure you for the coverages and the limits of liability shown on this policy's declarations page. Your policy consists of the policy contract, your insurance application, the declarations page, and all endorsements to this policy.

GENERAL DEFINITIONS

The following definitions apply throughout the policy. Defined terms are printed in boldface type and have the same meaning whether in the singular, plural, or any other form.

1. "Additional auto" means an auto you become the owner of during the policy period that does not permanently replace an auto shown on the declarations page if:
   a. we insure all other autos you own;
   b. the additional auto is not covered by any other insurance policy;
   c. you notify us within 30 days of becoming the owner of the additional auto; and
   d. you pay any additional premium due.

   An additional auto will have the broadest coverage we provide for any auto shown on the declarations page. If you ask us to insure an additional auto more than 30 days after you become the owner, any coverage we provide will begin at the time you request coverage.
2. "Auto" means a land motor vehicle:
   a. of the private passenger, pickup body, or cargo van type;
   b. designed for operation principally upon public roads;
   c. with at least four wheels; and
   d. with a gross vehicle weight rating of 12,000 pounds or less, according to the manufacturer's specifications.

   However, "auto" does not include step-vans, parcel delivery vans, or cargo cutaway vans or other vans with cabs separate from the cargo area.
3. "Auto business" means the business of selling, leasing, repairing, parking, storing, servicing, delivering or testing vehicles.
4. "Bodily injury" means bodily harm, sickness, or disease, including death that results from bodily harm, sickness, or disease.
5. "Covered auto" means:
   a. any auto or trailer shown on the declarations page for the coverages applicable to that auto or trailer;
   b. any additional auto;
   c. any replacement auto; or
   d. a trailer owned by you.
6. "Declarations page" means the document showing your coverages, limits of liability, covered autos, premium, and other policy-related information. The declarations page may also be referred to as the Auto Insurance Coverage Summary.

PNIC000014

ELECTRONICALLY FILED - 2021 May 28 1:26 PM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

7. "**Occupying**" means in, on, entering or exiting.
8. "**Personal vehicle sharing program**" means a system or process, operated by a business, organization, network, group, or individual, that facilitates the sharing of private passenger motor vehicles for use by individual's, businesses, or other entities.
9. "**Property damage**" means physical damage to, destruction of, or loss of use of, tangible property.
10. "**Rated resident**" means a person residing in the same household as **you** at the time of the loss who is not a **relative**, but only if that person is both:
    a. listed in the "Drivers and household residents" section on the **declarations page**; and
    b. not designated as either an "Excluded" or a "List Only" driver.
11. "**Relative**" means a person residing in the same household as **you**, and related to **you** by blood, marriage or adoption, and includes a ward, stepchild, or foster child. **Your** unmarried dependent children temporarily away from home will qualify as a **relative** if they intend to continue to reside in **your** household.
12. "**Replacement auto**" means an **auto** that permanently replaces an **auto** shown on the **declarations page**. A **replacement auto** will have the same coverage as the **auto** it replaces if the **replacement auto** is not covered by any other insurance policy. However, if the **auto** being replaced had coverage under Part IV—Damage To A Vehicle, such coverage will apply to the **replacement auto** only during the first 30 days after **you** become the owner unless **you** notify **us** within that 30-day period that **you** want **us** to extend coverage beyond the initial 30 days. If the **auto** being replaced did not have coverage under Part IV—Damage To A Vehicle, such coverage may be added, but the **replacement auto** will have no coverage under Part IV until **you** notify **us** of the **replacement auto** and ask **us** to add the coverage.
13. "**Ride-sharing activity**" means the use of any vehicle to provide transportation of persons or property in connection with a **transportation network company** from the time a user logs on to, or signs in to, any online-enabled application, software, website or system until the time the user logs out of, or signs off of, any such online-enabled application, software, website or system, whether or not the user has accepted any passenger(s) or delivery assignment, including the time the user is on the way to pick up any passenger(s) or property, or is transporting any passenger(s) or property.
14. "**Trailer**" means a non-motorized trailer, including a farm wagon or farm implement, designed to be towed on public roads by an **auto** and not being used:
    a. for commercial purposes;
    b. as an office, store, or for display purposes; or
    c. as a passenger conveyance.
15. "**Transportation network company**" means a corporation, partnership, sole proprietorship, or other entity that uses any online-enabled application, software, website or system to connect drivers with clients or passengers to facilitate and/or provide transportation or delivery services for compensation or a fee.
16. "**We**," "**us**" and "**our**" mean the underwriting company providing the insurance, as shown on the **declarations page**.

PNIC000015

17. "You" and "your" mean:
    a. a person shown as a named insured on the **declarations page**; and
    b. the spouse of a named insured if residing in the same household at the time of the loss.

PART I—LIABILITY TO OTHERS

INSURING AGREEMENT

If **you** pay the premium for this coverage, **we** will pay damages for **bodily injury** and **property damage** for which an **insured person** becomes legally responsible because of an accident.

Damages include prejudgment interest awarded against an **insured person**.

We will settle or defend, at **our** option, any claim for damages covered by this Part I.

ADDITIONAL DEFINITION

When used in this Part I:
"**Insured person**" means:
a. **you**, a **relative**, or a **rated resident** with respect to an accident arising out of the ownership, maintenance or use of an **auto** or a **trailer**;
b. any person with respect to an accident arising out of that person's use of a **covered auto** with the permission of **you**, a **relative**, or a **rated resident**;
c. any person or organization with respect only to vicarious liability for the acts or omissions of a person described in a. or b. above; and
d. any "Additional Interest" shown on the **declarations page** with respect only to its liability for the acts or omissions of a person described in a. or b. above.

ADDITIONAL PAYMENTS

In addition to **our** limit of liability, **we** will pay for an **insured person**:
1. all expenses **we** incur in the settlement of any claim or defense of any lawsuit;
2. interest accruing after entry of judgment, until **we** have paid, offered to pay, or deposited in court, that portion of the judgment which does not exceed **our** limit of liability. This does not apply if **we** have not been given notice of suit or the opportunity to defend an **insured person**;
3. the premium on any appeal bond or attachment bond required in any lawsuit **we** defend. **We** have no duty to purchase a bond in an amount exceeding **our** limit of liability, and **we** have no duty to apply for or furnish these bonds;
4. up to $250 for a bail bond required because of an accident resulting in **bodily injury** or **property damage** covered under this Part I. **We** have no duty to apply for or furnish this bond; and
5. reasonable expenses, including loss of earnings up to $200 per day, incurred at **our** request.

PNIC000016

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EXCLUSIONS—READ THE FOLLOWING EXCLUSIONS CAREFULLY. IF AN EXCLUSION APPLIES, COVERAGE WILL NOT BE AFFORDED UNDER THIS PART I.

Coverage under this Part I, including our duty to defend, will not apply to any **insured person** for:

1. **bodily injury** or **property damage** arising out of the ownership, maintenance or use of any vehicle or trailer while being used:
   a. to carry persons or property for compensation or a fee; or
   b. for retail or wholesale delivery, including, but not limited to, the pickup, transport or delivery of magazines, newspapers, mail or food.

   For damages arising out of the ownership, maintenance, or use of a **covered auto**, this exclusion applies only to those damages in excess of the minimum limit mandated by the motor vehicle financial responsibility law of South Carolina. This exclusion does not apply to shared-expense car pools;
2. any liability assumed under any contract or agreement by **you**, a **relative**, or a **rated resident**;
3. **bodily injury** to an employee of that **insured person** arising out of or within the course of employment. This exclusion does not apply to domestic employees if benefits are neither paid nor required to be provided under workers' compensation, disability benefits, or similar laws;
4. **bodily injury** or **property damage** arising out of an accident involving any vehicle while being maintained or used by a person while employed or engaged in any **auto business**. For damages arising out of the ownership, maintenance, or use of a **covered auto**, this exclusion applies only to those damages in excess of the minimum limit mandated by the motor vehicle financial responsibility law of South Carolina. This exclusion does not apply to **you**, a **relative**, a **rated resident**, or an agent or employee of **you**, a **relative**, or a **rated resident**, when using a **covered auto**;
5. **bodily injury** or **property damage** resulting from, or sustained during practice or preparation for:
   a. any pre-arranged or organized racing, stunting, speed or demolition contest or activity; or
   b. any driving activity conducted on a permanent or temporary racetrack or racecourse;
6. **bodily injury** or **property damage** due to a nuclear reaction or radiation;
7. **bodily injury** or **property damage** for which insurance:
   a. is afforded under a nuclear energy liability insurance contract; or
   b. would be afforded under a nuclear energy liability insurance contract but for its termination upon exhaustion of its **limit of liability**;
8. any obligation for which the United States Government is liable under the Federal Tort Claims Act;
9. **bodily injury** or **property damage** caused by an intentional act of that **insured person**, or at the direction of that **insured person**, even if the actual injury or damage is different than that which was intended or expected. For damages arising out of the ownership, maintenance, or use of a **covered auto**, this exclu-

PNIC000017

ELECTRONICALLY FILED - 2021 May 28 1:26 PM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

sion applies only to those damages in excess of the minimum limit mandated by the motor vehicle financial responsibility law of South Carolina;

10. **property damage** to any property owned by, rented to, being transported by, or in the charge of that **insured person**. This exclusion does not apply to a rented residence or a rented garage;
11. **bodily injury** or **property damage** arising out of the ownership, maintenance or use of any vehicle owned by **you** or furnished or available for **your** regular use, other than a **covered auto** for which this coverage has been purchased;
12. **bodily injury** or **property damage** arising out of the ownership, maintenance or use of any vehicle owned by a **relative** or a **rated resident** or furnished or available for the regular use of a **relative** or a **rated resident**, other than a **covered auto** for which this coverage has been purchased. This exclusion does not apply to **your** maintenance or use of such vehicle;
13. **bodily injury** or **property damage** arising out of **your**, a **relative's**, or a **rated resident's** use of a vehicle, other than a **covered auto**, without the permission of the owner of the vehicle or the person in lawful possession of the vehicle;
14. **bodily injury** or **property damage** arising out of the use of a **covered auto** while leased or rented to others or given in exchange for any compensation, including while being used in connection with a **personal vehicle sharing program**. This exclusion does not apply to the operation of a **covered auto** by **you**, a **relative**, or a **rated resident**;
15. **bodily injury** or **property damage** caused by, or reasonably expected to result from, a criminal act or omission of that **insured person**. This exclusion applies regardless of whether that **insured person** is actually charged with, or convicted of, a crime. However, this exclusion will apply only to those damages in excess of the minimum limit mandated by the motor vehicle financial responsibility law of South Carolina. For purposes of this exclusion, criminal acts or omissions do not include traffic violations; or
16. **bodily injury** or **property damage** arising out of the ownership, maintenance or use of any vehicle or trailer while being used for **ride-sharing activity**. This exclusion does not apply to shared-expense car pools.

LIMITS OF LIABILITY

The limit of liability shown on the **declarations page** for liability coverage is the most **we** will pay regardless of the number of:

1. claims made;
2. **covered autos**;
3. **insured persons**;
4. lawsuits brought;
5. vehicles involved in the accident; or
6. premiums paid.

If **your declarations page** shows a split limit:

1. the amount shown for "each person" is the most **we** will pay for all damages due to **bodily injury** to one person resulting from any one accident;

2. subject to the "each person" limit, the amount shown for "each accident" is the most we will pay for all damages due to **bodily injury** sustained by two or more persons in any one accident; and
3. the amount shown for "property damage" is the most we will pay for the total of all **property damage** resulting from any one accident.

The "each person" limit of liability applies to the total of all claims made for **bodily injury** to a person and all claims of others derived from such **bodily injury**, including, but not limited to, loss of society, loss of companionship, loss of services, loss of consortium, and wrongful death.

If the **declarations page** shows that "combined single limit" or "CSL" applies, the amount shown is the most **we** will pay for the total of all damages resulting from any one accident. However, without changing this limit of liability, **we** will comply with any law that requires **us** to provide any separate limits.

The limits of liability under this Part I shall not be reduced by payments made under Part II—Medical Payments Coverage. However, no one is entitled to duplicate payments for the same elements of damages.

We will not pay under this Part I any expenses paid or payable under Part II—Medical Payments Coverage.

If multiple auto policies issued by **us** are in effect for **you**, we will pay no more than the highest limit of liability for this coverage available under any one policy.

An auto and attached trailer are considered one **auto**. Therefore, the limits of liability will not be increased for an accident involving an **auto** that has an attached **trailer**.

FINANCIAL RESPONSIBILITY LAWS

When **we** certify this policy as proof of financial responsibility, this policy will comply with the law to the extent required. The **Insured person** must reimburse **us** if **we** make a payment that **we** would not have made if this policy was not certified as proof of financial responsibility.

OTHER INSURANCE

If there is any other applicable liability insurance or bond, **we** will pay only our share of the damages. **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 or trailer, other than a **covered auto**, will be excess over any other collectible insurance, self-insurance, or bond.

OUT-OF-STATE COVERAGE

If an accident to which this Part I applies occurs in any state, territory or possession of the United States of America or any province or territory of Canada, other than the

PNIC000019

ELECTRONICALLY FILED - 2021 May 28 1:26 PM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

ELECTRONICALLY FILED - 2021 May 28 1:26 PM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

ore in which a **covered auto** is principally garaged, and the state, province, territory or possession has:

1. a financial responsibility or similar law requiring limits of liability for **bodily injury** or **property damage** higher than the limits shown on the **declarations page**, this policy will provide the higher limits; or
2. a compulsory insurance or similar law requiring a non-resident to maintain insurance whenever the non-resident uses an **auto** in that state, province, territory or possession, this policy will provide the greater of:
   a. the required minimum amounts and types of coverage; or
   b. the limits of liability under this policy.

ARBITRATION OF PROPERTY DAMAGE LIABILITY CLAIMS

Any party to a disputed **property damage** liability claim may submit the claim to arbitration in accordance with South Carolina law.

PART II—MEDICAL PAYMENTS COVERAGE

INSURING AGREEMENT

If you pay the premium for this coverage, we will pay the reasonable expenses incurred for necessary **medical services** received within three years from the date of a **motor vehicle** accident because of **bodily injury**:

1. sustained by an **insured person**; and
2. caused by that **motor vehicle** accident.

We, or someone on our behalf, will determine:

1. whether the expenses for **medical services** are reasonable; and
2. whether the **medical services** are necessary.

ADDITIONAL DEFINITIONS

When used in this Part II:

1. "**Insured person**" means:
   a. **you**, a **relative**, or a **rated resident**:
      (i) while **occupying** an **auto**; or
      (ii) when struck by a **motor vehicle** or a trailer while not **occupying** a self-propelled motorized vehicle; and
   b. any other person while **occupying** a **covered auto** with the permission of **you**, a **relative**, or a **rated resident**.
2. "**Medical services**" means medical, surgical, dental, x-ray, ambulance, hospital, professional nursing, and funeral services, and includes the cost of eyeglasses, hearing aids, pharmaceuticals, orthopedics, and prosthetic devices.
3. "**Motor vehicle**" means a land motor vehicle designed for use principally on public roads.

PNIC000020

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EXCLUSIONS—READ THE FOLLOWING EXCLUSIONS CAREFULLY. IF AN EXCLUSION APPLIES, COVERAGE WILL NOT BE AFFORDED UNDER THIS PART II.

Coverage under this Part II will not apply to **bodily injury**:

1. sustained by any person while **occupying** a **covered auto** while it is being used:
   a. to carry persons or property for compensation or a fee;
   b. for retail or wholesale delivery, including, but not limited to, the pickup, transport or delivery of magazines, newspapers, mail or food; or
   c. for **ride-sharing activity.**

   This exclusion does not apply to shared-expense car pools;
2. arising out of an accident involving a vehicle while being maintained or used by a person while employed or engaged in any **auto business**. This exclusion does not apply to **you**, a **relative**, a **rated resident**, or an agent or employee of **you**, a **relative**, or a **rated resident**, when using a **covered auto**;
3. to any person resulting from, or sustained during practice or preparation for:
   a. any pre-arranged or organized racing, stunting, speed or demolition contest or activity; or
   b. any driving activity conducted on a permanent or temporary racetrack or racecourse;
4. due to a nuclear reaction or radiation;
5. for which insurance:
   a. is afforded under a nuclear energy liability insurance contract; or
   b. would be afforded under a nuclear energy liability insurance contract but for its termination upon exhaustion of its limit of liability;
6. for which the United States Government is liable under the Federal Tort Claims Act;
7. sustained by any person while **occupying** any vehicle or trailer while located for use as a residence or premises;
8. if workers' compensation benefits are available for the **bodily injury**;
9. sustained by any person while **occupying** or when struck by any vehicle owned by **you** or furnished or available for **your** regular use, other than a **covered auto** for which this coverage has been purchased;
10. sustained by any person while **occupying** or when struck by any vehicle owned by a **relative** or a **rated resident** or furnished or available for the regular use of a **relative** or a **rated resident**, other than a **covered auto** for which this coverage has been purchased. This exclusion does not apply to **you**;
11. to **you**, a **relative**, or a **rated resident**, while **occupying** any vehicle, other than a **covered auto**, without the permission of the owner of the vehicle or the person in lawful possession of the vehicle;
12. to any person while **occupying** a **covered auto** while leased or rented to others or given in exchange for any compensation, including while being used in connection with a **personal vehicle sharing program**. This exclusion does not apply to the operation of a **covered auto** by **you**, a **relative**, or a **rated resident**;
13. caused directly or indirectly by:
    a. war (declared or undeclared) or civil war;

PNIC000021

ELECTRONICALLY FILED - 2021 May 28 1:26 PM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

b. warlike action by any military force of any government, sovereign or other authority using military personnel or agents. This includes any action taken to hinder or defend against an actual or expected attack; or
c. insurrection, rebellion, revolution, usurped power, or any action taken by a governmental authority to hinder or defend against any of these acts;

14. caused directly or indirectly by:
    a. any accidental or intentional discharge, dispersal or release of radioactive, nuclear, pathogenic or poisonous biological material; or
    b. any intentional discharge, dispersal or release of chemical or hazardous material for any purpose other than its safe and useful purpose; or
15. caused by, or reasonably expected to result from, a criminal act or omission of an **insured person**. This exclusion applies regardless of whether the **insured person** is actually charged with, or convicted of, a crime. For purposes of this exclusion, criminal acts or omissions do not include traffic violations.

LIMITS OF LIABILITY

The limit of liability shown on the **declarations page** for Medical Payments Coverage is the most **we** will pay for each **insured person** injured in any one accident, regardless of the number of:

1. claims made;
2. **covered autos;**
3. **insured persons;**
4. lawsuits brought;
5. vehicles involved in the accident; or
6. premiums paid.

No one will be entitled to duplicate payments under this policy for the same elements of damages.

Any amount payable to an **insured person** under this Part II will be reduced by any amount paid or payable for the same expense under Part I—Liability To Others or Part III—Uninsured/Underinsured Motorist Coverage.

If multiple auto policies issued by **us** are in effect for **you**, **we** will pay no more than the highest limit of liability for this coverage available under any one policy.

UNREASONABLE OR UNNECESSARY MEDICAL EXPENSES

If an **insured person** incurs expenses for **medical services** that we deem to be unreasonable or unnecessary, **we** may refuse to pay for those expenses and contest them.

If the medical service provider sues the **insured person** because we refuse to pay expenses for **medical services** that **we** deem to be unreasonable or unnecessary, **we** will pay any resulting defense costs, and any resulting judgment against the

PNIC000022

Insured person, subject to the limit of liability for this coverage. We will choose the counsel. We will also pay reasonable expenses, including loss of earnings up to $200 per day, incurred at our request.

The **Insured person** may not sue **us** for expenses for **medical services** we deem to be unreasonable or unnecessary unless the **Insured person** paid the entire disputed amount to the medical service provider or the medical service provider has initiated collection activity against the **Insured person** for the unreasonable or unnecessary expenses.

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 for an **Insured person occupying** a vehicle or trailer, other than a **covered auto**, will be excess over any other **auto** insurance providing payments for **medical services**.

PART III—UNINSURED/UNDERINSURED MOTORIST COVERAGE

INSURING AGREEMENT—UNINSURED MOTORIST COVERAGE

If you pay the premium for this coverage, we will pay for damages that an **Insured person** is legally entitled to recover from the owner or operator of:

1. an **uninsured motor vehicle** because of **bodily injury**:
   a. sustained by an **Insured person**;
   b. caused by an accident; and
   c. arising out of the ownership, maintenance or use of an **uninsured motor vehicle**; or
2. an **uninsured motor vehicle** because of **property damage**:
   a. caused by an accident; and
   b. arising out of the ownership, maintenance, or use of an **uninsured motor vehicle**.

INSURING AGREEMENT—UNDERINSURED MOTORIST COVERAGE

If you pay the premium for this coverage, we will pay for damages that an **Insured person** is legally entitled to recover from the owner or operator of:

1. an **underinsured motor vehicle** because of **bodily injury**:
   a. sustained by an **Insured person**;
   b. caused by an accident; and
   c. arising out of the ownership, maintenance, or use of an **underinsured motor vehicle**; or
2. an **underinsured motor vehicle** because of **property damage**:
   a. caused by an accident; and
   b. arising out of the ownership, maintenance, or use of an **underinsured motor vehicle**.

PNIC000023

ELECTRONICALLY FILED - 2021 May 28 1:26 PM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

ELECTRONICALLY FILED - 2021 May 28 1:26 PM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

We will pay under this Part III only after the limits of liability under all applicable liability bonds and policies have been exhausted by payment of judgments or settlements.

NOTICE REQUIREMENT

Any judgment or settlement for damages against an owner or operator of an **uninsured motor vehicle** or an **underinsured motor vehicle** that arises out of a lawsuit brought for which we have not received notice in accordance with South Carolina law is not binding on **us**.

ADDITIONAL DEFINITIONS

When used in this Part III:

1. "**Insured person**" means:
   a. **you**, a **relative**, or a **rated resident**;
   b. any person while operating a **covered auto** with the permission of **you**, a **relative**, or a **rated resident**;
   c. any person **occupying**, but not operating, a **covered auto**; and
   d. any person who is entitled to recover damages covered by this Part III because of **bodily injury** sustained by a person described in a., b. or c. above.
2. "**Underinsured motor vehicle**" means a land motor vehicle or trailer of any type to which liability insurance or a bond applies at the time of the accident with limits of liability that equal or exceed the minimum amounts required by the South Carolina motor vehicle financial responsibility law, but which are less than the amount of the damages sustained by the **insured person** in the accident.
   An "**underinsured motor vehicle**" does not include any vehicle or equipment:
   a. operated on rails or crawler treads;
   b. designed mainly for use off public roads, while not on public roads;
   c. while located for use as a residence or premises; or
   d. that is an **uninsured motor vehicle**.
3. "**Uninsured motor vehicle**" means a land motor vehicle or trailer of any type:
   a. to which no liability bond, cash deposit, security, or liability policy in at least the amounts of coverage required by South Carolina law applies at the time of the accident;
   b. to which a liability bond or policy applies at the time of the accident, but the bonding or insuring company:
      (i) denies coverage;
      (ii) is or becomes insolvent;
      (iii) is in delinquency proceedings, suspension, or receivership; or
      (iv) is financially unable to fully satisfy a judgment rendered in favor of an insured person;
   c. to which a liability bond or policy applies at the time of the accident, but its limit of liability is less than the minimum limit of liability specified by the financial responsibility law of the state in which the **covered auto** is principally garaged; or

PNIC000024

ELECTRONICALLY FILED - 2021 May 28 1:26 PM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

d. that is a hit-and-run vehicle whose owner or operator cannot be identified and which causes an accident resulting in **bodily injury** to an **insured person**, or **property damage** to the property of an **insured person**, provided:
   (i) the **insured person**, or someone on his or her behalf, reports the accident to the police or civil authority within 24 hours or as soon as practicable after the accident; and
   (ii) if the **bodily injury** or **property damage** was not caused by physical contact between the vehicle operated by the unidentified operator and the **insured person**, or a vehicle occupied by the **insured person**, there must be independent corroborative evidence by a witness to the accident who executes a signed affidavit attesting to the truth of the accident to prove that the **bodily injury** or **property damage** was proximately caused by the negligent or intentional actions of the unidentified operator of the motor vehicle. The testimony of the owner or operator of the **covered auto** shall not constitute independent corroborative evidence. No recovery will be provided under this Part III if the **insured person** was negligent in failing to determine the identity of the other motor vehicle and its driver at the time of the accident.

An "**uninsured motor vehicle**" does not include any vehicle or equipment:
a. owned or operated by a self-insurer under any applicable motor vehicle law, except a self-insurer that:
   (i) is or becomes insolvent; or
   (ii) fails to qualify as a self-insurer under South Carolina law;
b. owned by any governmental unit or agency, except when:
   (i) operated by a person without property authorization; or
   (ii) a cause of action against that governmental unit or agency arising out of a motor vehicle accident is barred by the Tort Claims Act of South Carolina;
c. operated on rails or crawler treads;
d. designed mainly for use off public roads, while not on public roads;
e. while located for use as a residence or premises;
f. that is an **underinsured motor vehicle**; or
g. that is a **covered auto**.

EXCLUSIONS—READ THE FOLLOWING EXCLUSIONS CAREFULLY. IF AN EXCLUSION APPLIES, COVERAGE WILL NOT BE AFFORDED UNDER THIS PART III.

Coverage under this Part III will not apply:
1. to **bodily injury** sustained by any person while using or **occupying** a **covered auto** while being used:
   a. to carry persons or property for compensation or a fee;
   b. for retail or wholesale delivery, including, but not limited to, the pickup, transport or delivery of magazines, newspapers, mail or food; or
   c. for **ride-sharing activity**.

   This exclusion does not apply to shared-expense car pools;

2. to **bodily injury** sustained by the owner of a motor vehicle if:
   a. the **bodily injury** is sustained while using or **occupying** that owned motor vehicle; and
   b. if uninsured motorist coverage or underinsured motorist coverage, as the case may be, has not been purchased for that motor vehicle;
3. to **bodily injury** sustained by **you**, a **relative**, or a **rated resident** while using any vehicle, other than a **covered auto**, without the permission of the owner of the vehicle or the person in lawful possession of the vehicle;
4. to **bodily injury** arising out of the use of a **covered auto** while being used in connection with a **personal vehicle sharing program**. This exclusion does not apply to the operation of a **covered auto** by **you**, a **relative**, or a **rated resident**; or
5. directly or indirectly to benefit any insurer or self-insurer under any of the following or similar laws:
   a. workers' compensation law; or
   b. disability benefits law.

Coverage under this Part II will not apply to **property damage**:

1. sustained while a **covered auto** is being used:
   a. to carry persons or property for compensation or a fee;
   b. for retail or wholesale delivery, including but not limited to, the pickup, transport, or delivery of magazines, newspapers, mail, or food; or
   c. for **ride-sharing activity**.

   This exclusion does not apply to shared-expense car pools;
2. resulting from, or sustained during practice or preparation for:
   a. any pre-arranged or organized racing, stunting, speed, or demolition contest or activity; or
   b. any driving activity conducted on a permanent or temporary racetrack or racecourse;
3. to a **covered auto** for which insurance:
   a. is afforded under a nuclear energy liability insurance contract; or
   b. would be afforded under a nuclear energy liability insurance contract but for its termination upon exhaustion of its limit of liability;
4. to a trailer;
5. to any motor vehicle owned by **you**, a **relative**, or a **rated resident** if uninsured motorist coverage or underinsured motorist coverage, as the case may be, has not been purchased for that motor vehicle; or
6. sustained while a **covered auto** is being used in connection with a **personal vehicle sharing program**. This exclusion does not apply to the operation of a **covered auto** by **you**, a **relative**, or a **rated resident**.

LIMITS OF LIABILITY

The limit of liability shown on the **declarations page** for Uninsured Motorist Coverage or Underinsured Motorist Coverage, as the case may be, is the most we will pay regardless of the number of:

1. claims made;

ELECTRONICALLY FILED - 2021 May 28 1:26 PM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

2. **covered autos**, but only with respect to **insured persons** other than you, a **relative**, or a **rated resident**;
3. **insured persons**;
4. lawsuits brought;
5. vehicles involved in the accident; or
6. premiums paid, but only with respect to **insured persons** other than **you**, a **relative**, or a **rated resident**.

When **you**, a **relative**, or a **rated resident** are not **occupying** an **auto** and sustain **bodily injury** caused by the owner or operator of an **uninsured motor vehicle** or **underinsured motor vehicle**, our limit of liability shall not exceed the limit of liability shown on the **declarations page** for any one **covered auto**.

If **your declarations page** shows a split limit:
1. the amount shown for "each person" for "bodily injury" is the most **we** will pay for all damages due to **bodily injury** to one person;
2. subject to the "each person" limit, the amount shown for "each accident" is the most **we** will pay for all damages due to **bodily injury** sustained by two or more persons in any one accident; and
3. the amount shown for "property damage" is the most **we** will pay for the aggregate of all **property damage** caused by any one accident.

The "each person" limit of liability includes the total of all claims made for **bodily injury** to an **insured person** and all claims of others derived from such **bodily injury**, including, but not limited to, loss of society, loss of companionship, loss of services, loss of consortium, and wrongful death.

If the **declarations page** shows that "combined single limit" or "CSL" applies, the amount shown is the most **we** will pay for the total of all **bodily injury** damages resulting from any one accident. However, without changing this total limit of liability, **we** will comply with any law that requires **us** to provide any separate limits.

The amount of damages payable for **bodily injury** under this Part III will be reduced by all sums:
1. paid because of **bodily injury** by or on behalf of any persons or organizations that may be legally responsible;
2. paid under Part I—Liability To Others; and
3. paid or payable because of **bodily injury** under any disability benefits law or similar law.

We will not pay under this Part III any expenses paid or payable under Part II—Medical Payments Coverage.

The limit of liability for **property damage** to a **covered auto** is the lowest of:
1. the actual cash value of the **covered auto** at the time of the accident;
2. the amount necessary to replace the **covered auto**;

PNIC000027

ELECTRONICALLY FILED - 2021 May 28 1:26 PM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

3. the amount necessary to repair the **covered auto** to its pre-loss condition; or
4. the limit of liability shown on the **declarations page** for Uninsured Motorist Property Damage or Underinsured Motorist Property Damage, whichever applies.

The amount of damages payable for **property damage** under this Part III will be reduced by all sums paid because of **property damage** by or on behalf of any persons or organizations that may be legally responsible, including, but not limited to, all sums paid under Part I—Liability To Others.

We shall not pay for **property damage** to the extent that such damages are paid or payable under any other property damage or physical damage insurance, including all sums paid or payable under Part IV—Damage To A Vehicle.

Payments for **property damage** under this Part III are subject to the following provisions:
1. any amount payable under this Part III for **property damage** shall be subject to the applicable deductible shown on the **declarations page**; and
2. no more than one deductible shall be applied to any one accident.

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

OTHER INSURANCE

If there is other applicable uninsured or underinsured motorist coverage, we will pay only **our** share of the damages. **Our** share is the proportion that **our** limit of liability bears to the total of all available coverage limits. However, when **you**, a **relative**, or a **rated resident** are **occupying** a motor vehicle other than a **covered auto** and sustain **bodily injury** covered under this Part III, **our** coverage shall be excess to the coverage applicable to the motor vehicle that **you**, the **relative**, or the **rated resident** are **occupying**, and **our** total limit of liability under this policy shall not exceed **our** limit of liability for one **auto**.

However, when **you**, a **relative**, or a **rated resident** are operating, or **occupying**, a motor vehicle that is owned by **you**, a **relative**, or a **rated resident** but is not a **covered auto**, in that case, **our** total limit of liability will be the lesser of the limit of liability listed on the **declarations page** or the amount of Uninsured Motorist Coverage or Underinsured Motorist Coverage, as the case may be, on the vehicle involved in the accident.

ARBITRATION FOR BODILY INJURY CLAIMS

If **we** and an **insured person** cannot agree on:
1. the legal liability of the operator or owner of an **uninsured motor vehicle** or **underinsured motor vehicle**; or
2. the amount of the damages sustained by the **insured person**;

this will be determined by arbitration if **we** and the **insured person** mutually agree to arbitration prior to the expiration of the bodily injury statute of limitations in the state in which the accident occurred.

PNIC000028

ELECTRONICALLY FILED - 2021 May 28 1:26 PM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

ELECTRONICALLY FILED - 2021 May 28 1:26 PM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

If **we** and the **insured person** mutually agree to arbitration, each party will select an arbitrator. The two arbitrators will select a third. If the two arbitrators cannot agree on a third arbitrator within 30 days, then on joint application by the **insured person** and **us**, the third arbitrator will be appointed by a court having jurisdiction.

Each party will pay the costs and fees of its arbitrator and any other expenses it incurs. The costs and fees of the third arbitrator will be shared equally.

Unless both parties agree otherwise, arbitration will take place in the county in which the **insured person** resides. Local rules of procedure and evidence will apply.

A decision agreed to by two of the arbitrators will be binding with respect to a determination of:

1. the legal liability of the operator or owner of an **uninsured motor vehicle** or **underinsured motor vehicle**; and
2. the amount of the damages sustained by the **insured person**.

The arbitrators will have no authority to award an amount in excess of the limit of liability.

We and an **insured person** may agree to an alternate form of arbitration.

ARBITRATION FOR PROPERTY DAMAGE CLAIMS

An **insured person** may submit a disputed **property damage** claim to arbitration in accordance with South Carolina law.

PART IV—DAMAGE TO A VEHICLE

INSURING AGREEMENT—COLLISION COVERAGE

If **you** pay the premium for this coverage, **we** will pay for sudden, direct and accidental loss to a:

1. **covered auto**, including an attached **trailer**; or
2. **non-owned auto**;

and its **custom parts or equipment**, resulting from **collision**.

In addition, **we** will pay the reasonable cost to replace any child safety seat damaged in an accident to which this coverage applies.

INSURING AGREEMENT—COMPREHENSIVE COVERAGE

If **you** pay the premium for this coverage, **we** will pay for sudden, direct and accidental loss to a:

1. **covered auto**, including an attached **trailer**; or
2. **non-owned auto**;

and its **custom parts or equipment**, that is not caused by **collision**.

PNIC000029

A loss not caused by **collision** includes:
1. contact with an animal (including a bird);
2. explosion or earthquake;
3. fire;
4. malicious mischief or vandalism;
5. missiles or falling objects;
6. riot or civil commotion;
7. theft or larceny;
8. windstorm, hail, water or flood; or
9. breakage of glass not caused by **collision**.

In addition, **we** will pay for:
1. reasonable transportation expenses incurred by **you** if a **covered auto** is stolen; and
2. loss of use damages that **you** are legally liable to pay if a **non-owned auto** is stolen.

A combined maximum of $900, not exceeding $30 per day, will apply to these additional benefits. The additional benefit for transportation expenses will not apply if **you** purchased Rental Reimbursement Coverage for the stolen **covered auto**.

Coverage for transportation expenses and loss of use damages begins 48 hours after **you** report the theft to **us** and ends the earliest of:
1. when the **auto** has been recovered and returned to **you** or its owner;
2. when the **auto** has been recovered and repaired;
3. when the **auto** has been replaced; or
4. 72 hours after **we** make an offer to settle the loss if the **auto** is deemed by **us** to be a total loss.

We must receive written proof of transportation expenses and loss of use damages.

INSURING AGREEMENT—ADDITIONAL CUSTOM PARTS OR EQUIPMENT COVERAGE

We will pay for sudden, direct and accidental loss to **custom parts or equipment** on a **covered auto** for which this coverage has been purchased. This coverage applies only if **you** have purchased both Comprehensive Coverage and Collision Coverage for that **covered auto** and the loss is covered under one of those coverages. This coverage applies in addition to any coverage automatically provided for **custom parts or equipment** under Comprehensive Coverage or Collision Coverage.

INSURING AGREEMENT—RENTAL REIMBURSEMENT COVERAGE

We will reimburse rental charges incurred when **you** rent an **auto** from a rental agency or auto repair shop due to a loss to a **covered auto** for which Rental Reimbursement Coverage has been purchased. This coverage applies only if **you** have

PNIC000030

ELECTRONICALLY FILED - 2021 May 28 1:26 PM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

purchased both Comprehensive Coverage and Collision Coverage for that **covered auto** and the loss is covered under one of those coverages.

Additional fees or charges for insurance, damage waivers, optional equipment, fuel, or accessories are not covered.

This coverage is limited to the each day limit shown on the **declarations page** for a maximum of 30 days.

If Rental Reimbursement Coverage applies, no other coverage under this policy for rental expenses will apply.

Rental charges will be reimbursed beginning:
1. when the **covered auto** cannot be driven due to a loss; or
2. if the **covered auto** can be driven, when **you** deliver the **covered auto** to an auto repair shop or one of **our** Service Centers for repairs due to the loss;

and ending the earliest of:
1. when the **covered auto** has been returned to **you**;
2. when the **covered auto** has been repaired;
3. when the **covered auto** has been replaced;
4. 72 hours after **we** make an offer to settle the loss if the **covered auto** is deemed by **us** to be a total loss; or
5. when **you** incur 30 days worth of rental charges.

You must provide **us** written proof of **your** rental charges to be reimbursed.

INSURING AGREEMENT—LOAN/LEASE PAYOFF COVERAGE

If **you** pay the premium for this coverage, and the **covered auto** for which this coverage was purchased is deemed by **us** to be a total loss, **we** will pay, in addition to any amounts otherwise payable under this Part IV, the difference between:
1. the actual cash value of the **covered auto** at the time of the total loss; and
2. any greater amount the owner of the **covered auto** is legally obligated to pay under a written loan or lease agreement to which the **covered auto** is subject at the time of the total loss, reduced by:
   a. unpaid finance charges or refunds due to the owner for such charges;
   b. excess mileage charges or charges for wear and tear;
   c. charges for extended warranties or refunds due to the owner for extended warranties;
   d. charges for credit insurance or refunds due to the owner for credit insurance;
   e. past due payments and charges for past due payments; and
   f. collection or repossession expenses.

However, **our** payment under this coverage shall not exceed the limit of liability shown on the **declarations page**. The limit of liability is a percentage of the actual cash value of the **covered auto** at the time of the loss.

PNIC000031

ELECTRONICALLY FILED - 2021 May 28 1:26 PM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

ELECTRONICALLY FILED - 2021 May 28 1:26 PM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

This coverage applies only if **you** have purchased both Comprehensive Coverage and Collision Coverage for that **covered auto** and the loss is covered under one of those coverages.

INSURING AGREEMENT—PET INJURY COVERAGE

If **you** have purchased Collision coverage for at least one **covered auto** under **your** policy, and if **your pet** sustains injury or death while inside a **covered auto** or **non-owned auto** at the time of a loss covered under Collision or Comprehensive coverage, **we** will provide:

1. up to $1,000 for reasonable and customary veterinary fees incurred by **you**, a **relative**, or a **rated resident** if **your pet** is injured in, or as a direct result of, the covered loss; or
2. a $1,000 death benefit if **your pet** dies in, or as a direct result of, the covered loss, less any payment **we** made toward veterinary expenses for **your pet**.

In the event of a covered loss due to the theft of a **covered auto** or **non-owned auto**, **we** will provide the death benefit provided **your pet** is inside that auto at the time of the theft and **your pet** is not recovered.

ADDITIONAL DEFINITIONS

When used in this Part IV:

1. "**Collision**" means the upset of a vehicle or its impact with another vehicle or object.
2. "**Custom parts or equipment**" means equipment, devices, accessories, enhancements and changes, other than those that are offered by the manufacturer specifically for that **auto** model, or that are installed by the auto dealership as part of the original sale of a new **auto**, that:
   a. are permanently installed or attached; and
   b. alter the appearance or performance of the **auto**.
3. "**Mechanical parts**" means operational parts on a vehicle that wear out over time or have a finite useful life or duration typically shorter than the life of the vehicle as a whole. **Mechanical parts** do not include external crash parts, wheels, paint, or windshields and other glass.
4. "**Non-owned auto**" means an **auto** that is not owned by or furnished or available for the regular use of **you**, a **relative**, or a **rated resident** while in the custody of or being operated by **you**, a **relative**, or a **rated resident** with the permission of the owner of the **auto** or the person in lawful possession of the **auto**.
5. "**Your pet**" means any dog or cat owned by **you**, a **relative**, or a **rated resident**.

EXCLUSIONS—READ THE FOLLOWING EXCLUSIONS CAREFULLY. IF AN EXCLUSION APPLIES, COVERAGE WILL NOT BE AFFORDED UNDER THIS PART IV.

Coverage under this Part IV will not apply for loss:

1. to any vehicle while being used:
   a. to carry persons or property for compensation or a fee;

PNIC000032

ELECTRONICALLY FILED - 2021 May 28 1:26 PM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

b. for retail or wholesale delivery, including, but not limited to, the pickup, transport or delivery of magazines, newspapers, mail or food; or
c. for **ride-sharing activity.**

This exclusion does not apply to shared-expense car pools;

2. to a **non-owned auto** while being maintained or used by a person while employed or engaged in any **auto business**;
3. to any vehicle resulting from, or sustained during practice or preparation for:
   a. any pre-arranged or organized racing, stunting, speed or demolition contest or activity; or
   b. any driving activity conducted on a permanent or temporary racetrack or racecourse;
4. to any vehicle for which insurance:
   a. is afforded under a nuclear energy liability insurance contract; or
   b. would be afforded under a nuclear energy liability insurance contract but for its termination upon exhaustion of its limit of liability;
5. to any vehicle caused by an intentional act committed by or at the direction of **you, a relative, a rated resident**, or the owner of a **non-owned auto**, even if the actual damage is different than that which was intended or expected;
6. to a **covered auto** while it is leased or rented to others or given in exchange for compensation, including while being used in connection with a **personal vehicle sharing program**. This exclusion does not apply to the operation of a **covered auto** by **you**, a **relative**, or a **rated resident**;
7. due to destruction or confiscation by governmental or civil authorities of any vehicle because **you**, any **relative**, or any **rated resident** engaged in illegal activities;
8. to any vehicle that is due and confined to:
   a. wear and tear;
   b. freezing;
   c. mechanical, electrical or electronic breakdown or failure; or
   d. road damage to tires.

   This exclusion does not apply if the damage results from the theft of a vehicle;
9. to portable equipment, devices, accessories, and any other personal effects that are not permanently installed. This includes, but is not limited to:
   a. tapes, compact discs, cassettes, DVDs, and other recording or recorded media;
   b. any case or other container designed for use in storing or carrying tapes, compact discs, cassettes, DVDs, or other recording or recorded media;
   c. any device used for the detection or location of radar, laser, or other speed measuring equipment or its transmissions; and
   d. CB radios, telephones, two-way mobile radios, DVD players, personal computers, personal digital assistants, or televisions;
10. to any vehicle for diminution of value;
11. to any vehicle caused directly or indirectly by:
    a. war (declared or undeclared) or civil war,
    b. warlike action by any military force of any government, sovereign, or other authority using military personnel or agents. This includes any action taken to hinder or defend against an actual or expected attack; or

PNIC000033

ELECTRONICALLY FILED - 2021 May 28 1:26 PM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

c. insurrection, rebellion, revolution, usurped power, or any action taken by a governmental authority to hinder or defend against any of these acts;

12. to any vehicle caused directly or indirectly by:
    a. any accidental or intentional discharge, dispersal or release of radioactive, nuclear, pathogenic or poisonous biological material; or
    b. any intentional discharge, dispersal or release of chemical or hazardous material for any purpose other than its safe and useful purpose; or
13. to any vehicle caused by, or reasonably expected to result from, a criminal act or omission of **you**, a **relative**, a **rated resident**, or the owner of a **non-owned auto**. This exclusion applies regardless of whether **you**, the **relative**, the **rated resident**, or the owner of the **non-owned auto** is actually charged with, or convicted of, a crime. For purposes of this exclusion, criminal acts or omissions do not include traffic violations.

LIMITS OF LIABILITY

1. The limit of liability for loss to a **covered auto**, **non-owned auto**, or **custom parts or equipment** is the lowest of:
    a. the actual cash value of the stolen or damaged property at the time of the loss reduced by the applicable deductible;
    b. the amount necessary to replace the stolen or damaged property reduced by the applicable deductible;
    c. the amount necessary to repair the damaged property to its pre-loss condition reduced by the applicable deductible; or
    d. the Stated Amount shown on the **declarations page** for that **covered auto**.

    However, the most we will pay for loss to:
    a. **custom parts or equipment** is $1,000 unless **you** purchased Additional Custom Parts or Equipment Coverage ("ACPE"). If **you** purchased ACPE, the most **we** will pay is $1,000 plus the amount of ACPE **you** purchased.
    b. a **trailer** is the limit of liability shown on the **declarations page** for that **trailer**. If the **trailer** is not shown on the **declarations page**, the limit of liability is $500.
2. Payments for loss to a **covered auto**, **non-owned auto**, or **custom parts or equipment** are subject to the following provisions:
    a. If coverage applies to a **non-owned auto**, we will provide the broadest coverage applicable to any **covered auto** shown on the **declarations page**.
    b. If **you** have elected a Stated Amount for a **covered auto**, the Stated Amount is the most we will pay for all loss to that **covered auto**, including its **custom parts or equipment**.
    c. Coverage for **custom parts or equipment** will not cause our limit of liability for loss to an **auto** under this Part IV to be increased to an amount in excess of the actual cash value of the **auto**, including its **custom parts or equipment**.
    d. In determining the amount necessary to repair damaged property to its pre-loss condition, the amount to be paid by **us**:
        (i) will not exceed the prevailing competitive labor rates charged in the area where the property is to be repaired and the cost of repair or replacement parts and equipment, as reasonably determined by **us**; and

PNIC000034

ELECTRONICALLY FILED - 2021 May 28 1:26 PM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

(ii) will be based on the cost of repair or replacement parts and equipment which may be new, reconditioned, remanufactured or used, including, but not limited to:
(a) original manufacturer parts or equipment; and
(b) nonoriginal manufacturer parts or equipment.

e. To determine the amount necessary to repair or replace the damaged property as referred to in subsection 1., the total cost of necessary repair or replacement may be reduced by unrepaired prior damage. Unrepaired prior damage includes broken, cracked or missing parts; rust; dents; scrapes; gouges; and peeling paint. The reduction for unrepaired prior damage is the cost of labor, parts and materials necessary to repair or replace damage, deterioration, defects, or wear and tear on exterior body parts, windshields and other glass, wheels, and paint, that existed prior to the accident and that is eliminated as a result of the repair or replacement of property damaged in the loss.

f. To determine the amount necessary to repair or replace the damaged property as referred to in subsection 1., an adjustment may be made for betterment or depreciation and physical condition on:
(i) batteries;
(ii) tires;
(iii) engines and transmissions, if the engine has greater than 80,000 miles; and
(iv) any other mechanical parts that are nonfunctioning or inoperative.
We will not make an adjustment for the labor costs associated with the replacement or repair of these parts.

g. The actual cash value is determined by the market value, age, and condition of the vehicle at the time the loss occurs.

3. No deductible will apply with respect to damage to automobile safety glass.
4. Duplicate recovery for the same elements of damages is not permitted.
5. Any amount paid or payable to a person under this Part IV for property damage to an auto shall be reduced by any amount paid for that property damage to the auto under Part III--Uninsured/Underinsured Motorist Coverage.
6. The following additional limits of liability apply to Pet Injury coverage:
   a. The most we will pay for all damages in any one loss is a total of $1,000 regardless of the number of dogs or cats involved.
   b. If your pet dies in, or as a direct result of, a covered loss, we will provide a death benefit of $1,000, less any payment we made toward veterinary expenses for your pet.
   c. No deductible shall apply to this coverage.

PAYMENT OF LOSS

We may, at our option:
1. pay for the loss in money; or
2. repair or replace the damaged or stolen property.

PNIC000035

ELECTRONICALLY FILED - 2021 May 28 1:26 PM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

At our expense, we may return any recovered stolen property to **you** or to the address shown on the **declarations page**, with payment for any damage resulting from the theft. **We** may keep all or part of the property at the agreed or appraised value.

We may settle any loss with **you** or the owner or lienholder of the property.

NO BENEFIT TO BAILEE

Coverage under this Part IV will not directly or indirectly benefit any carrier or other bailee for hire.

LOSS PAYABLE CLAUSE

Payment under this Part IV for a loss to a **covered auto** will be made according to **your** interest and the interest of any lienholder shown on the **declarations page** or designated by **you**. At our option, payment may be made to both jointly, or to either separately. However, if the **covered auto** is not a total loss, we may make payment to **you** and the repairer of the **auto**.

The lienholder's interest will not be protected:

1. where fraud, misrepresentation, material omission, or intentional damage resulting in a denial of coverage by **us** has been committed by or at the direction of **you** or any person seeking coverage; or
2. where the loss is otherwise not covered under the terms of this policy.

If this policy is cancelled, nonrenewed or voided, the interest of any lienholder under this agreement will also terminate.

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 for a **non-owned auto**, or **trailer not** shown on the **declarations page**, will 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** or **trailer**;
2. any other applicable physical damage insurance; and
3. any other source of recovery applicable to the loss.

APPRAISAL

If **we** cannot agree with **you** on the amount of a loss, then **we** or **you** may demand an appraisal of the loss. Within 30 days of any demand for an appraisal, each party shall appoint a competent appraiser and shall notify the other party of that appraiser's identity. The appraisers will determine the amount of loss. If they fail to agree, the disagreement will be submitted to a qualified umpire chosen by the appraisers.

PNIC000036

ELECTRONICALLY FILED - 2021 May 28 1:26 PM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

If the two appraisers are unable to agree upon an umpire within 15 days, we or you may request that a judge of a court of record, in the county where you reside, select an umpire. The appraisers and umpire will determine the amount of loss. The amount of loss agreed to by both appraisers, or by one appraiser and the umpire, will be binding. You will pay your appraiser's fees and expenses. We will pay our appraiser's fees and expenses. All other expenses of the appraisal, including payment of the umpire if one is selected, will be shared equally between us and you. Neither we nor you waive any rights under this policy by agreeing to an appraisal.

PART V—ROADSIDE ASSISTANCE COVERAGE

INSURING AGREEMENT

If you pay the premium for this coverage, we will pay for our authorized service representative to provide the following services when necessary due to a covered emergency:

1. towing of a covered disabled auto to the nearest qualified repair facility; and
2. labor on a covered disabled auto at the place of disablement.

If a covered disabled auto is towed to any place other than the nearest qualified repair facility, you will be responsible for any additional charges incurred.

ADDITIONAL DEFINITIONS

When used in this Part V:

1. "Covered disabled auto" means a covered auto for which this coverage has been purchased that sustains a covered emergency.
2. "Covered emergency" means a disablement that is a result of:
   a. mechanical or electrical breakdown;
   b. battery failure;
   c. insufficient supply of fuel, oil, water, or other fluid;
   d. flat tire;
   e. lock-out; or
   f. entrapment in snow, mud, water or sand within 100 feet of a road or highway.

EXCLUSIONS—READ THE FOLLOWING EXCLUSIONS CAREFULLY. IF AN EXCLUSION APPLIES, COVERAGE WILL NOT BE AFFORDED UNDER THIS PART V.

Coverage under this Part V will not apply to:

1. more than three covered emergencies for any single covered auto in a six-month period;
2. the cost of purchasing parts, fluid, lubricants, fuel, or replacement keys, or the labor to make replacement keys;
3. installation of products or material not related to the disablement;

PNIC000037

4. labor not related to the disablement;
5. labor on a **covered disabled auto** for any time period in excess of 60 minutes per disablement;
6. towing or storage related to impoundment, abandonment, illegal parking, or other violations of law;
7. assistance with jacks, levelers, airbags or awnings;
8. labor or repair work performed at a service station, garage, or repair shop;
9. auto storage charges;
10. disablement that occurs on roads not regularly maintained, sand beaches, open fields, or areas designated as not passable due to construction, weather, or earth movement;
11. mounting or removing of snow tires or chains;
12. tire repair;
13. disablement that results from an intentional or willful act or action by **you**, a **relative**, or the operator of a **covered disabled auto**;
14. any **covered auto** while being used in connection with **ride-sharing activity**;
15. any **covered auto** while being used in connection with a **personal vehicle sharing program**; or
16. a trailer.

UNAUTHORIZED SERVICE PROVIDER

When service is rendered by a provider in the business of providing roadside assistance and towing services, other than one of **our** authorized service representatives, **we** will pay only reasonable charges, as determined by **us**, for:
1. towing of a **covered disabled auto** to the nearest qualified repair facility; and
2. labor on a **covered disabled auto** at the place of disablement;

which is necessary due to a **covered emergency**.

OTHER INSURANCE

Any coverage provided under this Part V for service rendered by an unauthorized service provider will be excess over any other collectible insurance or towing protection coverage.

PART VI—DUTIES IN CASE OF AN ACCIDENT OR LOSS

For coverage to apply under this policy, **you** or the person seeking coverage must promptly report each accident or loss even if **you** or the person seeking coverage is not at fault. **You** or the person seeking coverage must provide **us** with all accident or loss information, including time, place, and how the accident or loss happened. **You** or the person seeking coverage must also obtain and provide **us** the names and addresses of all persons involved in the accident or loss, the names and addresses of any witnesses, and the license plate numbers of the vehicles involved.

If **you** or the person seeking coverage cannot identify the owner or operator of a vehicle involved in the accident, or if theft or vandalism has occurred, **you** or the

PNIC000038

ELECTRONICALLY FILED - 2021 May 28 1:26 PM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

person seeking coverage must notify the police within 24 hours or as soon as practicable.

A person seeking coverage must:

1. cooperate with **us** in any matter concerning a claim or lawsuit;
2. provide any written proof of loss we may reasonably require;
3. allow **us** to take signed and recorded statements, including sworn statements and examinations under oath, which **we** may conduct outside the presence of **you** or any other person seeking coverage, and answer all reasonable questions we may ask as often as **we** may reasonably require;
4. promptly call to notify **us** about any claim or lawsuit and send us any and all legal papers relating to the claim or suit;
5. attend hearings and trials as **we** require;
6. take reasonable steps after a loss to protect the **covered auto**, or any other vehicle for which coverage is sought, from further loss. **We** will pay reasonable expenses incurred in providing that protection. If failure to provide such protection results in further loss, any additional damages will not be covered under this policy;
7. allow **us** to have the damaged **covered auto**, or any other damaged vehicle for which coverage is sought, inspected and appraised before its repair or disposal;
8. submit to medical examinations at **our** expense by doctors **we** select as often as **we** may reasonably require; and
9. authorize **us** to obtain medical and other records.

PART VII—GENERAL PROVISIONS

POLICY PERIOD AND TERRITORY

This policy applies only to accidents and losses occurring during the policy period shown on the **declarations page** and that occur within a state, territory or possession of the United States of America, or a province or territory of Canada, or while a **covered auto** is being transported between their ports.

CHANGES

This policy contract, your insurance application (which is made a part of this policy as if attached hereto), the **declarations page**, and all endorsements to this policy issued by **us**, contain all the agreements between **you** and **us**. Subject to the following, the terms of this policy may not be changed or waived except by an endorsement issued by **us**.

The premium for this policy is based on information **we** received from **you** and other sources. **You** agree to cooperate with **us** in determining if this information is correct and complete, and to promptly notify **us** if it changes during the policy period. If this information is determined by **us** to be incorrect, incomplete, or if it changes during the policy period, **you** agree that **we** may adjust your policy information and premi-

PNIC000039

ELECTRONICALLY FILED - 2021 May 28 1:26 PM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

um accordingly. Changes that may result in a premium adjustment are contained in our rates and rules. These include, but are not limited to, you, a relative, or a rated resident obtaining a driver's license or operator's permit, or changes in:

1. the number, type or use classification of covered autos;
2. the persons who regularly operate a covered auto;
3. the persons of legal driving age residing in your household;
4. the residents in your household;
5. an operator's marital status;
6. your mailing address and your residence address;
7. the principal garaging address of any covered auto;
8. coverage, deductibles, or limits of liability; or
9. rating territory or discount eligibility.

The coverage provided in your policy may be changed only by the issuance of a new policy or an endorsement by us. However, if during the policy period we broaden any coverage afforded under the current edition of your policy without additional premium charge, that change will automatically apply to your policy as of the date the coverage change is implemented in your state.

If you ask us to delete a vehicle from this policy, no coverage will apply to that vehicle as of the date and time you ask us to delete it.

DUTY TO REPORT CHANGES

You must promptly report to us all changes, including additions and deletions, in policy information. This includes, but is not limited to, changes in:

1. your mailing address or your residence address;
2. the principal garaging address of any covered auto;
3. the residents in your household;
4. the persons of legal driving age residing in your household;
5. the persons who regularly operate a covered auto;
6. an operator's marital status; or
7. the driver's license or operator's permit status of you, a relative, or a rated resident.

SETTLEMENT OF CLAIMS

We may use estimating, appraisal, or injury evaluation systems to assist us in adjusting claims under this policy and to assist us in determining the amount of damages, expenses, or loss payable under this policy. Such systems may be developed by us or a third party and may include computer software, databases, and specialized technology.

TERMS OF POLICY CONFORMED TO STATUTES

If any provision of this policy fails to conform to the statutes of the state listed on your application as your residence, the provision shall be deemed amended to conform

PNIC000040

ELECTRONICALLY FILED - 2021 May 28 1:26 PM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

ELECTRONICALLY FILED - 2021 May 28 1:26 PM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

to such statutes. All other provisions shall be given full force and effect. Any disputes as to the coverages provided or the provisions of this policy shall be governed by the law of the state listed on your application as your residance.

TRANSFER OF INTEREST

The rights and duties under this policy may not be transferred to another person without our written consent. However, if a named insured shown on the declarations page dies, this policy will provide coverage until the end of the policy period for the legal representative of the named insured, while acting as such, and for persons covered under this policy on the date of the named insured's death.

FRAUD OR MISREPRESENTATION

This policy was issued in reliance upon the information provided on your insurance application. We may void this policy at any time, including after the occurrence of an accident or loss, if you:

1. made incorrect statements or representations to us with regard to any material fact or circumstance;
2. concealed or misrepresented any material fact or circumstance; or
3. engaged in fraudulent conduct;

at the time of application. This means that we will not be liable for any claims or damages that would otherwise be covered unless we have certified this policy as proof of financial responsibility. If we have certified this policy as proof of financial responsibility, nothing in this provision shall affect coverage under Part I—Liability To Others up to the minimum limit mandated by the motor vehicle financial responsibility law of South Carolina for an accident that occurs before we notify you that the policy is void. If we void this policy, you must reimburse us if we make a payment.

Any changes we make at your request to this policy after inception will be made in reliance upon information you provide. If you:

1. make incorrect statements or representations to us with regard to any material fact or circumstance;
2. conceal or misrepresent any material fact or circumstance; or
3. engage in fraudulent conduct;

in connection with a requested change we may void the policy or reform it as it existed immediately prior to the requested change. We may do this at any time, including after the occurrence of an accident or loss.

When we have not voided or reformed the policy, we may still deny coverage for an accident or loss if you, in connection with the policy application, in connection with any requested change, or at any time during the policy period, have concealed or misrepresented any material fact or circumstance or engaged in fraudulent conduct and that concealment, misrepresentation, or fraudulent conduct was material to a risk we assumed.

PNIC000041

We may deny coverage for an accident or loss if you or a person seeking coverage has concealed or misrepresented any material fact or circumstance, or engaged in fraudulent conduct, in connection with the presentation or settlement of a claim. However, this shall not affect coverage under Part I—Liability To Others up to the minimum limit mandated by the motor vehicle financial responsibility law of South Carolina, for any injured person who has not knowingly concealed or misrepresented any material fact or circumstance.

PAYMENT OF PREMIUM AND FEES

If your initial premium payment is by check, draft, electronic funds transfer, or similar form of remittance, coverage under this policy is conditioned on payment to us by the financial institution. If the financial institution upon presentment does not honor the check, draft, electronic funds transfer, or similar form of remittance, this policy may, at our option, be cancelled from its inception by notice of cancellation or rescission. This means we will not be liable under this policy for any claims or damages that would otherwise be covered if the check, draft, electronic funds transfer, or similar form of remittance had been honored by the financial institution. Any action by us to present the remittance for payment more than once shall not affect our right to void this policy.

In addition to premium, fees may be charged on your policy. We may charge fees for installment payments, late payments, and other transactions. Payments made on your policy will be applied first to fees, then to premium due.

CANCELLATION

You may cancel this policy during the policy period by calling or writing us and stating the future date you wish the cancellation to be effective.

We may cancel this policy during the policy period by mailing a notice of cancellation to the named insured shown on the **declarations page** at the last known address appearing in our records, stating the specific reason for cancellation. Notice will be mailed at least 15 days before the date of cancellation.

We may cancel this policy for any of the following reasons within the first 60 days of the initial policy period:

1. a premium payment by check, draft, electronic funds transfer, or similar form of remittance is not honored upon presentment;
2. you produce proof that you have sold or otherwise disposed of a covered auto, or surrendered its tags and registration;
3. you have secured another policy that satisfies the financial responsibility laws of the State of South Carolina; or
4. you fail to pay when due:
   a. the premium for the policy;
   b. an installment of the premium; or
   c. an installment payment under a premium service contract.

PNIC000042

ELECTRONICALLY FILED - 2021 May 28 1:26 PM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

After the policy has been in effect for more than 60 days, but before the policy has been in effect for more than 90 days, we may cancel this policy for any reason.

After this policy is in effect for more than 90 days, or if this is a renewal or continuation policy, we may cancel only for one or more of the following reasons:

1. nonpayment of premium;
2. loss of driving privileges through suspension or revocation of an operator's license issued to you, any driver in your household, or any regular operator of a covered auto; or
3. any other reason permitted by law.

Proof of mailing will be sufficient proof of notice. If this policy is cancelled, coverage will not be provided as of the effective date and time shown in the notice of cancellation. For purposes of cancellation, this policy is neither severable nor divisible. Any cancellation will be effective for all coverages for all persons and all vehicles.

CANCELLATION REFUND

Upon cancellation, you may be entitled to a premium refund. However, our making or offering of a refund is not a condition of cancellation.

If this policy is cancelled, any refund due will be computed on a daily pro rata basis. However, if this policy is cancelled at your request any refund due will be computed on a 90% of a daily pro rata basis. Earned premium is calculated on a daily basis. We will supply a copy of the table to you on request.

When you renew this policy, we will waive our right under the policy to calculate cancellation refunds on a 90% of a daily pro rata basis; instead, any refund of premium following a cancellation that may apply to the renewal policy will be calculated on a daily pro rata basis.

NONRENEWAL

If neither we nor one of our affiliates offers to renew or continue this policy, we will mail notice of nonrenewal stating the specific reason for nonrenewal to the named insured shown on the declarations page at the last known address appearing in our records. Proof of mailing will be sufficient proof of notice. Notice will be mailed at least 15 days before the end of the policy period.

LEGAL ACTION AGAINST US

We may not be sued unless there is full compliance with all the terms of this policy.

We may not be sued for payment under Part I—Liability To Others until the obligation of an insured person under Part I to pay is finally determined either by judgment after trial against that person or by written agreement of the insured person, the

PNIC000043

ELECTRONICALLY FILED - 2021 May 28 1:26 PM - CHESTER - COMMON PLEAS - CASE#2020CP1200207

claimant, and us. No one will have any right to make us a party to a lawsuit to determine the liability of an insured person.

If we retain salvage, we have no duty to preserve or otherwise retain the salvage for any purpose, including evidence for any civil or criminal proceeding.

OUR RIGHTS TO RECOVER PAYMENT

We are entitled to the rights of recovery that the insured person to whom payment was made has against another, to the extent of our payment. That insured person may be required to sign documents related to the recovery and must do whatever else we require to help us exercise those recovery rights, and do nothing after an accident or loss to prejudice those rights.

However, we may not assert rights of recovery:
1. for amounts paid as Underinsured Motorist Coverage benefits; or
2. for amounts paid as Medical Payments Coverage benefits.

When an insured person has been paid by us and also recovers from another, the amount recovered will be held by the insured person in trust for us and reimbursed to us to the extent of our payment. If we are not reimbursed, we may pursue recovery of that amount directly against that insured person.

If an insured person recovers from another without our written consent, the insured person's right to payment under any affected coverage will no longer exist.

If we elect to exercise our rights of recovery against another, we will also attempt to recover any deductible incurred by an insured person under this policy unless we are specifically instructed by that person not to pursue the deductible. We have no obligation to pursue recovery against another for any loss not covered by this policy.

We reserve the right to compromise or settle the deductible and property damage claims against the responsible parties for less than the full amount. We also reserve the right to incur reasonable expenses and attorney fees in pursuit of the recovery.

If the total recovery is less than the total of our payment and the deductible, we will reduce reimbursement of the deductible based on the proportion that the actual recovery bears to the total of our payment and the deductible. A proportionate share of collection expenses and attorney fees incurred in connection with these recovery efforts will also reduce reimbursement of the deductible.

These provisions will be applied in accordance with state law.

JOINT AND INDIVIDUAL INTERESTS

If there is more than one named insured on this policy, any named insured may cancel or change this policy. The action of one named insured will be binding on all persons provided coverage under this policy.

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BANKRUPTCY

The bankruptcy or insolvency of an insured person will not relieve **us** of any obligations under this policy.

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PROGRESSIVE
AUTO

9511A SC 1014



PNIC000048

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MUSC Health
Medical University of South Carolina

MUSC Health
PO Box 931736
Atlanta, Ga 31193-1736

Alexis Jones
[redacted]

Guarantor ID: 500033958

Visit Coverages:
Wellcare of SC Medicaid - Wellcare of SC Medicaid

This is not a bill. This is an itemization of your MUSC Health services for:

Patient:	Jones, Alexis	Admission Date:	10/08/19
Hospital Account:	300053282	Discharge Date:	10/08/19

R51 - Headache
F17.210 - Nicotine dependence, cigarettes, uncomplicated

Current Account Balance: 0.00

Hospital Charges

Date	Rev Code	Procedure Code	Description	Qty	Amount
10/08/19	0250	63700001	CYCLOBENZAPRINE 10 MG TAB	1	6.00
10/08/19	0250	63700001	ACETAMINOPHEN 325 MG TAB	3	1.00
10/08/19	0255	Q9967	IOHEXOL 350 MG IODINE/ML SOLN	100	673.00
10/08/19	0352	35200033	HB CT ABDOMEN & PELVIS W/CONTRAST	1	16,228.56
10/08/19	0450	45000005	HB ER VISIT COMPREHENSIVE	1	5,219.98
10/08/19	0306	85100170	HB C UR	1	719.54
10/08/19	0307	85340180	HB URINALYSIS	1	283.84
10/08/19	0307	85340131	HB PREGNANCY-QUALITATIVE URINE	1	610.90

Total Charges: 23,742.82

EXHIBIT
B

For inquiries regarding this document, please call 1-843-792-2311.

PNIC000078

Account # **7621910080077** ADOS: **10/08/2019** BDOS: **10/08/2019** 10/17/2019

Patient Name: **ALEXIS JONES**

Group Information:

APP OF SOUTH CAROLINA ED PLLC
PO BOX 4458. DEPT 226
HOUSTON, TX 77210-4458
Tax ID: 82-2136565 **Phone: (866) 434-3164**
Doctor: **56 - CHRISTOPHER DAVIS, MD**
Hospital: **Springs Memorial Hospital**

Patient Information:

Patient DOB: [redacted]
Patient Phone: [redacted]

ALEXIS JONES
[redacted]

FinClass: **38 - MCD MANCR**
Diagnosis: **S09.90XA - Unspecified injury of head, initial encounter**

Charges:	**$883.63**
Payments:	**$0.00**
Adjustments:	**$0.00**
Balance:	**$883.63**
Collection Balance:	**$0.00**

Insurance Information:

	Primary Insurance	Secondary Insurance	Tertiary Insurance
Name:	52 - WELLCARE OF SC MCD		
Insured:	ALEXIS JONES		
Policy:	xxxxx8522		
GroupID:			
File Date:			

CHARGES:

Date:	Procedure	Mod	Description	Charges	Medicare Payment	Insurance Payment	Patient Payment	Payments	Balance
10/08/2019	99284	AN	EMERGENCY DEPT VISIT	$883.63	$0.00	$0.00	$0.00	$0.00	$883.63

TRANSACTIONS:

Actual Date	Transaction Type / Description	Ins Plan	Transaction Amount
--			

ALEXIS JONES
[redacted]

☐ Check if address is incorrect, and make changes in the space above.

If paying by a below listed Credit Card, please fill out below.

☐ AmEx ☐ MasterCard ☐ Visa ☐ Discover

Signature | Expires | Amount

ALEXIS JONES **Balance: $883.63**

APP OF SOUTH CAROLINA ED PLLC
PO BOX 4458. DEPT 226
HOUSTON, TX 77210-4458

7621910080077

EXHIBIT C 185

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MUSC Health
Medical University of South Carolina

MUSC Health
PO Box 931736
Atlanta, Ga 31193-1736

Alexis Jones
[redacted]

Guarantor ID: 1658302

Visit Coverages:
Wellcare of SC Medicaid - Wellcare of SC Medicaid

This is not a bill. This is an itemization of your MUSC Health services for:

Patient: Jones, Alexis
Hospital Account: 300053717

Admission Date: 10/09/19
Discharge Date: 10/09/19

S16.1XXA - Strain of muscle, fascia and tendon at neck level, initial encounter
R03.0 - Elevated blood-pressure reading, without diagnosis of hypertension
F17.210 - Nicotine dependence, cigarettes, uncomplicated

Current Account Balance: 0.00

Hospital Charges

Date	Rev Code	Procedure Code	Description	Qty	Amount
10/09/19	0250	63700001	IBUPROFEN 800 MG TAB	1	6.00
10/09/19	0450	45000003	HB ER VISIT INTERMEDIATE	1	1,720.09
Total hospital charges:					**1,726.09**

Hospital Payments and Adjustments

Date	Description	Amount
10/23/19	Wellcare of SC Medicaid Payments	-165.17
10/23/19	Wellcare of SC Medicaid Adjustments	-1,560.92
Total hospital payments and adjustments:		**-1,726.09**

EXHIBIT
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D

For inquiries regarding this document, please call 1-843-792-2311.

PNIC000077

CAROLINA RADIOLOGY ASSOCIATES, LLC
1303 AZALEA COURT
SUITE C
MYRTLE BEACH, SC 29577-5765
Phone: (866)264-3435
Fax: (843)497-9566
Tax ID:

Patient: 1292234 - JONES, ALEXIS
Date Created: Sunday, October 13, 2019 6:55 PM

DATE	REF. DOCTOR	DOCTOR	PROCEDURE	CHARGES	PAYMENTS	ADJUSTMENTS	BALANCE	PAYSOURCE	INS PLAN
10/09/2019	LANE, KRYSTAL	DEGN, CHRISTOP	74177 - CT, ABD A	$550.00					
				$550.00	**$0.00**	**$0.00**	**$550.00**		
10/09/2019	LANE, KRYSTAL	DEGN, CHRISTOP	G9637 - FINAL REP	$0.00					
10/11/2019	23569653		Adjustment		$0.00	$0.00		WELLCARE S CA	80420
				$0.00	**$0.00**	**$0.00**	**$0.00**		
			Account Total:	**$550.00**	**$0.00**	**$0.00**	**$550.00**		

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EQUIAN

Please make check for $439.97 payable to
Equian
PO Box 32100
Louisville, KY 40232
Tax ID - 27-0083277
Please include patient's name and file number on check
ALEXIS JONES - #46361740
Attn. Michael Zymwski

Patient's Name: ALEXIS JONES **Equian #:** 46361740

Provider of Service	Diagnosis Code	Claim Number	
Date of Service	Procedure Code(s)	Charged	Paid
	S 3991XA UNSPECIFIED INJURY OF ABDOMEN, INITIAL ENCOUNTER	994123748	
10/09/2019	74177 CT ABDOMEN&PELVIS W/CONTRAST	$550.00	$70.1
	S 0990XA UNSPECIFIED INJURY OF HEAD, INITIAL ENCOUNTER	996751822	
10/08/2019	99284 EMERGENCY DEPT VISIT	$883.63	$69.1
MUSC LANCASTER MEDICAL CENTER	S 161XXA STRAIN OF MUSCLE, FASCIA AND TENDON AT NECK LEVEL, INIT	996268564	
10/09/2019	SYSERLV2	$0.00	$165.1
	R51 HEADACHE	998119609	
10/08/2019	307 LABORATORY	$610.90	$8.56
10/08/2019	306 LABORATORY	$719.54	$10.9
10/08/2019	SYSERLV1	$0.00	$91.7
10/08/2019	307 LABORATORY	$283.84	$4.2

Equian #: 46361740

Totals:	Charged	Paid	Amount Received	Balance Due
	$3,047.91	$439.97	$0.00	$439.97

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EXHIBIT F

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHESTER COUNTY
Court of Common Pleas

Brian M. Gibbons, Circuit Court Judge

Appellate Case No. 2023-000654
Trial Court Case No. 2020-CP-12-00207

Alexis Jones .....Respondent – Appellant,

v.

Progressive Northern Insurance Company.....Appellant – Respondent.

CERTIFICATE OF COUNSEL

The undersigned certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

J.R. Murphy, Esquire
S.C. Bar No. 7941
Murphy & Grantland, P.A.
PO Box 6648
Columbia, South Carolina 29260
(803) 782-4100
jrmurphy@murphygrantland.com
Attorneys for Appellant-Respondent

Columbia, South Carolina
November 8, 2023

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Nov 08 2023
SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHESTER COUNTY
Court of Common Pleas

Brian M. Gibbons, Circuit Court Judge

Appellate Case No. 2023-000654
Trial Court Case No. 2020-CP-12-00207

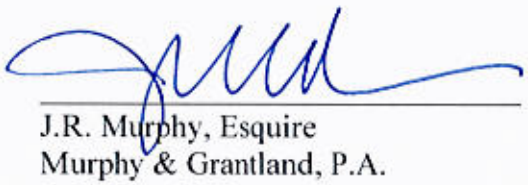
Alexis Jones .....Respondent – Appellant,

v.

Progressive Northern Insurance Company.....Appellant – Respondent.

PROOF OF SERVICE

I certify that I have served the Record on Appeal on Alexis Jones by depositing a copy of it in the United States Mail, postage prepaid, on November 8, 2023, addressed to her attorneys of record, J. Logan Cannon, Esquire, P.O. Drawer 36250, Rock Hill, South Carolina 29732 and by electronic mail at cannon@shawlawfirm.net and John S. Nichols, Esquire, Bluestein Thompson Sullivan, LLC, PO Box 7965, Columbia, SC 29202, and by electronic mail at john@bluesteinattorneys.com.



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(803) 782-4100
Attorneys for Appellant-Respondent