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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Jennifer B. McCoy, Circuit Court Judge

Appellate Case Number: 2024-000107

Jill S. Amoruso.....Appellant,

v.

United Services Automobile Association d/b/a USAA.....Respondent.

RECORD ON APPEAL

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INDEX

Order dated November 30, 2023.....2

Form 4 Order dated November 13, 20237

Form 4 Order dated November 13, 2023.....10

Form 4 Order dated January 19, 2024.....13

Complaint.....16

Amended Answer.....24

Plaintiff’s Motion for Partial Summary Judgment..... 32

Defendant’s Motion for Summary Judgment.....34

Defendant’s Memorandum in Support of Motion for Summary Judgment..... 36

Transcript of Hearing 40

Defendant’s Responses to Plaintiff’s Requests for Production..... 69

Plaintiff’s Responses to Defendant’s First Set of Interrogatories 74

Photographs..... 82

USAA policy..... 87

Plaintiff’s Motion to Alter or Amend Judgment134

Certificate of Counsel137

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)
)
)
JILL S. AMORUSO,)
)
)
)
Plaintiff,)
)
v.)
)
UNITED SERVICES AUTOMOBILE,)
ASSOCIATION d/b/a USAA,)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CIVIL ACTION NO. 2022-CP-08-01971

ORDER

On July 13, 2023, this Court heard cross-motions for summary judgment. The plaintiff moved for summary judgment on the ground USAA was obligated to make an offer of underinsurance motorist (UIM) coverage on a 2016 Montana and a 2007 Adams. The 2016 Montana was a camper, and the 2007 Adams was a horse trailer. USAA moved for summary judgment on the basis it was not obligated to offer UIM coverage on non-self-propelled vehicles such as horse trailers and campers because they were not “motor vehicles” as defined by section 38-77-30(9) of the South Carolina Code. USAA’s motion was supported by interrogatory answers and photographs of the camper and horse trailer.

The underlying facts are not in dispute. On January 7, 2017, the plaintiff was in an accident with Kaira Miller. At the time of the accident the plaintiff was driving a 2014 Nissan. At this time the Nissan and five other vehicles were insured with USAA. Of the total of six vehicles, four vehicles had UIM coverage in addition to statutorily mandated coverages. Two of the vehicles – a camper and horse trailer referenced as a 2016 Montana and a 2007 Adams – were insured for property damage only. Neither of these vehicles had liability, uninsured motorist (UM) or UIM coverage and on neither of these vehicles did USAA offer UIM coverage. Neither of these vehicles

were self-propelled. Instead, they were towed behind a transporting vehicle. On neither the 2016 Montana nor the 2007 Adams did the plaintiff pay a premium for liability, UM or UIM coverage.

Because the parties have filed cross motions for summary judgment this Court is presented with a question of law. *Meier v. Burnsed*, 882 S.E. 2d 863 (S.C. App. 2022); *Progressive Direct v. Groves*, 882 S. E. 2d 464 (S.C. 2022); *South Carolina Public Interest Foundation v. Calhoun County Council*, 854 S.E. 2d 836 (S.C. 2021); *USAA v. Pickens*, 862 S.E. 2d 442 (S.C. 2021) Additionally, where, as here, the court is presented with a question of statutory construction a question of law is involved. *Davis v. South Carolina Educational Credit*, 882 S.E. 2d 754 (S.C. 2023); *Flowers v. Giep*, 871 S. E. 2d 604 (S.C. App. 2021); *Ballard v. Newberry County*, 854 S.E. 2d 848 (S.C. App. 2021); *First Citizens Bank v. Taylor*, 847 S.E. 2d 249 (S. C. App. 2020)

Section 38-77-160 of the South Carolina Code requires insurers to offer UIM coverage "up to the limits of the insured liability coverage..." Section 38-77-140 requires liability coverage on a "motor vehicle." Section 38-77-30 (9) defines "motor vehicle" as every "self-propelled vehicle" including "trailers and semi-trailers designed for use with these vehicles..." It is undisputed neither the Montana nor the Adams were self-propelled vehicles. Requiring liability, UM coverage and offers of UIM coverage on non-self-propelled vehicles such as the Montana and the Adams will vastly transform this statutory scheme and cannot have been the intent of the legislature.

The specific question which with this court is presented is whether the Montana and the Adams, neither of which were self-propelled vehicles, fall within the definition of "motor vehicle" in section 38-77-30 (9) of the South Carolina Code. To fall within the definition of "motor vehicle" a vehicle must be self-propelled and designed for use upon a highway. Trailers and semi-trailers are included within the definition of "motor vehicle" in section 38-77-30 (9). In other words,

trailers and semi-trailers which are designed for use with motor vehicles are included within or are a part of a self-propelled vehicle such that there is one vehicle.

The word "includes" is ordinarily a word of enlargement and not of limitation. *Baker v. Chavis*, 410 S.E. 2d 600, 603 (S.C. App. 1991) Applying this definition to section 38-77-30 (9), the only reasonable statutory construction is that "trailers and semitrailers" are within the category of "self-propelled vehicles" such that a trailer or semitrailer being towed behind a self-propelled vehicle is one vehicle. Any construction otherwise would mean a trailer or semitrailer being towed behind a self-propelled vehicle is a separate vehicle requiring its own separate insurance. Such a construction of section 38-77-30 (9) would reach an absurd result and courts are not to construe statutes to reach an absurd result. *Buff v. South Carolina Department of Transportation*, 505 S.E. 2d 360 (S. C. App. 1998) – courts will reject an interpretation leading to a result so plainly absurd it could not have possibly been intended, or would defeat plain legislative intention. The interpretation of a term set forth in a statute should support the statute and should not lead to an absurd result. *Miller v. Robinson Trucking*, 510 S.E. 2d 431 (S.C. App. 1998); *Ogburn-Mathews v. Loblolly Partners*, 505 S.E. 2d 598 (S.C. App. 1998)

Case law also supports this Court's conclusion the 2016 Montana and the 2007 Adams are not "motor vehicles" within the definition of "motor vehicle" in section 38-77-30 (9) such that USAA was not required to make an offer of UIM coverage on these vehicles. In *Anderson v. State Farm Mutual Automobile Insurance Company*, 442 S.E. 2d 179 (S. C. 1994), the plaintiff argued a farm tractor was a motor vehicle. The Court considered section 38-77-30 (7), now section 38-77-30 (9), and held a farm tractor does not come within the definition of motor vehicle because although it could be incidentally used on a highway it was not designed for use upon a highway. This reasoning applies to the plaintiff's camper and horse trailer.

Miller v. Aiken, 613 S.E. 2d 364 (S. C. 2005), is dispositive. In that case the Supreme Court considered whether, as here, an auto insurer which provided only non-liability collision and other named perils coverage was required offer UIM coverage. In *Miller*, as here, the plaintiff argued an automobile insurer which provided only collision coverage was required to offer UIM coverage. The Supreme Court rejected this argument and stated "an automobile insurer providing only collision coverage to its insured should not be required to make a meaningful offer of UIM." 613 S.E. 2d at 367. The Supreme Court went on to state "requiring an insurer providing only collision coverage to make a meaningful offer of UIM would lead to a result so plainly absurd that it could not possibly have been intended by the legislature." 613 S. E. 2d at 367. The plaintiff's own motion for summary judgment cites this case.

More recently, in *Jack's Custom Cycles v. South Department of Revenue*, 885 S.E. 2d 433 (S.C. App. 2023), the Court defined "motor vehicle" as a vehicle which is self-propelled and a vehicle "operated by power developed within itself..." The Court cited the American Heritage College dictionary definition of a motor vehicle as a "self-propelled wheeled conveyance, such as a car or truck that does not run on rails." The horse trailer and camper in question do not come within this definition nor the statutory definition.

For these reasons the court grants USAA's motion for summary judgment and denies the plaintiff's motion for summary judgment. All of which is so ORDERED.

Jennifer B. McCoy, Presiding Judge
9th Judicial Circuit

Dated:



Berkeley Common Pleas

Case Caption: Jill S Amoruso VS United Services Automobile Association ,
defendant, et al
Case Number: 2022CP0801971
Type: Order/Other

So Ordered

s/Jennifer B. McCoy #2764

Electronically signed on 2023-11-29 17:11:38 page 5 of 5

Jill S Amoruso
PLAINTIFF(S)

United Services Automobile Association et al
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), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled);
 Other
- ACTION STRICKEN** (*CHECK REASON*): Rule 40(j), SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other
- 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:

Plaintiff's Motion for Partial Summary Judgment filed January 23, 2023 was heard by this court on July 13, 2023 by WebEx. Plaintiff's Motion is respectfully denied, as this court does not find that a "trailer" is a "motor vehicle" within the context of S.C. Code Sec. 38-77-30(9).

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 11/13/2023 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

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.



Berkeley Common Pleas

Case Caption: Jill S Amoruso VS United Services Automobile Association ,
defendant, et al
Case Number: 2022CP0801971
Type: Order/Electronic Form 4

So Ordered

s/Jennifer B. McCoy #2764

Electronically signed on 2023-11-13 14:22:44 page 3 of 3

Jill S Amoruso
PLAINTIFF(S)

United Services Automobile Association et al
DEFENDANT(S)

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- 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:

Defendant USAA's Motion for Summary Judgment filed March 15, 2023 and heard July 13, 2023 is GRANTED at this time based on the court's finding that the trailers at issue were not "motor vehicles" within the context of S.C. Code Section 38-77-30(9). Defendant shall draft formal proposed order within 10 days of the date of this order.

ORDER INFORMATION

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Berkeley Common Pleas

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defendant, et al
Case Number: 2022CP0801971
Type: Order/Electronic Form 4

So Ordered

s/Jennifer B. McCoy #2764

Electronically signed on 2023-11-13 14:27:09 page 3 of 3

Jill S Amoruso
PLAINTIFF(S)

United Services Automobile Association et al
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.
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 Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
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- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded;
 Other

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IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

Plaintiff filed a Motion to Reconsider with this Court on December 4, 2023. "The purpose of Rule 59(e), SCRPC, to alter or amend the judgment is to request the trial judge to reconsider matters properly encompassed in a decision on the merits." Arnold v. State, 309 S.C. 157, 172, 420 S.E.2d 8/34, 842 (1992). "A party may wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it." Elam v. South Carolina Dept. of Transp., 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). This Court DENIES Plaintiff's Motion to Reconsider without the necessity of a hearing, and it was decided on the record and briefs. Rule 59(f), SCRPC; Pollard v. City of Florence, 314 S.C. 397, 401-402, 444 S.E.2d 534, 536 (Ct. App. 1994).

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 01/19/2024 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

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Berkeley Common Pleas

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Case Number: 2022CP0801971
Type: Order/Electronic Form 4

So Ordered

s/Jennifer B. McCoy #2764

Electronically signed on 2024-01-19 11:22:19 page 3 of 3

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

JILL S. AMORUSO,

Plaintiff,

vs.

UNITED SERVICES AUTOMOBILE
ASSOCIATION d/b/a USAA,

Defendant.

IN THE COURT OF COMMON PLEAS

C/A No.: 2022-CP-08-

COMPLAINT

Plaintiff complains of Defendant as follows:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff is a resident of Berkeley County, South Carolina.
2. Defendant (“USAA”) is a reciprocal interinsurance exchange, has its principal place of business in the State of Texas, and does business as “USAA.”
3. Reciprocal interinsurance exchanges are unincorporated associations of members. Unincorporated entities carry the citizenship of their members. As such, reciprocal insurance exchanges are citizens in each state where their members reside. USAA has members in the State of South Carolina. Therefore, USAA is considered a citizen of the State of South Carolina for jurisdictional purposes as and there is no diversity of citizenship with Plaintiff.
4. USAA is licensed to write and, in fact, writes automobile insurance policies insuring citizens and residents of the State of South Carolina, including Plaintiff.
5. The most substantial part of the acts or omissions giving rise to the causes of action stated herein occurred in Berkeley County, South Carolina; therefore, venue is proper pursuant to S.C. CODE ANN. § 15-7-30 (1976, as amended).

6. Venue is also proper pursuant to S.C. CODE ANN. § 15-7-70 (1976, as amended).

THE POLICY

7. In approximately 2004, Plaintiff purchased an automobile insurance policy from USAA; thereafter, Plaintiff continuously renewed the policy, including a renewal effective November 7, 2016 to May 7, 2017 as policy number 01475 85 15U 7106 2 (“the Policy”).

8. The Policy insured six motor vehicles, including a 2014 Nissan SUV.

9. Among other coverages, the Policy provided liability insurance coverage with limits of \$300,000 per person per accident.

10. The Policy also provided underinsured motorist (“UIM”) coverage on the 2014 Nissan SUV, as well as three other vehicles listed in the Policy, with limits of \$300,000 per person per accident on each of those vehicles.

THE COLLISION

11. On January 7, 2017, while the Policy was in effect, Plaintiff was operating the 2014 Nissan SUV insured under the Policy when she was involved in a motor vehicle collision in Berkeley County, South Carolina (“the Collision”).

12. The Collision caused bodily injuries to Plaintiff.

13. The Collision was caused by the negligence of Kaira Miller (“Miller”).

THE LAWSUIT

14. As a result of the Collision, Plaintiff filed a suit against Miller in Berkeley County, South Carolina, Civil Action Number 2019-CP-08-00758, seeking damages for her bodily injuries (“the Lawsuit”).

15. Plaintiff served USAA with the Lawsuit as Plaintiff’s UIM insurer.

16. Miller was also insured by USAA, with liability insurance limits of \$100,000 per person per accident.

17. After the Lawsuit was filed, USAA tendered Miller's liability limits of \$100,000 to Plaintiff in exchange for a covenant not to execute against Miller.

18. Because Plaintiff's damages exceeded the sum of \$100,000, Miller was an underinsured motorist.

19. Upon payment of Miller's liability coverage limits, USAA, as Plaintiff's UIM insurer, assumed the defense of the Lawsuit.

20. During discovery related to the Lawsuit, USAA represented to Plaintiff that USAA provided a total of \$1,500,000 in UIM coverage under the Policy applicable to Plaintiff's claim as a result of the Collision.

21. Plaintiff offered to settle her UIM claim with USAA and the Lawsuit in exchange for USAA's payment of \$400,000 in UIM coverage.

22. USAA refused to settle for this amount.

23. Instead, USAA offered to settle Plaintiff's UIM claim and the Lawsuit for USAA's payment of \$250,000 in UIM coverage.

24. At the trial of the Lawsuit, on February 2, 2022, the jury returned a verdict in the amount of \$2,500,000 in favor of Plaintiff.

25. The verdict resulted in a judgment of \$2,400,000 in favor of Plaintiff after applying an offset for the \$100,000 in liability coverage paid by USAA on behalf of Miller.

26. The Policy's UIM coverage applied to the judgment resulting from the Lawsuit.

27. In response to the judgment USAA tendered to Plaintiff \$1,200,000 in UIM coverage under the Policy in partial satisfaction of the judgment.

28. At that time, USAA represented that \$1,200,000 was the total of UIM coverage available under the Policy for Plaintiff's claim as a result of the Collision and that its earlier representation of \$1,500,000 in UIM coverage under the Policy was an error.

29. The remaining balance of the judgment remains unsatisfied.

FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment and Reformation)

30. Plaintiff realleges the above allegations as if fully repeated herein.

31. At the time of the Collision, Plaintiff was a "Class 1" insured under the Policy.

32. As a result, Plaintiff is entitled to stack UIM coverage from each vehicle insured for that coverage under the Policy and to apply that stacked coverage to her claim as a result of the Collision.

33. The Policy's stacked UIM coverage applies to the judgment resulting from the Lawsuit.

34. Plaintiff contends that, for reasons discussed further below, all six motor vehicles insured by the Policy should have UIM coverage of \$300,000 per person per accident, for a total of \$1,800,000 in stacked UIM coverage; alternatively, Plaintiff contends the Policy should provide \$1,500,000 in stacked UIM coverage, as represented by USAA in the Lawsuit.

35. Upon information and belief, USAA contends the Policy provides a total of \$1,200,000 in stacked UIM coverage applicable to Plaintiff's claim as a result of the Collision.

36. The parties disagree as to the amount of stacked UIM coverage the Policy provides for Plaintiff's claim as a result of the Collision; therefore, an actual and justiciable controversy exists, making it proper for the Court to issue a declaratory judgment as to that issue.

37. Per S.C. CODE ANN. § 38-77-160 (1976, as amended), USAA owed a duty to Plaintiff, as named insured on the Policy, to make a meaningful offer of UIM coverage for each motor vehicle insured thereunder.

38. USAA failed to make a meaningful offer of UIM coverage under the Policy regarding two of the motor vehicles insured thereunder (the 2016 Montana and the 2007 Adams).

39. Because of the foregoing, the Court should declare that the Policy provides UIM coverage with limits of \$300,000 per person per accident for all six vehicles insured thereunder, reform the Policy to include UIM coverage with limits of \$300,000 per person per accident applicable to the 2016 Montana and the 2007 Adams motor vehicles insured thereunder, and declare that the Policy provides a total of \$1,800,000.00 in UIM coverage for Plaintiff's claim as a result of the Collision.

40. Alternatively, the Court should declare that the Policy provides a total of \$1,500,000 in stacked UIM coverage applicable to Plaintiff's claim as a result of the Collision.

FOR A SECOND CAUSE OF ACTION
(Breach of Contract)

41. Plaintiff realleges the above allegations as if fully repeated herein.

42. The issuance of the Policy by USAA to Plaintiff created a mutually binding contract of insurance between Plaintiff and USAA and gave rise to a contractual relationship between Plaintiff and USAA.

43. In the Policy, USAA contractually agreed to pay Plaintiffs for bodily injury damages which she is legally entitled to recover from the operator of an underinsured motor vehicle because of an auto accident.

44. The Policy does not condition USAA's duty to make this payment on the receipt of a release or waiver of further claims from Plaintiff.

45. USAA investigated Plaintiff's claims and made offers to settle her claim for UIM benefits under the Policy in amounts less than the total stacked UIM coverage limits.

46. However, USAA refused to pay Plaintiff the amount of its UIM coverage offer without Plaintiff's agreement to forego any claim for additional UIM coverage.

47. USAA's refusal to tender the amount of its UIM coverage and/or its conditioning of Plaintiffs providing a release or waiver of further claims in exchange for such a payment are in violation of the Policy and constitute a breach of contract.

48. As a direct and proximate result of USAA's breach of contract, Plaintiff was deprived of insurance benefits for which she paid a premium and to which she was entitled and therefore sustained damages.

49. Plaintiff is entitled to a judgment against USAA for her actual damages due to USAA's breach of contract.

50. Plaintiff is also entitled to an award of attorneys' fees pursuant to statutory and/or common law.

FOR A THIRD CAUSE OF ACTION
(Breach of the Covenant of Good Faith and Fair Dealing)

51. Plaintiff realleges the above allegations as if fully repeated herein.

52. The Policy includes an implied covenant of good faith and fair dealing.

53. Under the implied covenant of good faith and fair dealing, USAA is prohibited from doing anything to impair Plaintiff's rights to receive UIM benefits under the Policy.

54. Under this covenant, USAA owed Plaintiff a duty of care to process, to handle, and to adjust Plaintiff's claims fairly, reasonably, and in good faith.

55. The covenant of good faith and fair dealing also prevents USAA from offering less than what its own investigation reveals to be the value of Plaintiff's UIM claim.

56. Moreover, under the covenant of good faith and fair dealing, USAA owed to Plaintiff a duty to pay undisputed portions of her UIM claim promptly and without conditions.

57. There was no reasonable basis for USAA's refusal to tender to Plaintiff the amount of USAA's evaluation of Plaintiff's UIM claim.

58. There was no reasonable basis for USAA's refusal to tender to Plaintiff the amount of USAA's offer to pay for Plaintiff's UIM claim.

59. In addition, without reasonable basis, USAA defended the Lawsuit by alleging Plaintiff, its own insured, was addicted to drugs and was being untruthful about the cause, nature, and extent of her injuries and damages.

60. USAA was negligent, reckless, grossly negligent, willful, and wanton, acted without a reasonable basis or just cause, and/or acted in bad faith in its processing, handling, adjusting, and defending of Plaintiff's UIM claim in one or more of the following particulars:

- a. In failing to tender promptly and without conditions the amount it offered to pay for Plaintiff's UIM claim;
- b. In failing to tender promptly and without conditions the amount of its evaluation of Plaintiff's UIM claim;
- c. In impairing Plaintiff's rights to receive UIM benefits under the Policy;
- d. In refusing to tender promptly and without conditions the undisputed amounts of UIM coverage it contractually owed to Plaintiff despite requests to do so;
- e. In requiring Plaintiff to undergo the time, cost, and stress of trial to obtain UIM coverage that USAA admitted was due to Plaintiff;
- f. In requiring Plaintiff to undergo the time, cost, and stress of trial to obtain UIM coverage to which Plaintiff was entitled;
- g. In engaging in false accusations and character assassination of Plaintiff as part of its efforts to avoid paying UIM benefits to Plaintiff;
- h. In placing its own interests above those of Plaintiff; and
- i. In failing to place Plaintiff's interests ahead of its own.

61. As a direct and proximate result of USAA's negligence, recklessness, gross negligence, willfulness, wantonness, unreasonable conduct, and/or bad faith, Plaintiff has suffered damages including, without limitation, loss of insurance benefits, loss of use of insurance benefits, mental

anguish, emotional distress, costs related to the Lawsuit, consequential damages, and other actual damages.

62. USAA's actions were willful, wanton, and/or in reckless disregard for the rights of Plaintiff who is, therefore, entitled to an award of punitive damages.

63. Plaintiff is also entitled to an award of attorneys' fees against USAA.

WHEREFORE, Plaintiff prays for a declaratory judgment and reformation as set forth above, a monetary judgment against USAA for actual damages, punitive damages, and attorneys' fees, and such other relief as the Court deems proper.

CLAWSON FARGNOLI UTSEY, LLC

BY: /s/ Bert G. Utsey, III
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August 18, 2022
Charleston, South Carolina

Attorneys for Plaintiff

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)
)
)
JILL S. AMORUSO,)
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Plaintiff,)
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v.)
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UNITED SERVICES AUTOMOBILE,)
ASSOCIATION d/b/a USAA,)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CIVIL ACTION NO. 2022-CP-08-01971

AMENDED ANSWER OF
UNITED SERVICES
AUTOMOBILE ASSOCIATION
d/b/a USAA

The defendant United Services Automobile Association d/b/a USAA (USAA) answers the plaintiff's complaint as follows:

FOR A FIRST DEFENSE

1. Paragraph 1 is admitted upon information and belief.
2. USAA admits only that it is a reciprocal interinsurance exchange organized under Texas law that is an unincorporated association but denies the remaining allegations in paragraph 2.
3. Paragraph 3 is admitted.
4. Paragraph 4 is admitted.
5. Answering paragraph 5, USAA would show that venue is a matter of law to be determined by the court and otherwise paragraph 5 is denied.
6. Answering paragraph 6, USAA would show that venue is a matter of law to be determined by the court and otherwise paragraph 6 is denied.
7. Answering paragraph 7, USAA refers to the insurance policies purchased by the plaintiff for the dates of coverage and the policy numbers and, to the extent the allegations in

paragraph 7 vary or contradict the dates of policies and the policy numbers, paragraph 7 is denied and otherwise paragraph 7 is denied.

8. Answering paragraph 8, USAA admits only that at the time of the plaintiff's accident referenced in paragraph 11 the policy provided certain coverages on six vehicles including a 2014 Nissan SUV, but USAA would show that liability and UIM coverage existed on only 4 vehicles at the time of the accident referenced in paragraph 11 and otherwise paragraph 8 is denied.

9. Answering paragraph 9, USAA admits only that in January 2017 the plaintiff's policy included liability coverage with limits of \$300,000 per person per accident for 4 vehicles, but 2 vehicles did not include liability coverage.

10. Answering paragraph 10, USAA admits the policy in effect in January 2017 provided UIM coverage on the 2014 Nissan SUV of \$300,000 per person per accident, that the policy provided that coverage on 3 other vehicles and that these coverages are listed in the policy but otherwise paragraph 10 is denied.

11. Paragraph 11 is admitted.

12. Paragraph 12 is admitted.

13. Answering paragraph 13, USAA admits that, according to the jury's verdict in the plaintiff's case against Kaira Miller, the plaintiff's injuries were caused by the negligence of Miller.

14. Paragraph 14 is admitted.

15. Paragraph 15 is admitted.

16. Paragraph 16 is admitted.

17. Paragraph 17 is admitted upon information and belief.

18. Answering paragraph 18, USAA admits the plaintiff claimed the damages caused by Miller exceeded \$100,000, that the plaintiff maintained Miller was an underinsured motorist

and that the plaintiff made an UIM claim under her policy with USAA but otherwise paragraph 18 is denied.

19. Paragraph 19 is admitted upon information and belief.

20. Answering paragraph 20, USAA admits only that during the lawsuit an email was sent to plaintiff's counsel which mistakenly stated there was \$1,500,000 in UIM coverage applicable to the plaintiff's claim but otherwise paragraph 20 is denied.

21. Answering paragraph 21, USAA admits the plaintiff submitted an offer of judgment of \$400,000 in connection with the plaintiff's UIM claim but otherwise paragraph 21 is denied.

22. Paragraph 22 is admitted and USAA would further show it made an offer of judgment of \$250,000 of UIM coverage which the plaintiff did not accept and otherwise paragraph 22 is denied.

23. Paragraph 23 is admitted.

24. Paragraph 24 is admitted.

25. Paragraph 25 is admitted.

26. Answering paragraph 26, USAA admits the policy's UIM coverage applied to the judgment resulting from the plaintiff's lawsuit up to the amount of UIM coverage provided by the policy but otherwise paragraph 26 is denied.

27. Answering paragraph 27, USAA admits that in response to the judgment it tendered \$1,200,000 in UIM coverage and an additional amount of \$79,920 and that this amount partially satisfied the judgment but otherwise paragraph 27 is denied.

28. Answering paragraph 28, USAA admits upon information and belief it represented that \$1,200,000 was the total of UIM coverage available under the policy for the plaintiff's UIM

claim as a result of the collision and that any previous representation to the contrary was in error but otherwise paragraph 28 is denied.

29. Paragraph 29 is admitted.

30. Answering paragraph 30, USAA incorporates its responses to paragraphs 1 – 29 as fully and effectually as if set forth verbatim.

31. Paragraph 31 is admitted.

32. Answering paragraph 32, USAA admits that as a class I insured under the policy the plaintiff was entitled to stack UIM coverage for each vehicle which included that coverage and to apply the stacked coverage to a judgment on the plaintiff's UIM claim, but otherwise paragraph 32 is denied.

33. Paragraph 33 is admitted.

34. Answering paragraph 34, USAA admits that apparently the plaintiff is claiming \$1,500,000 in total UIM coverage or, alternatively, \$1,800,000 in UIM coverage, but USAA denies the plaintiff is entitled to any more than \$1,200,000 in total UIM coverage and, therefore, paragraph 34 is denied.

35. Answering paragraph 35, USAA does contend the policy provides a total of \$1,200,000 in UIM coverage applicable to the plaintiff's judgment but otherwise paragraph 35 is denied.

36. Answering paragraph 36, USAA admits there is a disagreement as to the amount of UIM coverage applicable to the plaintiff's judgment, that an actual and justiciable controversy does exist and that it is proper for this court to issue a declaratory judgment action as to the amount of UIM coverage applicable under the plaintiff's policy to the plaintiff's judgment but otherwise paragraph 36 is denied.

37. Answering paragraph 37, USAA refers to the wording of the statute in paragraph 37 and denies that that statute and any other statute or case requires an offer of UIM coverage on vehicles such as campers and horse trailers which are not self-propelled.

38. Paragraph 38 is denied as the law does not require liability insurance or offers of UIM coverage on such vehicles.

39. Paragraph 39 is denied.

40. Paragraph 40 is denied.

41. Answering paragraph 41, USAA incorporates its answers to paragraphs 1 – 40 as fully and effectually as if set forth verbatim.

42. USAA admits paragraph 42.

43. Answering paragraph 43, USAA refers to the contract of insurance for the terms and conditions therein and, to the extent paragraph 43 contradicts or varies the provisions of the contract of insurance, paragraph 43 is denied.

44. Answering paragraph 44, USAA refers to the terms and conditions of the contract of insurance and, to the extent paragraph 44 varies or contradicts the terms of the contract of insurance, paragraph 44 is denied and otherwise paragraph 44 is denied.

45. Answering paragraph 45, USAA admits it investigated the plaintiff's claim and it made an offer of judgment to resolve that claim in an amount less than the total UIM limits applicable to the plaintiff's claim and USAA would further show the plaintiff made an offer of judgment to resolve her UIM claim for an amount less than the total UIM coverage limits but otherwise paragraph 45 is denied.

46. Answering paragraph 46, USAA refers to its offer of judgment in the plaintiff's case against Kaira Miller and otherwise paragraph 46 is denied.

47. Paragraph 47 is denied.

48. Paragraph 48 is denied.

49. Paragraph 49 is denied.

50. Paragraph 50 is denied.

51. Answering paragraph 51, USAA incorporates by reference its answer to paragraphs 1 – 50 as fully and effectually as if set forth verbatim.

52. Answering paragraph 52, USAA denies the policy itself includes an implied covenant of good faith and fair dealing and would show that, instead, the duty of good faith and fair dealing is implied into the policy and otherwise paragraph 52 is denied.

53. Answering paragraph 53, USAA would show that which acts an insurer is prohibited from doing or is required to do under the implied covenant of good faith and fair dealing is a matter of law to be decided by the court and USAA would further show in response to paragraph 53 that it paid to the plaintiff all UIM benefits to which the plaintiff is contractually entitled under the policy.

54. Paragraph 54 is admitted.

55. Paragraph 55 is denied.

56. Paragraph 56 is denied and USAA would further show there is no contractual duty to pay UIM benefits until the insured obtains a judgment against the tortfeasor in excess of the tortfeasor's policy limits.

57. Paragraph 57 is denied.

58. Paragraph 58 is denied.

59. Paragraph 59 is denied.

60. Paragraph 60 and all subparagraphs therein are denied.

61. Paragraph 61 is denied.

62. Paragraph 62 is denied.

63. Paragraph 63 is denied.

64. Except as is specifically admitted, each and every allegation in the complaint and in the prayer of the complaint is denied.

FOR A SECOND DEFENSE

65. Any award of punitive damages under the facts of this case will violate the South Carolina and United States constitutions.

FOR A THIRD DEFENSE

66. It will be against public policy to require an insurer whose policy includes UIM coverage to pay the amount of its settlement offer to resolve the UIM claim as any such rule will impair the process of settlement negotiations on UIM claims.

FOR A FOURTH DEFENSE

67. Any representations of the amount of UIM coverage external to the policy itself merged into the contract of insurance and cannot vary or contradict the policy of insurance.

FOR A FIFTH DEFENSE

68. The parol evidence rule bars any modification of the contract of insurance.

FOR A SIXTH DEFENSE

69. Under section 38-77-160, cited in paragraph 37 of the plaintiff's complaint, USAA had a statutory right to defend the plaintiff's UIM claim and this statutory right cannot be abrogated by the actions pled in the plaintiff's complaint

FOR A SEVENTH DEFENSE

70. Statements of parties offered in the course of a judicial proceeding and relevant to that judicial proceeding are protected by an absolute privilege, and, thus, the allegations in paragraphs 59 and 60(g) cannot serve as the grounds for a bad faith cause of action.

WHEREFORE, having fully answered the complaint, USAA prays that the complaint be dismissed, with costs, and for such other and further relief as this Court may deem just and proper.

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Attorneys for USAA

March 15, 2023

Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

JILL S. AMORUSO,

Plaintiff,

vs.

UNITED SERVICES AUTOMOBILE
ASSOCIATION d/b/a USAA,

Defendant.

IN THE COURT OF COMMON PLEAS

C/A No.: 2022-CP-08-01971

MOTION FOR PARTIAL
SUMMARY JUDGMENT

TO: THE DEFENDANT AND ITS ATTORNEY:

Pursuant to S.C.R.C.P. 56(a), Plaintiff hereby moves the Court for an Order granting judgment in her favor as a matter of law with respect to her First Cause of Action (Declaratory Judgment and Reformation).

Specifically, Plaintiff seeks an Order from the Court declaring that Defendant provides underinsured motorist (“UIM”) coverage under the subject insurance policy (the “Policy”) with limits of \$300,000 per person per accident applicable to the 2016 Montana and the 2007 Adams vehicles insured thereunder, reforming the Policy to include such coverage, and declaring that the Policy provides a total of \$1,800,000.00 in stacked UIM coverage for Plaintiff’s claim as a result of the subject collision.

In support of this motion, Plaintiff submits the following:

1. Under South Carolina law, motor vehicle insurer carriers such as Defendant must offer UIM coverage on all vehicles insured under motor vehicle policies providing liability insurance coverage. S.C. CODE ANN. § 38-77-160 (1976, as amended); *see also Miller v. Aiken*, 364 S.C. 303, 613 S.E.2d 364 (2005).

2. The Policy provides liability insurance coverage.
3. The Montana and Adams vehicles are trailers that are insured under the Policy.
4. Trailers are considered “motor vehicles” under the automobile insurance code. S.C. CODE ANN. § 38-77-30(9) (1976, as amended).
5. The Policy did not provide UIM coverage for the Montana or the Adams.
6. USAA did not offer UIM coverage for the Montana or the Adams. *See* Defendant’s Responses to Plaintiff’s Requests for Production numbers 8-11.
7. When a motor vehicle insurer fails to make a meaningful offer of UIM coverage to an insured, the Court should reform the policy to include such coverage. *See, e.g., State Farm Mut. Auto. Ins. Co. v. Wannamaker*, 291 S.C. 518, 354 S.E.2d 555 (1987).

This motion will be based on Defendant’s responses to Plaintiff’s discovery requests, the applicable law and rules of civil procedure, the arguments of counsel, and such other matters as may be provided to the Court prior to any hearing hereon.

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January 23, 2023
Charleston, South Carolina

Attorneys for Plaintiff

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)
)
)
JILL S. AMORUSO,)
)
)
Plaintiff,)
)
v.)
)
UNITED SERVICES AUTOMOBILE,)
ASSOCIATION d/b/a USAA,)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CIVIL ACTION NO. 2022-CP-08-01971

**DEFENDANT’S MOTION FOR
SUMMARY JUDGMENT**

Pursuant to SCRCP 56 the Defendant moves for summary judgment on the Plaintiff's first cause of action for declaratory relief and for reformation of the contract of insurance.

The ground for this motion is that a 2016 Montana and a 2007 Adams, referenced in the Plaintiff's motion for summary judgment, are not motor vehicles within the meaning of chapter 77 of title 38 of the South Carolina Code and, as such, no liability or underinsurance motorist (UIM) coverage is to be provided or offered on the 2016 Montana or on the 2007 Adams, as these are not self-propelled vehicles and, instead, are towed behind a transporting vehicle.

Under section 38-77-140 of the South Carolina Code liability coverage, in certain minimum amounts, must be provided on a "motor vehicle." Section 38-77-30(9) defines a motor vehicle as a "self-propelled vehicle". Any trailers which fall within this definition must by virtue of this definition be "self-propelled." The Plaintiff's answer to the Defendant's interrogatory 12 states the 2016 Montana and the 2007 Adams are not self-propelled and, instead, are towed behind a transporting vehicle. Thus, the Montana and the Adams are not within the definition of "motor vehicle" in section 38-77-30(9).

Section 38-77-160 requires an offer of UIM coverage "up to the limits of liability coverage..." Where, as here, no liability coverage existed or was required, it follows that no offer of UIM coverage was required by law.

This motion is based upon the Plaintiff's responses to discovery, upon the statutes in Chapter 77 of Title 38 of the South Carolina Code, upon applicable case law and upon such other matters timely provided to the Court prior to any hearing.

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March 15, 2023

Charleston, South Carolina

coverage. (Plaintiff's answers to defendant's interrogatories 17, 18) On neither the 2016 Montana nor the 2007 Adams did the plaintiff ever pay a premium for liability, UM or UIM coverage. (Plaintiff's answer to defendant's interrogatory 21).¹

THE ISSUE

Are insurance carriers required offer UIM coverage and provide liability and UM coverage on vehicles which are not self-propelled? This duty either exists, or it does not, and the parties have filed cross motions for summary judgment on this issue. In such cases, the issue is one of law for the court. *Meier v. Burnsed*, 882 S.E. 2d 863 (S.C. Ct. App. 2022); *Progressive Direct v. Groves*, 882 S.E. 2d 464 (S. C. 2022)

ARGUMENT

Section 38-77-160 requires insurers to offer UIM coverage "up to the limits of the insured liability coverage..." Section 38-77-140 requires liability coverage on a "motor vehicle." Section 38-77-30 (9) defines "motor vehicle" as every "self – propelled vehicle" including "trailers and semi-trailers designed for use with these vehicles..." Is undisputed neither the Montana nor the Adams were self-propelled vehicles.

In *Anderson v. State Farm Mutual Automobile Insurance Company*, 442 S.E. 2d 179 (S. C. 1994), the plaintiff argued a farm tractor was a motor vehicle. The court considered section 38-77-30 (7), now section 38-77-30 (9), and held a farm tractor does not come under the definition of motor vehicle because although it could be incidentally used on a highway it was not designed for use upon a highway. The same reasoning applies to the Plaintiff's camper and horse trailer.

Miller v. Aiken, 613 S. E. 2d 364 (S.C. 2005), is dispositive. In that case the Supreme Court considered whether, as here, an auto insurer which provided only non-liability collision and other

¹ The USAA policy is exhibit C to USAA's motion for summary judgment filed April 19, 2022. That motion concerns separate issues.

named perils coverage was required offer UIM coverage. In Miller, as in the present case, the plaintiff argued an automobile insurer which provided only collision coverage was required to offer UIM coverage. The Supreme Court rejected this argument and stated "an automobile insurer providing only collision coverage to its insured should not be required to make a meaningful offer of UIM." 613 S. E. 2d at 367. The Supreme Court went on to state "requiring an insurer providing only collision insurance to make a meaningful offer of UIM would lead to a result so plainly absurd that it could not possibly have been intended by the legislature." 613 S. E. 2d at 367

More recently, in *Jack's Custom Cycles v. South Carolina Department of Revenue*, 885 S. E. 2d 433 (S. C. Ct. App. 2023), the court defined "motor vehicle" as a vehicle which is self-propelled and a vehicle "operated by power developed within itself..." The court cited the American Heritage College dictionary definition of motor vehicle as a "self – propelled wheeled conveyance, such as a car or truck that does not run on rails." The horse trailer and the camper do not come within this definition.

CONCLUSION

Because UIM coverage need not be offered on vehicles such as the Plaintiff's camper and horse trailer USAA is entitled to summary judgment on the Plaintiff's causes of action for declaratory relief and for reformation of the contract of insurance.²

[Signature Page Follows]

² When an insurer is required to make a commercially reasonable offer of UIM coverage and fails to do so, the remedy is to reform the policy to include UIM coverage up to the liability limits. *Croft v. Old Republic Insurance Company*, 618 S. E. 2d 909 (S. C. 2005) Here, however, the 2 vehicles in question had no liability coverage nor were they required to have this coverage.

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Attorneys for USAA

July 12, 2023

Charleston, South Carolina

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF BERKELEY) COURT OF COMMON PLEAS NONJURY

3
4 JILL S. AMORUSO,) TRANSCRIPT
5 PLAINTIFF,) OF
6 vs.) RECORD
7 UNITES STATES AUTOMOBILE)
8 ASSOCIATION D/B/A USAA,) 2022-CP-08-1971
9 DEFENDANT.)

10 July 13th, 2023

11
12
13 B E F O R E :

14 THE HONORABLE JENNIFER B. MCCOY, Judge.

15
16 A P P E A R A N C E S :

17 BERT G. UTSEY
18 ESQ.
Attorney for the Plaintiff

19 CHARLES R. NORRIS
20 ESQ.
Attorney for the Defendant

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22
23
24 Transcribed by Pamela E. Green, from
25 WebEx

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I N D E X

(WHEREUPON, there were no exhibits marked or testimony taken during this hearing.)

1 P R O C E E D I N G S

2
3 THE COURT: And then I have Mr. Utsey and Mr. Norris
4 present for the eleven o'clock. It's a few minutes early
5 but I'm happy to start if you-all are ready or we can wait.

6 MR. UTSEY: I'm ready when you are, Your Honor.

7 THE COURT: All right. Mr. Norris, are you there?

8 MR. NORRIS: Okay. It, it does help to read the
9 prompts on the screen --

10 THE COURT: Yeah, start video, unmute. There we go.
11 Perfect.

12 MR. NORRIS: -- at the bottom of the page.

13 Your Honor, before Mr. Utsey argues his motion, his
14 motion is the first one filed, I, I do have a little
15 housekeeping thing which is this. The -- his motion was
16 filed in January and, and they just go by I guess the oldest
17 one to schedule what's gonna be heard.

18 THE COURT: Uh-huh. (Affirmative).

19 MR. NORRIS: We filed a motion which is really the flip
20 side of Mr. Utsey's motion.

21 THE COURT: Uh-huh. (Affirmative).

22 MR. NORRIS: So they're really cross-motions for
23 summary judgment.

24 THE COURT: Uh-huh. (Affirmative).

25 MR. NORRIS: Our motion on that issue was filed March

1 the 15th and we filed another motion on another issue in
2 April.

3 THE COURT: Okay.

4 MR. NORRIS: So, Mr. Utsey has agreed that we can or
5 Your Honor can, if it's acceptable, hear all of the motions
6 today. So I don't know if that's acceptable to Your Honor
7 or not. But I think, in the interest of judicial economy,
8 it's the best way to go.

9 THE COURT: All right.

10 MR. UTSEY: Your Honor, I---

11 THE COURT: Um.

12 MR. UTSEY: I agree that the --

13 THE COURT: I'm happy to do it.

14 MR. UTSEY: -- first filed motion---

15 THE COURT: Happy to do it.

16 MR. UTSEY: ---for partial summary judgment by
17 Mr. Norris is, as he characterizes it, the flip side of my
18 motion. I think that those two motions present a pure legal
19 issue that, that you're gonna rule with the plaintiff or the
20 defendant. And so it makes sense to hear those two
21 together.

22 After reviewing his most recent motion, which relates
23 to a separate cause of action, I believe that that's one
24 that requires additional discovery and I, I probably earlier
25 jumped the gun by saying I thought it was ripe. But had I

1 realized that, I probably would of done a Rule 56(f)
2 affidavit that, that we haven't conducted any depositions.
3 It goes to the question of whether the insurance company
4 acted in bad faith and, at this stage in the discovery, we,
5 we think that would be premature to address that---

6 THE COURT: All right.

7 MR. UTSEY: ---motion.

8 THE COURT: Well, can we agree that I'll hear the
9 cross-motions for summary judgment?

10 MR. UTSEY: Yes, that's as to the declaratory judgment.
11 They're, they're two causes of action. One's a declaratory
12 judgment on a pure legal issue and I do agree that those
13 should be heard today. The second cause of action is---

14 THE COURT: I'm happy to.

15 MR. UTSEY: ---for bad faith.

16 THE COURT: Oh, okay. Bad faith.

17 Yeah, we won't address that one yet. That's the one
18 you're -- it's a little early you think?

19 MR. UTSEY: And, and, Charles, I apologize for my
20 confusion on that. I -- when I responded earlier, I was
21 thinking only of the -- on the legal issue, the DJ action
22 issue, and, and neglected to look back and see that there
23 was this also motion on the bad faith cause of action. So
24 that was my mistake.

25 MR. NORRIS: well, that's okay. Just do this for me,

1 skip.

2 why don't you let me know what discovery you think you
3 need to take to defend against the -- a motion for summary
4 judgment. Actually they're, they're three causes of action.

5 The first cause of action is for declaratory judgment
6 relief and reformation of the policy. The second cause of
7 action is for breach of contract. The third and final cause
8 of action is, is for bad faith.

9 THE COURT: Uh-huh. (Affirmative).

10 MR. NORRIS: And we had filed cross-motions for summary
11 judgment on the first cause of action, which is breach of
12 contract or for reformation of the policy. So, we'll argue
13 those cross-motions for summary judgment today, and going
14 forward with -- Mr. Utsey can let me know what discovery he
15 feels he needs to take in order to make our motion for
16 summary judgment on bad faith ripe for a hearing.

17 MR. UTSEY: That's fair.

18 THE COURT: Okay. Well, I'm happy to do it. Normally
19 they kind of frown on that, you know, hearing off-docket
20 motions. But I -- you're in luck because -- mostly because
21 all my other eleven o'clocks have fallen off. So, I got
22 time.

23 So tee it up, gentlemen. I'm happy to hear from you.

24 MR. UTSEY: Thank you, judge, and it's -- this is an
25 interesting legal issue and it's, and it's discrete and I

1 think discrete straightforward.

2 By way of background, you may recall this case cause I
3 understand you were the trial judge in the tort action.
4 Chris Romeo associated me to handle this action. But Chris
5 had represented the plaintiff in a motor vehicle collision
6 suit and I think John Grantland was defense counsel and that
7 resulted in a jury verdict of I think 2.5 million-dollars
8 some time ago.

9 The present action deals with the fact that the amount
10 of coverage USAA says it has was inadequate to pay for the
11 full judgment and, therefore, we are seeking a
12 declaratory -- putting aside the breach of contract and, and
13 bad faith causes of action for a moment. We're seeking a
14 declaratory judgment that the policy provides more
15 underinsured motorist coverage than USAA now concedes that
16 it provides and, and it's as simple as this, Your Honor.

17 The policy at the, at the time of the collision insured
18 a number of vehicles and among those vehicles were four
19 traditional automobile or truck type vehicles and two were
20 trailers.

21 Now, the insurance code in South Carolina defines motor
22 vehicles as including trailers or semitrailers that are
23 designed for use with self-propelled vehicles. And so
24 there's no question that a trailer is a motor vehicle even
25 though we might not commonly say motor vehicle when

1 referring to a trailer that's not self-propelled.

2 The Legislature has, in 38-77-30 in Subsection 9,
3 defined trailers as "motor vehicles for purposes of the
4 insurance code." The insurance code also goes on to say
5 that automobile insurance includes all types of insurance
6 for motor vehicles. Not just liability insurance. But
7 under 38-77-30(1), it includes physical damage insurance
8 such as collision coverage.

9 The dispute comes to us -- comes to -- before you today
10 because, when USAA issued this policy, it provided liability
11 and underinsured coverage, among other coverages, on the
12 four what I'll call traditional motor vehicles. But with
13 respect to the two trailers, it only provided collision
14 coverage and it is our position that USAA was required to
15 offer underinsured coverage on those trailers as well. And
16 because it admits, and this is in their responses to our
17 request for production, it admits it did not make an offer
18 on those trailers. The, the Court must, therefore, reform
19 the policy to include underinsured coverage for each of
20 those two motor vehicles equivalent to the liability
21 coverage on the policy.

22 Now, in fairness to USAA, its position is, because it
23 didn't write liability coverage on the trailers, it was not
24 required to offer underinsured coverage. And so that's
25 really the question before the Court is did USAA have an

1 obligation to offer underinsured coverage under these
2 circumstances.

3 Now, the -- as you probably know, Your Honor, the
4 determinative statute on that topic is Section 38-77-160
5 which says automobile insurance carriers shall offer
6 underinsured motorist coverage, et cetera, et cetera. And
7 so the question here is, for purposes of that statute, is
8 USAA considered a "automobile insurance carrier."

9 The South Carolina Supreme Court has addressed this in
10 a case called Miller versus Aiken and, ironically, it's the
11 case that we cited in our motion and, and that the defense
12 is relying on too. So I think a lot of the Court's work
13 will be divining what the Miller case stands for. This is a
14 2005 case from the Supreme Court and it presented a very
15 similar question to what is before the Court in our case.

16 In the Miller case, there was a vehicle that did not
17 have underinsured motorist coverage. That vehicle was
18 covered by two separate insurance policies, two different
19 insurance carriers actually. One insurance carrier provided
20 the liability coverage on the policy -- rather on the
21 vehicle.

22 The second insurance carrier wrote a separate policy
23 for only collision coverage and the plaintiff, in that case,
24 argued that that second insurance company, the one that
25 provided the collision coverage, should also be required to

1 provide underinsured coverage because it had failed to offer
2 underinsured coverage.

3 So, the Court says -- the question before us, it was
4 based on a certified question from the District Court, is an
5 automobile insurer which provides only non-liability
6 collision and other named perils coverage, a "automobile
7 insurance carrier" within the scope of 38-77-160 and thus
8 required to offer underinsured motorist coverage. It goes
9 on -- and, in that case, the plaintiff, as we do, argued to
10 the Court that an automobile insurer which provides only
11 collision insurance is a "automobile insurance carrier"
12 under the definitional provisions that I quoted to you a
13 moment ago in the code and the Court agreed.

14 The Court said but the question we must decide is
15 whether an insurer which provides only non-liability
16 collision and other named peril coverage constitutes an
17 automobile insurance carrier under Section 38-77-160 and,
18 ultimately, the Court held that, even though the plaintiff
19 was correct that the insurer that provided the collision
20 coverage is an "automobile insurance carrier," it was not
21 required in that case to comply with the mandatory offer
22 provisions of 38-77-160 and this is what's critical, Your
23 Honor.

24 The Court held this, and I, I -- I'll quote from the
25 case. "However, we conclude an automobile insurance

1 carrier -- insurer providing only, and they put the word
2 only in bold type, collision insurance to its insured should
3 not be required to make a meaningful offer of UIM coverage."
4 And that's important, Your Honor, because that case is a
5 little different than ours for a couple of reasons.

6 One, the vehicle involved in that case, the, the
7 subject vehicle for the -- is the question of UIM coverage
8 had liability coverage. It was just through a different
9 insurance carrier. Whereas here, USAA didn't provide
10 liability insurance coverage on either of those two
11 vehicles.

12 Secondly, it's different because the Court's holding in
13 Miller was conditioned on the fact that the second insurance
14 company provided, as it stressed, only collision insurance
15 under its policy and that was the basis for finding that
16 38-77-160 was not triggered. Here, as, as you know, USAA
17 did provide liability insurance coverage under the, under
18 the subject insurance policy.

19 Now, the other part about that that's important, Your
20 Honor, is this. We go how did we end up in a situation
21 where there was no liability coverage on either of these
22 trailers.

23 In the Miller case, that was clear because, in the
24 Miller case, another insurance company provided that
25 liability coverage. Here, nobody did and that's important

1 because, if you look at 38-77-140, which is the provision of
2 our insurance code that deals with mandatory liability
3 coverage, the Legislature says an automobile insurance
4 policy may not be issued or delivered in this, in this state
5 unless it contains a provision insuring the persons defined
6 as insured against loss for liability imposed by loss for
7 damage. In other words, liability insurance coverage, as
8 Your Honor knows, is mandatory and the Miller Court found
9 that an insurer like USAA is an automobile insurer and its
10 issued an automobile insurance policy.

11 So, frankly, this policy should of also had liability
12 coverage on these two trailers. That's really irrelevant to
13 this case cause nothing triggers that liability coverage.
14 But it only comes into play because, to the extent USAA
15 wants to try and excuse its failure to offer underinsured
16 coverage on the basis that there's no liability coverage,
17 the fact remains it should of provided liability coverage on
18 those trailers to begin with and then there wouldn't have
19 been the question before the Court now about whether it had
20 a duty to offer.

21 So, to bring all of that full circle, Your Honor, our
22 position is simple. The trailers are vehicles. This is an
23 automobile insurance policy. USAA is an automobile
24 insurance carrier that is subject to 38-77-160. 38-77-160
25 required it to offer underinsured motorist coverage on all

1 these vehicles. It admittedly failed to do so on the two
2 trailers, which are also considered motor vehicles, and,
3 therefore, the Court should declare that those trailers have
4 UIM coverage equivalent to the liability coverage that is on
5 the policy and should reform the policy to include that
6 coverage.

7 Thank you.

8 THE COURT: All right. Mr. Norris, happy to hear from
9 you.

10 MR. NORRIS: Thank you, Judge McCoy.

11 Yesterday we filed a, a memorandum in support of this
12 motion. If it's not available to the Court, I assume it is,
13 we can, we can certainly send that in a, in a separate
14 email. That memorandum attached photographs of one of these
15 vehicles, which is the horse trailer.

16 Now, it's -- a lot of -- you know, these are
17 cross-motions for summary judgment, which, of course,
18 presents a question of law for the Court and the facts are
19 really undisputed. It is undisputed, from the plaintiff's
20 answers to USAA's interrogatories, that these were not
21 self-propelled vehicles and the definition of motor vehicle
22 in 38-77-39 says it means every self-propelled vehicle which
23 these are not.

24 So, you can't separate UIM coverage from the concept of
25 liability coverage because if you go to 38-77-160 that says

1 insurance carriers have to offer UIM coverage up to the
2 liability limits. So, it has to be the plaintiff's position
3 that these non self-propelled vehicles not only must have
4 UIM coverage but they also have to have liability in UI --
5 in UM coverage which are mandatory coverages.

6 Now, I think that will come as a shock and a surprise
7 to people who have horse trailers just sitting out in
8 pastures as depicted in the pictures we've attached to the
9 brief we filed yesterday cause what the plaintiff is saying
10 is that you have to have liability in UM coverage on non
11 self-propelled vehicles. So, it really kind of boils down
12 to the question of, of whether these are self-propelled.

13 Now, it's interesting that Mr. Utsey would say Miller
14 versus Aiken is different which he just said. If it's
15 different, that raises the question of well, why did you
16 cite it in your motion. The motion of the plaintiff says
17 you have to offer UIM coverage on all vehicles insured under
18 motor vehicle policies providing liability coverage. That's
19 what the plaintiff's motion says. So, that, again, goes
20 back to you have to tie UIM to liability coverage.

21 And so what they're saying is not only do you have to
22 have UIM coverage or offer it on non self-propelled
23 vehicles, but you have to have liability and UM coverage
24 also and the remedy where an insurance carrier has a duty to
25 make an offer of UIM coverage and does not make a

1 commercially offer of UIM coverage is to reform the policy
2 up to the liability limits. Here, however, there were no
3 liability limits and there still aren't. And, and the horse
4 trailer is still insured with USAA and they've never paid a,
5 a premium for that.

6 Now, they're two cases that are cited in the brief that
7 we filed yesterday. In addition to the Miller versus Aiken
8 case, we cited Anderson versus State Farm which is at 442
9 S.E.2d 179. In that case, the plaintiff argued a farm
10 tractor was a motor vehicle and the Court, in that 1994
11 case, considered the predecessor to 38-77-90, Subparagraph
12 9, which was 38-77-37, and they held a farm tractor did not
13 come under the definition of a motor vehicle because
14 although it could be incidentally used on a highway, it was
15 denied -- not designed for use on a highway and that
16 reasoning applies to both the camper and the horse trailer
17 neither of which are going anywhere unless they are towed
18 behind a self-propelled vehicle and, again, the plaintiff---

19 THE COURT: But, but I -- and I don't want to cut you
20 off, Mr. Norris. But I'm, I'm looking at -- I mean let's
21 just look at subsection 9 of 38-77-30 in the definition
22 section of the insurance code and---

23 MR. NORRIS: Uh-huh. (Affirmative).

24 THE COURT: ---and I agree it's -- the first part says
25 motor vehicle means every self-propelled vehicle which is

1 de -- designed for use upon a highway, including trailers
2 and semitrailers designed for use with these vehicles.

3 So---

4 MR. NORRIS: And the---

5 THE COURT: ---what about that?

6 MR. NORRIS: well, that applies to 18 wheeler, 16
7 wheeler, or, or whatever. I think it deals with that
8 situation. But, again, this is a question of statutory
9 interpretation because the statute---

10 THE COURT: Right.

11 MR. NORRIS: The statute---

12 THE COURT: I mean you've mentioned the tractor and
13 that there's a -- there's clearly a -- an exception for --
14 let's see. Farm -- except traction engines, rolled -- road
15 rollers, farm trailers.

16 well, what's a horse trailer?

17 That's a farm trailer.

18 MR. NORRIS: well---

19 THE COURT: Is that right?

20 MR. NORRIS: I, I don't think -- a, a horse trailer
21 it's not used in farming. It's used to transport horses.
22 A, a farm tractor is like what you would, you would plow
23 with.

24 The other case, Your Honor, there's a, there's a
25 case---

1 THE COURT: Well, no, I mean that would play into your
2 argument, Mr. Norris, if you -- like look -- y'all just look
3 with me. Let's, let's all look at it together.

4 MR. NORRIS: Well, the other---

5 THE COURT: Pull it up. Motor vehicle means every
6 self-propelled vehicle included trailers and semitrailers
7 designed for use with these vehicles. That -- that's
8 probably the Legislature contemplating 18 wheelers. I'm
9 with you.

10 MR. UTSEY: If I may, I'm, I'm trying to---

11 THE COURT: But except---

12 MR. UTSEY: ---share something.

13 THE COURT: But except---

14 MR. NORRIS: And -- excuse me.

15 May I finish?

16 THE COURT: ---engines.

17 MR. UTSEY: May I finish my argument please?

18 THE COURT: Are you talking to me or --?

19 MR. NORRIS: No, I was talking to Skip.

20 MR. UTSEY: I'm sorry. I was just putting it on the
21 screen so we could all follow along with the judge.

22 THE COURT: Yeah, I'm just asking everybody -- I'm
23 just -- I, I -- I'm the one that's interrupting you, Mr.
24 Norris.

25 MR. NORRIS: Okay.

1 THE COURT: So, if you're frustrated, be frustrated
2 with me. I just want to make sure---

3 MR. NORRIS: Yeah, you can interrupt me.

4 THE COURT: I just want to make sure that we're all
5 looking at the, the same statute section together.

6 MR. NORRIS: Yeah.

7 THE COURT: You are---

8 MR. NORRIS: Yeah, we are, and let me add one thing,
9 Judge McCoy, that is cited in the case -- in the brief we
10 filed yesterday. Earlier this year there's a case that came
11 out that actually defined motor vehicle and it's Jack's
12 Custom Cycles versus the South Carolina Department of
13 Revenue. It's a 2023 case and it defines "motor vehicle" as
14 a vehicle which is self-propelled and a vehicle "operated by
15 power developed within itself" and it actually cites the
16 American Heritage College Dictionary definition of a motor
17 vehicle as a "self-propelled, wheeled conveyance such as a
18 car or truck that does not run on rails."

19 So, we have the most recent authority from the
20 Appellate Courts defining a motor vehicle and, and I, I
21 guess that the way that you look at this thing, it, you
22 know, Subsection 9 says it means every self-propelled
23 vehicle and then it goes on to say -- well, it includes
24 trailers and semitrailers designed for use with those
25 vehicles.

1 So, you know, that -- I think that's a, a question of
2 statutory interpretation, which is a question of law for the
3 Court about whether that applies to the type of vehicles in
4 this case and I will say this. I, I think that USAA, in not
5 offering UIM coverage and not providing liability and UM
6 coverage on these types of vehicles, is hardly alone. I
7 suspect every other insurance company doing business in this
8 state does the same thing. I don't know that but I have a
9 feeling that that's the case.

10 So, whichever way, way the Court rules, it could have
11 a, a significant impact on automobile insurance in this
12 state. So --.

13 THE COURT: Yeah, I agree with you. I'm just -- if, if
14 you could, take a look with me, just because I want to make
15 sure that I'm, I'm reading this right, it's Subsection 9
16 because I think this goes to your argument, Mr. Norris,
17 which I think you thought earlier I was sort of playing
18 devil's advocate with you. I, I wasn't.

19 I think a horse trailer is a farm trailer and the
20 statute says but excepting traction engines, road rollers,
21 farm trailers, tractor train, train -- tractor, cranes,
22 power shovels, and well drillers and that's---

23 MR. NORRIS: well, that---

24 THE COURT: That participle phrase between the commas
25 there. So, so, I think that goes to your argument. I don't

1 think that, you know, I don't think a farm trailer, a horse
2 trailer is a motor vehicle but --.

3 MR. NORRIS: well, the Court is already held in the, in
4 the Anderson case that a farm --

5 THE COURT: Right.

6 MR. NORRIS: -- tractor is not a motor vehicle.

7 That's---

8 THE COURT: Right.

9 MR. NORRIS: ---in Anderson versus State Farm and
10 certainly the, the camper is not a farm trailer because of
11 those are the, those are the two at issue here. It's a --
12 it's a camper that has to be towed by---

13 THE COURT: One is a -- okay. So, I thought we had two
14 horse trailers. So, I misheard that.

15 MR. NORRIS: No, it's, it's a -- one is a camper and
16 one is a horse trailer. I -- we asked for pictures of the
17 two of them. I guess they don't have pictures of the camper
18 anymore cause I don't think they have it anymore. But they
19 did provide pictures of the horse trailer and those pictures
20 are attached to the brief that we filed yesterday.

21 THE COURT: Okay. All right. Well, I, I mean -- I was
22 an equestrian at one point in time. I, I, I think that a
23 horse trailer, a horse trailer's a farm trailer. But Mr.
24 Utsey disagrees with me on that and I understand. To me, a
25 horse trailer is much like a trailer used to move cattle or

1 pigs or chickens or any other sort of, you know, farm type
2 animal. But I'm happy to hear from you in response on that
3 and obviously I didn't -- I thought we were talking about
4 two horse trailers. I didn't know one was a camper.

5 So, at any rate, go ahead.

6 MR. NORRIS: But I don't have anything else, else to
7 add. I think it's a -- it, it really boils down to
8 statutory interpretation by the Court and there are cases,
9 again, the case cited by Mr. Utsey in their motion and the
10 two other cases that are, that are cited in the brief that
11 we filed yesterday that I think offer the Court guidance on
12 this issue.

13 The -- Mr. Utsey quoted from the Miller versus Aiken
14 case and, and, in that case, the Supreme Court rejected the
15 argument and said an, an automobile insurer provided only
16 collision coverage to its insured should not be required to
17 make a meaningful offer of UIM and that's the case we have,
18 have here that, that these two vehicles, the camper and the
19 horse trailer, only had collision coverage.

20 So, if you accept the proposition that the, excuse me,
21 the, the horse trailer is within the definition of motor
22 vehicle in 38-77-30(9), then that means you have to go to
23 the next step which, which means that, on that vehicle, you
24 have to have liability coverage and UM coverage. But you
25 can't -- because you can't have UIM without liability

1 coverage, which then goes to the next issue.

2 well, if there's no liability coverage, and an insurer
3 is required to make a commercially reasonable offer of UIM
4 coverage and does not, the remedy is to reform the policy up
5 to the liability limits. Here there were no liability
6 limits.

7 So, if we're gonna follow this thread of reasoning to
8 its, its ultimate conclusion proposed by Mr. Utsey, then
9 these vehicles are going to have to be reformed to include
10 liability and UM coverage and I'm not sure that -- well,
11 I'm, I'm, I'm pretty confident the Legislature never
12 intended that and, and I don't think the people in this
13 state storing horse trailers or using campers are going to
14 be enthusiastic about being forced to buy liability and UM
15 coverage on non self-propelled vehicles. But it -- if, if
16 you -- if you accept the plaintiff's proposition, you have
17 to take it all the way. You can't take it halfway and
18 that's where you end up.

19 THE COURT: All right. Mr. Utsey, you want to respond?

20 MR. UTSEY: Thank you, Your Honor.

21 Yeah, just briefly.

22 First of all, with respect to the case that Mr. Norris
23 cited, Jack's Custom Cycles, it's in his brief, the case is
24 wholly unrelated to the subject matter before the Court
25 here. That case was a case involving the sales tax

1 statutes. As you know, when you buy a motor vehicle, they
2 cap your sales tax at \$300.00. And so the question wasn't
3 trying to interpret whether that same limitation on sales
4 tax applies to ATVs and UTVs.

5 It was not a Title 38 insurance case. It did not cite
6 any section -- Title 38 section's we're dealing with. It
7 cited tax code sections. So the context is entirely
8 different and certainly that Court's decision could not be
9 used to alter the clear legislative -- the wording of the
10 legislation here that is at issue.

11 With respect to Mr. Norris' position that this policy
12 doesn't provide liability coverage, I was a little surprised
13 and, in our complaint, we alleged, in Paragraphs 8 and 9,
14 that the policy insured six motor vehicles including a 2014
15 Nissan SUV. Paragraph 9, among other coverages, the policy
16 provided liability insurance coverage with limits of
17 \$300,000 per person per accident and then USAA's answer,
18 Paragraph 8, it -- USAA admits only at the time of the
19 plaintiff's accident the policy provided certain coverages
20 on six vehicles including the Nissan SUV but USAA would show
21 liability and UIM coverage existed on only four vehicles at
22 the time of the accident and otherwise denies Paragraph 8.

23 Paragraph 9. USAA admits only in January of 2017 the
24 plaintiff's policy included liability coverage with limits
25 of \$300,000 per person per accident for four vehicles but

1 two vehicles did not include liability coverage. That's
2 important because the language the Court used in the Miller
3 case talks about an insurer that provides only collision
4 coverage on its policy and I think what USAA would like in
5 this case is now to disclaim the fact that it issued a
6 policy with liability insurance coverage and act as if it
7 wrote separate policies on each of these vehicles. It
8 didn't.

9 This is an insurance carrier who did provide more than
10 collision coverage. It provided liability coverage.

11 So, using the language of the statute and of the Miller
12 case, this is a policy providing liability coverage.
13 Therefore, it's a policy where they should of offered
14 underinsured coverage and, similarly, as I said earlier, the
15 fact that the -- there's an absence of liability coverage
16 should not be dispositive because there should of been
17 liability coverage. I know Mr. Norris wants to sort of
18 sound the alarm that the sky is falling, that if, if a
19 trailer that the Legislature has defined as a motor vehicle
20 has to have liability coverage is suddenly going to turn the
21 world upside down, I, I don't know that that's the case.

22 I've had plenty of cases wherein trailers are insured
23 separately on insurance policies as different vehicles and
24 that they are covered for liability coverage. It, it
25 happens all the time in my experience.

1 Finally, Your Honor raises a good question about the
2 definitional section, 38-77-30 Subsection 9 with respect to
3 farm trailer, and as Mr. Norris has said, one of these
4 trailers clearly would not be a farm trailer because it's,
5 you know, it's more in the nature of an RV type trailer.

6 But with respect to the horse trailer, I would submit
7 that that is not a farm trailer in that sense. A, a farm
8 trailer is a trailer that's used on the farm to transport,
9 you know, cargo, whether it be crops or, or maybe livestock
10 on the farm itself. This is an over the road trailer that's
11 used to transport horses for horse shows and other
12 equestrian events. It's not in the nature of simply being a
13 farm trailer and I think that fact is recognized by the fact
14 that they insured it for collision coverage.

15 If, if you just got a, a farm trailer, you know,
16 something you're towing around your farm to haul crops
17 around or, or maybe cattle around or something, you don't
18 need collision coverage on that. You need collision
19 coverage cause you're on the road potentially encountering
20 other vehicles that are gonna cause a collision and,
21 therefore, need that coverage for the vehicle.

22 So, the fact that it's insured for collision coverage,
23 in and of itself, shows that it is an over the road type
24 trailer clearly within the definitional provision of --
25 definition of, of 38-77-30 dash -- Subsection 9 for motor

1 vehicle.

2 Thank you.

3 MR. NORRIS: And let me just make one more point.

4 The policy says what the policy says and there's no
5 dispute about that and the plaintiff has admitted the
6 genuineness and authenticity of the policy.

7 This is one policy which provided coverage on a total
8 of six vehicles. Four of the vehicles, which were
9 self-propelled vehicles, had liability coverage. Two of the
10 vehicles, the camper and the horse trailer, did not have
11 liability coverage, did not have UM coverage, did not have
12 UIM coverage. They only had property coverage.

13 Now, I can understand why you may want to insure a
14 camper just sitting it in your driveway or a horse trailer
15 sitting out in a field for property coverage because it is
16 entirely conceivable that you could have a hurricane that
17 might -- a tree might fall on it or who knows. You might
18 have a wildfire that, that might damage it. What those
19 vehicles do need to be insured for is the policy -- the
20 possibility of damage outside the context of an automobile
21 accident.

22 So, it, it certainly makes sense you'd want to insure
23 those vehicles for property damage. But how you would need
24 liability coverage -- remember, liability coverage is you,
25 the insured, do something wrong.

1 Okay. I don't know how pulling a horse trailer or a
2 camper behind a self-propelled vehicle, I don't know how
3 that's gonna be the cause of an accident. I don't know how
4 you -- how do you negligently operate a non self-propelled
5 vehicle?

6 It -- the thing is it doesn't make sense and that's the
7 problem here with the plaintiff's argument is, is, is it
8 just, when you distill it to its essence, it does not make
9 sense. So, you know, the policy says what the policy says.
10 There's no dispute about that.

11 MR. UTSEY: I had more than one case, Your Honor, where
12 people have improperly connected a trailer to a vehicle and
13 the two have separated in movement and the trailer has
14 careened off and caused damage to a person or an -- another
15 vehicle and that will be a basis for a liability claim
16 against the owner of the trailer or the operator of the
17 vehicle that was attached to the trailer. So, it, it --
18 there are some areas where liability coverage is triggered.

19 They're also instances, and I just litigated a case in
20 the Fourth Circuit involving questions like this, where you
21 park a trailer. So you park it on a hill and you don't
22 adequately chock the wheels or otherwise stabilize it and it
23 rolls down the hill and causes damage. That's another basis
24 for liability.

25 So, they're -- there are frequently scenarios where

1 trailers can cause liability though.

2 MR. NORRIS: That would not be an automobile accident.
3 But -- you know, if a trailer -- you know, the brake fails
4 and it's parked on a hill and it falls down, I don't, I
5 don't think that's a -- that's an automobile accident but I
6 don't know what else to say. I think Mr. Utsey and I have
7 both stated our---

8 THE COURT: I think you have too.

9 MR. NORRIS: ---positions.

10 MR. UTSEY: Well, I agree.

11 THE COURT: I think you have.

12 It's an interesting, it's an interesting -- you know,
13 I, I see both sides. So -- and I -- I'm -- thank you for
14 your arguments on both sides.

15 It's an interesting question of interpretation and I
16 look forward to reading your memos that you wrote and
17 hopefully get a -- hope to get a, a decision one way or the
18 other so that you can move on to the next level sooner
19 rather than later.

20 All right. If I need anything else from your offices
21 I'll certainly let you know and thank y'all very much.

22 MR. UTSEY: Yes, Your Honor. To be clear, I didn't
23 submit a memorandum but we did, in our motion, sort of---

24 THE COURT: That's fine, yeah.

25 MR. UTSEY: --- (indiscernible).

1 THE COURT: And that's fine. Yeah, that's---

2 MR. UTSEY: And I'm happy to submit anything else the
3 Court would like if you---

4 THE COURT: Yeah, if we need it we'll let you know.
5 But I, I think that will be sufficient.

6 MR. UTSEY: Thank you.

7 THE COURT: All right. Y'all take care.

8 MR. NORRIS: Thank you, Judge McCoy.

9 THE COURT: Good to see y'all.

10 MR. NORRIS: Thank you.

11 THE COURT: Absolutely.

12 MR. UTSEY: Thank you.

13

14 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

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STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)
))
))
JILL S. AMORUSO,)
))
))
Plaintiff,)
))
v.)
))
UNITED SERVICES AUTOMOBILE,)
ASSOCIATION d/b/a USAA,)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CIVIL ACTION NO. 2022-CP-08-01971

**DEFENDANT’S RESPONSES
TO PLAINTIFF’S FIRST
REQUEST FOR PRODUCTION**

Pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, Defendant United Services Automobile Association (“USAA”) responds to the Plaintiff’s First Request for Production as set forth below.

REQUESTS

1. A certified copy of the Policy.

RESPONSE: Attached is a certified copy of the policy in effect at the time of the plaintiff's accident.

2. All documents (written, electronic, or otherwise) created, modified, or received by any adjuster, claims representative, supervisor, or other employee or independent contractor of USAA who handled, supervised, or otherwise performed work on Plaintiff's UIM claim as described in Plaintiff's Complaint, with the exception of any attorney-client communications.

RESPONSE: Attached is the claim file marked USAA_Amoruso_0001 through USAA_Amoruso_0648. A privilege log is set forth in response to plaintiff's interrogatory 3.

3. To the extent USAA is asserting a defense based upon advice of counsel, all documents related to communications between USAA and counsel that would be responsive to request number 2 above but for the attorney-client communications exception stated therein.

RESPONSE: In defense of the plaintiff's UIM claim USAA communicated with its attorney defending the plaintiff's UIM claim, and those written communications are set forth in a privilege log. USAA is not, however, relying upon advice of counsel in defense of this lawsuit against USAA.

4. All demonstrative evidence upon which USAA may rely at trial.

RESPONSE: USAA objects to paragraph 4 because demonstrative evidence USAA may rely upon at trial is a matter of trial strategy and as such is protected from discovery by SCRPC 26 (b)(3).

5. All documents identified in USAA's Answers to Interrogatories.

RESPONSE: Attached are the documents identified in USAA's answers to the plaintiff's interrogatories.

6. All documents, electronic or otherwise, created or modified by any adjuster or other USAA representative who handled, supervised, or participated in any coverage decisions with respect to the Policy.

RESPONSE: To the extent such documents exist, they are included in claim file produced in response to paragraph 2.

7. All documents, electronic or otherwise, created or modified by any adjuster or other USAA representative who handled, supervised, or participated in any settlement decisions with respect to Plaintiff's UIM claim.

RESPONSE: To the extent USAA has documents responsive to paragraph 7, such documents are included in the claim file produced in response to paragraph 2.

8. All documents that USAA contends constitute a meaningful offer of UIM coverage with respect to the 2016 Montana insured under the Policy.

RESPONSE: USAA has no documents responsive to paragraph 8 as that vehicle was not required to have liability coverage, UM coverage or an offer of UIM coverage.

9. All documents that USAA contends constitute a rejection by Plaintiff of UIM coverage with respect to the 2016 Montana insured under the Policy.

RESPONSE: See the response to paragraph 8.

10. All documents that USAA contends constitute a meaningful offer of UIM coverage with respect to the 2007 Adams insured under the Policy.

RESPONSE: See the response to paragraph 8.

11. All documents that USAA contends constitute a rejection by Plaintiff of UIM coverage with respect to the 2007 Adams insured under the Policy.

RESPONSE: See the response to paragraph 8.

12. The complete file regarding Plaintiff's purchase of motor vehicle insurance coverage from USAA.

RESPONSE: See the response to paragraph 13.

13. USAA's complete underwriting file for the Policy.

RESPONSE: Attached is the underwriting file marked Amoruso_UW_0001 through Amoruso_UW_1110.

14. USAA's complete claims file related to Plaintiff's UIM claim.

RESPONSE: See the response to paragraph 2.

15. All recordings, notes, records, and transcripts of any telephone calls between USAA (or any agent thereof) and Plaintiff regarding USAA's offer of UIM coverage to Plaintiff and/or Plaintiff's purchase of UIM coverage from USAA.

RESPONSE: It is USAA's understanding the plaintiff's lawsuit only concerns whether UIM coverage should exist on the vehicles referenced in paragraphs 8 – 11 of the plaintiff's request to produce. With this understanding, USAA has no documents responsive to paragraph 15.

16. All emails and/or faxes between USAA (or any agent thereof) and Plaintiff regarding USAA's offer of UIM coverage to Plaintiff and/or Plaintiff's purchase of UIM coverage from USAA.

RESPONSE: See the response to paragraph 13 wherein USAA is producing its underwriting file.

17. All of USAA's internal policies, rules, guidelines, standards, handbooks, CSR or agent instructions, CSR or agent manuals, procedural manuals, claims manuals, adjusters' manuals, directives, on-line manuals, and other written and electronic documents of whatsoever nature as in effect on November 1, 2016 that refer in any way to:

- a) Proper offer of UIM coverage in automobile insurance policies issued in the State of South Carolina;
- b) Proper documentation of offers of UIM coverage in automobile insurance policies issued in the State of South Carolina;
- c) Proper rejection of UIM coverage in automobile insurance policies issued in the State of South Carolina; and
- d) Proper documentation of rejections of UIM coverage in automobile insurance policies issued in the State of South Carolina.

RESPONSE: USAA objects to the first paragraph 17 because it is overbroad. It is overbroad because it concerns USAA's policies and rules on offering and documenting UIM coverage on all vehicles, whereas the issue in this case concerns UIM coverage on a horse

trailer and a camper, neither of which were self-propelled vehicles. The plaintiff is not contesting the propriety of UIM offers and coverage under 4 self-propelled vehicles insured under the policy.

17. With regard to any expert witnesses identified in Answers to Interrogatories:

- a) All documents prepared by the expert;
- b) All documents sent to the expert by USAA;
- c) All documents relied upon by the expert;
- d) All documents used, consulted, or reviewed by the expert;
- e) All documents setting forth the compensation agreement between USAA and the expert;
- f) All documents that have been or will be shown to the expert prior to trial testimony; and
- g) All documents including current curriculum vitae used to establish the expert's qualifications.

RESPONSE: In response to the second paragraph 17, USAA has not identified an expert witness in response to the plaintiff's interrogatories.

18. If you contend any documents or other items need not or should be produced (whether based on a claim of privilege or for other reasons), identify each such document or item, set forth all bases for your failure or refusal to produce same, and provide a privilege log for all documents as to which you claim a privilege.

RESPONSE: See the privilege log in response to the plaintiff's interrogatory 3.

WHELAN MELLEN & NORRIS, LLC

By: /s/ CHARLES R. NORRIS

Charles R. Norris

Bar No. 4238

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Attorneys for USAA

November 18, 2022
Charleston, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

JILL S. AMORUSO,)
)
Plaintiff.)
)
v.)
)
UNITED SERVICES AUTOMOBILE)
ASSOCIATION d/b/a USAA,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2022-CP-08-01971

**PLAINTIFF’S RESPONSES TO
DEFENDANT’S FIRST SET OF
INTERROGATORIES TO PLAINTIFF**

Plaintiff responds to Defendant’s Interrogatories as follows:

1. Give the names and addresses of persons known to the plaintiff or counsel for the plaintiff to be witnesses concerning the facts of this case and indicate whether written or recorded statements have been taken from these witnesses and, if so, who has possession of the statements.

RESPONSE:

- (A) Jill S. Amoruso
132 Emmaus Ct.
Ridgeville, SC 29472
- (B) Darrell Amoruso
132 Emmaus Ct.
Ridgeville, SC 29472
- (C) Kaira Miller
503 Cinder Street
Summerville, SC 29483
- (D) Jerome William Gregg
217 Myrtle Way
Summerville, SC 29483
- (E) Ciara Taylor
238 Cameron Street
Summerville, SC 29483

- (F) Charles Dixon
434 Spectrum Road
Summerville, SC 29483
- (G) John L. McDonald, Esq.
Clawson and Staubes, LLC
126 Seven Farms Drive, Suite 200
Charleston, SC 29492
- (H) Maggie Shortridge, Paralegal
Clawson and Staubes, LLC
126 Seven Farms Drive, Suite 200
Charleston, SC 29492
- (I) John Grantland, Esq.
Murphy & Grantland
Columbia, SC
- (J) Christopher Romeo, Esq.
Thurmond Kirchner & Timbes, P.A.
15 Middle Atlantic Wharf
Charleston, SC 29401
- (K) Michael Grabara, Esq.
657 Pawley Road
Mt. Pleasant, SC 29464
- (L) All claims representatives, supervisors, and other employees and agents of Defendant who participated in Plaintiff's underlying claim for UIM benefits, including defense of the resulting lawsuit.

Plaintiff reserves the right to call any witness named by Defendant.

2. Set forth a list of photographs, plats, sketches or other prepared documents in possession of the plaintiff or her attorney that relate to the claim or defense in this case.

RESPONSE: Plaintiff objects to this interrogatory on the grounds and to the extent it seeks information protected by attorney-client privilege, the attorney work product doctrine, or is otherwise confidential. Subject to and without waiving this objection, Plaintiff states that the non-privileged information in her custody or control consists of documents and materials produced by Defendant herein (copies of which Defendant has) and all file materials of

Thurmond, Kirchner & Timbes regarding its representation of Plaintiff in the underlying action (excluding attorney-client communications and work product materials, as to which Plaintiff asserts all applicable privileges). Plaintiff will produce for review and copying the non-privileged portions of the Thurmond, Kirchner & Timbes file at a mutually agreeable time and location.

3. Set forth an itemized statement of all damages, exclusive of pain and suffering, claimed to have been sustained by the plaintiff.

RESPONSE: Unpaid portions of the judgment from the underlying action; loss of use of funds that should have been tendered to Plaintiff in a timely fashion; interest; costs; anxiety and emotional distress; punitive damages.

4. List the names and addresses of any expert witnesses the plaintiff proposes to use as a witness at trial or in any pretrial proceeding.

RESPONSE: Plaintiff has not retained any expert witnesses at this time; however, Plaintiff reserves the right to do so and will supplement this interrogatory as may become necessary. Plaintiff further reserves the right to call all of her treating physicians, nurses, therapists, or other treatment providers as experts in their respective fields of expertise.

5. For each person listed in response to interrogatory 4, set forth every opinion held by the expert witness.

RESPONSE: See response to No. 4 above.

6. For each person known to the plaintiff or the attorney for the plaintiff to be a witness concerning this case set forth a summary sufficient to inform the defendant of the important facts known to observed by the witness.

RESPONSE:

- (A) Plaintiff is expected to testify as to the lack of an offer of UIM coverage by USAA on the subject vehicles, USAA's handling of her claim, and her damages.
- (B) Darrell Amoruso is the Plaintiff's husband and is expected to testify as to his knowledge of Plaintiff's damages.
- (C) Kaira Miller is the at-fault driver and may testify as to the facts and circumstances of the collision.
- (D) Jerome William Gregg was involved in the collision and may testify regarding same.
- (E) Ciara Taylor was a witness to the collision and may testify as to same.
- (F) Charles Dixon was a witness to the collision and may testify as to same.
- (G) John L. McDonald may testify regarding his defense of the underlying lawsuit, as well as his communications with USAA.
- (H) Maggie Shortridge may testify regarding her assistance in the defense of the underlying lawsuit, as well as her communications with USAA.
- (I) John Grantland may testify regarding his defense of the underlying lawsuit, as well as his communications with USAA.
- (J) Christopher Romeo represented Plaintiff for the underlying claim and resulting litigation. He may testify regarding USAA's conduct in response to Plaintiff's claim, including allegations by USAA against Plaintiff.
- (K) Michael Grabara was an associate of Christopher Romeo and assisted in representing Plaintiff for the underlying claim and resulting litigation. He may testify regarding USAA's conduct in response to Plaintiff's claim, including allegations by USAA against Plaintiff.
- (L) Defendants employees and agents may testify regarding their role in handling of Plaintiff's UIM claim and defense of the resulting lawsuit.

7. Regarding paragraph 20 of the plaintiff's complaint, state what documents this paragraph references and state if the document was listed in an interrogatory response or was produced in response to a request for production of documents.

RESPONSE: See Response to Request for Production number 11.

8. State the name of the person who made the representation referenced in paragraph 20 of the plaintiff's complaint and whether the representation was oral or in writing.

RESPONSE: See Response to Request for Production number 11.

9. Set forth the name and address of each person who relied on the representation of \$1,500,000 in UIM coverage, as alleged in paragraph 20 of the plaintiff's complaint.

RESPONSE:

- (a) Christopher C. Romeo, Esq.
Thurmond Kirchner & Timbes, P.A.
15 Middle Atlantic Wharf
Charleston, SC 29401
- (b) John L. McDonald, Esq.
Clawson and Staubes, LLC
126 Seven Farms Drive, Suite 200
Charleston, SC 29492
- (c) Maggie Shortridge, Paralegal
Clawson and Staubes, LLC
126 Seven Farms Drive, Suite 200
Charleston, SC 29492
- (d) Jill S. Amoruso
132 Emmaus Ct.
Ridgeville, SC 29472
- (e) Darrell Amoruso
132 Emmaus Ct.
Ridgeville, SC 29472

10. Set forth the name and address of any medical provider who has provided any medical treatment to the plaintiff for her mental anguish and emotional distress alleged in paragraph 61 of the plaintiff's complaint.

RESPONSE: Plaintiff is informed and believes that her complete medical history is in possession of the Defendant.

11. Set forth the name and address of every medical provider who will testify to a reasonable degree of certainty the plaintiff's mental anguish and emotional distress referenced in paragraph 61 of her complaint was caused by USAA.

RESPONSE: Unknown to Plaintiff.

12. Are the 2016 Montana and the 2007 Adams referenced in paragraphs 8 and 10 of the plaintiff's request to produce self-propelled vehicles, or are these vehicles transported by being towed behind another vehicle?

RESPONSE: These vehicles are towed behind a transporting vehicle but are defined as "motor vehicles" by S.C. Code Ann. § 38-77-30(9) (1976, as amended).

13. State why the plaintiff offered to settle her UIM claim for \$400,000 in UIM coverage, as alleged in paragraph 21 of the plaintiff's complaint.

RESPONSE: Plaintiff objects to this interrogatory on the grounds that seeks information that is irrelevant, is not reasonably calculated to lead to the discovery of relevant evidence, and is the product of communications between Plaintiff and her attorney and therefore privileged.

14. Who made the decision to offer to settle the plaintiff's UIM claim for \$400,000, as alleged in paragraph 21 of the plaintiff's complaint?

RESPONSE: Plaintiff objects to this interrogatory on the grounds that seeks information that is irrelevant, is not reasonably calculated to lead to the discovery of relevant evidence, and is the product of communications between Plaintiff and her attorney and therefore privileged.

15. How was the offer to settle referenced in paragraph 21 of plaintiff's complaint communicated – was it in the form of an offer of judgment or some other communication?

RESPONSE: Plaintiff submitted an Offer of Judgment to John McDonald, Jr., Esq.

16. Does the plaintiff still insure her vehicles with USAA?

RESPONSE: Yes.

17. Is the 2016 Montana or the 2007 Adams still insured with USAA?

RESPONSE: The 2007 Adams is still insured with USAA but the 2016 Montana was removed from the policy on October 26, 2017.

18. If the 2016 Montana or the 2007 Adams are still insured with USAA, are those vehicles now insured for liability, UM or UIM coverage?

RESPONSE: No.

19. When, and how, did the plaintiff first learn there was no UIM coverage on the 2007 Adams and the 2016 Montana?

RESPONSE: Objection. This information is irrelevant inasmuch as it was USAA's duty, as the insurer, to make a meaningful offer of UIM coverage and not the insured's duty. Whether USAA satisfied its statutory duty is the relevant inquiry, not when Plaintiff learned there was no UIM coverage.

20. Prior to the plaintiff's accident in January 2017 referenced in paragraph 11 of plaintiff's complaint, did the plaintiff receive a copy of the USAA policy insuring the plaintiff's vehicles?

RESPONSE: Yes.

21. Regarding the allegation in paragraph 48 of the plaintiff's complaint she has been "deprived of insurance benefits for which she paid a premium..." did the plaintiff ever pay a premium for liability, UM or UIM coverage on the 2016 Montana or the 2007 Adams referenced in paragraphs 8 and 10 of the plaintiff's request to produce?

RESPONSE: No. Plaintiff was denied the benefits for which she paid a premium when USAA, in bad faith, refused to pay those benefits in a timely manner.

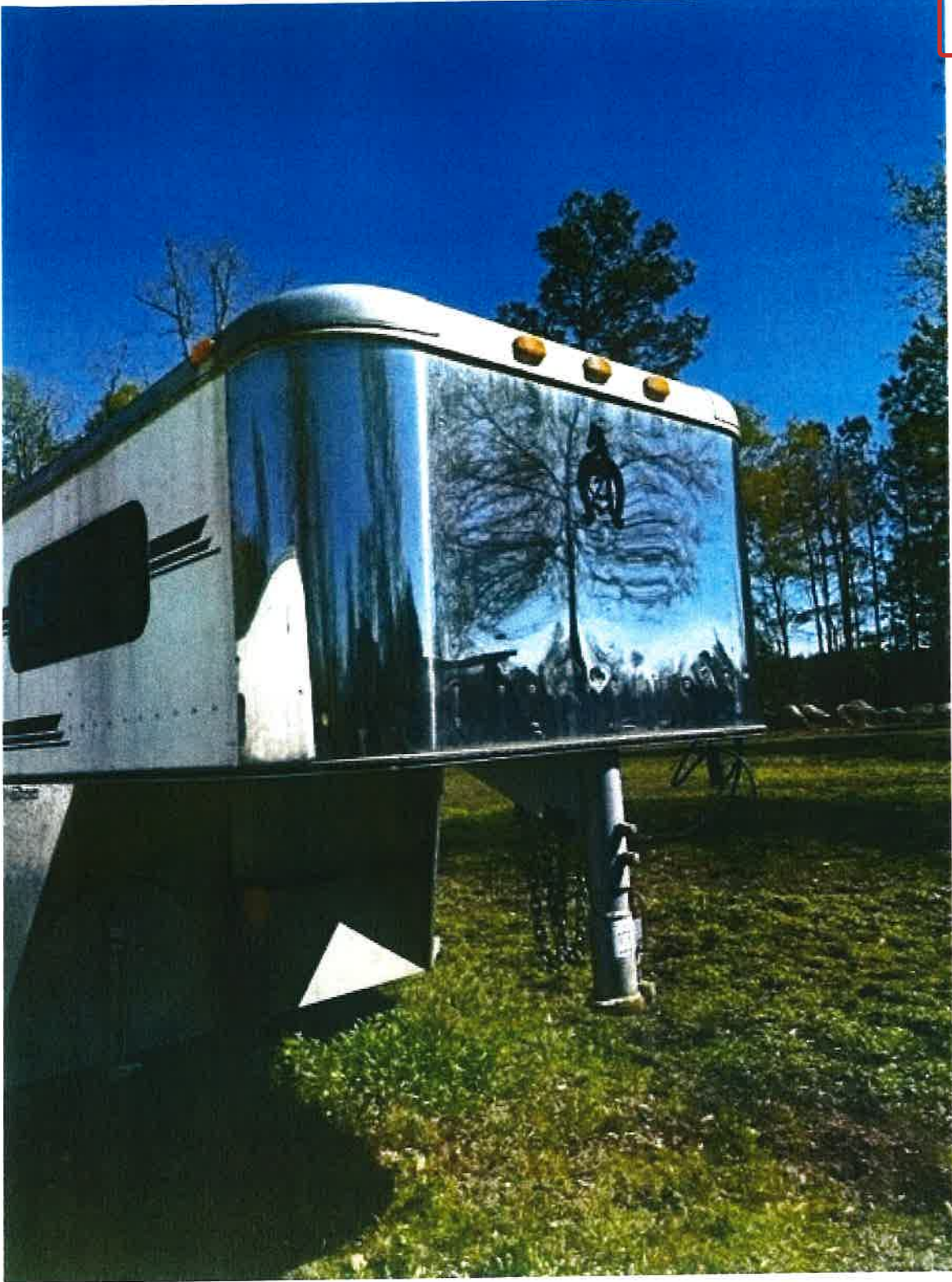
22. Unless the answer to interrogatory 21 is an unequivocal “no,” state the amount of premium paid by the plaintiff for either liability, UM or UIM coverage on the 2016 Montana or on the 2007 Adams.

RESPONSE: Not applicable.

23. Regarding the allegation in paragraphs 59 and 60(g) of the plaintiff’s complaint state:

- (a) who made these allegations?
- (b) state whether the allegations were oral, in writing or both.
- (c) state whether the allegations were made in discovery and, if so, specify what discovery – interrogatory answers, depositions or both.
- (d) state the substance of the allegations.
- (e) state whether the allegations were introduced into evidence at the plaintiff’s trial referenced in paragraph 24 of the plaintiff’s complaint.
- (f) if the allegations in question were introduced into evidence at the plaintiff’s trial, state whether counsel for the plaintiff objected to the introduction of this evidence and the ruling on the objection, the basis for the objection.

RESPONSE: The referenced paragraphs of the Complaint refer to oral statements by USAA’s agents (attorneys and Dr. Alfred Rhyne, an expert witness) that Plaintiff was addicted to pain medication and was being untruthful about the extent and duration of her injuries. These were communicated to Plaintiff and her attorney at various times during the underlying litigation, including Dr. Rhyne’s deposition, and to the judge and the jury at trial. Dr. Rhyne’s testimony on these topics was introduced into evidence at trial without objection. These statements are imputable to USAA because they were made by its agents noted above. However, at this stage of discovery, Plaintiff does not know whether other employees or agents of USAA also made such statements.

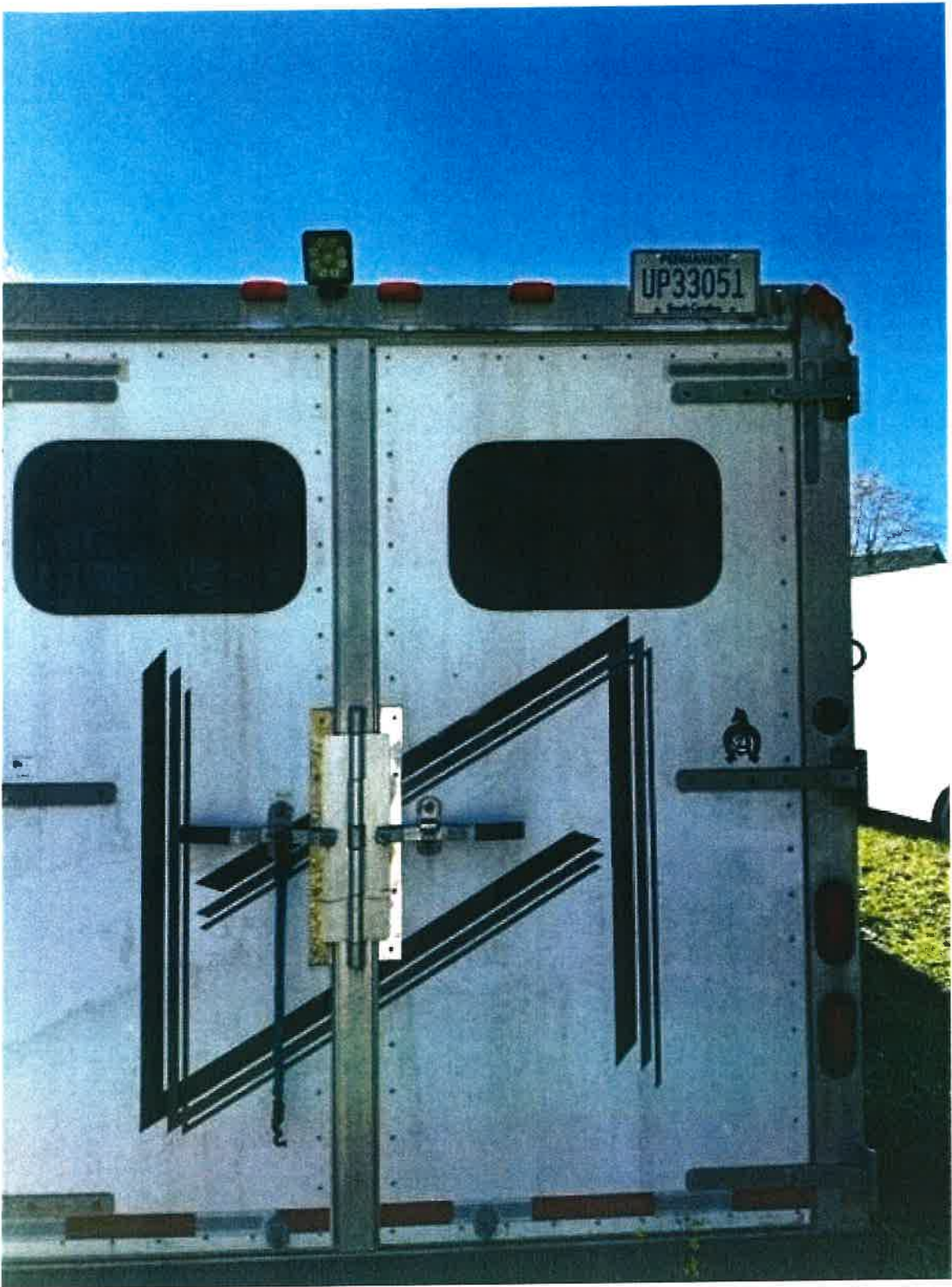




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Member Name: JILL S AMORUSO
Member Number: 01475 85 15U 7106 2
Loss Report Number: 27
Date of Loss: 01/07/2017
Company: UNITED SERVICES AUTOMOBILE ASSOCIATION

Texas Unsworn Declaration

My name is John Bradley, my date of birth is Dec 5, 1966, and my work address is 9800 Fredericksburg Road, San Antonio, Texas 78288, and United States of America.

I declare under penalty of perjury that the foregoing and attached (policy) is a true and correct copy.

E-SIGNED by john bradley
on 2022-09-06 19:26:32 GMT

Signature

Executed in Bexar County, State of Texas, on September 06, 2022.
(Date)



AUTOMOBILE POLICY PACKET

JILL S AMORUSO
SMSGT USAF RET
132 EMMAUS CT
RIDGEVILLE SC 29472-6637

USAA 01475 85 15 7106 2

POLICY PERIOD: EFFECTIVE NOV 07 2016 TO MAY 07 2017

IMPORTANT MESSAGES

Refer to your Declarations Page and endorsements to verify that coverages, limits, deductibles and other policy details are correct and meet your insurance needs. Required information forms are also enclosed for your review.

Check your vehicle for a safety recall today! Visit www.usaa.com/autorecall to learn more.

South Carolina law requires us to add Uninsured Motorists Bodily Injury and Underinsured Motorists Bodily Injury limits equal to your Bodily Injury limits. The law also requires Uninsured Motorists Property Damage and Underinsured Motorists Property Damage limits equal to your Property Damage limits. For more information about these limits, or to reject or lower them, please review the enclosed Offer of Additional Uninsured Motorists Coverage and Optional Underinsured Motorists Coverages notice.

Your Uninsured Motorists Coverage (UM), Underinsured Motorists (UIM), and Uninsured Motorists Property Damage (UMPD) selection/rejection remains in effect. You may quote different coverage limits and make changes at any time to your policy on usaa.com. Or you may call us at 1-800-531-USAA (8722).

Please see your declarations page for information on Accident Forgiveness.

TEXTING & DRIVING ... It Can Wait! Join USAA in the movement against distracted driving by going to <http://itcanwait.usaa.com> to watch powerful videos and take the pledge to not text and drive!

We have provided your ID cards in this packet. You can use the cards to show proof of insurance, if necessary.

This is not a bill. Any premium charge or change for this policy will be reflected on your next regular monthly statement. Your current billing statement should still be paid by the due date indicated.

To receive this document and others electronically, or manage your Auto Policy online, go to usaa.com.

For U.S. calls: Policy Service (800) 531-8111. Claims (800) 531-8222.

ACS1

49708-0406
ROA 088

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9800 Fredericksburg Road
San Antonio, Texas 78288

25941

SOUTH CAROLINA INSURANCE IDENTIFICATION CARD

The coverage provided by this policy meets the South Carolina minimum financial responsibility requirements prescribed by law. KEEP A COPY OF THE ID CARD IN YOUR VEHICLE AT ALL TIMES. Examine policy exclusions carefully.

Insurance Company Name

UNITED SERVICES AUTOMOBILE ASSN

Name

JILL S AMORUSO
DARRELL AMORUSO

Policy Number 01475 85 15U 7106 2

Effective Date 11/07/16

Expiration Date 05/07/17

Year: 2010

Make/Model: VOLKS

Vehicle Identification Number:

3VWAL7AJ6AM155823

CONTACT US: 210-531-USAA(8722)

OR 800-531-USAA

Additional copies available at usaa.com

Automobile Insurance Identification Card

We've issued an identification card as evidence of liability insurance for your vehicle(s). This card is valid only as long as liability insurance remains in force.

You may be required to produce your identification card at vehicle registration or inspection, when applying for a driver's license, following an accident or upon a law enforcement officer's request.

Keep a copy of the ID card in your vehicle at all times.

For your convenience, additional copies are available on usaa.com.

53SC2 Rev. 06-13

55078-0513__03



9800 Fredericksburg Road
San Antonio, Texas 78288

25941

SOUTH CAROLINA INSURANCE IDENTIFICATION CARD

The coverage provided by this policy meets the South Carolina minimum financial responsibility requirements prescribed by law. KEEP A COPY OF THE ID CARD IN YOUR VEHICLE AT ALL TIMES. Examine policy exclusions carefully.

Insurance Company Name

UNITED SERVICES AUTOMOBILE ASSN

Name

JILL S AMORUSO
KARA A AMORUSO

Policy Number 01475 85 15U 7106

Effective Date 11/07/16 2

Expiration Date 05/07/17

Year: 2013

Make/Model: VOLKS

Vehicle Identification Number:

3VW2K7AJ6DM378231

CONTACT US: 210-531-USAA(8722)

OR 800-531-USAA

Additional copies available at usaa.com **ROA 090**

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9800 Fredericksburg Road
San Antonio, Texas 78288

25941

SOUTH CAROLINA INSURANCE IDENTIFICATION CARD

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Insurance Company Name

UNITED SERVICES AUTOMOBILE ASSN

Name

JILL S AMORUSO
DARRELL AMORUSO

Policy Number 01475 85 15U 7106 2

Effective Date 11/07/16

Expiration Date 05/07/17

Year: 2012

Make/Model: DODGE

Vehicle Identification Number:

3C63D3EL9CG330085

CONTACT US: 210-531-USAA(8722)

OR 800-531-USAA

Additional copies available at usaa.com

Automobile Insurance Identification Card

We've issued an identification card as evidence of liability insurance for your vehicle(s). This card is valid only as long as liability insurance remains in force.

You may be required to produce your identification card at vehicle registration or inspection, when applying for a driver's license, following an accident or upon a law enforcement officer's request.

Keep a copy of the ID card in your vehicle at all times.

For your convenience, additional copies are available on usaa.com.

53SC3 Rev. 06-13

55078-0513__03



9800 Fredericksburg Road
San Antonio, Texas 78288

25941

SOUTH CAROLINA INSURANCE IDENTIFICATION CARD

The coverage provided by this policy meets the South Carolina minimum financial responsibility requirements prescribed by law. KEEP A COPY OF THE ID CARD IN YOUR VEHICLE AT ALL TIMES. Examine policy exclusions carefully.

Insurance Company Name

UNITED SERVICES AUTOMOBILE ASSN

Name

JILL S AMORUSO
DARRELL AMORUSO

Policy Number 01475 85 15U 7106 2

Effective Date 11/07/16

Expiration Date 05/07/17

Year: 2014

Make/Model: NISSAN

Vehicle Identification Number:

5N1AR2MN7EC723065

CONTACT US: 210-531-USAA(8722)

OR 800-531-USAA

Additional copies available at usaa.com **ROA 091**

USAA Confidential



UNITED SERVICES AUTOMOBILE ASSOCIATION

(A RECIPROCAL INTERINSURANCE EXCHANGE)
9800 Fredericksburg Road - San Antonio, Texas 78288
SOUTH CAROLINA AUTO POLICY
RENEWAL DECLARATIONS
(ATTACH TO PREVIOUS POLICY)

ADDL INFO ON NEXT PAGE MAIL MCH-M-I
RENEWAL OF

Table with columns: State, Year, Policy Number, etc. Values: 08, 13, 15, 16, SC, 392392392392, 01475 85 15U 7100 2

POLICY PERIOD: (12:01 A.M. standard time)
EFFECTIVE NOV 07 2016 TO MAY 07 2017

OPERATORS
01 JILL S AMORUSO
02 DARRELL AMORUSO
06 KARA A AMORUSO

Named Insured and Address
JILL S AMORUSO
SMSGT USAF RET
132 EMMAUS CT
RIDGEVILLE SC 29472-6637

Table with columns: VEH, YEAR, TRADE NAME, MODEL, BODY TYPE, ANNUAL MILEAGE, IDENTIFICATION NUMBER, VEH USE*, WORKSCHOOL Miles One Way, Days Per Week

The Vehicle(s) described herein is principally garaged at the above address unless otherwise stated.
VEH 08 RIDGEVILLE SC 29472-6637
VEH 13 RIDGEVILLE SC 29472-6637
VEH 15 RIDGEVILLE SC 29472-6637
VEH 16 RIDGEVILLE SC 29472-6637

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

Table with columns: COVERAGES, LIMITS OF LIABILITY, VEH 08 6-MONTH, VEH 13 6-MONTH, VEH 15 6-MONTH, VEH 16 6-MONTH

ADDITIONAL INTEREST - LESSOR AND LOSS PAYEE
VEH 15 VW CREDIT LEASING LTD, MINNEAPOLIS MN
LOSS PAYEE
VEH 08 M & T CREDIT SERVICES LLC, BALTIMORE MD
VEH 13 SAC FEDERAL CREDIT UNION, BELLEVUE NE
VEH 16 NAVY FEDERAL CREDIT UNION, MERRIFIELD VA

ENDORSEMENTS: ADDED 11-07-16 - NONE
REMAIN IN EFFECT (REFER TO PREVIOUS POLICY) - 5100SC(05) A072(06) ACCFOR(01)
INFORMATION FORMS: 999SC(23)

Table with columns: VEH, Year, Policy Number, etc. Values: 13, XXX4000000, 15, XXX4000000, 16, RMM4810000

In WITNESS WHEREOF, the Subscribers at UNITED SERVICES AUTOMOBILE ASSOCIATION have caused these presents to be signed by their Attorney-in-Fact on this date OCTOBER 6, 2016

Laura Bishop
Laura Bishop
President, USAA Reciprocal Attorney-in-Fact, Inc.

ELECTRONICALLY FILED - 2023 APR 19 11:58 AM - BERKELEY - COMMON PLANS - CASE# 2022CP0891971



UNITED SERVICES AUTOMOBILE ASSOCIATION

(A RECIPROCAL INTERINSURANCE EXCHANGE)
 9800 Fredericksburg Road - San Antonio, Texas 78288
 SOUTH CAROLINA AUTO POLICY
 RENEWAL DECLARATIONS
 (ATTACH TO PREVIOUS POLICY)

State	08	13	15	16	Veh	POLICY NUMBER	
SC	392	392	392	392	Terr	01475	85 15U 710 2
POLICY PERIOD: (12:01 A.M. standard time)							
EFFECTIVE NOV 07 2016 TO MAY 07 2017							

ELECTRONICALLY FILED - 2023 APR 19 11:58 AM - BERKELEY - COMMON PLEAS - CASE#2022-00801971

Named Insured and Address

JILL S AMORUSO
 SMSGT USAF RET
 132 EMMAUS CT
 RIDGEVILLE SC 29472-6637

Description of Vehicle(s)							VEH USE*	WORK SCHOOL Miles One Way	Days Per Week
VEH	YEAR	TRADE NAME	MODEL	BODY TYPE	ANNUAL MILEAGE	IDENTIFICATION NUMBER	SYM		
08	07	ADAMS	HORSE TRAILER		0	5CLHG20237R002923			
13	10	VOLKS	JETTA 4D TDI	4 DOOR	14000	3VWAL7AJ6AM155823	P		
15	13	VOLKS	JETTA 4D B/S	4 DOOR	2000	3VW2K7AJ6DM378231	P		
16	12	DODGE	RAM 3500	4 DOOR	4000	3C63D3EL9CG330085	P		

The Vehicle(s) described herein is principally garaged at the above address unless otherwise stated. * W/C=Work/School; B=Business; F=Farm; P=Plow
 VEH 08 RIDGEVILLE SC 29472-6637 VEH 15 RIDGEVILLE SC 29472-6637
 VEH 13 RIDGEVILLE SC 29472-6637 VEH 16 RIDGEVILLE SC 29472-6637

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

COVERAGES ("ACV" MEANS ACTUAL CASH VALUE)	LIMITS OF LIABILITY		VEH 08 6-MONTH		VEH 13 6-MONTH		VEH 15 6-MONTH		VEH 16 6-MONTH	
	D=DED AMOUNT	PREMIUM \$	D=DED AMOUNT	PREMIUM \$	D=DED AMOUNT	PREMIUM \$	D=DED AMOUNT	PREMIUM \$	D=DED AMOUNT	PREMIUM \$
PART C - UNDERINSURED MOTORISTS										
BODILY INJURY EA PER \$		300,000								
EA ACC \$		500,000								
PROPERTY DAMAGE EA ACC \$		500,000				54.32		46.26		57.73
PART D - PHYSICAL DAMAGE COVERAGE										
COMPREHENSIVE LOSS ACV LESS	D 250	10.15	D 250	99.97	D 250	84.57	D 250	208.94		
COLLISION LOSS ACV LESS	D 500	28.73	D 500	115.21	D 500	103.30	D 500	127.75		
TOWING AND LABOR		6.63				6.63				
VEHICLE TOTAL PREMIUM				45.51		513.51		443.58		777.41
TOTAL PREMIUM - SEE FOLLOWING PAGE(S)										

Veh 08 XXX4000000 Veh 13 XXX4000000 Veh 15 XXX4000000 Veh 16 RMM4810000

In WITNESS WHEREOF, the Subscribers at UNITED SERVICES AUTOMOBILE ASSOCIATION have caused these presents to be signed by their Attorney-in-Fact on this date OCTOBER 6, 2016

Laura Bishop
 Laura Bishop
 President, USAA Reciprocal Attorneys-in-Fact, Inc.



ROA 053



SUPPLEMENTAL INFORMATION

EFFECTIVE NOV 07 2016 TO MAY 07 2017

The following approximate premium discounts or credits have already been applied to reduce your policy premium costs.

NOTE: Age or **senior citizen** status, if allowed by your state/location, was taken into consideration when your rates were set and your premiums have already been adjusted.

VEHICLE 13		
DAYTIME RUNNING LIGHTS DISCOUNT	-\$	3.15
MULTI-CAR DISCOUNT	-\$	84.21
PASSIVE RESTRAINT DISCOUNT	-\$	2.65
VEHICLE 15		
ANNUAL MILEAGE DISCOUNT	-\$	65.21
DAYTIME RUNNING LIGHTS DISCOUNT	-\$	2.78
MULTI-CAR DISCOUNT	-\$	70.69
PASSIVE RESTRAINT DISCOUNT	-\$	2.13
VEHICLE 16		
ANNUAL MILEAGE DISCOUNT	-\$	72.90
MULTI-CAR DISCOUNT	-\$	130.06
PASSIVE RESTRAINT DISCOUNT	-\$	2.24
VEHICLE 18		
DAYTIME RUNNING LIGHTS DISCOUNT	-\$	2.89
MULTI-CAR DISCOUNT	-\$	87.75
PASSIVE RESTRAINT DISCOUNT	-\$	2.39

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**OFFER OF ADDITIONAL UNINSURED MOTORIST COVERAGE AND
OPTIONAL UNDERINSURED MOTORIST COVERAGE**

Automobile liability insurance coverage pays other motor vehicle drivers and their passengers for the damages caused by you and for which you are legally responsible. There are two types of automobile liability insurance coverage: bodily injury and property damage. Bodily injury coverage pays for bodily injuries to others inflicted by your motor vehicle. Property damage coverage pays for damages which your motor vehicle causes to other motor vehicles or property.

Under South Carolina law, we may refuse to write your automobile liability insurance for a number of reasons. If we decide to write your automobile liability insurance coverage, however, it must provide to you at least \$25,000 of bodily injury for each person whom you may injure and \$50,000 of bodily injury for two or more persons whom you may injure in any single accident. We must also provide to you at least \$25,000 in property damage coverage for each accident which you may cause. You may have seen these limits described as \$25,000/\$50,000/\$25,000 or 25-50-25. These limits are commonly known as minimum limits. In order to drive your automobile upon the roads of this State, you must have at least these minimum limits of insurance, unless you post a satisfactory bond or pay a \$550 fee to drive uninsured. There is no requirement that we offer higher than the minimum limits of automobile liability insurance coverage. If we do not offer more than the minimum limits, you will be required to pay an additional premium for those increased limits of protection.

An insurer that writes your automobile liability insurance coverage must also offer two additional coverages which will protect you in the event you are damaged in an automobile accident by an at-fault driver who either has no automobile insurance or whose automobile insurance liability limits are less than your damages in that accident. These coverages are termed additional uninsured motorists coverage and optional underinsured motorists coverage, respectively. You may also see them referred to as UIM and/or UIM. If you decide to purchase either of these coverages, you will be required to pay an additional premium for each of these coverages.

Uninsured motorists coverage compensates you, or other persons insured under your automobile insurance policy, for amounts which you may be legally entitled to collect as damages from an owner or operator of an at-fault uninsured motor vehicle. An uninsured motor vehicle is a motor vehicle which either has no liability insurance coverage or is operated by a hit-and-run driver. By law, your automobile insurance policy automatically provides uninsured motorists coverage of \$25,000/\$50,000/\$25,000. There is a \$200 deductible for uninsured property damage claims.

You also have the right to buy additional uninsured motorists coverage, in various limits up to the limits of liability coverage you have purchased. The limits of additional uninsured motorist coverage which we are authorized to write and for which you are eligible are shown on this form, together with the additional premium for those increased limits. You may not purchase uninsured motorist coverage with limits in excess of your liability limits.

Underinsured motorists coverage compensates you, or other persons insured under your automobile insurance policy, for amounts which you legally may be entitled to collect as damages from an owner or operator of an at-fault underinsured motor vehicle. An underinsured motor vehicle is a motor vehicle which is covered by some form of liability insurance, but which is insufficient to fully compensate you for your damages.



Your automobile insurance policy does not automatically provide any underinsured motorists coverage. However, you have the right to buy, and we are required to offer, optional underinsured motorists coverage in various limits up to the limits of liability coverage you have purchased. The limits of optional underinsured motorists coverage which we are authorized to write and for which you are eligible are shown on this form, together with the additional premiums for those limits. You may not purchase underinsured motorist coverage with limits in excess of your liability limits.

If you reject optional underinsured or additional uninsured motorist coverages shown on this form and if you are involved in an automobile accident that is not your fault, this form may be used by us as evidence against you if you make a claim for additional uninsured motorists coverage or optional underinsured motorists coverage.

If you do not complete this form and return it to us within 30 days, we are required by law to add additional uninsured motorists coverage and optional underinsured motorist coverage, in the same limits as the automobile liability insurance, to your automobile insurance policy. You will be required to pay an additional premium for each of these coverages and your policy may be cancelled for non-payment of that additional premium.

In the future, if you wish to increase or to decrease your limits of additional uninsured motorist coverage or optional underinsured motorist coverage, you must contact us. You will not be presented with another copy of this form by us upon renewal of your automobile liability insurance policy. You will not be presented with another copy of this form by us when you extend, change, supersede, or replace your automobile liability insurance policy. You may also complete this form online at usaa.com.

Please read this form carefully. We must answer any questions which you may have. If you have any questions, please call Policy Service at 1-800-531-USAA (8722).

If you have any further questions, you may contact the Department of Insurance at:

Office of Consumer Services
South Carolina Department of Insurance
1201 Main Street, Suite 1000, Columbia, SC 29201
(803) 737-6180
(800) 768-3467 E-mail address: consumers@doi.sc.gov



REJECTION/SELECTION FORM

ELECTRONICALLY FILED - 2023 Apr 19 11:58 AM - BERKELEY - COMMON PLEAS - CASE#2022CP0801971

Minimum limits of Uninsured Motorists (UM) Coverage are automatically provided. If you wish to purchase additional UM, please select the limit desired. Underinsured Motorists (UIM) coverage is not automatically provided. If you wish to purchase UIM in either the base limit or an additional limit, please select the limit desired. The premiums below reflect the total premium for this coverage for all the vehicles insured on your policy. The coverage-limit combinations displayed in this form are examples. You can create other combinations of the coverage limits displayed in this example.

THESE LIMITS CANNOT EXCEED YOUR AUTOMOBILE INSURANCE LIABILITY LIMITS. (Semi-annual premiums per policy)

To make a change to your current policy, you must check one of the following boxes or enter your desired UM limits:

Table with columns for UM Premium, Available Limits (UM/UIM/BI, UM/UIM/PD), and UIM Premium. Rows show various limit combinations and their corresponding premiums.

If you prefer a combination of UM limits other than those shown above, please enter those desired here:

Form for entering custom UM and UIM limits with fields for (Per person/per accident) and dollar amounts.

I do not wish to purchase additional UM coverage. I do not wish to purchase optional UIM coverage.

By my signature, I acknowledge that I have read - or I have had read to me - the above explanations and offers of additional uninsured motorists coverage and optional underinsured motorists coverage. I understand that the above explanations of these coverages are intended only to be brief descriptions of additional uninsured motorist coverage and optional underinsured motorist coverage, and that payment of benefits under either of these coverages is subject both to the terms and conditions of my automobile insurance policy and to the State of South Carolina's law.

I also acknowledge that I have personally marked this form to indicate the coverages and amounts of coverage I wish to purchase. At the time of this signature, no other person has written on, typed in or in any other way marked this form.

USAA Number: Phone Number: Today's Date:

Type or Print Your Name:

Signature:

Address:

Please complete this form and fax it to 1-800-531-8877 or mail it to USAA, 9800 Fredericksburg Road, San Antonio, Texas 78288; or complete this form on usaa.com

If this form is sent by facsimile machine (fax), the sender adopts the document USAA receives as a duplicate original and adopts the signature the receiving fax machine produces as the sender's original signature.



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ELECTRONICALLY FILED - 2023 Apr 19 11:58 AM - BERKELEY - COMMON PLEAS - CASE#2022CP0801971





USAA
 9800 Fredericksburg Road
 San Antonio, Texas 78288

SOUTH CAROLINA AUTO POLICY

READ YOUR POLICY, DECLARATIONS AND ENDORSEMENTS CAREFULLY

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

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

This is a participating policy. You are entitled to dividends as may be declared by the board of directors.

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

- By purchasing this policy you are a member of USAA and are subject to its bylaws.
- This is a non-assessable policy. You are liable only for the amount of your premium as USAA has a free surplus in compliance with Article 19.03 of the Texas Insurance Code of 1951, as amended.
- The board of directors may annually allocate a portion of USAA's surplus to Subscriber's Accounts. Amounts allocated to such accounts remain a part of USAA's surplus and may be used as necessary to support the operations of the Association. A member shall have no right to any balance in the member's account except until following termination of membership, as provided in the bylaws.

QUICK REFERENCE

	DECLARATIONS PAGE
	Named Insured and Address Policy Period Operators Description of Vehicle(s) Coverages, Amounts of Insurance and Premiums Endorsements
Beginning on Page 3	Agreement and Definitions
Part A 4	Liability Coverage
	Definitions Insuring Agreement Bodily Injury Liability Coverage and Property Damage Liability Coverage Limit of Liability Supplementary Payments Exclusions Out of State Coverage Other Insurance
Part B 7	Personal Injury Protection Coverage
	Definitions Insuring Agreement Limit of Liability Exclusions Other Insurance
Part B 10	Medical Payments Coverage
	Definitions Insuring Agreement Limit of Liability Exclusions Other Insurance Special Provisions
	(Quick Reference continued on Page 2)

ELECTRONICALLY FILED - 2023 Apr 19 11:58 AM - BERKELEY - COMMON PLEAS - CASE#2022CP0801971

Part C 13	Uninsured Motorists Coverage and Underinsured Motorists Coverage	Part E 23	General Provisions
	Definitions Insuring Agreement Uninsured Motorists Coverage Underinsured Motorists Coverage Limit of Liability Exclusions Other Insurance Non-Duplication Loss Payable Clause		Bankruptcy Changes Conformity to Law Duties After an Accident or Loss Legal Action Against Us Misrepresentation Non-Duplication of Payment Our Right to Recover Payment Ownership Policy Period and Territory Reducing the Risk of Loss Spouse Access Termination Transfer of Your Interest in this Policy Two or More Auto Policies
Part D 18	Physical Damage Coverage		
	Definitions Insuring Agreement Comprehensive Coverage Collision Coverage Rental Reimbursement Coverage USAA Roadside Assistance Limit of Liability Payment of Loss Loss Payable Clause Waiver of Collision Deductible Exclusions No Benefit to Bailee Other Sources of Recovery Appraisal		

SOUTH CAROLINA AUTO POLICY

AGREEMENT

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

DEFINITIONS

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

- A. **"You"** and **"your"** refer to the "named insured" shown on the Declarations and spouse if a resident of the same household.
- B. **"We," "us,"** and **"our"** refer to the Company providing this insurance.
- C. **"Auto business"** means the business of altering, customizing, leasing, parking, repairing, road testing, delivering, selling, servicing, towing, repossessing or storing vehicles.
- D. **"Bodily injury"** (referred to as **BI**).
1. **"Bodily injury"** means bodily harm, sickness, disease or death.
 2. **"Bodily injury"** does not include mental injuries such as emotional distress, mental anguish, humiliation, mental distress, or any similar injury unless it arises out of physical injury to some person.
- E. **"Driving contest or challenge"** includes, but is not limited to:
1. A competition against other people, vehicles, or time; or
 2. An activity that challenges the speed or handling characteristics of a vehicle or improves or demonstrates driving skills, provided the activity occurs on a track or course that is closed from non-participants.
- F. **"Family member"** means a person related to **you** by blood, marriage or adoption who resides primarily in **your** household. This includes a ward or foster child.
- G. **"Fungi"** means any type or form of **fungi**, including mold or mildew, and includes any mycotoxins, spores, scents, or byproducts produced or released by **fungi**.
- H. **"Miscellaneous vehicle"** means the following motorized vehicles: motor home; golf cart; snowmobile; all-terrain vehicle; or dune buggy.
- I. **"Motorcycle"** means a two- or three-wheeled motor vehicle that is subject to motor vehicle licensing in the location where the **motorcycle** is principally garaged.
- J. **"Newly acquired vehicle."**
1. **"Newly acquired vehicle"** means a vehicle, not insured under another policy, that is acquired by **you** or any **family member** during the policy period and is:
 - a. A private passenger auto, pickup, **trailer**, or **van**;
 - b. A **miscellaneous vehicle** that is not used in any business or occupation; or
 - c. A **motorcycle**, but only if a **motorcycle** is shown on the current Declarations.

(DEFINITIONS Cont'd.)

2. **We** will automatically provide for the **newly acquired vehicle** the broadest coverages as are provided for any vehicle shown on the Declarations. If **your** policy does not provide Comprehensive Coverage or Collision Coverage, **we** will automatically provide these coverages for the **newly acquired vehicle** subject to a \$500 deductible for each loss.
3. Any automatic provision of coverage under J.2. will apply for up to 30 days after the date **you** or any **family member** becomes the owner of the **newly acquired vehicle**. If you wish to continue coverage for the **newly acquired vehicle** beyond this 30-day period, **you** must request it during this 30-day period, and **we** must agree to provide the coverage **you** request for this vehicle. If **you** request coverage after this 30-day period, any coverage that **we** agree to provide will be effective at the date and time of **your** request unless **we** agree to an earlier date.
- K. "**Occupying**" means in, on, getting into or out of.
- L. "**Property damage**" (referred to as **PD**).
1. "**Property damage**" means physical injury to, destruction of, or loss of use of tangible property.
2. For purposes of this policy, electronic data is not tangible property. Electronic data means information, facts or programs:
- a. Stored as or on;
- b. Created or used on; or
- c. Transmitted to or from;
- computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.
- M. "**Trailer**" means a vehicle designed to be pulled by a private passenger auto, pickup, **van**, or **miscellaneous vehicle**. It also means a farm wagon or implement while towed by such vehicles.
- N. "**Van**" means a four-wheeled land motor vehicle of the van type with a load capacity of not more than 2,000 pounds.
- O. "**Your covered auto**" means:
1. Any vehicle shown on the Declarations.
2. Any **newly acquired vehicle**.
3. Any **trailer you own**.

PART A - LIABILITY COVERAGE

DEFINITIONS

"**Covered person**" as used in this Part means:

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

(PART A Cont'd.)

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

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

INSURING AGREEMENT

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

LIMIT OF LIABILITY

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

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

1. **Covered persons**;

2. Claims made;
3. Vehicles or premiums shown on the Declarations; or
4. Vehicles involved in the auto accident.

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

SUPPLEMENTARY PAYMENTS

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

1. Premiums on appeal bonds and bonds to release attachments in any suit **we** defend. But **we** will not pay the premium for bonds with a face value over **our** limit of liability shown on the Declarations.
2. Prejudgment interest awarded against the **covered person** on that part of the judgment **we** pay. If **we** make an offer to pay the applicable limit of liability, **we** will not pay any prejudgment interest based on that period of time after the offer.
3. Interest accruing after a judgment is entered in any suit **we** defend. **Our** duty to pay interest ends when **we** offer to pay that part of the judgment which does not exceed **our** limit of liability for this coverage.
4. Up to \$250 a day for loss of wages because of attendance at hearings or trials at **our** request.
5. The amount a **covered person** must pay to the United States Government because of damage to a government-owned private passenger auto, pickup, or **van** which occurs while the vehicle is in the care, custody, or control of a **covered person**. The most **we** will pay is an amount equal to one month of the basic salary of the **covered person** at the time of a loss. Only Exclusions A.1. and A.8. apply.

(PART A Cont'd.)

6. Other reasonable expenses incurred at our request.
7. All defense costs we incur.

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

1. Who intentionally acts or directs to cause **BI** or **PD**, or who acts or directs to cause with reasonable expectation of causing **BI** or **PD**. This exclusion (A.1.) applies only to the extent that the limits of liability under this Part exceed \$25,000 for each person and \$50,000 for each accident for **BI** and \$25,000 for **PD**.
2. For **PD** to property owned or being transported by a **covered person**.
3. For **PD** to property rented to, used by, or in the care of any **covered person**. This exclusion (A.3.) does not apply to damage to a residence or garage.
4. For **BI** to an employee of that person which occurs during the course of employment. This exclusion (A.4.) does not apply to a domestic employee unless workers' compensation benefits are required or available for that domestic employee.
5. For that person's liability arising out of the ownership or operation of a vehicle while it is being used to carry persons for a fee. This exclusion (A.5.) does not apply to:
 - a. A share-the-expense car pool; or
 - b. **Your covered auto** used for volunteer work when reimbursement is limited to mileage expenses.

6. While employed or otherwise engaged in the **auto business**. This exclusion (A.6.) does not apply to the ownership, maintenance, or use of **your covered auto** by **you**, any **family member**, or any partner, agent, or employee of **you** or any **family member**.
7. Maintaining or using any vehicle while that person is employed or otherwise engaged in any business or occupation other than the **auto business**, farming, or ranching. This exclusion (A.7.) does not apply:
 - a. To the maintenance or use of a private passenger auto; a pickup or **van** owned by **you** or any **family member**, or a **trailer** used with these vehicles.
 - b. To the maintenance or use of a pickup or **van** not owned by **you** or any **family member** if the vehicle's owner has valid and collectible primary liability insurance or self-insurance in force at the time of the accident.
8. Using a vehicle without expressed or implied permission.
9. For **BI** or **PD** for which that person is an insured under any nuclear energy liability policy. This exclusion (A.9.) applies even if that policy is terminated due to exhaustion of its limit of liability.
10. For **BI** or **PD** occurring while **your covered auto** is rented or leased to others, or shared as part of a personal vehicle sharing program.
11. For **BI** sustained as a result of exposure to **fungi**, wet or dry rot, or bacteria.
12. For **BI** to a relative who resides primarily in that **covered person's** household. This exclusion (A.12.) applies only to the extent that the limits of liability for **BI** under this Part exceed \$25,000 for each person and \$50,000 for each accident.

(PART A Cont'd.)

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

1. Any vehicle that is not **your covered auto** unless that vehicle is:
 - a. A four- or six-wheel land motor vehicle designed for use on public roads;
 - b. A moving van for personal use;
 - c. A **miscellaneous vehicle**; or
 - d. A vehicle used in the business of farming or ranching.
2. Any vehicle, other than **your covered auto**, that is owned by **you**, or furnished or available for **your** regular use. This exclusion (B.2.) does not apply to a vehicle not owned by **you** if the vehicle's owner has valid and collectible primary liability insurance or self-insurance in force at the time of the accident.
3. Any vehicle, other than **your covered auto**, that is owned by or furnished or available for the regular use of, any **family member**. This exclusion (B.3.) does not apply:
 - a. To **your** maintenance or use of such vehicle; or
 - b. To a vehicle not owned by any **family member** if the vehicle's owner has valid and collectible primary liability insurance or

self-insurance in force at the time of the accident.

4. Any vehicle while being operated in, or in practice for, any **driving contest or challenge**.

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

OUT OF STATE COVERAGE

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

OTHER INSURANCE

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

1. A vehicle **you** do not own; or
2. **Your covered auto** while in the possession of an **auto business**.

PART B – PERSONAL INJURY PROTECTION COVERAGE

(referred to as PIP Coverage)

DEFINITIONS

- A. "**Auto**" means a motor vehicle of the kind required to be registered under the South Carolina Motor Vehicle Registration and Licensing Act.
- B. "**Covered person**" as used in this Part means:

1. **You** or any **family member**; or
2. Any other person who sustains **BI** while:
 - a. **Occupying your covered auto**; or
 - b. Not **occupying** a motor vehicle as a result of an accident involving **your covered auto**.

(PART B Cont'd.)

C. "**Medical payment fee**" is an amount, as determined by **us** or someone on **our** behalf, that **we** will pay for charges made by a licensed hospital, licensed physician, or other licensed medical provider for **medically necessary and appropriate medical services**. The amount that **we** will pay will be one of the following:

1. The amount provided by an applicable agreement with a Preferred Provider Organization, Preferred Provider Network, or other similar agreement; or
2. The amount required, approved, or allowed by a fee schedule established by a state, federal, or other governmental entity in the relevant geographic area; or
3. The amount negotiated with the provider; or
4. The lesser of the following:
 - a. The actual amount billed; or
 - b. A reasonable fee for the service provided.

D. "**Medically necessary and appropriate medical services**" means services for remedial treatment and care rendered in accordance with a recognized religious healing method or those services or supplies provided or prescribed by a licensed hospital, licensed physician, or other licensed medical provider that, as determined by **us** or someone on **our** behalf, are required to identify or treat **BI** caused by an auto accident and sustained by a **covered person** and that are:

1. Consistent with the symptoms, diagnosis, and treatment of the **covered person's** injury and appropriately documented in the **covered person's** medical records;

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

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

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

INSURING AGREEMENT

- A. **We** will pay PIP Coverage benefits to or for a **covered person** who sustains **BI** caused by an accident and resulting from the ownership, maintenance or use of an **auto** as an **auto**.

(PART B Cont'd.)

B. **We**, or someone on **our** behalf, will review and audit claims for benefits under PIP Coverage. **We** are only obligated to pay expenses for the following benefits:

1. **Medical Expenses.** **We** will pay only the **medical payment fee** for **medically necessary and appropriate medical services** incurred within three years from the date of the accident. Only semi-private hospital room charges will be paid unless special or intensive care is required.
2. **Funeral Expense.** **We** will pay the reasonable funeral and burial expense actually incurred for death of a **covered person** that occurs within three years from the date of the accident.
3. **Work Loss Benefits.** **We** will pay for loss of income from work which a **covered person** would have performed except for the **BI**.
 - a. **We** will pay Work Loss Benefits for no more than three years from the date of the accident.
 - b. Work Loss Benefits will not continue after the death of the **covered person**.

Work loss applies only if the **covered person** was an income or wage producer at the time of the accident.

4. **Essential Services Expenses.** **We** will pay necessary and reasonable expenses for services which would ordinarily have been performed for the benefit of his or her family by a **covered person** who was not an income earner.
 - a. Expenses must be incurred within three years from the date of the accident.
 - b. **We** will not pay for expenses incurred after the death of the **covered person**.

LIMIT OF LIABILITY

Our maximum limit of liability for all benefits for each **covered person** injured in any one **auto** accident is \$1,000. This is the most **we** will pay regardless of the number of:

1. **Covered persons;**
2. Claims made;
3. Vehicles or premiums shown on the Declarations;
4. Vehicles involved in the accident; or
5. Insurers providing no-fault benefits.

EXCLUSIONS

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

1. Sustained by any **covered person** who:
 - a. Intentionally causes the accident resulting in the **BI**; or
 - b. Operates or voluntarily rides in a vehicle known by that person to be stolen; or
 - c. Is committing a felony; or
 - d. Fails to stop an **auto** he or she is operating when signaled by any law enforcement vehicle by means of a siren or flashing light.
2. Sustained by any **covered person** while **occupying**, or while a pedestrian as a result of an accident involving, an **auto** (other than **your covered auto**) insured for PIP Coverage.
3. Sustained by any **covered person** while not **occupying** a motor vehicle if the accident occurs outside South Carolina. This exclusion (3.) does not apply to **you** or any **family member**.

(PART B Cont'd.)

4. Sustained by any **covered person** while **occupying** an **auto** located for use as a residence or premises.
5. Caused by or as a consequence of war (declared or undeclared), civil war, a discharge of a nuclear weapon (even if accidental), insurrection, or rebellion or revolution.
6. Resulting from or as a consequence of the following, whether controlled, uncontrolled, or however caused:
 - a. Nuclear reaction;
 - b. Radiation; or
 - c. Radioactive contamination.
7. Sustained by any **covered person** arising out of the ownership, maintenance or use of a **motorcycle** by that person.
8. Sustained by **you** or any **family member** while **occupying** any **auto** owned by **you** which is not insured for PIP Coverage under this policy.
9. Sustained by any **family member** while **occupying** any **auto** owned by that **family member** that is not insured for PIP Coverage under this policy.
10. Sustained while a participant in, or in practice for, any **driving contest or challenge**.
11. Sustained as a result of a **covered person's** exposure to **fungi**, wet or dry rot, or bacteria.

OTHER INSURANCE

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

PART B – MEDICAL PAYMENTS COVERAGE

DEFINITIONS

- A. "**Covered person**" as used in this Part means:
 1. **You** or any **family member** while **occupying** any auto.
 2. Any other person while **occupying** your **covered auto**.
 3. **You** or any **family member** while not **occupying** a motor vehicle if injured by:
 - a. A motor vehicle designed for use mainly on public roads;
 - b. A **miscellaneous vehicle**; or
 - c. A **trailer**.
- B. "**Medical payment fee**" is an amount, as determined by **us** or someone on **our** behalf, that **we** will pay for charges made by a licensed hospital, licensed physician, or other licensed medical provider for **medically necessary and appropriate medical services**. The amount that **we** will pay will be one of the following:
 1. The amount provided by an applicable agreement with a Preferred Provider Organization, Preferred Provider Network, or other similar agreement; or
 2. The amount required, approved, or allowed by a fee schedule established by a state, federal, or other governmental entity in the relevant geographic area; or

(PART B Cont'd.)

3. The amount negotiated with the provider; or
4. The lesser of the following:
 - a. The actual amount billed; or
 - b. A reasonable fee for the service provided.

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

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

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

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

INSURING AGREEMENT

- A. **We** will pay only the **medical payment fee** for **medically necessary and appropriate medical services** and the reasonable expense for funeral services. These fees and expenses must:
 1. Result from **BI** sustained by a **covered person** in an auto accident; and
 2. Be incurred for services rendered within one year from the date of the auto accident.
- B. **We** or someone on **our** behalf will review, by audit or otherwise, claims for benefits under this coverage to determine if the charges are **medical payment fees** for **medically necessary and appropriate medical services** or reasonable expenses for funeral services. A provider of medical or funeral services may charge more than the amount **we** determine to be **medical payment fees** and reasonable expenses, but such additional charges are not covered.
- C. **We** will not be liable for pending or subsequent benefits if a **covered person** or assignee of benefits under Medical Payments Coverage unreasonably refuses to submit to an examination as required in Part E – General Provisions, Duties After An Accident or Loss.

(PART B Cont'd.)**LIMIT OF LIABILITY**

- A. The limit of liability shown on the Declarations for Medical Payments Coverage is the maximum limit of liability for each **covered person** injured in any one accident. This is the most **we** will pay regardless of the number of:
1. **Covered persons**;
 2. Claims made;
 3. Vehicles or premiums shown on the Declarations; or
 4. Vehicles involved in an auto accident.
- B. No one will be entitled to receive duplicate payments for the same elements of loss under this coverage and:
1. Any PIP Coverage; or
 2. Part A or Part C of this policy.

EXCLUSIONS

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

1. Sustained while **occupying** any vehicle that is not **your covered auto** unless that vehicle is:
 - a. A four- or six-wheel land motor vehicle designed for use on public roads;
 - b. A moving van for personal use;
 - c. A **miscellaneous** vehicle; or
 - d. A vehicle used in the business of farming or ranching.
2. Sustained while **occupying your covered auto** when it is being used to carry persons for a fee. This exclusion (2.) does not apply to:
 - a. A share-the-expense car pool; or
 - b. **Your covered auto** used for volunteer work when reimbursement is limited to mileage expenses.
3. Sustained while **occupying** any vehicle located for use as a residence.
4. Occurring during the course of employment if workers' compensation benefits are required or available.
5. Sustained while **occupying**, or when struck by, any vehicle, other than **your covered auto**, that is owned by **you**.
6. Sustained while **occupying**, or when struck by, any vehicle, other than **your covered auto**, that is owned by any **family member**. This exclusion (6.) does not apply to **you**.
7. Sustained while **occupying** a vehicle without expressed or implied permission.
8. Sustained while **occupying** a vehicle when it is being used in the business or occupation of a **covered person**. This exclusion (8.) does not apply to **BI** sustained while **occupying** a private passenger auto, pickup or **van**, or a **trailer** used with these vehicles.
9. Caused by or as a consequence of war, insurrection, revolution, nuclear reaction, or radioactive contamination.
10. Sustained while **occupying your covered auto** while it is rented or leased to others, or shared as part of a personal vehicle sharing program.
11. Sustained while a participant in, or in practice for, any **driving contest or challenge**.
12. Sustained as a result of a **covered person's** exposure to **fungi**, wet or dry rot, or bacteria.

(PART B Cont'd.)**OTHER INSURANCE**

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

SPECIAL PROVISIONS

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

PART C – UNINSURED MOTORISTS COVERAGE (referred to as UM Coverage) and **UNDERINSURED MOTORISTS COVERAGE** (referred to as UIM Coverage)

DEFINITIONS

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

However, "**covered person**" does not include the United States of America or any of its agencies.

- B. "**Uninsured motor vehicle**" means a land motor vehicle or **trailer** of any type:
1. To which neither a liability bond or policy, nor cash or securities deposited with the State Treasurer, applies at the time of the accident.
 2. To which a liability bond or policy applies at the time of the accident but its limits for liability are less than the minimum limits specified by the South Carolina Financial Responsibility Act.

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

If there is no physical contact with the hit-and-run motor vehicle, the facts of the accident must be corroborated by an affidavit attesting to the truth of the facts of the accident signed by any eyewitness other than the owner or operator of the vehicle which **you** or any **family member** were **occupying** at the time of the accident.

4. To which a liability bond or policy applies at the time of the accident but the bonding or insuring company:
 - a. Successfully denies coverage;
 - b. Is or becomes insolvent;
 - c. Is in delinquency proceedings, suspension or receivership; or
 - d. Is proven unable to respond to a judgment.

(PART C Cont'd.)

5. For which the owner has not qualified as a self-insurer.

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

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

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

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

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

INSURING AGREEMENT

A. UM Coverage.

1. **We** will pay damages which a **covered person** is legally entitled to recover from the owner or operator of an **uninsured motor vehicle** because of:
 - a. **BI** sustained by a **covered person** and caused by an auto accident; and
 - b. **PD** to the property of a **covered person**.
2. The owner's or operator's liability for these damages must arise out of the ownership, maintenance or use of the **uninsured motor vehicle**.
3. Any judgment for damages arising out of a suit brought without **our** written consent is not binding on **us**.
4. **We** will pay under UM Coverage only after the limits of liability under any applicable liability bonds or policies have been exhausted by payment of judgments or settlements. This provision applies only to definition B.2. under this Part.

B. UIM Coverage.

1. **We** will pay the following damages which a **covered person** is legally entitled to recover from the owner or operator of an **underinsured motor vehicle** because of an auto accident:
 - a. **BI** sustained by a **covered person**; and
 - b. **PD** to your **covered auto**.
2. The owner's or operator's liability for these damages must arise out of the ownership, maintenance or use of the **underinsured motor vehicle**.

(PART C Cont'd.)**LIMIT OF LIABILITY****A. UM Coverage.**

1. For **BI** sustained by any one person in any one accident, **our** maximum limit of liability for all resulting damages, including, but not limited to, all direct, derivative, or consequential damages recoverable by any persons, is the limit of liability shown on the Declarations for "each person" for **BI** under UM Coverage. Subject to this limit for "each person," the limit of liability shown on the Declarations for "each accident" for **BI** under UM Coverage is **our** maximum limit of liability for all damages for **BI** resulting from any one accident. For **PD** sustained in any one accident, **our** maximum limit of liability for all resulting damages is the limit of liability shown on the Declarations for **PD** under UM Coverage. These limits are the most **we** will pay regardless of the number of:

- a. **Covered persons;**
- b. Claims made;
- c. Vehicles or premiums shown on the Declarations;
- d. Premiums paid; or
- e. Vehicles involved in the accident.

2. However, if **you** or any **family member** sustains **BI** or **PD** while **occupying your covered auto** and:

- a. No **covered person** other than **you** or any **family member** sustains **BI** or **PD** in the accident, **our** maximum limits of liability will be the limits of liability in Paragraph A.1., multiplied by the number of premiums shown on the Declarations for UM Coverage.
- b. **BI** or **PD** is also sustained in the accident by a **covered person** other than **you** or any **family member**:

(1) The most **we** will pay for **BI** or

PD to **you** or any **family member** is the sum of:

- (a) The pro rata share of the "each accident" limit of liability shown on the Declarations for **BI** or **PD** under UM Coverage for the vehicle **occupied** at the time of the accident; and
 - (b) The "each person" limit of liability shown on the Declarations for **BI** under UM Coverage or the "each accident" limit of liability for **PD** under UM Coverage, multiplied by the number of premiums for UM Coverage shown on the Declarations for all **your covered autos** not **occupied** at the time of the accident.
- (2) Subject to the limit of liability for each person in Paragraph A.2.b.(1) above, the most **we** will pay for all **BI** or **PD** sustained by **you** and all **family members** in any one accident is the sum of:
- (a) The pro rata share of the "each accident" limit of liability shown on the Declarations for **BI** or **PD** under UM Coverage for the vehicle **occupied** at the time of the accident; and
 - (b) The "each accident" limit of liability shown on the Declarations for **BI** or **PD** under UM Coverage, multiplied by the number of premiums for UM Coverage shown on the Declarations for all **your covered autos** not **occupied** at the time of the accident.
- (3) A person's pro-rata share is the proportion that that person's damages bear to the total damages sustained by all **covered persons**.

(PART C Cont'd.)

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

- (a) **Covered persons**;
- (b) Claims made;
- (c) Vehicles or premiums shown on the Declarations;
- (d) Premiums paid; or
- (e) Vehicles involved in the accident.

B. UIM Coverage.

1. For **BI** sustained by any one person in any one accident, **our** maximum limit of liability for all resulting damages, including, but not limited to, all direct, derivative, or consequential damages recoverable by any persons, is the limit of liability shown on the Declarations for "each person" for **BI** under UIM Coverage. Subject to this limit for "each person," the limit of liability shown on the Declarations for "each accident" for **BI** under UIM Coverage is **our** maximum limit of liability for all damages for **BI** resulting from any one accident. For **PD** to **your covered auto** sustained in any one accident, **our** maximum limit of liability for all resulting damages is the limit of liability shown on the Declarations for **PD** under UIM Coverage. These limits are the most **we** will pay regardless of the number of:

- a. **Covered persons**;
- b. Claims made;
- c. Vehicles or premiums shown on the Declarations;
- d. Premiums paid; or
- e. Vehicles involved in the accident.

2. However, if **you** or any **family member** sustains **BI** or **PD** while **occupying your covered auto** and:

- a. No **covered person** other than **you** or any **family member** sustains **BI** or **PD** in the accident, **our** maximum limits of liability will be the limits of liability in Paragraph B.1., multiplied by the number of premiums shown on the Declarations for UIM Coverage.
- b. **BI** or **PD** is also sustained in the accident by a **covered person** other than **you** or any **family member**:

(1) The most **we** will pay for **BI** or **PD** to **you** or any **family member** is the sum of:

- (a) The pro rata share of the "each accident" limit of liability shown on the Declarations for **BI** or **PD** under UIM Coverage for the vehicle **occupied** at the time of the accident; and
- (b) The "each person" limit of liability shown on the Declarations for **BI** under UIM Coverage or the "each accident" limit of liability for **PD** under UIM Coverage, multiplied by the number of premiums for UIM Coverage shown on the Declarations for all **your covered autos** not **occupied** at the time of the accident.

(2) Subject to the limit of liability for each person in Paragraph B.2.b.(1) above, the most **we** will pay for all **BI** or **PD** sustained by **you** and all **family members** in any one accident is the sum of:

- (a) The pro rata share of the "each accident" limit of liability shown on the Declarations for **BI** or **PD** under UIM Coverage for the vehicle **occupied** at the time of the accident; and

(PART C Cont'd.)

- (b) The "each accident" limit of liability shown on the Declarations for **BI** or **PD** under UIM Coverage, multiplied by the number of premiums for UIM Coverage shown on the Declarations for all **your covered autos** not **occupied** at the time of the accident.
- (3) A person's pro-rata share is the proportion that that person's damages bear to the total of all damages sustained by all **covered persons**.
- (4) These limits are the most **we** will pay regardless of the number of:
- Covered persons**;
 - Claims made;
 - Vehicles or premiums shown on the Declarations;
 - Premiums paid; or
 - Vehicles involved in the accident.
- C. Any amounts otherwise payable for damages under UM Coverage or UIM Coverage shall be reduced by all sums paid because of the **BI** or **PD** by or on behalf of persons or organizations who may be legally responsible. This includes all sums paid under Part A.

EXCLUSIONS

- A. **We** do not provide UM Coverage:
- For **BI** or **PD** sustained by any **covered person** if that person or legal representative settles the **BI** or **PD** claim without **our** consent.
 - For the first \$200 of the amount of **PD** to each **covered person's** property as the result of any one accident.
- B. **We** do not provide UIM Coverage for **BI** or **PD** sustained by any **covered person** while **occupying**, or when struck by, any vehicle,

other than **your covered auto**, that is owned by that **covered person**.

- C. **We** do not provide UM Coverage or UIM Coverage for **BI** or **PD** sustained by any **covered person**:
- While **occupying your covered auto** when it is being used to carry persons for a fee. This exclusion (B.1.) does not apply to:
 - A share-the-expense car pool; or
 - Your covered auto** used for volunteer work when reimbursement is limited to mileage expenses.
 - Using a vehicle without expressed or implied permission.
 - While **your covered auto** is rented or leased to others, or shared as part of a personal vehicle sharing program.
 - While **occupying** any vehicle when it is being operated in, or in practice for, any **driving contest or challenge**.
- D. UM Coverage or UIM Coverage shall not apply directly or indirectly to benefit:
- Any insurer or self-insurer under any workers' compensation law or similar disability benefits law; or
 - Any insurer of property.

OTHER INSURANCE

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

FIRST PRIORITY	The policy affording UM Coverage or UIM Coverage to the vehicle the covered person was occupying at the time of the accident.
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(PART C Cont'd.)

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

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

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

NON-DUPLICATION

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

1. Paid because of the **BI** or **PD** by or on behalf of persons or organizations who may be legally responsible.
2. Paid or payable under any workers' compensation law or similar disability benefits law. This (2.) does not apply to UM Coverage.
3. Paid under Part A of this policy.
4. Paid under any auto policy medical expense coverage.
5. Paid because of **PD** under Part D of this policy or any similar coverage under any other policy.

LOSS PAYABLE CLAUSE

With respect to **PD**, loss or damage under UM Coverage or UIM Coverage will be paid, as interest may appear, to the named insured and the loss payee shown on the Declarations. When **we** pay the loss payee **we** will, to the extent of payment, be subrogated to the loss payee's right of recovery.

PART D – PHYSICAL DAMAGE COVERAGE

DEFINITIONS

- A. "**Actual cash value**" means the amount that it would cost, at the time of **loss**, to buy a comparable vehicle. As applied to **your covered auto**, a comparable vehicle is one of the same make, model, model year, body type, and options with substantially similar mileage and physical condition.
- B. "**Collision**" means the impact with an object and includes upset of a vehicle. **Loss** caused by the following is covered under Comprehensive Coverage and is not considered **collision**: fire; missiles or falling objects; hail, water or flood; malicious mischief or vandalism; theft or larceny; riot or civil commotion; explosion or earthquake; contact with bird or animal;

(PART D Cont'd.)

windstorm; or breakage of window glass. If breakage of window glass is caused by a **collision**, you may elect to have it considered a **loss** caused by **collision**.

- C. "**Custom equipment**" means equipment, furnishings and parts permanently installed in or upon **your covered auto**, other than:
1. Original manufacturer equipment, furnishings or parts;
 2. Any replacement of original manufacturer equipment, furnishings or parts with other equipment, furnishings or parts of like kind and quality;
 3. Equipment, furnishings or parts designed to assist disabled persons;
 4. Anti-theft devices and devices intended to monitor or record driving activity; and
 5. Tires of a substantially similar size as those installed by the manufacturer.
- D. "**Loss**" means direct and accidental damage to the operational safety, function, or appearance of, or theft of, **your covered auto** or personal property contained in **your covered auto**. **Loss** includes a total loss, but does not include any damage other than the cost to **repair** or replace. **Loss** does not include any loss of use, or diminution in value that would remain after **repair** or replacement of the damaged or stolen property.
- E. "**Nonowned vehicle**."
1. "**Nonowned vehicle**" means any private passenger auto, pickup, **van**, **miscellaneous vehicle**, or **trailer** not owned by, or furnished or available for the regular use of, **you** or any **family member**. This applies only when the vehicle is in the custody of or being operated by **you** or any **family member**.

2. A **nonowned vehicle** does not include any of the following vehicles used in any business or occupation other than farming or ranching:

- a. A pickup;
- b. A **van**; or
- c. A **miscellaneous vehicle**.

F. "**Repair**."

1. "**Repair**" means restoring the damaged property to its pre-**loss** operational safety, function, and appearance. This may include the replacement of component parts.
2. **Repair** does not require:
 - a. A return to the pre-**loss** market value of the property;
 - b. Restoration, alteration, or replacement of undamaged property, unless such is needed for the operational safety of the vehicle; or
 - c. Rekeying of locks following theft or misplacement of keys.

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

1. **Custom equipment**, up to a maximum of \$5,000, in or on **your covered auto**.
2. A **nonowned vehicle**. If there is a **loss** to a **nonowned vehicle**, **we** will provide the broadest coverage shown on the Declarations.

INSURING AGREEMENT

A. Comprehensive Coverage (excluding **collision**).

1. Physical damage. **We** will pay for **loss** caused by other than **collision** to **your covered auto**, including its equipment,

(PART D Cont'd.)

and personal property contained in **your covered auto**, minus any applicable deductible shown on the Declarations.

No deductible under Comprehensive Coverage or Collision Coverage applies to the cost of repairing or replacing damaged automobile safety glass.

2. Transportation expenses. **We** will also pay:
 - a. Up to \$30 a day, to a maximum of \$900, for transportation expenses incurred by **you** or any **family member**. This applies only in the event of a total theft of **your covered auto**. **We** will pay only transportation expenses incurred during the period beginning 48 hours after the theft and ending when **your covered auto** is returned to use or, if not recovered or not **repairable**, up to seven days after **we** have made a settlement offer.
 - b. If Rental Reimbursement Coverage is afforded, limits for transportation expenses are the limits of liability shown on the Declarations for Rental Reimbursement Coverage for that vehicle.
- B. Collision Coverage. **We** will pay for **loss** caused by **collision** to **your covered auto**, including its equipment, and personal property contained in **your covered auto**, minus any applicable deductible shown on the Declarations.
- C. Rental Reimbursement Coverage (for **loss** other than total theft).
 1. **We** will reimburse **you** for expenses **you** or any **family member** incurs to rent a substitute for **your covered auto**. This coverage applies only if:
 - a. **Your covered auto** is withdrawn from use for more than 24 hours due to a **loss**, other than a total theft, to that auto; and

- b. The **loss** is covered under Comprehensive Coverage or caused by **collision**, and the cause of **loss** is not otherwise excluded under Part D of this policy.

2. **We** will reimburse **you** only for that period of time reasonably required to **repair** or replace **your covered auto**. If **we** determine **your covered auto** is a total loss, the rental period will end no later than seven days after **we** have made a settlement offer.

- D. USAA Roadside Assistance. **We** will pay the reasonable costs **you** or any **family member** incurs for one of the following each time **your covered auto** is disabled:
 1. Mechanical labor up to one hour at the place of breakdown.
 2. Locksmith services to gain entry to **your covered auto**. This does not include the rekeying of locks following theft or misplacement of keys.
 3. Towing, to the nearest place where necessary repairs can be made during regular business hours, if the vehicle will not run or is stranded on or immediately next to a public road.
 4. Delivery of gas or oil to, or a change of tire on a disabled vehicle. However, **we** do not pay for the cost of these items.

LIMIT OF LIABILITY

- A. Total loss to **your covered auto**. Our limit of liability under Comprehensive Coverage and Collision Coverage is the **actual cash value** of the vehicle, inclusive of any **custom equipment**.
 1. The maximum amount **we** will include for **loss** to **custom equipment** in or on **your covered auto** is \$5,000.

(PART D Cont'd.)

2. **We** will declare **your covered auto** to be a total loss if, in **our** judgment, the cost to **repair** it would be greater than its **actual cash value** minus its salvage value after the **loss**.
- B. Other than a total loss to **your covered auto**:
1. **Our** limit of liability under Comprehensive Coverage and Collision Coverage is the amount necessary to **repair** the **loss** based on **our** estimate or an estimate that **we** approve, if submitted by **you** or a third party. Upon request, **we** will identify at least one facility that is willing and able to complete the **repair** for the amount of the estimate.
 2. **Our** estimate may specify used, rebuilt, remanufactured, or non-Original Equipment Manufacturer (non-OEM) parts.
 3. **You** may request that damaged parts be replaced with new Original Equipment Manufacturer (OEM) parts. **You** will be responsible, however, for any cost difference between the parts included in **our** estimate and the new OEM parts used in the **repair**.
 4. **We** will not take a deduction for depreciation. **We** will take a deduction if prior damage has not been **repaired**. Prior damage does not include wear and tear.
- C. Personal property contained in **your covered auto**. The limits of liability described below are separate from the limits available for a **loss** to **your covered auto**.
1. **Our** limit of liability under Comprehensive Coverage and Collision Coverage is the lesser of:
 - a. The amount necessary to replace the damaged or stolen property; or
 - b. \$250.

2. **We** will not take a deduction for depreciation.
- D. Under Rental Reimbursement Coverage, **our** maximum limits of liability are the limits of liability shown on the Declarations for Rental Reimbursement Coverage for that vehicle.
- E. Under USAA Roadside Assistance, **our** limit of liability is the reasonable price for the covered service.

PAYMENT OF LOSS

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

LOSS PAYABLE CLAUSE

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

(PART D Cont'd.)**WAIVER OF COLLISION DEDUCTIBLE**

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

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

EXCLUSIONS

We will not pay for:

1. **Loss** to **your covered auto** which occurs while it is being used to carry persons for a fee. This exclusion (1.) does not apply to:
 - a. A share-the-expense car pool; or
 - b. **Your covered auto** used for volunteer work when reimbursement is limited to mileage expenses.
 2. Damage due and confined to:
 - a. Road damage to tires;
 - b. Wear and tear;
 - c. Freezing; or
 - d. Mechanical or electrical breakdown or failure, including such damage resulting from negligent servicing or repair of **your covered auto** or its equipment. **We** will pay for ensuing damage only to the extent the damage occurs outside of the major component (such as transmission/transaxle, electrical system, engine including cooling and lubrication thereof, air conditioning, computer, suspension, braking, drive assembly, and steering) in which the initial mechanical or electrical breakdown or failure occurs.
- This exclusion (2.) does not apply if the damage results from the total theft of **your covered auto**, and it does not apply to USAA Roadside Assistance.
3. **Loss** due to or as a consequence of war, insurrection, revolution, nuclear reaction, or radioactive contamination.
 4. **Loss** to a camper body or trailer owned by **you** or any **family member** that is not shown on the Declarations. This exclusion (4.) does not apply to one **you** or any **family member** acquires during the policy period and asks **us** to insure within 30 days after **you** or any **family member** becomes the owner.
 5. **Loss** to any **nonowned vehicle** when used by **you** or any **family member** without a reasonable belief that **you** or that **family member** is entitled to do so.
 6. **Loss** to equipment designed or used to evade or avoid the enforcement of motor vehicle laws.
 7. **Loss** to any **nonowned vehicle** arising out of its use by **you** or any **family member** while employed or otherwise engaged in **auto business** operations.
 8. **Loss** to **your covered auto** while it is rented or leased to others, or shared as part of a personal vehicle sharing program.
 9. **Loss** to any vehicle while it is being operated in, or in practice for, any **driving contest or challenge**.
 10. **Loss** resulting from:

(PART D Cont'd.)

- a. The acquisition of a stolen vehicle;
- b. Any legal or governmental action to return a vehicle to its legal owner; or
- c. Any confiscation or seizure of a vehicle by governmental authorities.

This exclusion (10.) does not apply to innocent purchasers of stolen vehicles for value under circumstances that would not cause a reasonable person to be suspicious of the sales transaction or the validity of the title.

11. **Loss** resulting from use in any illicit or prohibited trade or transportation.
12. Any **loss** arising out of any act committed:
 - a. By or at the direction of **you** or any **family member**; and
 - b. With the intent to cause a **loss**.
13. **Loss** caused by **fungi**, wet or dry rot, or bacteria. This means the presence, growth, proliferation, spread, or any activity of **fungi**, wet or dry rot, or bacteria. This exclusion (13.) does not apply to damage directly resulting from a **loss** covered under Comprehensive Coverage or Collision Coverage.

NO BENEFIT TO BAILEE

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

OTHER SOURCES OF RECOVERY

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

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

This provision does not apply to USAA Roadside Assistance.

APPRAISAL

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

PART E – GENERAL PROVISIONS

BANKRUPTCY

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

CHANGES

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

(PART E Cont'd.)

B. If, during the policy period, the risk exposure changes for any of the following reasons, **we** will make the necessary premium adjustments effective the date of change in exposure. Change in exposure means the occurrence of an event listed in B.1. through B.7. or in E. below, or a similar event that may increase or decrease the policy premium. **You** agree to give **us** notice of any exposure change as soon as is reasonably possible. Changes that may result in a premium adjustment include, but are not limited to, the following:

1. Change in location where any vehicle is garaged.
2. Change in description, equipment, purchase date, registration, cost, usage, miles driven annually, or operators of any vehicle.
3. Replacement or addition of any vehicle. A replacement or additional vehicle is a **newly acquired vehicle**.
4. Deletion of a vehicle. The named insured may request that a vehicle shown on the Declarations be deleted from this policy. The effective date of this change cannot be earlier than the date of the named insured's request unless **we** agree to an earlier date.
5. Change in date of birth, marital status, driver's license information, or driving record of any operator.
6. Addition or deletion of an operator.
7. Change, addition, or deletion of any coverage or limits.

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

D. If **we** make a change which broadens coverage under this edition of **our** policy without additional premium charge, that

change will automatically apply to **your** insurance as of the date **we** implement that change in **your** location. This paragraph does not apply to changes implemented with a revision that includes both broadenings and restrictions in coverage. Otherwise, this policy includes all of the agreements between **you** and **us**. Its terms may not be changed or waived except by endorsement issued by **us**.

E. Deployment.

1. If, because of **your** active-duty deployment in one of the military services of the United States, **you** have reduced the coverage on **your covered auto** and placed the vehicle in storage, then, upon **your** return from the deployment, **we** will reinstate the coverage that was on the vehicle prior to the deployment-caused reduction beginning on the date the vehicle is removed from storage.
2. Any reinstatement of coverage under E.1. will apply for up to 60 days after the date **you** returned from deployment. If **you** wish to continue the reinstated coverage beyond the 60-day period, **you** must request it during the 60-day period. If **you** request reinstated coverage after this 60-day period, any coverage **we** agree to provide will be effective at the date and time of **your** request unless **we** agree to an earlier date.
3. **You** must pay an additional premium, as set out in Part E, Changes, B.7., for the reinstated coverage. However, if **you** return from deployment on furlough or emergency leave for a period of 30 days or less, **we** will waive any increase in the premium for the period of time **you** are on furlough or emergency leave, provided that no claim for coverage under this policy is made for a loss that occurs during that time period. If a loss occurs **we** will, as of the date of the loss, reinstate the coverage that was on the vehicle prior to the

(PART E Cont'd.)

deployment–caused reduction, and **you** must pay an additional premium for that coverage.

CONFORMITY TO LAW

If any of the terms of this policy conflict with state or local law, state or local law will apply.

DUTIES AFTER AN ACCIDENT OR LOSS

We will not be required to provide coverage under this policy unless there has been full compliance with the following duties:

- A. **We** must be notified promptly of how, when, and where an accident or loss happened. Notice should also include the names and addresses of any injured persons and of any witnesses.
- B. A person or entity seeking any coverage or payment of any benefits except payment under Part A – Liability must:
 1. Cooperate with **us** in the investigation, settlement, or defense of any claim or suit.
 2. Promptly send **us** copies of any notices or legal papers received in connection with a suit, accident or loss.
 3. Submit, as often as **we** reasonably require:
 - a. To physical exams by physicians **we** select. **We** will pay for these exams.
 - b. To examination under oath. The examination must be signed.
 4. Authorize **us** to obtain medical reports and other pertinent records.
 5. Submit a proof of loss when required by **us**.
 6. Promptly notify the police if a hit–and–run driver is involved.

- C. A person seeking benefits under Part B – PIP Coverage must also submit a written proof of claim when required by **us**.
- D. A person seeking coverage for **PD** under Part C – Uninsured Motorists Coverage and Underinsured Motorists Coverage, or coverage under Part D – Physical Damage Coverage must also:
 1. Take reasonable steps after loss to protect **your covered auto** and its equipment from further loss. **We** will pay reasonable expenses incurred to do this.
 2. Promptly notify the police if **your covered auto** is stolen.
 3. Permit **us** to inspect and appraise the damaged property before its repair or disposal.

LEGAL ACTION AGAINST US

- A. No legal action may be brought against **us** until there has been full compliance with all the terms of this policy. In addition, under Part A, no legal action may be brought against **us** until **we** agree in writing that the **covered person**, as defined in Part A, has an obligation to pay, or the amount of that obligation has been finally determined by judgment after trial.
- B. No person or organization has any right under this policy to bring **us** into any action to determine the liability of a **covered person**, as defined in this policy.
- C. Unless **we** agree otherwise, any legal action against **us** must be brought in a court of competent jurisdiction in the county and state where the **covered person** lived at the time of the accident.

MISREPRESENTATION

We do not provide any coverage under this policy for any person who has knowingly concealed or misrepresented any material fact or circumstance relating to this insurance:

(PART E Cont'd.)

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

1. Under Part B – Medical Payments Coverage or Part B – PIP Coverage.
 2. Under Part C, to UIM Coverage.
- C. With respect to payments under Part C – UM Coverage:

NON-DUPLICATION OF PAYMENT

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

OUR RIGHT TO RECOVER PAYMENT

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

1. Under Part B – Medical Payments Coverage or Part B – PIP Coverage.
2. Under Part C:
 - a. To UM Coverage to the extent that such payment does not exceed the minimum limits specified by the South Carolina Motor Vehicle Financial Responsibility Act; or
 - b. To UIM Coverage.
3. Under Part D, against any person using **your covered auto** with a reasonable belief that that person is entitled to do so.

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

1. If a **covered person** has prosecuted to judgment a suit against any party at fault, **we** will be entitled to an assignment of the judgment to the extent of payment under this insurance that does not exceed the minimum limits specified by the South Carolina Motor Vehicle Financial Responsibility Act.
 2. **We** will pay **our** proportionate part of any reasonable costs and expenses incurred for any recovery, including reasonable attorneys' fees. However, **we** reserve the right to retain an attorney of **our** choice to pursue a claim instead of reasonable attorneys' fees.
 3. If a **covered person** making a claim for **PD** under Part C of this policy is also entitled to any other compensation for the **PD**, **we** will not be obligated to pay a claim until the **covered person** has assigned **us** the rights to the compensation. This applies only to the extent of payment under UM Coverage that does not exceed the minimum limit specified by the South Carolina Motor Vehicle Financial Responsibility Act.
- D. If the **covered person**, as defined in this policy, recovers from the party at fault and **we** share in the recovery, **we** will pay our share of the legal expenses. **Our** share is that percent of the legal expenses that the amount **we** recover bears to the total recovery. This does not apply to any amounts recovered or recoverable by **us** from any other insurer under any inter-insurer arbitration agreement.
- E. If **we** make payment for a claim under Part A, and the **covered person**, as defined in Part A:

(PART E Cont'd.)

1. Knowingly concealed or misrepresented any material fact or circumstance relating to this insurance; or
2. Failed or refused to comply with the duties specified in this policy and prejudiced **our** defense of the liability claim by such failure or refusal;

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

- F. If **we** make payment for a claim under Part D and **you** or any **family member** has knowingly concealed or misrepresented any material fact or circumstance relating to this insurance, then **you** shall reimburse **us** to the extent of **our** payment.

OWNERSHIP

For purposes of this policy, a vehicle is deemed to be owned by a person if leased under a written agreement to that person for a continuous period of at least six months.

POLICY PERIOD AND TERRITORY

- A. This policy applies only to accidents and losses which occur during the policy period as shown on the Declarations and within the policy territory. The policy territory is the United States of America (USA), its territories and possessions, Puerto Rico, and Canada, including transportation of **your covered auto** between any ports of these locations.
- B. The policy territory also includes Mexico, subject to the following conditions:
1. All coverages afforded by the policy are extended to include coverage during trips into Mexico. This applies only to loss or accident that occurs within 75 miles of the USA border.
 2. Any liability coverage afforded by the policy is extended to include the remainder of Mexico, but only if **you** have valid and collectible liability coverages from a licensed Mexican

insurance company at the time of loss. This paragraph (B.2.) applies only if the original liability suit for **BI** or **PD** is brought in the USA.

3. Coverage under this policy does not extend:
 - a. To any **covered person**, as defined in this policy, who does not live in the USA.
 - b. To any **covered person**, as defined in this policy, **occupying** a vehicle which is not principally garaged and used in the USA.
 - c. To any vehicle which is not principally garaged and used in the USA.
4. The words "state or province" as used in the Out of State Coverage provision in Part A of the policy do not include a "state or province" of Mexico.
5. Losses payable under Part D of the policy will be paid in the USA. If the vehicle must be repaired in Mexico, **our** limit of liability will be determined at the nearest point in the USA where repairs can be made.
6. Any insurance **we** provide will be excess over any other similar valid and collectible insurance.

REDUCING THE RISK OF LOSS

We may occasionally provide **you** with products or services that assist **you** in preventing or reducing the risk of loss, and may provide an incentive for **your** use of these items.

SPOUSE ACCESS

- A. The named insured and **we** agree that the named insured and resident spouse are "customers" for purposes of state and federal privacy laws. The resident spouse will have access to the same information

(PART E Cont'd.)

available to the named insured and may initiate the same transactions as the named insured.

(2) During the 90 days immediately preceding the last anniversary of the effective date.

B. The named insured may notify **us** that he/she no longer agrees that the resident spouse shall be treated as a "customer" for purposes of state and federal privacy laws, and **we** will not permit the resident spouse to access policy information.

c. For any other reason not prohibited by law.

B. Nonrenewal. If **we** decide not to renew this policy, **we** will send notice to the named insured shown on the Declarations. This notice may be delivered to the named insured, mailed to **you** by postal mail to the most recent address **you** provided to **us** or sent electronically if **we** have **your** consent and agreement on file to receive documents electronically. In any event, notice will be sent at least 15 days before the end of the policy period.

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

D. Other Termination Provisions.

1. Proof of mailing or electronic transmission of any notice will be sufficient proof of notice.

2. If this policy is cancelled, the named insured shown on the Declarations may be entitled to a premium refund. The premium refund, if any, will be computed according to **our** manuals. However, making or offering to make the refund is not a condition of cancellation.

3. The effective date of cancellation stated in the notice will become the end of the policy period.

TERMINATION

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

1. **You** may cancel this policy at any time, but the effective date of cancellation cannot be earlier than the date of the request unless **we** agree to an earlier date.
2. **We** may cancel this policy by sending notice to the named insured shown on the Declarations. This cancellation notice may be delivered to the named insured, mailed by postal mail to the most recent address **you** provided to **us** or sent electronically if **we** have **your** consent and agreement on file to receive documents electronically. In any event, **we** will give at least 15 days notice.
3. During the first 90 days this policy is in effect, the policy may be cancelled for any reason.
4. After this policy is in effect for 90 days, or if this is a renewal policy, **we** will cancel only:
 - a. For nonpayment of premium;
 - b. If **your** driver's license, or that of any driver who either resides in **your** household or customarily operates **your covered auto**, has been suspended or revoked. This must have occurred:

(1) During the policy period; or

TRANSFER OF YOUR INTEREST IN THIS POLICY

A. **Your** rights and duties under this policy may not be assigned without **our** written consent. However, if the named insured

(PART E Cont'd.)

shown on the Declarations dies, **we** will provide coverage until the end of the policy period for:

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

TWO OR MORE AUTO POLICIES

- A. If this policy and any other auto insurance policy **we** issued to **you** apply to the same accident, the maximum limit of **our** liability under all the policies will not exceed the highest applicable limit of liability under any one policy.
- B. This provision does not apply to Part C – UM Coverage and UIM Coverage.

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LEASED AUTOS - ADDITIONAL COVERED PERSON

This Endorsement forms a part of the auto policy to which it is attached.

It is effective from the policy effective date or from the date shown on the amended Declarations.

We agree that, with respect to the covered auto described on the Declarations, insurance under this policy applies to the leasing or rental agency(s) named as an additional covered person, but only to the extent that such agency qualifies as a covered person under Definition 3. of covered person in Part A - Liability Coverage of this policy. Our inclusion of this additional covered person does not operate to increase the limits shown on the Declarations.

The insurance for any described auto which is held under any leasing, rental, or similar agreement expires in the following cases:

- (1) The lease or rental agreement is revoked or terminated; or
- (2) The additional covered person takes possession of the auto.

We further agree that if the named insured elects to cancel the policy or change coverage, we will give written notice of the cancellation or change in coverage and its effective date to the additional covered person. If we decide to cancel the policy, we will give the same advance notice of cancellation to the additional covered person as we give to the named insured listed on the Declarations.

We may send notices to the additional covered person either by mail or by electronic means. However, if the additional covered person requests in writing that we not send notices, including notice of cancellation, we will abide by that request.

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ACCIDENT FORGIVENESS

When a premium for Accident Forgiveness is shown on the Declarations:

1. If you or any family member shown as an operator on the Declarations:
 - a. Is involved in an at-fault accident that occurs after the effective date of this endorsement, we will waive any premium increase under this policy that would otherwise be applied for the first such at-fault accident.
 - b. Was involved in an at-fault accident forgiven in a policy written by us or one of our affiliates and such operator was removed from that policy and added to this policy without any gap in coverage, we will continue to forgive the accident on this policy for the remainder of the period of time the premium increase would have occurred under this policy if there are no other at-fault accidents for which premium is waived under this policy.

We will waive the premium increase for only one at-fault accident per policy period, regardless of the number of operators shown on the Declarations.

2. We will waive the premium increase for the at-fault accident in Section I for the period of time during which:
 - a. This endorsement is in effect; and
 - b. A premium increase for such at-fault accident would have otherwise applied to this policy.

The Accident Forgiveness Endorsement must remain in effect during any renewal period of this policy over the full accident forgiveness period for the premium increase waiver to remain in effect.

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Page 1 of 1

ROA 133

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

JILL S. AMORUSO,

Plaintiff,

vs.

UNITED SERVICES AUTOMOBILE
ASSOCIATION d/b/a USAA,

Defendant.

IN THE COURT OF COMMON PLEAS

C/A No.: 2022-CP-08-01971

MOTION TO ALTER OR
AMEND JUDGMENT

Pursuant to S.C.R.C.P. 59(e), Plaintiff hereby moves the Court for an Order altering or amending its Order dated November 29, 2023 (filed November 30, 2023) granting Defendant's Motion for Summary Judgment and denying Plaintiff's Motion for Partial Summary Judgment law with respect to her First Cause of Action (Declaratory Judgment and Reformation).

The grounds for this motion are as follows:

1. While the Court found that *Miller v. Aiken*, 364 S.C. 303, 613 S.E.2d 364 (2005), "is dispositive" of the issues before it, the Court failed to apply the holding in *Miller* properly. In *Miller*, the Supreme Court held that "an automobile insurer providing **only** collision insurance to its insured should not be required to make a meaningful offer of UIM." *Id.* at 308, 613 S.E.2d at 367 (emphasis in original). Here, however, as the Defendant admitted (Answer, ¶ 9) and the Court found (Order, p. 1), the policy Defendant issued to Plaintiff provided liability insurance and other coverages in addition to collision coverage. Therefore, the holding in *Miller*, plus the statutory mandate in S.C. CODE ANN. § 38-77-160 (1976, as amended) required Defendant to offer UIM coverage on the 2016 Montana and 2007 Adams.

2. The Court misconstrued S.C. CODE ANN. § 38-77-30(9) (1976, as amended). Under that statute, trailers such as the 2016 Montana and 2007 Adams are considered “motor vehicles” for purposes of the automobile insurance code. The Court erred in concluding that the statute requires trailers to be self-propelled inasmuch as the express statutory language demonstrates the term “self-propelled” applies only to vehicles attached to trailers (“‘Motor vehicle’ means every self-propelled vehicle which is designed for use upon a highway, including trailers and semitrailers designed for use *with these vehicles*” (emphasis added)).
3. The Court erred in finding that the 2016 Montana and 2007 Adams were only intended for “incidental use[] on a highway” (Order, p. 3) when the fact that Defendant insured the trailers for collision coverage demonstrates that they were intended for highway use, unlike the farm tractor discussed in *Anderson v. State Farm Mut. Auto. Ins. Co.*, 314 S.C. 140, 442 S.E.2d 179 (1994).
4. The Court erred in relying upon *Jack’s Custom Cycles v. S.C. Dept. of Revenue*, 439 S.C. 35, 885 S.E.2d 433 (Ct. App. 2023) – a tax case, not an automobile insurance case governed by Title 38 of the South Carolina Code – in which the Court of Appeals did not apply the S.C. CODE ANN. § 38-77-30(9) definition of “motor vehicle” applicable to motor vehicle insurance but a different, inapplicable definition of “motor vehicle.”
5. The Court failed to reform the policy to include UIM coverage.

For the foregoing reasons, the Court should alter or amend its Order to deny the Defendant’s Motion for Summary Judgment and instead grant the Plaintiff’s Motion for Partial Summary Judgment.

Respectfully submitted,

CLAWSON FARGNOLI UTSEY, LLC

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Attorneys for Plaintiff

December 4, 2023
Charleston, South Carolina

RECEIVED

Apr 16 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Jennifer B. McCoy, Circuit Court Judge

Appellate Case Number: 2024-000107

Jill S. Amoruso.....Appellant,

v.

United Services Automobile Association d/b/a USAA.....Respondent.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal Contains all material proposed to be included by any of the parties and not any other material.

CLAWSON FARGNOLI UTSEY, LLC

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April 16, 2024
Charleston, South Carolina