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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Clifton B. Newman, Circuit Court Judge

Appellate Case No. 2023-001289

Tasha Jones and Shaniqua Thompson, ... Respondents,

v.

Lyndon Southern Insurance Company,
Safe Choice Insurance, LLC, and
Jupiter Managing General Agency, Inc, Defendants,

Of which

Lyndon Southern Insurance Company is the .... Appellant.

RECORD ON APPEAL
VOLUME II

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MR. LAKE: No further questions. Please answer any questions defense counsel may have.

THE COURT: Yes, sir.

MR. HELMLY: Your Honor, I'd like to reserve my examination for Mr. Fishbein for my case in chief.

THE COURT: Yes, sir, you may.

MR. HELMLY: Thank you.

You may step down.

(THE WITNESS EXITS THE STAND.)

THE COURT: Call your next witness.

MR. LAKE: Your Honor, the plaintiffs would call Constance Anastopoulo.

CONSTANCE ANASTOPOULO, BEING DULY SWORN, TESTIFIES AS FOLLOWS:

CLERK: Please state your full name for the record.

WITNESS: Professor Constance Anastopoulo.

CLERK: Thank you. You may be seated.

VOIR DIRE EXAMINATION BY MR. LAKE:

A. Good afternoon.

Q. Do you mind providing a jury a little bit of your educational background?

A. Certainly. Can you hear me, or should I wait for the microphone? He's going to...

THE COURT: We're going to work on the microphone.

(A PAUSE.)

THE COURT: We can start and hopefully it will pick up.

A. All right. So, I went to college at the University of Virginia, where I majored in economics. I then went to work for Prudential Insurance Company as a licensed broker. I did that for four and a half years, and then I decided to go to law school. So, I went to University of North Carolina at Chapel Hill law school. I graduated in 1992. I married my husband in 1993. Between that time, I received a grant from the Z. Smith Reynolds Foundation to work and, and do research. I married my husband in 1993, moved to South Carolina, and I've been here ever since.

I was licensed to practice law in South Carolina in 1994. I am a member of the South Carolina Bar; I am licensed in all courts in the jurisdiction, in this jurisdiction. I've appeared in front of circuit court, Court of Appeals, Supreme Court many times. I have argued before the federal district court. I have argued before the Fourth Circuit in Richmond. Almost exclusively my practice was in the area of insurance law, particularly in the area of bad faith, and so I practiced from '94 to 2007.

In 2007, I was invited by the Charleston School of Law to teach insurance law, and so I took leave from my firm and joined the faculty at the Charleston School of Law in 2007. I came in as an assistant professor. I obtained tenure in 2011. I was promoted to associate professor, and since that time I have been promoted to full professor at the Charleston School of Law, which is the highest rank in academia. And so now I am a full professor at the Charleston School of Law with tenure.

I teach almost every year, I think every year since I've been there, insurance law, particularly focused on South Carolina insurance law.

I write. In order to get tenure, you have to publish. I publish exclusively about insurance law. I've written somewhere, fifteen to twenty different articles, law review articles. I wrote an article about bad faith, and particularly about how it is treated in all fifty states. All of those articles are published. They have been downloaded almost 5000 times.

In addition to that, I also teach lawyers insurance law, and so I do several CLEs, several CLEs a year teaching lawyers continuing legal education, primarily in the areas of uninsured motorist, which is what this claim is about, uninsured motorist and bad faith.

In addition to teaching lawyers, I was actually invited by the Chief Justice of the Supreme Court, Justice Beatty, last year to teach the judges about South Carolina insurance law. So, I actually came up to Columbia and was a presenter at the South Carolina judicial conference.

Several Supreme Court judges, Court of Appeals justices, Circuit Court judges were there, and it was so well received, they actually invited me back in June. So, I again came up to Columbia on June 2nd of this year to teach judges and their clerks the same information, which was about uninsured motorist claims, which again this case is about, uninsured motorist claim, and issues related to, to other stacking in South Carolina.

In addition to that, I have actually been invited to teach insurance law at the University of California at LA, at UCLA, which is a top fifteen law school. So, I will take leave from Charleston School of law next year to teach at UCLA and teach insurance law, which I'm, I'm very excited about.

Q. And so I assume with all of those, do you specialize in bad faith in terms of providing expert testimony and things of that sort, or just insurance as an entire body?

A. Insurance as an entire body. I, I have been an expert in both plaintiff's and defense cases, and I opine about the conduct of the insurer in handling claims, whether they deviated from standard insurance practices, whether they deviate from South Carolina law, and particularly on the issue of bad faith. That, that almost always arises when you're talking about a first-party claim or insured's claim against their carrier.

Q. Okay, and have you ever had -- been qualified as an expert?

A. All of the cases that I have been an expert in, and there have been, gosh, since I've at the law school fifteen years, they've actually all settled.

Q. Okay. All right. Do you believe that your testimony today here will provide the jury with some information that would -- and the court -- some information that will be useful in terms of assisting them in their determination today?

A. I, I do. Insurance is -- one of the things I tell my students is it's actually kind of a different language when we talk about insurance in terms of first party, third party, bad faith, tortfeasor, and so I think it's helpful for a jury, as well as the court, in terms of breaking that down into laymen's terms.

Q. Okay.

MR. LAKE: Your Honor, at this time we choose to admit Professor Anastopoulo as an expert in insurance damages and all things related to insurance.

THE COURT: What says the defense?

MR. HELMLY: No objection from defense, Your Honor.

THE COURT: She is so qualified.

MR. LAKE: Thank you.

DIRECT EXAMINATION BY MR. LAKE:

Q. We're going to walk through couple of things so the jury can understand exactly how certain claims are, are connected and related. How are John Doe claims -- kind of explain that process, how that works.

A. Sure. So, when you're talking an uninsured motorist claim, you're talking about a driver who either is operating a vehicle without permission, a thief who steals your car, runs into you, and runs away from the car or drives off. You don't know who hit you. You suffer damages. Your car is, is wrecked, and as a result of that you don't know who that person is, and that's called a John Doe claim.

South Carolina insurance law, our state requires that every person who has an automobile have two kinds of coverage. One is liability, and that's the coverage for the people you hit. You run a red light and you run into somebody. They bring an action against you as an insured under your liability coverage. The other part that is current mandatory coverage in South Carolina is called uninsured motorist claim. Our legislature has decided that it is so important that we protect our citizens from uninsured drivers -- a driver that comes from another state and hits a South Carolinian, a driver who's a thief who's operating a vehicle without the permission of the owner -- that coverage is required. It's mandatory. So, when you walk out of the insurance agent's office with your policy, you must have liability and you must have UM coverage.

All right, so everybody's got coverage has UM coverage because it's so important, and the minimum standard, the minimum amounts in South Carolina is 25,000 per person, 50,000 per occurrence. So, what that means is if, if there's three people in the car, the insurer doesn't pay 25, 25, 25. They pay 50 and then those three people have to divide it. There's only one person in the car, the limit is 25. If there's two people in the car, it's 25/25, and then again if there's more people in the car, it goes to that occurrence limit, which the minimum coverage is 50,000, which it is in this case.

So, what happens is you're -- you had an accident. The person has hit and run. You don't know who did it, but you suffered damages. Our statutes require, in order to trigger the coverage under your uninsured motorist coverage on your policy, you must file an action against John Doe in order to establish liability because the insurer doesn't owe you a duty until you prove that somebody was at fault. That's the liability part of it. So, you have to, as Ms. Jones and Ms. Thompson did, you have to bring an action against John Doe. That's what triggers the coverage. So, that's what happened in this case. They filed suit against John Doe.

Now, what does that mean with regard to Lyndon? As I've listened to the testimony, they keep saying, well, the judgment's against John Doe. That doesn't -- that's not our insured. Well, technically that is their insured because they have a duty under the policy, as Mr. Fishbein just read, that if there's an uninsured motorist claim, they have the right to defend that claim, and they have to pay the damages associated with that claim if the plaintiff proves liability.

In this case, liability was not an issue, and so when Ms. Jones and Ms. Thompson filed suit, they properly served it on Lyndon and Lyndon didn't answer. The defendant has thirty days -- in this case, the insurer -- thirty days to answer. After that time, the window closes. They don't get to just do nothing, and when that window closes, then the plaintiff here has the opportunity to move for a default judgment, meaning they haven't answered. We get to keep moving forward, and that's what happened here.

So, once they're -- once the defense is in default, then the proper step is to move for a damages hearing, and you move for a damages hearing by asking the court to address the damages so we can at least get a number that we can submit to the insurer, and that's exactly what happened here.

(A PAUSE.)

Q. And I know you said the defendants in this particular case did not appear on the record.

A. Right.

Q. They did physically appear at hearings, correct?

A. Yeah. So, when you're talking about lawsuits and coming to court and appearing, there are rules and you have to follow the rules. The lawyers have to follow the rules. The court follows the rules. We have to have some parameters about which we bring these actions, and so every lawyer that represents anybody in court has to file a notice of appearance -- I represent this plaintiff; I represent this defendant -- so that the court knows who is properly there to argue the case. So, when you appear in court, you have to file a notice of appearance so the court is aware of that.

In this case, they didn't answer. They were found to be in default, and then the damages hearing was scheduled, and then the attorney appeared at that hearing, but he didn't file a notice of appearance and asked for a continuance. So, the judge, Judge Hood, allowed him to continue. In fact, the plaintiffs consented to it. Allowed them to appear -- I'm sorry, to get a continuance to give them time to file that notice of appearance and to properly make a motion for a continuance.

The damages hearing was rescheduled, and someone else appeared on behalf of Lyndon to defend the action or argue about the damages in the case, but they still had not followed the rules of the court. The judge had told them they must file a notice of appearance. They failed to do that. The judge said you can't -- nobody can just walk in the door and start arguing. You have to follow the rules. They didn't do that, so the judge let the damages hearing proceed.

The judge determined that the damages in the case were 50,000 to Ms. Thompson, 50,000 to Ms. Jones. That's the order of the court. The defendant then -- in this case Lyndon -- has an opportunity to say Your Honor, you got it wrong. You file a motion to reconsider; you file what's called a remittitur. You say Judge, your number's too high. You got to lower that number, or you appeal it.

But again there's a window that you can do that. They didn't do any of those things. And so you have one year to file what's called a 60 -- a 60(b) motion to say Your Honor, there was -- there was fraud, there was a mistake, there was something. On day 365, they filed a 60(b) motion. And as you heard Mr. Fishbein read that order, Judge Manning denied that motion and said you haven't produced any evidence to this motion, and so he denied it.

At that point, the window closes completely. That judgment is a valid judgment and order of the court, and you don't have the right to say, well, yeah, we kind of showed up. We kind of don't like the number. We're not going to pay it. That's not South Carolina law. When that order comes in, they can't say, well, we didn't do all the things we were supposed to do. We didn't -- we don't have a -- we don't have a duty to defend that action, but we don't like that number, so we're not going to pay it, and that's what happened here.

Q. And as it relates to -- is any of that conduct you just described, is any of that conduct reasonable?

A. It is wholly unreasonable. It is unreasonable to have a judgment that is a valid judgment that you failed to file a proper notice of appearance, you failed to file a motion for continuance, you failed to file any of the post-judgment actions available to you, and six years later that judgment still has not been paid. The insurer -- let me back up.

When you enter a contract with an insurance company, as Ms. Jones did here, both sides owe duties, right? The insurer owes a duty to its insured, and primarily that duty is based on we're going to treat the insured with good faith and fair dealing. We're going to treat them fairly, and the insured also owes a duty. Pay your premiums. Make sure the coverage is valid. If there's a claim, file a notice of claim. So, both sides owe duties.

When one side breaches that duty, that's called a tort, and I teach torts, too, so that's called a tort. And so the contract creates both a duty within the contract but it also creates a larger duty in tort, and that is that we have to treat our insureds with good faith and fair dealing. When they breach that duty because of unreasonable action that causes damage to the plaintiff or the insured here, that's what creates the tort. And so, again, their failure to pay the claim, their failure to pay the judgment, their failure to negotiate in good faith. Here, they offered, they made two offers to the plaintiffs here below the minimum, below their medical records.

Q. What's your opinion as to the reasonableness of making an offer below the medical records?

A. My opinion is that it's insincere, that it's unreasonable, and I would assert that it is willful, wanton, reckless conduct to, to not negotiate in good faith with the insured knowing what those medical records are and making an offer such as that.

And, quite honestly, I've been practicing thirty years in this state. When you get an offer like that, it is -- it is so unreasonable that you don't spend a lot of time trying to negotiate from that point. Generally what plaintiffs do is, is go ahead and file suit, which is what happened in this case.

Q. There's been some testimony that Ms. Jones had policy limits of 25, 50, 25. Explain -- I think we kind of talked about that. What does that mean in laymen's terms?

A. So South Carolina, we have this funny way of referring to policies: 25, 50, 25 or sometimes 100, 300, 100. That just means 25,000 per person, 50,000 per occurrence. So as I said, if there were ten people in Ms. Jones's car, the occurrence limit would be 50,000. So, that 50,000, generally what happens is the insurer will pay that money into the court and let the multiple plaintiffs decide how to allocate that money, but they know what the damage limit is. It's 50,000 per occurrence.

Q. Now, if she -- if Ms. Jones had limits to, I guess, 25 per person and 50 total in this particular accident, why is she entitled to recover in excess of those policy limits?

A. Yes. So, I've heard a lot about the fact that -- a lot of testimony on this issue of, well, we have a policy limit. That's all we have to pay. We have a policy limit. Mr. Fishbein keeps referring to a statute. Again, I have practiced law in this state for thirty years. That is an incorrect and misrepresentation of the law in the state of South Carolina. Our jurisprudence does not limit an insurer's duty to pay exclusively or on the limits.

There is an exception to that, and here's the exception. We have case law in South Carolina dating back to 1933. There's a case called *Tyger River*. Since 1933, we have a ton of cases: *Cock and Bull*, *Tadlock*, *Tremper*, *Nichols*. All of those cases stand for the proposition of *Tyger River*. And *Tyger River* says, and I want to be sure that I quote it exactly right. *Tyger River* says that: An unreasonable refusal to settle subjects an insurer to tort liability. That's the first part. Second thing it says is: An insurer is liable in tort for an amount of the judgment in excess of the limits.

So, what that means is when an insurer has the ability to come in and defend an action and they don't do it, or they don't do it properly, or they fail to offer the insured the limits when they have an opportunity to do that, then they are liable for the excess judgment. So, every time I hear them say, well, we don't have to pay it, we have a limit, that simply is not consistent with South Carolina law.

Q. And I think we heard Mr. Fishbein indicate that, you know, he doesn't practice law in South Carolina. That is my understanding. Possibly doesn't know the law in South Carolina.

A. He certainly is not quoting or representing the law of South Carolina as our jurisprudence allows for an excess judgment, and again this dates all the way back to 1933 to the *Tyger River* case. And in that case, the insurance company -- the insured got an excess judgment against him, and he gave it to the insurance company. They said, oh, we're just responsible for the limits. Not our problem, and our court said no. When you have an opportunity to settle a case within the limits and you don't do it, you're liable for the excess judgment, and that's what happened here.

So, when, when Mr. Fishbein says, well, that's against John Doe, that's what triggers their duty. That's required by Ms. Jones and Ms. Thompson to do that to trigger their duty to pay, and they did that. And again, I think it's a misrepresentation for them to say we only have to pay our limits. That's not our law.

Q. And I know that *Tyger River* applies to third parties and *Nichols* applies to first parties.

A. That's correct. *Nichols* is a first-party claim, an insured's claim. So, *Nichols*, he filed an action. The insurer would not settle the case, and he got an excess judgment, and *Nichols* says the same thing that *Tyger River* said. If you have an opportunity, insurer, to settle within the limits and you fail to do that, then you're liable for the excess judgment.

Q. And did you see any evidence other than that first offer that was sent to, to Ms. Jones and Ms. Thompson? Have you see any other offers from Jupiter -- sorry, either

Jupiter or Lyndon to settle this case within the policy limits?

A. No, and I, I reviewed all the pleadings. I reviewed the correspondence. I reviewed the claim file. I reviewed the emails. I've reviewed, gosh, everything in this file, and I haven't seen anything that indicates that they made an offer within the limits.

Q. And I don't know if I asked you this initially, but could you explain what a bodily injury claim is, a property damage claim is so -- the jury doesn't quite understand what both of them are, what they signify.

A. Yeah. So, there's, there's two parts to an automobile accident claim. One is the property damage. That's your car, to get your car fixed or in this case, their car was totaled. Ms. Jones's car was totaled. They're really two separate kinds of claims. It's, it's -- the property damage always happens pretty quickly because you know. Here's the estimate to fix it, or the car's totaled. Here's a check. So, that's a -- that's a pretty fast thing that happens.

The second part is bodily injury claim. What is -- what is the passenger and the insured, the driver in this case, what bodily injury? That's separate coverage, so again that's 25, 50 in this case. 25,000, 50,000 per occurrence in this case.

That takes a little bit longer to, to resolve because the insured, Jones and Thompson here, getting medical treatment. And generally once you submit those medical bills, there's a process that happens. The claim filed here is, is -- well, there's a rule in insurance. If it's not in the claim file, it didn't happen. If it's not written down, it didn't happen. The claim file stops any entries at a certain point, and then nothing else happened. So, that's the rule.

Q. And we're just talking about property damage claims. Does South Carolina prescribe a deductible amount for deductibles in this particular case?

A. Yes. So, we, we have a statute as well as the policy here. So, we have a statute in South Carolina that says an insurer can only charge, pursuant to the statute, can only charge a $200 deductible on a UM claim, an uninsured motorist claim. So, when I -- when I heard Ms. Jones testify as she was asked, well, why didn't you do this, why didn't you do that, why didn't you notice, that's not her duty. Again, it's the duty of the insurer to apply their provisions of their policy in paying the insured. She's not a lawyer; she's not an insurance person. She doesn't have a responsibility to apply the proper deductible to the pavement. That's the responsibility of the insurer. And, and I would opine that their failure to apply their own --

their own provision as well as the South Carolina statute with regard to the deductible is willful, wanton, reckless conduct and, and really it's unconscionable.

Q. Would what you expect an adjustor or a vice president of claims to at the minimum know what the statutory deductible limit is in South Carolina?

A. Yes, I would expect that, and, and often times insurers do audits of their own policies, their own claims to make sure they get it right. You've heard, well, it's a -- it's a -- it's a mistake. We made a mistake, but there is supposed to be a process by which mistakes get caught. Often time insurers audit. They have a review of the claim. Again, none of those things happened because nobody caught it, and it's the insurer's responsibility to do that.

Q. Have you see any evidence of any audit on any files from Lyndon in terms of discovery?

A. No, I haven't seen any audits. In fact, I think at your deposition -- I read Mr. Fishbein's deposition -- he said he hadn't even looked at the file.

Q. And what about have you seen any policies or claims found in the files?

A. I believe you asked Mr. Fishbein in his deposition about policies and procedures or claims, claims handling manual. So, again, I, I've been doing this thirty years.

I've dealt with every insurer, every major insurer. I've never, I've never seen an insurer say we don't have a claims practice manual. We don't have policies and procedures. We don't have guidelines. That is a deviation from standard insurance practices. Insurers are required to have a process, again, rules by which claims are adjusted to ensure fairness, equity, process, that the steps are followed.

Mr. Fishbein testified in his deposition we don't have those things. It's on the TPA or the third-party adjustor. The third-party adjustor is just an arm of the insurer. They can't say that's not our responsibility because they hired that adjustor. They have a responsibility to hire good adjusters or third-party adjusters and to oversee them, to ensure that they're doing it the way Lyndon's policies requires. And again, those don't exist, so that is a deviation from standard insurance practices, and I think not having policies and procedures is willful, wanton, reckless conduct.

Q. So, it's not reasonable. That would be fair? That's not reasonable conduct on their part not to have these things.

A. It's unreasonable, and again it's not standard practice in the insurance industry.

Q. What about as it relates to requiring your insureds to file to recover damages?

A. So, to sort of understand what an insurer's duty is, one is they have a responsibility to try and resolve claims, and again to treat insureds fairly. When they force an insured to file suit, and in this case they had to file on the John Doe claim. Then they had to appear at a damages hearing; they had to reappear at the second damages hearing. They had to file the judgment. They had to file an order to get the judgment paid. All of those things are, are unreasonable to require someone to whom they owe a duty to have to jump through so many hoops in order to get paid what they're owed under their own policy is unreasonable, and again I think it's willful, wanton, reckless conduct.

Q. You were talking about -- talking about duties. Explain to the jury what does that mean in relation to duties that the insurer owes to their policyholder and duties that the insurer -- duties between the, I guess, a TPA and the carrier itself.

A. So, again, both sides when you enter an insurance contract owe duties to each, and both of them are to treat each other fairly and in good faith. The insurer has a duty also to oversee their third-party adjustors, the people that they hired to handle the claims to make sure they're done properly, to make sure that the limits are properly addressed.

Here, the authority was 25,000 when the limit was 50. They, they, they never authorized more money. And again as Mr. Lake said yesterday, the, the third-party adjuster Jupiter here was trying to, to wedge in all of the damages into 25 because that was only the authority but yet the limit was 50. So, they offered, I think he said, $25,025 to try and get it under that 25,000. That's the insurer's duty, to make sure that the third-party adjustor knows the limits, has the proper authority to resolve the claim, that they oversee an audit, and make sure that the TPA is following their practices and procedures, and none of that happened here, which is unreasonable.

Q. And does South Carolina law consider or recognize when offers are made below medical expenses in terms of what type of terms need to be made to a -- to a -- to a claimant?

A. I'm not sure I understand that.

Q. What is -- what is South Carolina's view on offering to settle claims in an amount less than the coverage?

A. Yeah. Again, so our legislature has promulgated what is called an Unfair Claims Practices Act. There is no private right of action in that act, meaning that the plaintiff can't say, well, you violated that act. You owe me money. But what it is instructful is that our legislature said there are parameters we recognize as an Unfair Claims Practice Act, right? One of the provisions of that is making fair and reasonable offers on claims. Offering below the medicals, again, it's at worst, I don't know, insincere, unreasonable, and then to expect the plaintiffs to have the responsibility to negotiate the medicals is -- it's, again, I think it's unconscionable.

Q. So, South Carolina also recognizes it as improper, correct?

A. Yes.

Q. What are the things that you saw in this particular case that would apply to what South Carolina has designated as improper claims handling?

A. Well, not having policies and procedures or guidelines in place would, would, would constitute improper claims practices. As our act, 38-59-20, knowingly providing misleading information with regard to coverage, telling her her deductible's 500 when it's not, it's 200, that's a provision of our improper claims.

Failing to acknowledge with reasonable promptness pertinent communications. As you heard Ms. Jones say, she called and called and called, left voicemail. Never got responses to those. That's improper.

Failing to adopt, implement reasonable standards for investigation. They don't have any. Mr. Fishbein said we don't have any claims practice manual. We don't do that. We leave it to somebody else, but they, as the insurer, owe that to the insureds.

Not attempting in good faith to effect prompt, fair, equitable settlement, that goes to the issue of offering below the medical records. Compelling policyholders to institute suits to recover amounts reasonable -- reasonably due and payable, again, we talked about that. They've had to continue to try to even get the judgment paid, which is a judgment, order of this court. Still haven't paid that. Offering to settle claims an amount otherwise less that reasonable, well, again, that is unreasonable to offer below the medicals.

So, those are just some of the provisions that I think the conduct of the insurer rises to the level of unreasonable and willful, wanton, reckless.

Q. And that was about six things we're talking about.

A. Yes.

Q. Six. Okay. Now, I notice we're talking about the amount of the medicals. Do you know what the legal definition is subjectively objective?

A. I've never heard that term; in all the years I've been teaching insurance law, I've never heard objectively subjective.

Q. Subjectively objective.

A. Oh, subjectively objective. As Mr. Lipshultz sais yesterday -- and he's been in the insurance business fifty years -- to, to say that we send the medical bills out and we have somebody else decide what they are without talking to -- I think Mr. Fishbein said, well, she went to the emergency room two times. We thought that was unreasonable. They didn't talk to Ms. Thompson about why she had to go to the ER two times. They didn't ask her about it. They didn't talk to their doctors. To have this objectively subjective or subjectively objective third party alter the amount of the bills is unreasonable.

Q. And why would you say that?

A. Again, they didn't talk to the -- to the people who got treated. The doctor -- they're, they're basically stepping into the shoes of their care providers, their doctors and saying, yeah, we didn't think they needed that. Yeah, we made a decision about that. That's unreasonable.

Q. Do we know whether the individuals that made this determination were either doctors or adjusters, or do we know who they were?

A. Don't know who they were. Mr. Fishbein said, well, sometimes they're doctors. Sometimes they're nurse practitioners. Sometimes they're adjusters. I don't think he knows who they are.

Q. Is that reasonable?

A. That's unreasonable.

Q. Explain Ms. Thompson's -- you've already explained Ms. Jones was a policy holder, correct?

A. Correct.

Q. What, what relation does Ms. Thompson play as relates to an uninsured motorist claim, bad-faith claim, how these things should be handled.

A. Yeah. So, the, the -- we have a statute in South Carolina called the Omnibus Statute, and that identifies insureds under our statute, and those are the named insureds, which Ms. Jones was, a resident spouse, resident relative, a permissive user which is, you know, I loan you my car to, to go to the store for me. That's a permissive user or a guest, which is a passenger. Those are by statutory definition an insured under the policy.

So, if Ms. Jones is in an accident and Ms. Thompson is in the car, she's a guest in the car; therefore, she's an insured. But she's not just an insured under the statute. She's an insured under this policy.

As Mr. Fishbein just read, she's an insured under this policy because she is a guest with the permission of the owner/operator, Ms. Jones, in the car. So, she is an insured under the statute, and she is an insured under this policy, which gives her standing to bring this action.

Q. And when you say standing to bring this action, that means breach of -- breach of contract, bad faith?

A. Yes.

Q. Even though she is not a main person on the policy per se?

A. That, that's right, and again I teach insurance law. I teach these cases. I update all the new cases as they come down. I am -- I am unaware of any requirement that a bad-faith claim is limited to the named insured.

Q. And we're talking about a summons and complaint. How long do you typically have to respond to a summons and complaint after service?

A. So once you file it, you have to serve it on the defendant, and the defendant has thirty days to answer. They can ask the court to expand that time. Your Honor, we need to do this, that. Can we get an extension? And typically that's granted, very commonly, but they have thirty days to answer.

Here they, they, they never answered. They never answered the summons and complaint, which is the next step is to move them to be in default, which they were.

Q. And to this date, have you ever seen an answer filed in that particular case?

A. No.

Q. My understanding, there's no evidence that they ever filed a -- did you see any evidence of them filing a motion to continue as Judge Hood had ordered?

A. No.

Q. What does it mean for a judge to give you an order?

A. It means you'd better do it, that it -- it is -- an order of the court and failure to do that subjects you to contempt of court.

Q. And what does a contempt of court -- what does that mean?

A. You can be held liable for civil fines, for criminal fines because we have, again, we have to have a process. And if the court makes an order, it has to be followed. If, if we didn't have that process, then the legal system would collapse.

Q. It appears from looking at -- I'm going to show you a couple of documents, what's been marked as Plaintiffs' Exhibit Number 4 -- it's either 4 or 14, and I think it -- I'll take you to the next page.

A. Yes.

Q. And we'll start, I guess, on -- right here on -- can you say what date they actually received that summons and complaint?

A. So, this is the claim notes from the claim for Ms. Jones and Ms. Thompson, and the entry on February 1, 2018, by Terry James, was, I think, is the, the supervisor of Phil Levesque. Says: New lawsuit received.

Q. What does it impose upon Lyndon to do at that particular moment upon receipt of that?

A. They are now on notice that a lawsuit has been filed. So, they have responsibility to answer it, if they so choose, or not to. If they answer it, they don't defend the claim, which is their right -- they can sit on their hands and knees and do nothing -- they don't have the ability to say, yeah, we didn't do anything, we didn't answer, we didn't -- we didn't properly appear at the damages hearing, but we don't like the number, so we're not going to pay it. That's unreasonable. They can't do that. They can't have it both ways. They either have to answer and, and argue about the damages or not, but they can't have it both ways.

Q. And is that the law of South Carolina?

A. With regard to?

Q. That they can just not appear, not do anything, and then still be bound to the limits of just the policy itself?

A. That is not our jurisprudence in South Carolina, no.

Q. And then what's the next action that you see after that particular date?

A. Not til November 13th -- I'm sorry, after. There's nothing after that.

Q. Let me show you.

A. Oh, I'm sorry, 6/28.

Q. What, what ---

A. Yeah.

Q. --- corresponds to that particular date?

A. So, that is entered by Phil Levesque, who is the adjuster, and he says:

> Going through the file and came across suit attached in file. Sent to defendant counsel Randy Helmly new lawsuit claim.

Q. How would you describe that in terms of reasonableness in what is reasonable to not do anything on that summons and complaint for, I guess, a couple of months?

A. Yeah, for almost five months nothing was done. That's unreasonable and, and it's, it's, it's more than negligence. It's gross negligence to have a lawsuit sitting in your file and do nothing for almost five months. The plaintiffs had the right to proceed, and ultimately they did move for a default.

Q. And is there any sense of time? I think you said we have a -- plaintiffs have a right to proceed. Is there a timeline or reasonable timeframe for, I guess, things move along before the -- defendant to do something to in a particular matter?

A. Well, they should file an answer in thirty days or ask for an extension of time, and they failed to do that. And,

and it was sent to their counsel, but I've never seen an answer filed.

Q. And so what's the next activity that occurred on that case?

A. It's 11/27/18: Emailed defense counsel RE claim status our file claimants Jones, Thompson, and Mack. Am I reading that right? Yeah.

Q. So, then we have another gap in time but where nobody's doing anything on the file.

A. Right. So, you have -- you have initially a four or five gap between the time that the lawsuit's received and the time that they find it in the file and send it to their counsel, and then you have another several month gap before they emailed to find out what's going on.

Q. And so is that unreasonable conduct?

A. No. Again, the insurer owes a duty to the insured to timely resolve the claim. They can't just do nothing. That's -- these huge gaps deviate from the standard insurance practices, and they breach the duty of good faith and fair dealing to treat the insured fairly.

Q. You just testified about standard practices. What do you mean by that? Are there standard practices?

A. There are standard practices. So, there is an entity called the National Association of Insurance Commissioners, and that's where, like, all these insurance executives and,

and people get together, and they promulgate model standards by which claims should be adjusted, should be dealt with. And, and, quite honestly, South Carolina basically kind of lifted those model rules and dropped them into a statute, and that created our Improper Claims Practice Act. So, lot of the things that I talked about under our Improper Claims Practice Act are -- come from the model rules promulgated by the insurance industry.

Q. And did you see any evidence that either Lyndon or Jupiter were following these standards?

A. No evidence, no.

Q. Have you seen any evidence that they had any sort of standards?

A. No, and in fact, you asked Mr. Fishbein to provide any policies, procedures, guidelines, standards, claims practice manual, and he said we do not have them. And again, in my thirty years of dealing with South Carolina insurance law, it's willful, wanton, reckless to not have at least some standards with regard to policies and procedures to adjust claims.

Q. And what's the importance of having these things as it relates to adjusting claims?

A. Again, it's to follow procedure, and it, it keeps the insurer on track, it keeps the insured being treated fairly because there's, there's a process and without a processes, it's just willy-nilly, which is kind of what happened here.

Q. So, you're finding just like Mr. Fishbein -- not Mr. Fishbein, Mr. Lipshultz everybody's just doing what they want to do?

A. Yes.

Q. It that reasonable?

A. That's unreasonable, and again policies and procedures, every insurer that I've ever dealt with have policies and procedures in place to adjust claims.

Q. And they also have audits, too, in terms of them catching mistakes, correct?

A. Yes.

Q. Are those audits, are they materialized in, in written form or some sort of form that allows -- there is the entity, for everyone within that entity to know?

A. Yes. There's usually a process for audits, that they are, are done somewhat randomly, but there's, again, a process in place. Everybody's got to follow rules. There's a process in place that files are audited to ensure that they follow practices, policies, and procedures, to ensure that the provisions of the policy have been appropriately applied by the insurer, all of those things. That didn't happen here, and they don't seem to have an audit system.

Q. You never saw any evidence of an audit system, right?

A. I've never seen anything to indicate their audit process.

Q. And we've talked about the word reasonable and unreasonable and things of that sort. Why is that such an important word when it comes to these type of bad faith actions?

A. Yeah. So, let me back up and just explain bad faith because we hear this term. What does it mean? In South Carolina, there is the tort of bad faith. What that means is that the -- that, that one party owes a duty to another party and when they breach that duty because they're unreasonable, that creates a breach of the duty, which creates the tort, okay?

So in South Carolina, our standard for determining whether or not bad faith has occurred is whether the insurer acted reasonably or unreasonably, and that's why it's so important to talk about whether the insurer is reasonable. Our standard is simply a negligence standard: were they careless, not careless? Reasonable, unreasonable? That's the standards in South Carolina.

Q. And how does that relate as it comes to damages?

A. So, when there's -- so, this case is interesting because there's really three buckets of damages in this case. The first bucket is the judgment, right? So, Ms. Jones and Ms. Thompson have a judgment for 50,000 apiece.

It hasn't been paid in a number of years. That judgment collects interest, and I think Mr. Lake mentioned that it's about 25,000 apiece, so that bucket is the judgment, which is the 50,000 plus the interest, which is maybe somewhere around 75,000. So, that's one bucket.

The second bucket here is the bad-faith claim. Was the insurer reasonable in how they treated the insured or were they unreasonable? That's a separate tort damage. It arises both out of the contract and in tort, and so that, that is a separate claim with separate damages associated with it for basically requiring these plaintiffs to spend six years to get money they're owed.

The third bucket is a punitive damage award, and that arises when the insurer is, is -- acts in a way that rises to a level of gross negligence or willful, wanton, reckless conduct. And that bucket is a damage to publish the insurer to say you can't treat people like this. You can't do this again to somebody else. So, it's both -- it's punitive in nature. It is to deter this insurer or any other insurer from treating people the way they did in this case.

Q. I notice something you said earlier. You said they're owed this money.

A. They're owed. They're owed this money. They have a judgment, yes.

Q. And I'm assuming your, your opinion is they are owed the entire amount of judgment plus the interest?

A. Yes. Again, pursuant to our laws in South Carolina, if the insurer is unreasonable in settling the claim within the policy limits and they force the insured to go and get a judgment in excess of the policy limits, the insurer is liable for that excess judgment.

MR. LAKE: Just another second.

(A PAUSE.)

THE COURT: More questions?

MR. LAKE: Yes, sir. Just one second. Just making sure.

(A PAUSE.)

Q. Just kind of wrapping it up, in your professional opinion, has Lyndon acted reasonably?

A. No.

Q. Have you ever seen an insurance company without policies and procedures?

A. No.

Q. Without claims manuals?

A. No.

Q. Without any concrete knowledge of industry standards?

A. No.

Q. Why are all these things important?

A. Again, it ensures that the treatment of the insureds, Ms. Jones and Ms. Thompson and other insureds under their policies, are treated fairly because there's a process in place that requires them to follow rules. This insurer doesn't seem to follow any rules, including an order from the court, an order from the judge to, to file a notice of appearance, to file motion to, to continue, and, and so again I think that rises to the level of willful, wanton, reckless contact.

Q. And have all your opinions been to a reasonable degree of professional certainty as to whether Lyndon acted reasonable or unreasonable in the handling of this claim involving both Ms. Jones and Ms. Thompson?

A. Yes.

Q. And is there any other conduct that we have not discussed so far as relates to Lyndon or Jupiter's conduct that you would consider unreasonable?

A. Well, Mr. Fishbein testified that he had -- he had not seen the judgment. He hadn't seen your demand for payment of the judgment in fifteen days. So, when a party, whether it's the insurer or whether it's the plaintiffs in this case, are represented by counsel, the other attorney cannot communicate directly with them. They have to go through the attorney. Again, it's a process.

So, when, when Mr. Lake sends it to their counsel, that's all he can do. He can't send it directly to the insurer because he is not permitted to contact or communicate directly was a represented party. They're represented. The plaintiffs are represented, just like Mr. Helmly cannot call the plaintiffs in this case. So, when he said, well, I've never seen it, that, that just doesn't ring true.

Q. And as it relates to Jupiter, is Lyndon responsible for all the conduct of Jupiter?

A. Yes. They are their agent. They are responsible. They have a contractual relationship, so whatever carelessness, recklessness conduct of Jupiter is imputed to the principle here, which is Lyndon.

Q. And when you say imputed, just in laymen's terms, what does that mean?

A. That means that whatever they do means that Lyndon did it, too.

Q. Okay.

MR. LAKE: No further questions. Please answer any questions counsel has.

THE COURT: Ladies and gentlemen, we will break now for lunch; we'll take one hour for lunch. Please do not discuss the case.

(THE JURY EXITS AT 1:00 PM.)

THE COURT: We will be in recess until 2 o'clock.

(OFF THE RECORD.)

THE COURT: Anything before we proceed?

MR. LAKE: Nothing from the plaintiff, Your Honor?

MR. HELMLY: Nothing, Your Honor.

THE COURT: Yes, and I think waiting for a juror to come back.

(A PAUSE.)

THE COURT: Bring them on.

(THE JURY ENTERS AT 2:06 PM.)

THE COURT: All right, cross-examination.

MR. HELMLY: Thank you, Your Honor.

CROSS-EXAMINATION BY MR. HELMLY:

Q. Good afternoon, Professor. How are you?

A. Good. Thank you.

Q. In your prior testimony, you explained to the jury about *Tyger River*. You know, that's a term that we use, we're familiar with. Can you -- what the -- what are the typical mechanics of, say, a -- I guess when we talk about a *Tyger River* demand, you know, that process and how that typically carries out in your experience?

A. Not sure I understand the question.

Q. You know what a *Tyger River* demand is, right? I mean.

A. We don't call it demand. We call it an offer of settlement. So, the plaintiff make an offer of settlement.

Q. Okay.

A. To settle the case.

Q. A *Tyger River* offer of settlement then, how does that typically work?

A. Yeah. So, the plaintiff generally makes offer of settlement, and there is a negotiation back and forth, and the objective of the insurer it to try to settle the policy or the claim within the policy limits, if that's a reasonable thing to do. Liability is not an issue in this case, so it -- it's just a question of damages and trying to, to come to that number.

If the insurer acts unreasonably in not settling the case within the policy limits, the insured -- insureds, I should say -- then proceed to suit, file suit, get an excess judgment, and the failure of the insurer to settle within the policy limits when it was a reasonable thing to do exposes the insurer to the excess judgment.

Q. Is, is that process -- do you believe that process is the same for a uninsured motorist claim?

A. Yes.

Q. Okay. There's no distinction between a, a *Tyger River*, which contemplates a third-party claim, and an uninsured motorist claim, which is a first-party claim?

A. Well, as I mentioned, there are several cases that apply, including *Nichols*, which is a first-party claim, and so *Nichols* stands for the same proposition. The plaintiff in that case could not get the insurer to settle. Went to suit. Got an excess judgment, and the court held that the insurer was responsible for the excessive judgment in failing to settle the claim within the policy limits, and that was a first-party claim insured.

Q. Did they get -- did they get an excess judgment, or did they simply get a judgment and then were entitled to damages on top of that?

A. They were ---

Q. Or compensatory and, and punitive damages on top of that?

A. Yes, they were entitled to consequential damages, yeah.

Q. Isn't one of the linchpins of, I guess, this case law the opportunity to settle within policy limits?

A. Yes, if the -- if it's a reasonable thing to do, the insurer has an opportunity to settle within policy limits.

Q. Based on the demands or offers of settlement that were submitted in this case, do, do you agree, do you not agree that they were never given the opportunity for that settlement, given that all of the demands were above policy limits?

A. Not at all. The, the plaintiff has an opportunity to, to start the negotiation at whatever number they feel is reasonable. And, in fact, the court found that their claims were 50 -- were valued at 50,000 apiece.

Q. But ---

A. So, the plaintiff has an opportunity to start the negotiation, and, and Mr. Lake initiated that by making an offer of settlement. The offer of settlement allows the insurer to do three things. It can reject it, they can accept it, or they can counter. Here they countered below medicals. It, it was a wholly unreasonable counter, and it really left the plaintiffs here no option but to file suit to proceed to get this thing resolved.

Q. So, when you -- so, is it your contention that if the carrier or third-party administrator, when they get someone's medical package, that they have to take those medicals on face value, and it's unreasonable to undertake a review and then make a -- make a offer based on their review?

A. It depends on the review. So, I, I think here they sent it out to some third party who said, yeah, she went to the emergency room twice. We don't think that's right. They didn't speak to her. They didn't speak to their doctors. That's unreasonable.

Q. How -- that offer came in with a demand package from Mr. Lake and, therefore, they can't speak to her. They can only look at the medical records and then evaluate, correct?

A. They can absolutely speak to her through her attorney, yeah. They're represented by as counsel, and they have an opportunity to talk to their attorney about discussing that review of the records.

Q. You've mentioned on several occasions and Mr. Lipshultz mentioned on several occasions that, hey, we're making an offer. It's way up there. We're just getting -- we're getting the negotiations started, and that's plural and that suggests it contemplates some sort of back and forth. They didn't make any sort of counter to the original offer, correct?

A. Who? Who didn't make a counter to the original offer?

Q. The plaintiffs.

A. They made an offer.

Q. They made an offer and then ---

A. Yeah.

Q. --- the offer they received from the carrier was below what they wanted, and so they did not -- they choose not to make a counteroffer, correct?

A. Well, I'm, I'm not sure they have to make a counteroffer when, when the response to their offer of settlement is, is so out far of the range of what's reasonable. You know, to spend six months negotiation -- negotiating with an insurer who says we're not even going to pay your medicals, good luck, I think they took the appropriate step and that was to go ahead and file suit and let the court decide what the damages are.

Q. When you say six months, you're, you're attaching a long timeframe, but they had to complete their treatment before they could submit a medical package, correct?

A. Yes.

Q. So, there's, there's actually some -- a timeframe built into, correct?

A. Correct.

Q. Okay. So, they get the rental car promptly, pay the property damage promptly, they submit the MedPays promptly, and then from, from, you know -- or excuse me, after they pay the property damage, there's a period of time where there's waiting for them to finish their treatment. So, the six months is, is inconsequential, correct?

A. That, that's not the six months to which I am referring. I'm saying the file -- they, they send a demand package. They make an offer of settlement. The insurer responds with what in essence is kind of a ridiculous offer below medicals. Then ---

Q. Have you reviewed the medicals? Have you seen the medicals?

A. I think I have, yes.

Q. But did you -- so, you're familiar with all the medicals, and so did you review them and, and per your review, you found nothing in those medicals that, that could be contested or questioned? The number of treatments, the reasonableness of certain treatments?

A. That's not my job. I'm not a doctor. I don't review medical records to determine the reason, whether there is appropriate care or necessary care. That's not my job. That's their doctors' job, and they followed their doctors' instructions with regard to getting treatment. So, that's absolutely outside of the purview of what I do.

Q. But if there's something in there that's questionable that leads them to believe that we, we might not should consider this, then, then it's reasonable for them to take something like that in consideration.

A. I'm not sure I understand the question. That they consider, they being the insurer, says we don't like the fact that you went to the ER twice? We get to take that out?

Q. Whatever the case may be based on the injuries sustained. What you're saying is that -- your, your testimony is that they can never offer below the medicals?

A. I'm not sure I said that. I said what they offered was unreasonable given what the medicals were.

Q. But ---

A. It would be -- I mean, I guess there could be a scenario where a person said, well, I have to go to Switzerland to get treatment. That, that might be unreasonable, but that's not what happened here. They followed their doctors' instructions, were transported to the hospital, so.

Q. Again, they didn't -- they didn't look at it and say, well, we want this or make a counteroffer. Did they ever make an offer to say pay me the limits of the policy?

A. There was never an offer made by the insurer that was reasonable, and they never offered the limits either. There's nothing in the file, and as I said earlier, the rule is if it's not in the claim notes, it didn't happen. So, there's nothing in the file to indicate that the insurer made an offer to settle for the balance of the -- of the per occurrence limit, which was, I guess, 42,000. So, they, they, they don't have to negotiate against themselves, no.

Q. By that same token, does the carrier have to negotiate against themselves?

A. No, but they have to be reasonable and treat the plaintiffs fairly, and they just didn't do that in this case.

Q. Based on one offer.

A. A ridiculous offer, quite frankly, so far below the medicals, it's unreasonable for them to continue negotiating with an insurer who's not taking their medicals ---

Q. A third ---

A. --- appropriately.

Q. A third claimant accepted. I mean, is that not some, some evidence it's reasonable? Somebody thought it was reasonable.

A. Mr. Mack was unrepresented, and it would be my contention that the insurer took complete advantage of his need to get -- to get paid. They said you're responsible for negotiating this. Here's what we're offering, and he took it. So, I'm not sure he understood his rights, so I don't think you can compare him to these two plaintiffs.

Q. Ms. Jones testified yesterday that even the night before the damages hearing, if the limits were offered, she wouldn't have accepted at that point. Do you ---

A. Is that a question?

Q. --- recall that testimony?

A. I, I don't think she said wouldn't have accepted it, and it, it, it -- what matters here is the court's already determined that the value of the claim, the damages, are 50,000 per person. So, to go behind the judge and say, well, the judge was wrong, she should have taken the -- the judge has decided the damages in this case.

Q. At what point does the carrier get to assert the limits of the policy?

A. I'm not sure I understand the question.

Q. In other words, when, when do the limits apply? So, they always -- your content, your testimony is that any time there's an award above the limits and it's reduced to a judgment, that regardless of what the policy says, they're obligated to pay it.

A. No, that's not what I said at all.

Q. Okay, I want to be clear because that's what it sounds like.

A. That's not what I said at all. The law in South Carolina is if the insurer is unreasonable in settling within the policy limits and they force the plaintiff to go and get a judgment, and that judgment is in excess of the policy limits, then the insurer is responsible. Not just go get a judgment. That's not what I said.

Q. And that's in every case? That's, that's third-party cases and in first-party cases?

A. That's what *Tyger River*s and *Nichols* both say. *Tyger River*s, third party. *Nichols* is first party.

Q. May I -- this is a -- show you this. Tell me what that is.

A. It is a copy of a statute, 38-77-150.

Q. Okay.

MR. HELMLY: And do you want to see this, Dietrich?

MR. LAKE: No. You're fine.

Q. What's the -- what's the title of that statute?

A. Uninsured Motorist Provision: Defense of Action by Insurer Subrogation Assignment of Benefits.

Q. Clear as a bell. Can you read the section that I highlighted for you?

A. Subsection A: No automobile insurance policy

> or contract may be issued or delivered unless it contains a provision by endorsement or otherwise, herein referred to as the uninsured motorist provision, undertaking to pay the insured all sums which he is legally entitled to recover as damages from the owner operator of an uninsured motor vehicle within limits which may be not less than the requirements under 38-77-140.

Q. So, what does legally entitled to recover mean to you?

A. The insurer has an opportunity to settle within the policy limits. That's what it means to me. If the insurer fails to do that and it's a reasonable thing to do, it exposes the insurer to the excess judgment. That's our law; that's our jurisprudence in South Carolina.

Q. Are you familiar with the *Conley* case?

A. No.

Q. Where the court recently decided that legally entitled to recover means has obtained a judgment from the court.

A. Okay.

Q. And, and, and so does this statute not mean that they can go get a judgment, but the statute and the policy which mirrors the statute simply says the carrier is only responsible to pay up to the limits?

A. Well, well, first of all, that's not what the policy says. It doesn't mirror the statute. Mr. Fishbein read the statute with regard -- I mean, the policy with regard to uninsured motorists. It says in the policy we will pay all sums which we are legally obligated to pay. That's the court ordered part of it.

(A PAUSE.)

Q. I'm just going to ask you to read that first section, Insuring Agreement Uninsured Motorist Coverage. I think that's the section you're referring to.

A. Mr. Fishbein already read it. You want me to read it again?

Q. Please do.

A. Insuring Agreement, Uninsured Motorist Coverage.

> If you pay us the premium when due for this coverage, we will pay for damages an insured person is legally entitled to recover from the owner or operator of an uninsured motor vehicle because of bodily injury or property damage sustained by an insured person caused by an accident arising out of the ownership, maintenance, or use of an uninsured motor

vehicle.

Q. I'll ask you to flip over to under that same section beginning at Limit of Liability.

A. Limit of Liability. The limit of uninsured motorist bodily injury liability or uninsured motorist property damage liability shown in the schedule or in the declaration is the most we will pay regardless of the number of injured persons, claims made, vehicle premium shown in the declaration, vehicles involved in the accident, or premiums paid.

Q. So, does that not suggest that there's a limitation to what they're entitle -- obligated to pay under the -- under the policy?

A. There is a limit. However, when the insurer -- again, South Carolina law is clear on this. When the insurer fails to settle the claim within the policy limits and it's a reasonable thing to do, then they are liable for the excess, including an excess over the limit. The insurer can't have it both ways here. They can't say we're not going to show up, we're not going to answer the complaint, we're not going to address the damages, and whatever the judgment is, we still get to apply our limits. That is not jurisprudence in South Carolina.

Q. At the point where Ms. Jones says on June the 5th, the night before the damages hearing, when she said, you know, she said that that at point, she wouldn't even have accepted an offer for her limits, I mean, does that not have an impact on what the carrier's obligation is after that?

A. I don't see how those two things are related, no. You didn't offer. You're saying today, six years later, well, if we have made an offer, would you have taken it. I don't see how those two things are related.

Q. Is there anything that you've reviewed where the plaintiffs said to Lyndon pay us the policies?

A. Again, that's not the process. It, it -- the plaintiff makes an offer of settlement, and the insurer has the ability to respond to that. Here they made an offer that, again, was, was so low that the reasonable thing to do was to go ahead and, and, and file suit and let the court determine what the damages are because they were so far apart.

Q. You, you practiced law at one point, right?

A. I still practice law.

Q. You still practice?

A. I am a licensed attorney in the ---

Q. Are you ---

A. --- state of South Carolina.

Q. --- still with the Anastopoulo firm?

A. I am of counsel, my husband's firm.

Q. So, you're familiar with the -- with the ten-page demand letters that, that your firm generates for, for policy limits demands.

A. I, I you don't write demand -- I haven't seen the demand letters. I'm of counsel, so I don't see those letters. I'm, I'm not familiar with that.

Q. You're not familiar with those letters. Have you ever prepared a *Tyger River* letter and sent it to an insurance company?

A. Yes.

Q. What would your typical letters say?

A. My clients make an offer of settlement. There is a time limit associated with it, and I think in addition I say pursuant to *Tyger River*, if the insurer does not reasonably respond within the time limit, that they could be held liable for the excess judgment. That we will proceed to suit and will be liable for the excess judgment.

Q. So, nowhere in those letters it says pay us the policy limits, using those specific terms policy limits, or else we'll proceed to an excess judgment. Does it use the term policy limits?

A. Gosh, I, I haven't written a demand letter in more than fifteen years. I've been at the law school, so I'm, I'm not writing demand letters, but to my recollection, it's as I said.

Q. Professor, you know that every, every offer of settlement generally instead of just saying a number above the known policy limits -- $65,000 per person in this case -- is not typically found in, in those types of letters.

A. I don't know that to be true.

Q. I think some of the demand letters from your firm were recently under scrutiny in the Court of Appeals. Is that accurate?

A. It is not my firm. You're misstating ---

Q. Excuse me.

A. --- that.

Q. I apologize.

A. Yes.

Q. And those are -- those are demand letters demanding policy limits. Are you familiar with those?

A. They're offers of settlement.

Q. Do they ---

A. I'm not familiar with them because I haven't -- I haven't been in the practice for fifteen years. I've been teaching at the law school, so I'm not -- you're asking me ---

Q. Do y'all talk about *Tyger River* offers of settlement at, at the law school?

A. When I teach insurance, absolutely.

Q. So, you just -- the, the word demand is not something that -- or policy limits is, is something that's commonly used in, in these types of situations?

A. I'm not sure I understand the question. Is the word demand?

Q. Demand or -- what you're saying is that they're offers of settlement, and the words -- you just don't know if the words policy limits are typically used?

A. I haven't seen every offer of settlement in the state of South Carolina. So, I don't know what's typically used. When I teach it, I talk about offer of settlement because I think demand misrepresents what is it, and, and it sounds very final. Offer of settlement is exactly that: it is an offer to settle the case. And again, the insurer has the ability to reject, accept, or counteroffer that.

Q. Well, what if every single offer of settlement that is received is above the policy limits? They're not required to pay amounts above the policy limits in just a negotiation process, correct?

A. No. I never said they were required to pay above the policy limits. There is a limit that is applicable. I don't disagree with that. Where the excess becomes the responsibility of the insurer is when the insurer has an opportunity to settle within the policy limits and unreasonably doesn't do that.

Q. That opportunity has to be presented by the plaintiffs, though, correct?

A. I don't know that to be true. I haven't seen that in the case law.

Q. Well, how does that -- again, you said they don't have to negotiate against themselves. So, I'm going to refer you back to Plaintiffs' Exhibit 9 and, and this is the -- we've established that it's your opinion that those offers are low, but could you just read the paragraph for me?

A. Mr. Lake, we reviewed your demand for Tasha Jones and Shaniqua Thompson. Their medical bills went through an audit. We can make an offer of 7500 for Tasha Jones and 8660 for Shaniqua Thompson. We look forward to resolving this matter. Please contact me after you've relayed this to your clients.

Q. That doesn't say this is it. It's all we've ever going to offer. That doesn't say don't ever -- you know, take it or leave it. I mean, does that -- does that letter sound like it's some rude letter saying that's all we're ever going to offer? That's a pretty open-ended letter just to suggest that, hey, here's our offer. Reach back out to us.

A. But again, as I've said, the offers are so unreasonable that to spend time negotiating with an insurer who says we're not even going to offer your medical bill is wasting their time to get this claim resolved, and here we are six years later. They still haven't paid anything.

Q. Well, it took them -- after that letter was sent, they didn't file a lawsuit for another three or four months. I mean, at no point in time, could they have simply said we think that's unreasonable? Pay us the limits. Did that happen?

A. I, I don't know that that -- I don't think that happened, but I don't think they're required to do that. They don't have to say, oh, well, we're going to keep negotiating. They can proceed to suit, which is exactly what they did. That is standard practice.

Q. And, and likewise there's -- there is no obligation for the carrier to just pony up the limits right out of the gate. I mean, Mr. Lipshultz said to himself -- said himself yesterday never make your best offer first.

A. I didn't say they have to settle for the policy limits. I said they have to settle within the policy limits. That gives them all the room from 50,000 down to whatever that number is reasonable. I think Mr. Mack took 8800 of that. That left 4200 within the policy limits. Never offered that to the plaintiffs here.

Q. I believe there was a -- during Mr. Fishbein's testimony, there was an exchange between he and Mr. Lake where he said otherwise.

A. Again ---

Q. It proceeded ---

A. --- if it's not in the notes, it didn't happen. Claim notes require constant documentation. If it's not in the notes -- he can say anything right now, but it's not reflected in the claim notes and, therefore, according to insurance practices, it didn't happen.

Q. If the -- if they had made that original offer and then suit was filed, and you're saying that offer was unreasonable, the initial offer of 7500 and $8500, and, and participated in the John Doe action and there was an excess judgment at that point, what would they be responsible for?

A. If they -- if they made the offers that they made which were unreasonable, right?

Q. Right.

A. Again, what makes the insurer liable for the excess is the unreasonable action in not settling within the policy limits. If, if the offers are unreasonable, that's what triggers their liability or exposure, I guess is the right word, to the excess judgment.

Q. When did the plaintiffs say to them we are willing to settle within the policy limits?

A. I'm not sure they have a responsibility to do that.

MR. HELMLY: Beg the court's indulgence.

(A PAUSE.)

MR. HELMLY: Thank you, Professor Anastopoulo. Safe travels and best of luck in La La Land.

WITNESS: Thank you.

MR. HELMLY: No more questions.

THE COURT: Any redirect?

MR. LAKE: No, Your Honor.

THE COURT: Thank you. You may step down.

WITNESS: May I be excused, Your Honor?

THE COURT: Yes, you may be excused.

(THE WITNESS EXITS THE STAND.)

THE COURT: And, ladies and gentlemen, we will have you go to the jury room for another break. Please do not discuss the case.

(THE JURY EXITS AT 2:36 PM.)

THE COURT: I have a status conference in another case. We'll take a break with you all.

MR. HELMLY: Thank you, Judge.

(OFF THE RECORD.)

THE COURT: Are there any additional witnesses for the plaintiff?

MR. LAKE: No, Your Honor.

THE COURT: Plaintiff rests.

Any motions by the defense or the plaintiff?

MR. HELMLY: Yes, Your Honor.

THE COURT: First by the plaintiff.

MR. HELMLY: Oh. I'm sorry.

MR. LAKE: Thank you, Your Honor. The plaintiffs would make a motion for a directed verdict. We contend there are no genuine issues of material fact as relates to the breach of contract. There's been two -- testimony from two experts. I don't think there will be any other experts that will be testifying that the conduct of Lyndon and/or Jupiter was not unreasonable. So as a matter of law, Your Honor, I think we'd ask that you direct a verdict in the plaintiffs' favor as relates to the violation of breach of contract and move this issue forward as relates to damages or as to the tort and as well punitive damages.

THE COURT: Yes, sir.

MR. HELMLY: Your Honor, I certainly think that there is a -- as particularly with the breach of contract, I believe that Jones testified that she did not -- I mean, excuse me, Ms. Thompson did not enter into a contract with, with Lyndon for a policy. She's not a party to the contract. She doesn't have privy contract.

Established case law says a, a not-named insured is not considered a party to the contract for the purposes of a breach of contract claim, or a -- satisfying the first element of bad faith requires a mutually, mutu -- excuse me, getting my tongue tied here -- mutually binding contract between the carrier and the insured, and that, that doesn't exist here.

And certainly, Judge, the *Nichols* case is -- while it talks about a first-party bad-faith claim in the context of insured, *Nichols* is dealing with the named insured. Named insured has been ferreted out by case law, and while it may seem like a, a unjust result, that's what our -- that's what our courts have continued to hold.

THE COURT: Judge Hood's order, I believe, is in -- order is in evidence?

MR. LAKE: Yes, sir. There are two versions, and I think the -- definitely one of them.

THE COURT: I want the one that was on the -- filed as a matter of record.

MR. LAKE: I think it would be Exhibit Number 2, I believe.

(A PAUSE.)

THE COURT: All right, based on the testimony, including the admissions by Mr. Fishbein during his testimony, the order of judgment by Judge Hood, and the clear testimony in the record that an insurance contract was entered into, that the defendant has breached that contract in failing to pay pursuant to the contract. So, I direct a verdict in plaintiffs' favor, each plaintiff's favor against the insurance company Lyndon for a breach of contract.

Anything else from the plaintiff?

MR. LAKE: Nothing else from the plaintiffs, Your Honor, other than the fact that we would rest and move forward. I don't know if the defendants intend to call someone else in.

MR. HELMLY: No, Your Honor, the defense is going to rest and stand on Mr. Fishbein's prior testimony.

THE COURT: All right. Then requested jury charges.

MR. LAKE: I've provided -- I don't know what I did with my copy, but I provided some on Monday, the jury charges. Some of them might not be applicable now in light of the court's ruling. I provided a hard copy on Monday.

THE COURT: We use standard charges where applicable, applicable, and not Judge ---

MR. LAKE: Yes, sir.

THE COURT: --- Ralph King Anderson's charges.

MR. LAKE: Yes, sir.

THE COURT: Most of yours cited Judge King Anderson, Ralph King Anderson, and there are standards that cover most of the basic stuff that he has. We have the additional issue in this case of jury charge on the bad faith refusal to pay.

MR. LAKE: Your Honor, I don't think the court has addressed at least one of the charges I had asked for, a spoliation charge in light of the fact there were a number of records that were missing. I think we had two experts that testified there should have been records that would have come post January 21st of 2019. And so, therefore, we're asking that this court charge on the issue of spoliation as well.

MR. HELMLY: I don't...

THE COURT: Yes, sir.

MR. HELMLY: I don't believe it's been established that they actually exist, Your Honor. There's a -- there's a suggestion that they should be there and they are not, but I don't believe that's been...

THE COURT: I agree with the defense. There's no testimony that records existed, and the plaintiffs' position is that there are no policy, procedures, or records, business things that should exist in a reasonable claim file or claim records. So, I'm not charging that.

MR. HELMLY: And, Your Honor, I, I had a directed verdict motion if the court is inclined to hear it.

THE COURT: Yes, sir.

MR. HELMLY: Make a motion on directed verdict for bad faith. And I think the testimony establishes it was bad faith refusal to settle. The testimony establishes that. The defense never had -- was never presented with an opportunity to pay the policy limits. Every demand issued was in excess of policy limits. Ms. Jones testified that as of June 5, 2019, she wouldn't have accepted the limits anyway. So, they were never given a chance to -- never given an opportunity to settle.

And there's a case on point, *Founders Insurance Company v. Richard Ruth's Bar And Grill*, interestingly enough that contemplates a demand from the Anastopoulo Law Firm that includes a demand for a payment of policy limits. And in this case, the terms of the demand that were issued and then what proceeded afterwards presented -- established that there was never an opportunity for them to settle and, therefore, even -- I think this term in this case was even if there was bad faith in the processing of the claim, there can be no bad faith if a carrier's never given the opportunity to settle. I have some copies of that case, Judge.

THE COURT: Yes, sir. Let me see it.

(A PAUSE.)

THE COURT: All right. Well, you've argued it, and we'll hear the response.

Response.

MR. LAKE: They've had six years to settle this case and it hasn't been settled. I think Professor Anastopoulo testified multiple times as to bad faith, as to violations. She went through each one. While the Unfair Claims

Practice Act does -- is a private right of action, it is instructive as to what is considered, you know, bad faith or Unfair Claims Practice Act -- practice activities and things of that sort, and she went through all of them. I think only -- I think six of the eight apply in this particular case. I think one of the biggest things is, you know, the initial offer that they made was unreasonable. So, I think it starts that -- at that particular point. It just kind of continues on.

Well, Your Honor, there's also been, you know, evidence that was presented that there was an offer that was made to Lyndon prior to the damages hearing, and there has never been a response. I don't think there's been any ---

THE COURT: Yeah, we know what the facts are. The response to his argument, including his cite, cite of *Founders Insurance Company*.

MR. LAKE: He hasn't provided me with that, so I'm not exactly sure.

MR. HELMLY: I'm looking for the extra. I have ---

THE COURT: All right.

MR. HELMLY: --- copies.

THE COURT: Well, we'll press on and I'll just start talking about it. This is a declaratory judgment action in federal court. Founders's motion for summary judgment in the bad faith action. The court grants in part and denies part Founders's motion for summary judgment. It's quite interesting that this would be handed up. This is 2016, these Charleston, Mount Pleasant cases.

Patron of Richard's Bar struck Kehagias, and he suffered severe injuries and permanent brain damage as a result. The law firm sent a demand letter and all. Then a lawsuit was filed, Common Pleas Court in Charleston, issue of who was notified, insurance carriers and all that.

As I skim through it, the case, on page -- looks like page 2 on the right side, second to the last paragraph:

> On January 2014, Judge *Nichols*on denied the Ruths' motion to set aside an entry of default in an underlying state court action. Judge Newman held a damages hearing on March 19, 2014, and on April 24th entered a default judgment against the Ruths in the amount of 5 ---

Is that $5 million?

> At the Ruths' request, Smith appealed Judge Newman's default. The same day, the Ruths executed an agreement under which they agreed not to execute the judgment against Ruths, and the Ruths assigned to their right to sue Founders and Hull for bad faith. One day after the assignment, Ruths' personal counsel advised

Founders that the Ruths no longer wished to appeal.

And so this goes on. A motion for summary judgment was filed contending it was entitled to a summary judgment on the claim because it does not provide coverage, as more fully addressed in the court's order. Argued that never had the opportunity to settle the underlying case. Summary judgment on the request for punitive damages, negligence per se. Let's see.

(A PAUSE.)

THE COURT: It appears that Ruth's failed to provide notice as required under the policy and insured didn't give notice. Therefore, the insurance company was substantially prejudiced and so summary judgment granted as it pertains to the breach of contract claim. Then they start -- get to the section about bad faith for failure to settle.

They argued that they cannot be held liable for bad faith because there is no coverage owed under the policy. The claim is based on the failure to process a claim and the failure of insurer to comply with. The obligation of the contract releases the insurer from liability. So, Founders's had their motion for summary judgment granted with regard to bad-faith claim.

(A PAUSE.)

THE COURT: Yes, it's pretty interesting. I did the default hearing and granted $5 million. It's, you know, we're in a pool hall where the guy hit the guy in the head, and he suffered brain damage and, I mean, how much money can you pay someone who was rendered a vegetable based on being hit in the head in a pool hall? And sued the joint, you might say, and they didn't respond. They didn't send the paperwork to the insurance company. So, my involvement was dealing with the default judgment, and I awarded damages in that sum. And so then the next phase of it was the law firm then moving to try to collect on the judgment. Then it became an insurance coverage question, which is the reason why it was declaratory judgment in federal court. And it appears that the gist of it all is because of failure to cooperate, the insured not giving the company an opportunity to adjust the claim. Then, therefore, there's no liability and summary judgement was granted on seemingly most, if not all of the claims. That has no applicability in this case.

MR. HELMLY: Your Honor, in looking at page 13 of that case, it says:

> Even if the court were to hold that there was a genuine issue of material fact as to whether Founders received notice or suffered substantial prejudice, he would be entitled to summary judgment on the bad faith failure to settle the

claim.

It goes on to say that if the carrier doesn't ever have a reasonable opportunity to settle within the policy limits, the claim must fail. And, and this talks about an ambiguous demand letter, and I think that's what we, we've had here with respect to the very first demand that was $80,000 over the policy limits and the ---

THE COURT: Yeah. I ---

MR. HELMLY: --- second demand and, and, and Ms. Jones's testimony saying she wouldn't have accepted limits at that point.

THE COURT: Yeah. Well, those are questions of fact for the jury, and I -- this case would be almost the opposite of the *Founders* case because of the notice given early on to the insurance company. So, all of these issues and your argument really -- really your argument is a jury argument, and I deny the motion for directed verdict on bad faith refusal to pay. That issue will be submitted to the jury in addition to the question of punitive damages, which will be submitted under the *Nichols* case.

All right, any -- where the plaintiff has a separate cause of action for negligence, that negligence is really the, I think, the bad-faith claim. So, you have the breach of contract which the court will instruct the jury that I have determined that the defense breached the insurance contract. Their question is whether or not there's a bad faith refusal to pay and what consequential damages were suffered as a result of that. If they find that there's a bad faith refusal to pay, then what are the consequential -- of course, the first question, I guess, is I'm not sure whether there should be separate damages for breach of contract if no other -- there has to be. They have to determine damages from a breach of contract, then any consequential damages for the bad faith refusal to pay, and then any punitive damages that they -- if there -- which is willful, wanton, and all that.

That, that's how I would see a verdict form going to the jury. First, I don't think any of you have handed up anything along those lines.

MR. LAKE: I had three options on mine. I don't know whether I did it correctly in preparing my verdict form, but that's what I was trying to...

THE COURT: Well.

MR. LAKE: I think it had three separate options.

THE COURT: They have -- they have three options: one, breach of contract; two, bad faith refusal to pay; and three, punitive damages. And all of that is as to each plaintiff.

In the bad faith refusal to -- well, the punitive damages charge is pretty standard, and I'm directing the verdict on, on the breach of contract, so -- and the bad faith refusal to pay is just one sentence -- I mean, one page.

(A PAUSE.)

THE COURT: Everything else is fairly standard other than the bad faith refusal to pay, and she'll make a couple of copies of that.

Anything else we need to talk about?

MR. LAKE: Nothing from the plaintiff, Your Honor.

MR. HELMLY: Nothing from -- nothing from the defendant, Judge.

THE COURT: Do y'all need any more minutes before closing arguments?

MR. LAKE: About two minutes, Your Honor, we should be ready.

THE COURT: About two minutes. Okay, go ahead. It will take them that long to copy those.

(A PAUSE AS COURT REPORTER REVIEWS EVIDENCE WITH COUNSEL.)

THE COURT: Anything before the jury comes in?

MR. LAKE: Nothing from the plaintiff, Your Honor.

MR. HELMLY: Nothing from the defense, Your Honor.

THE COURT: Okay. Bring them in.

We'll have the plaintiff rest, then the defense rest, then tell them it's closing arguments.

(THE JURY ENTERS AT 3:22 PM.)

THE COURT: Welcome back, ladies and gentlemen.

Anything further from the plaintiff?

MR. LAKE: The plaintiff will rest at this time, Your Honor.

THE COURT: All right, ladies and gentlemen, you heard the plaintiffs' case.

Anything further by the defense?

MR. HELMLY: Nothing, Your Honor.

THE COURT: The defense has rested.

So, you have heard all of the testimony, received all of the evidence. It is now time for the lawyers to give their closing arguments. They give their closing arguments. I'll give you a jury charge. Then you will deliberate on this case. It's 3:30.

Where is that teacher? There were two teachers. Oh, oh, three? Four? Goodness. I mean the one with the baby from yesterday. Do you have someone to pick up your baby?

JUROR: No, but it's, it's fine.

THE COURT: Okay. How old is the baby?

JUROR: She's thirteen.

THE COURT: She's fine.

Okay, it's time for closing arguments. Mr. Lake.

MR. LAKE: Thank you, Your Honor.

Good afternoon, ladies and gentlemen of the jury.

This has been a -- I'm not going to have to say it's a fun case or an interesting case, but it is an important case. It's an important case for my client. Whenever you think about, I guess, really the sacrifices that you all made -- because I know it's kind of hard sometimes to pay attention to this stuff. I do it for a living. Sometimes I get a little worn out. I leave out of here, I'm kind of worn out. So, I want to thank you personally. It's probably my only time to tell you all thank you all for taking time to listen to it throughout the entire time. We're at the end, the conclusion of this particular matter.

I want to thank my clients for being here because just like you all took a sacrifice, they had sacrifice to be here. Tasha just started a job, had to be off, is not getting compensated, and those are things that you all -- we ask you all to think about when it comes to damages and things of that sort.

Ms. Thompson had to take time out. She just had a baby six days ago. So, she has really been struggling throughout this entire time. So, she's got a little six-year-old daughter. So, it's been a while since.

But as I sit here, I think when I first started this opening, I think told you all I want to kind of have a conversation with Mr. Fishbein to figure out why, why are we here today six years later, and I'm not sure whether you all got any answers about why you're here, whether their conduct is even slightly reasonable. You've heard two separate experts tell you that it wasn't, and you never heard any other expert tell you differently.

I will tell you that your job is going to be a little bit easier. It's going to be easier because the judge is going to tell you he's already found as a matter of law that they breached the contract. So, all you're really here doing today now, because we proved our point, that they breached their contract. Now we're really just talking about damages and why you should award significant damages in this particular case.

You remember when I talked about when we first started off about how they really feel about this entire matter? And one of the things I told you, they don't care. That is their process.

You think about this timeline. Accident happened on June the 15th. We hadn't paid you to settle this bodily injury claim. We don't care. You offer below the medicals on both of these cases. You know why they offer you something like that? Because they don't care. Who offers someone below their medicals and tells you you have to be responsible for negotiating your own medicals to get them down? And to tell Mr. Mack in order to get his check, which is below also, that he had to agree. You only tell people that when don't care about them.

These guys have left South Carolina in terms of the auto. They're down there in Florida. They could care less about drivers here in South Carolina. They could care less about Ms. Jones.

You keep someone's $300, and this thing is by statute and their own policy. All their documents, they knew from the very beginning that this was an uninsured motorist claim. So, they knew this was $300, but what they're counting on if that you don't know, that you don't check behind them. But guess what? You're not supposed to check behind them. They're the ones that are supposed to protect you. You go to them so that if I hit someone, you're going to take care of me. You're going to indemnify and take care of those other people. Or if someone that I hit or someone hits me and they don't have any insurance, that you're going to take care of me. You don't go to your own insurance company expecting them to take $300 out of you. And think about how many other people they've done that to. Do you think she's the only person?

You saw no auditing records. You saw no policies and procedures. What insurance company in today's world doesn't have policies to follow? Ones that don't care. What kind of company doesn't have industry standards where they can tell you what those industry standards are?

Company doesn't care. You'd have to care to put some effort into anything.

Think about this right here. 2022 is when I took Mr. Fishbein's deposition, and he had not bothered to look at the very document that would determine or had determined what her damage amount was, and he is the vice president of claims. He is the person that decides what's going to go above 25,000, and not one time in this world did he authorize that. You never saw one document, one piece of paper, one email where he authorized anything about $25,000. Ladies and gentlemen of the jury, you cannot settle a case with three people and their medical expenses are over $30,000 total with 25,000 unless you're getting over on them.

They got over on Mr. Mack. They're just mad because they didn't get over on these ladies. But guess what? They had a lawyer. She handled that property damage with them. They didn't handle that property damage me. They weren't going to get by me. So, only when you have to hire a lawyer to file suit do you find bad faith, do you find unlawful conduct.

Did you ever get -- did he ever give you a reason why once he found out he still didn't make a phone call and go out and request that check? Why? Do y'all really think they intend to cut that check six years later? He knows what statute of limitations means. That means the time has gone by, so you can't file suit after a certain time. If she doesn't -- they don't want to give it back. Guess what? They don't have to give it to her because she has lost her right to sue them to get that $300. That may seem small to you, but it wasn't to her. $300 is a lot of money to a lot of people depending upon your circumstances. And the very people that are supposed to protect you are the very people that was harming you, and that's what we've got in this particular case.

Lyndon only did things for Lyndon. Tell me one thing in this case that they did right. They didn't pay Mr. Mack right. They didn't pay her all her money in terms of the property damage. They didn't pay her for her bodily injury claims, bodily injury claims. What did they do besides keep their money?

And what do they do with that money? All that money they have in their bank, you think it's just sitting there waiting? No. I imagine they've invested that money. There's a variety of things that they could have made money off of the policies and the money they did not pay her.

So, when you wonder why you have to get someone's attention because guess what? $50,000 didn't get their attention. $50,000 apiece is $100,000. That didn't get their attention. He didn't even bother to look at the document. Can you imagine that? $1000 -- I know if I get something that says I owe $100,000, I'm going to look at that document. I'm going to look at it immediately, but he didn't even bother to look at it. Interest on that thing is $25,000 apiece now. So, that's $150,000, and he still has not bothered to do anything. That's the way you know that they don't care.

You can't get a chance to redo things of -- life doesn't give you get a chance to redo when it comes to damages and things of that sort. The only thing that she can do right now is to ask for compensation to punish them, ask for compensation as relates to the damages, consequential damages, damages as relates to the bad faith, and consequences as relates to punitive damages. And when you think about those three sets of damages -- you'll have an opportunity to do -- it's important to kind of consider all of the factors that come into play.

So, when I tell you that they've had to wait six years, that's a factor to consider. When they tell you they had to come to court multiple times, that's a factor you all can consider. They're here away from their jobs, away from their families, that's what you can consider. When you're crying on the stand, frustrated, have anxiety because they still have bills that are still outstanding six years later.

Do you believe that if Ms. Jones didn't pay her premium, they would cancel that policy? They would cancel that policy so quick. Wouldn't cover one single dime, but what have they done? They have done nothing. They have not lived up to the deal, to the bargain, to the contract that they entered into, and that's what the judge is going to tell you. They breached their contract, their duty to their own policyholder.

And then what's so strange and so puzzling about this entire matter, I looked at some of the offers that were made. She was offered less than Ms. Thompson. That's their policyholder. They talk about, oh, we was going to offer you -- we would have offered you this right here. We'd have offered you -- well, where is it?

More importantly, ladies and gentlemen of the jury, did you ever remember what that range was for settling this case that they set in stone? They keep coming up here, telling you, and what that is is red herrings, misleading. Say, oh, she wasn't going to take it and she wasn't going to do this, she wasn't going to do that.

The settlement for -- in their own records, the settlement range for Ms. Jones was 7500 to $9100. They never were going to offer the rest of it. Even if they gave her $9100, still less than the medicals. Ms. Thompson's range was 8660 to 9900. If you add those two up together, that's not $42,000. That's with their own records. You've seen nothing else. You'll have a chance to take this back there, but you will see no other evaluations where they have made a higher offer, or that they valued this case higher, or that Mr. Fishbein himself gave them authorization. So, when you look at this timeline, you'll get an opportunity to kind of feel what they felt over this timeframe when you say they don't care.

They talk about their offers. Lawsuit filed and received. The lawsuit was filed February the 12th, served on them. June 28th is the first time they look at it and hand it over to Mr. Helmly. Already late on this, mind you, but the default hasn't been entered in that particular moment. So, what were they doing between February and June? Nothing. You know why they weren't doing anything? Because they didn't care.

Next time you see something -- well, actually, June 28th, default entered against Lyndon Southern. That means they had roughly about, what, three months that they could have appeared and avoided this entire situation, but you know what? They didn't care. They didn't bother. So, what was going on this entire time? That's not reasonable to not look at a file, especially when you know there's been a suit filed.

Then we skip another couple of months. Claims adjuster emailed Randy Helmly requesting update regarding liability analysis damages settlement value. Have y'all ever seen that? The reason why you don't see it, because they didn't bother to do it because they don't care. This is what people do when they don't care. They don't even follow up on the very things that they've got to document.

Received notice of the court hearing on damages January 30, 2019. That's when they sent it to Mr. Helmly, Randy, and Mr. Fishbein. So, when Mr. Fishbein said he didn't know much about this case, ask yourself why don't you know about this case because you knew right then with that email it was a damages hearing. He is the person that decides everything above 25,000. No notes, no response, no communication from the very person. Why? Because he doesn't care. There are no notes from Mr. Fishbein at all in this file. No responses, no nothing.

Wouldn't you expect someone who makes the decision, makes the call to decide whether they're going to give somebody one penny above $25,000, you'll see a note, a response, something? Because you know why they didn't do that? Because she was just another claim. We're not here in South Carolina anymore. What can they do to us?

Remember they kept saying they sued John Doe? They didn't sue Lyndon. You remember how many times they kept saying that, and we had to have an expert explain that.

That's what they want you to think. Oh, you sued John Doe, so if you didn't sue us directly, it don't matter. Well, guess, ladies and gentlemen, guess what? That's why we're here today. They forced us to come forward and sue them to show that they breached that contract by their own actions, and the judge agreed.

They asked for a continuance. We gave them a continuance. They had to do two things, two things. They showed you they don't follow orders because the judge gave them -- the judge have them two things to do. File a notice of appearance, file a notice just letting the court know who you are. You can't do that, the bare minimum. That's Lyndon. File for motion for a continuance. Never done. Two orders by a judge that you just completely ignore. How do you ignore a judge? You only ignore a judge when you don't care. I know I would never ignore a judge. I'll bet you Randy would never tell you he will ignore a judge. He knows, but when you're not here, you don't practice in South Carolina, doesn't bother you. Doesn't affect you personally because remember we sued John Doe in that case.

Come June 6, 2019, nothing done. Ladies and gentlemen of the jury, let's all go to what's unreasonable. If you know there is something to be done, if you know you've got to file a notice of appearance, you know you've got to file

-- oh, and by the way, that order for a continuance has never been filed even though the judge ordered it. But we get here for the damages hearing, have an opportunity to contest anything they wanted to. They didn't really -- keep trying to say, oh, we didn't have to be here. They appeared. Asked them if you didn't have to appear and you don't care about appearing, why are you there on two separate occasions on January 30th and on June the 6th? You know why. They wanted to try to keep those damages down, but they hadn't done the things that they were supposed to do. They hadn't followed orders.

And at that particular moment, the damage award was entered a couple weeks later in terms of June 19, 2019. Judge Hood heard all the facts. That's conclusive as to what the damages is. That's conclusive as to what the judgment amount is, $50,000 plus they're entitled to interest in this particular case.

Was there a motion to reconsider? No. Lyndon didn't do that. You heard Professor Anastopoulo tell you. Was there a motion for a remittitur, new trial? No, but could have potentially. The very time they took any affirmative action was one, almost exactly one year to the date of the very last day they could file a motion to set aside a judgment. So, they made them wait 364 days before they filed a motion to set aside judgment. Why? Why did the plaintiff wait that long? Why make both of them wait that long for you to do that? You only do that when you don't care, the very last day.

And then when it was denied, the court heard it and denied it and August the 4th issued an order denying it, you have a moment at that particular point when the judge has denied your motion, you've got a couple of options you can do. You can do the same thing. I can request a motion for reconsideration, or I can file an appeal, neither of which was done, which means that $50,000 was it. There was nothing else that they could do at that particular moment, But then they go back and start trying to find every reason, every reason why they couldn't pay this claim. Oh, Ms. Thompson, she's, she's not really insured. She didn't -- wasn't part of the contract. I guess that's still another law in South Carolina.

If you're going to come down here and do business in our state, at the very minimum know our laws. Make sure your adjustors who we never heard from -- anybody hear Jupiter? Anybody hear anything from Jupiter saying we did everything right? We didn't violate anything. Didn't hear from Jupiter. But at the very minimum, can't you make sure people with Jupiter got licensing? Can you come to court, at least say, hey, no, they're weren't licensed here to do business in South Carolina? You can't even do that. You don't do that because you don't care. The very minimum effort to walk into this courtroom and tell y'all basically I don't know. The reason why you don't know is you don't care.

You got to make them care. You have to get their attention to kind of punish this kind of behavior and punish it severely because again, $150,000 hadn't gotten their attention just yet. So, the question becomes what kind of number would get their attention?

I'm going to let you -- you know, you all will get the chance to decide because of the fact that, you know, your role as a jury -- as I said, the judge has kind of helped you out in terms of he's already decided there's a breach. Now we're really talking about damages and things of that sort. So, really it's kind of -- he's going to explain to you the law, so I'm going to let that be his province and things of that sort, but he's going to tell you this again, three types of damages to award in this particular case.

The consequential damages, the extra contractual damages that flow from the breach. That means the things that they had to experience as a result of not getting their money. They're entitled to some compensation above that, along with the money that flowed from the breach itself. So, there's bad faith. There's also punitive. We need to make sure there's no more Tasha Joneses out there that they can do this to, and no more Shaniqua Thompsons that they can do this to.

Your role as a jury is to determine whether we have met our burden and say first we're clear with punitive damages, whether we've shown clear and convincing evidence of their, you know, bad faith. And when we talk about bad faith, you're really talking about unreasonableness. You know, when they're doing things just not responsible at all.

And we had -- remember the professor here? She painstakingly went through all the things she testified to that was willful, wanton, and with reckless disregard for the other person. Those are your elements of punitive damages. That's what you're looking for. Was this an accident by Lyndon or was this intentional? Was it deliberate? Was it with reckless disregard?

I think that just -- if you just look at one thing, you'll get your answer in terms of yes, that was the case. That $300, I'm going to always keep going back to that. Even though it's the smallest amount, to me it means the biggest because it showed the least amount of care, the least amount of intentional conduct, that you made the conscious decision because remember how skillful -- he said we got skillful, experienced adjustors. They were able to audit the medicals to lower them. They didn't audit this right here to lower those -- that property damage claim. Is this their form of audit? How do -- how do you not know if you're an experienced adjustor? But you did know. You knew exactly what you're doing in this particular case.

As I sit down, ladies and gentlemen of the jury, I told you I was going to give you my analysis of where things should be at. I want to make sure -- I'm going to put this -- I'm going to go over it again just to make sure because I want -- I want Randy, I want Mr. Fishbein to know exactly -- that is a comma and there are a whole lot of zeros behind it. You ask for a lot of zeros when you want to apply the proper type of deterrent.

Oh, you can look over here, Randy. I'll let you look at it.

When you want to make people care, to make sure this doesn't happen again, to make sure there are no more people standing in front of people such as yourself, taking you away from your families, your jobs to listen to a case where breach was decided. You don't have to answer that question. That just how convincing their case was. That's just how clear, that's just how convincing, that's just how strong the issues were.

At every step of the way, when they had an opportunity to do the right thing, to do the reasonable thing, they chose not to do it. Why? Because they chose profits over people. Any time you choose keeping that money for yourself, you have made the conscious decision that I'm going to keep that money for myself, for my business, whether that's to get a promotion, to make myself look big, but it's definitely designed to impress somebody within that company. So, if you want to get yourself to a position where you want to get their attention, this is the only thing that's going to get their attention, especially when it comes to punitive damages and things of that sort because otherwise they're not going to listen.

Let them know we didn't sue John Doe this time. We sued Lyndon and remember Lyndon is not by themself. Lyndon is a -- is a large company. They're owned by a larger company, so you have to get someone's attention to say you cannot do that again to anybody.

I think Your Honor -- ladies and gentlemen, as you look at what we've said is in terms of the damages claims and the law, the judge is going to instruct you as to the law, you just know that when we look at these things and the law as the judge instructs you, there's one important thing that you've got to -- need to remember as you look at that information. We bear the burden of proof. We've already proved the breach. Now what you're looking at is -- we talk about the scales, the scales. People say the scales of justice. You know, it's supposed to be the lady, she's blind. Well, justice demands that you award these ladies consequential damages, damages for bad faith, and punitive damages so that we don't ever have to worry about hearing about Lyndon in our state again. Thank you.

THE COURT: Mr. Helmly.

MR. HELMLY: May it please the court? Thank you, Your Honor.

THE COURT: Yes, sir.

MR. HELMLY: Good afternoon, ladies and gentlemen. Again, my name is Randy Helmly. I'm here on behalf of Lyndon Southern Insurance Company. I appreciate your attentiveness.

It's -- jury trials are tough. They're long. You typically are hearing about things that perhaps you may not have heard about before, and certainly that's the case here, and it's a complicated business and sometimes, as you heard, it sounds like it's callus.

But you've also heard that they reported the claim the day after the accident. They immediately arranged for a rental car; they immediately ordered the appraisal on their vehicle. Got the property damage paid within a few weeks. Waited for them to finish treatment after a few months. When those records came in, they immediately issued $1000 in MedPay coverage right out of the gate. But they hit a snag. They hit a snag when the plaintiffs, despite knowing what the limits of their policy are, demanded $65,000 apiece, $65,000 apiece knowing that under the policy all that was available was $50,000. Talking $130,000 versus $50,000, and they did that willingly and voluntarily, and that's how they kicked things off.

And, yes, you've heard testimony about the, the review of the medical records. That's what insurance companies do, they review the medical records. They review them as they come in, and they take their first impression of what they are. They take a look at it, and they think that was too much or perhaps that was too much. It happens all the time. It happens in every single insurance claim. And then they extended two offers that they thought were fair and reasonable based on their evaluation.

After that, was no follow up from the plaintiffs, no counteroffer. Nothing to say we think you undervalued these medical records. Here's why we think so. They didn't do that. There was an invitation to do that. That letter that was sent from Lyndon to the plaintiffs didn't say this is the most amount of money you're ever going to get. That's not what they said, not at all. They extended an invitation to negotiate.

You want to rely on the plaintiffs' experts, Mr. Lipshultz and Professor Anastopoulo, remember their words. Both of them said it's a negotiation. Never make your best offer first. It's a back and forth, things of that nature. Well, they halted the back and forth, and they went and filed a lawsuit. That's certainly well within their right to do.

But the judge is going to instruct you on the law. He's going to go through that after we wrap up here, and I want you -- you got to listen closely. You have to listen closely to what the judge tells you what the law is because a few phrases, a few words change everything such as any reasonable ground for contesting a claim. I say to you that demanding $80,000 above what you contracted for is a reasonable ground to say we're not paying that. Any reasonable ground to contest a claim.

Another phrase you're going to hear -- and you've seen the timeline, and I will tell that litigation is a long slog. Throw in a pandemic, and it takes a while. After they filed their John Doe suit, it took them a full year to even get a hearing on the damages. It just takes a long time. But what you'll hear also, though, is that it's okay for the insurance carrier to resort to court to dispute an action as well. It's their right. It's our right, my client's right.

So, those are things that I want you to pay close attention to, any reasonable ground. $80,000 over what you paid, that's what she asked right out of the gate.

The next time you had an opportunity was on June 5, 2019, when you hear the word the damages hearing. You heard that several times when that cropped up. You heard Mr. Fishbein talk about communication to Mr. Lake about the policy limits, what was left after they paid Mr. Mack. And you've seen that email, or you will get to see it. It's at 10 PM the night before. Conversations have been had and it says: Randy, sorry for the late follow up, but I was unable to reach my clients. But I want you to pay us $30,000 apiece. They've been informed of what those limits were. There's only $42,000 left. Still wanted more, and that's okay for them to choose that option. Any reasonable ground to contest. Again, asked for more than what they paid for after being told what was available. It's reasonable to say no to that. If you found yourself in a similar situation where there was an agree-upon amount, someone was trying to get more out of you, you'd, you'd probably say no as well.

But I think that the evidence shows early on from the start if they didn't care, they would have said we're not accepting this claim. We don't believe anything about the accident. Sorry. Do better. They didn't do that. I mean, they jumped on it just like that. They jumped on it, trying to take care of their insurer. And where do they hit a snag? Again, it was when they asked for more than what they paid for. Any reasonable ground.

Ladies and gentlemen of the jury, again you've heard a lot of subject matter that is -- that is foreign to you, and at times it can be mind numbing, but we're almost to the end. We're almost to the end. So, I say it's really, really important from here on out to listen to what Judge Newman tells you about what the law is and for those, those few phrases that are in there that are important to this claim. They form the basis of the decision-making process, any reasonable ground, any. Not several. Not twenty. Not a hundred. Any. Any one, one reasonable ground. Give us $80,000 more than what we paid.

And while this seems harsh at times, it's, it's, it's the way that this business works. These are smart ladies. These are smart ladies. They, they understand and they, they make decisions and they take chances and take risks, and they chose a route. And it's taken a while, but there's a reason for it, and it didn't start with Lyndon Southern.

Now, we talked a lot about the $300 deductible. That's a screw up. Somebody overlooked it. The regular deductible is $500. The uninsured motorist deductible is $200, and I'll tell you right now a lot of people that are pretty doggone familiar with all this stuff missed it. First time I heard about it was this week. They just found out, so it wasn't like they're trying to hold on to this for some reason. They'd already paid them some money. Already paid the property damage, MedPay. So, don't, don't hold -- Mr. Fishbein said it best. People handling these claims are -- they're human. They make mistakes and if anybody had figured it out, you know, before we're sitting here in this courtroom during this trial this week, it would have gotten squared away. So, on behalf of Lyndon Southern, sorry for making that mistake, you know.

We have -- we know that, per the policy, they're entitled to something. They're entitled to what they paid for, but again I go back to any reasonable ground. And I think that crops up in various points in this process.

And so I appreciate your attention. I really, I really do. I appreciate your attention. I was once a law student sitting in class. It wasn't taught by Ms. Anastopoulo. It was taught by somebody else, an insurance class, and I, I thought to myself I will never do this stuff ever in my entire life. It was just mind numbing, but you guys have been great. Ladies and gentlemen, you've been wonderful. You've been attentive. I've watched you pay attention. You've listened to the testimony, and so I just ask that you hang in there. Listen to what Judge Newman is going to tell you. I want you to remember those words: any, any reasonable ground. It's okay for the carrier to do just what they did, come to court to hash it out. Thanks for your time. Thanks for your attention. God bless you.

MR. LAKE: Your Honor, this is the reply?

THE COURT: Yes, sir.

MR. LAKE: We get -- it's kind of like a little back and forth, a little -- I go first. Then he comes up. Then I come after him one more time.

That's the first time I've ever heard that the pandemic is the cause of this problem. Now, this thing goes back to 2017. Pandemic wasn't in 2017 or 2018 or 2019. The pandemic was in 2020. That's what I remember. I had just turned fifty when the pandemic occurred. I'm fifty-three now, so I know it's 2020. So, how did the pandemic cause a problem in 2017 or 2018 or 2019? You come up here and tell people like that when you don't care. You think you can just tell anybody anything. That's what they think: they can tell you any single thing.

I don't like interrupting people in their closings because I don't like people interrupting me. So, I'm going to sit there and I'm going to let him say what he wants to say, but one of the things I had just told you all, and I know everybody was here except for you all when it was decided that the judge has already decided that they have breached the contract. That's already been decided. They sat up here and talked about reasonable this and reasonable that, reasonable this, reasonable that. The judge has already decided they have breached their contract. They still think they can just tell you anything. That's red herring after red herring.

So, when y'all wonder why we've asked for a certain amount, a whole lot of zeros, because these guys just don't get it. They don't, and you don't get it when you don't care, when you think you can say anything to anybody at any time and they're just supposed to accept it. That's not how it works, at least that's not how it works in South Carolina. It might work that way in Florida. Doesn't work that way here.

I've never heard of a six year screw up. If you just found out about it, the first thing you should have been doing is getting on the phone and calling someone to get that check, have someone issue that check on your behalf. You're the vice president. Even if you have to pay it out of your own pocket, give her her $300 that you claim you're so interested in her getting, that you want to make right. They ain't going to make nothing right.

The only way they're going to make something right is if it's against them, and you tell them to because now it's against them. We're not going to enforce a judgment against John Doe. We're going to enforce that judgment against them.

Thank you. I'd like to turn this over to Judge Newman, and he's going to instruct you on the law. It's been my pleasure bringing this case to you all.

THE COURT: Ladies and gentlemen, if you will go to the jury room for a short break. Then we will come back for our jury charge.

(THE JURY EXITS AT 4:10 PM.)

THE COURT: Give y'all a chance to look at the printed jury charge in case you have any questions, comments, or concerns.

(A PAUSE.)

THE COURT: Any questions or issues regarding the jury charge?

MR. LAKE: Nothing from the plaintiffs, Your Honor.

MR. HELMLY: Nothing from defense, Your Honor.

THE COURT: Okay. You may bring the jury.

(THE JURY ENTERS AT 4:18 PM.)

JURY CHARGE

THE COURT: Madame Forelady and members of the jury, you have heard the testimony, you've received the evidence, and you've heard the arguments of the plaintiffs and the defendant. I will now explain to you the law that applies to this case.

Under the constitution and laws of South Carolina, you are the finders of the facts. I do not have the right to pass upon the facts or to express any opinion that I might have as to them because this is a matter solely for you, the jury, to determine. As jurors, then, it is your duty to determine the effect, the value, the weight, and the truth of the evidence presented during this trial.

Now as the trial judge, it's my responsibility to preside over the trial of the case and to rule upon the admissibility of the evidence offered during the trial. You are to consider only the testimony which has been presented from this witness stand, together with exhibits which have been made a part of the record. I have the additional duty to charge you the law applicable to this case, and as the presiding judge, I am the sole judge of the law. It is your duty as jurors to accept as correct and apply the law as I now state it to you and then deliberate in an effort to reach a verdict.

And finally, I charge you in the regard that you should not be concerned with what you think the law ought to be but rather what I charge you the law is.

You are also the judges. You are the sole judges of the credibility, that is the believability, of the witnesses who have testified and of the evidence which has been presented during this trial. In evaluating credibility, you may take into consideration many things such as the demeanor or manner of testifying, whether the witness had reason to be biased or prejudiced, or whether the testimony of a witness was contradicted on the one hand or supported and corroborated on the other hand. It becomes your duty as jurors to analyze and to evaluate the evidence and determine that evidence which convinces you of its truth.

Now, the rules of evidence ordinarily do not permit witnesses to testify to opinions or conclusions. An exception to this rule exists for witnesses we call expert witnesses. A witness who by education and experience has become expert in some art or science or profession may give an opinion as to the subject the witness claims to be an expert in, and may also give the reasons for the opinion. You should consider any expert testimony given by a witness like any other evidence: give it the weight you think it deserves. If you decide that an expert's opinion is not based on sufficient education and experience, or if you decide that the reasons given in support of the opinion are not sound, or that the opinion is outweighed by other evidence, you may disregard the opinion entirely. An expert witness's testimony is to be given no greater weight than that of other witnesses simply because the witness is an expert, and you do not have to accept an expert's opinion even though it is uncontradicted.

Now, the burden of proof in this case is by a preponderance of the evidence. A preponderance of the evidence simply means the greater weight of the evidence. It is evidence which as a whole shows that the fact sought to be proved is more likely true than not true.

And this can be illustrated, as I told you earlier, by imagining a set of scales, and when the case began, the scales are even. After all the evidence has been presented, if the scales tip even so slightly in favor of the defendant, then the plaintiff has -- plaintiffs have failed to meet the burden of proof and would not be entitled to recover. On the other hand, should the scales tip even slightly in favor of the plaintiffs, the plaintiffs will have met the burden of proof, and you should return a verdict for the plaintiffs. The preponderance of the evidence is not determined by the number witnesses. Instead, it must be determined by the greater weight of the evidence.

In this case, the plaintiff claims that the defendant breached an insurance contract that existed between the parties. In order to recover for breach of contract, the plaintiff must prove the claim by a preponderance or greater weight of the evidence, greater weight of the evidence.

A contract is an agreement entered into by two or more parties in which each party agrees to perform or not perform certain acts. For the agreement to be considered a contract, the parties must have intended to enter into a contract and must have reached a mutual understanding of the terms of that contract. This is sometimes called a meeting of the minds. The parties must intend to be mutually bound by the agreement.

The court has determined, I have determined that there is a legally binding insurance contract as to each plaintiff and the defendant, and the defendant breached the contract by failing to perform as agreed.

The plaintiff must prove by a preponderance or greater weight of the evidence that the plaintiff suffered damages which was -- which were proximately caused by the defendant's breach of the contract, and the plaintiff must prove these damages by a preponderance or greater weight of the evidence. This does not mean that the plaintiff must prove damages to a mathematical certainty or produce evidence of the exact amount of the damages suffered. However, the amount of damages cannot be left to guesswork or speculation. Instead, the evidence presented by the plaintiffs must be enough to allow you to determine the amount of damages with reasonable certainty and accuracy.

Damages for breach of contract are those that may fairly and reasonably, reasonably be considered to arise naturally from the breach of contract itself, or those that may be reasonably supposed to have been in the minds of the parties at the time the contract was made.

Actual damages are damages to compensate the plaintiffs and put them as closely as possible in the same position they were in before the breach of contract. In other words, actual damages are the actual losses and expenses which the plaintiffs have suffered because the defendant breached the contract. Generally, actual damages are the out-of-pocket costs actually paid by the plaintiffs as a result of the breach of contract, and the gain above the cost that would have been realized if the contract had been performed. There exists in every contract an unspoken but legally enforceable promise of good faith and fair dealing.

The plaintiff claims that the insurance company refused to pay under the insurance policy in bad faith. The plaintiff must prove that the insurance company refused to pay benefits due under the contract because of bad faith or reasonable action, which is a violation of the implied covenant of good faith and fair dealing under the policy. The plaintiff must prove that there is no reasonable basis to support the decision of the insurance company to refuse to pay benefits to the plaintiffs.

If there is any reasonable ground for contesting the claim of the plaintiffs, there is no bad faith. It is not necessarily bad faith or unfair dealing for the insurance company to resort to a court action to resolve the dispute with the plaintiffs.

Finally, the plaintiffs must prove they suffered damages as a result of the insurance company's refusal to pay and the consequential losses sustained as a result of the wrongful refusal to pay.

Now, in addition to actual damages, you may also consider an award of punitive damages. Punitive damages are intended to publish the defendant for extraordinary and outrageous misconduct and to prevent the defendant and others from committing similar acts in the future.

Punitive damages can only be awarded when conduct of the defendant has been something more than mere negligence. The evidence must establish the acts of the defendant were reckless, willful, and wanton, meaning there was a conscious failure to exercise due care, or a conscious indifference to the rights and safety of others, or a reckless disregard thereof. If you find that the conduct of the defendant was willful, wanton, or reckless, you may award the plaintiffs punitive damages.

To support an award of punitive damages, the plaintiffs must prove by clear and convincing evidence that the conduct complained of included a consciousness of wrongdoing at the time of the conduct. Clear and convincing is more than just a preponderance or greater weight of the evidence, which requires only proof which persuades you that a party's claim is more likely true than not true. On the other hand, clear and convincing proof is not as high a standard as the burden of proof in criminal cases, which is proof beyond a reasonable doubt.

Clear and convincing evidence leaves no substantial doubt in your mind. It means that the evidence is not ambiguous, doubtful, equivocal, or contradictory. Convincing means persuading by proof or argument, causing one to believe in the truth of what is asserted. Clear and convincing proof establishes in your mind not only that the act is probable, but that it is highly probable.

Before awarding punitive damages, you must consider and weigh four elements which may be pertinent to the facts of this case. You must first consider the relationship between any punitive damages award and the harm caused. Any penalty imposed should take into account the reprehensibility of the conduct, the harm caused, the defendant's awareness of the conduct's wrongfulness, the duration of conduct, and any concealment. Thus, any penalty imposed should bear a relationship to the nature and extent that the conduct and the harm caused, including the compensatory damages award made by you.

Secondly, the penalty imposed should take into account as a mitigating factor any other penalty that may have been imposed or which may be imposed for the conduct involved, including any criminal or civil penalty or any other punitive damages award arising out of the same conduct.

Next, you should consider whether the award of and the amount of any punitive damage award may deprive the defendant of any profits derived from the improper conduct, and whether ill gotten profits should be properly awarded to the plaintiff.

Finally, any award of punitive damages must be limited to punishment and thus may not effect economic bankruptcy. To this end, the defendant's ability to pay any punitive award, punitive damage award should be considered. However, the economic bankruptcy factor is not an absolute bar to an award of punitive damages.

Now, while the arguments of counsel are a beneficial part of every case, you should remember that the statements made by counsel are not evidence. In presenting their arguments, counsel will often refer to the evidence. However, you should base your verdict on the evidence as you see it. Therefore, if there are any conflicts between the recollection of counsel about the evidence and your own recollection, you should rely on your own understanding of the evidence.

Now, you've been chosen and sworn to give the parties in this case a fair and impartial trial. When you've done so, you will have complied with your oath, and no one will have a right to criticize your verdict. You must not be influenced by opinions or expressions of opinion you may have heard outside of the courtroom but rather should base your verdict solely on the testimony of the sworn witnesses who took the stand, the exhibits received into evidence, and the law which I have stated. You should not be swayed by caprice, passion, prejudice, or improper sympathy for or against anyone in this case. Remember you have no friends to reward, no enemies to punish, and all parties are entitled to a fair and impartial trial.

It is your duty as jurors to consult with one another and to deliberate in an effort to reach an agreement. Each of you must decide this case for yourself but only after impartial consideration of all the evidence with your fellow jurors.

In the course of your deliberation, do not hesitate to re-examine your own views and change your opinion if you become convinced it is erroneous. However, do not surrender your honest conviction as to the weight or effect of the evidence solely because of the opinion of your fellow jurors or for the mere purpose of returning a verdict. As stated earlier, you are the judges, judges of the facts. Your verdict must represent the considered judgment of each juror. In other words, your verdict must be unanimous.

Now, you may have noticed I have read these instructions to you. I do so to give you the law as accurately as possible. I will give you a copy of these instructions to have in the jury room. You may refer to these instructions to assist you in your deliberations. You must consider the instructions as a whole and may not follow some and ignore others.

And, Madame Forelady, it will be your duty to preside over the deliberations of the jury. If during your deliberations you should desire to communicate with the court, with me, please reduce your message or question to writing, signed by the foreperson, and pass the note to the bailiff, who will bring it to my attention. I'll then respond as promptly as possible, either in writing or having you come back into the courtroom. I caution you, however, with regard to any message or question you might send that you should never state your -- or specify your numerical division at the time.

Now you've heard the evidence, and now you have heard the law. Whatever your verdict, for the plaintiff or for the defendants -- plaintiffs or for the defendant, you will indicate on the verdict form and then sign and date the verdict.

So, this verdict form says: As to breach of contract, we, the jury, unanimously find for the plaintiff in the amount of as to Tasha Jones blank actual damages.

Who is Tasha Jones? All right.

And as to Shaniqua Thompson blank actual damages. You would put in there the amount of actual damages you have found. As to bad faith refusal to pay, we, the jury, unanimously find for. If you find for the plaintiffs, check that box. If you find for the defendant, you check that box. If you find for the defendant on this question number 2, you please stop your deliberations at that point. If you find for the plaintiffs as to the bad faith refusal to pay, then what damages do you award each plaintiff as a consequence of the bad faith refusal to pay, and in that line for Tasha Jones you write that, that amount of damages, and for Shaniqua Thompson you write down the amount of damages found there.

Question number 4: Do you find that the plaintiffs have proven by clear and convincing evidence that the defendant, Lyndon Southern, acted recklessly, willfully, or wantonly in causing the damages to the plaintiffs? If your answer is yes, then you go to question number 5. If your answer is no, then you stop deliberations. If your answer is yes, then question number 5 says: State the amount of punitive damages, if any, that you award to each plaintiff. As to Tasha Jones, you write the amount of punitive damages awarded; as to Shaniqua Thompson, you write the amount of punitive damages awarded. Then you are to sign and date the form, verdict form, notify the bailiffs, bailiffs, and then we'll have you come back, come out, and give us your verdict.

Now, remember although the foreperson is the only juror who writes the verdict, it is not hers alone. The verdict has to be unanimous.

And, Madame Forelady, you're not authorized to write the verdict until all of you have agreed on the verdict.

So, now, ladies and gentlemen, I am going to send you to your jury room, everyone except the two jurors that we're not going to use in deliberations. But before I send you back, I want to make sure out of that first twelve -- we know that it's 18 minutes to 5 o'clock. I need to know if any of you cannot continue with the deliberations. If any of you want to check out while we have these other two jurors who can participate in the deliberations, if any of the first twelve jurors cannot participate in the deliberations, please let me know now.

(THERE IS NO RESPONSE.)

THE COURT: Okay. So, each of the first twelve are good to go. So, that means the last two jurors, Ms. Cooper and Mr. Leduc, y'all will stay with us when they go back in.

So, we're going to send you to the jury room, but do not begin your deliberations until you receive a copy of this jury charge, the verdict form, and the exhibits. Once you receive these things, that will be your signal to begin your deliberations. If y'all need something to eat, we'll have to figure out. We have Nabs and all that around, potato chips, Nabs, anything.

BAILIFF: Just some snacks, Your Honor.

THE COURT: All right. That might hold them for a while. Once you begin your deliberations, you will deliberate until you have reached a verdict. Once you have reached a verdict, you knock on the door and advise the bailiff, and we will bring you out to receive your verdict. Please go to the jury room.

(THE JURY EXITS AT 4:43 PM.)

THE COURT: All right, I certainly want to thank you all for your effort here and listening to the case and being ready, willing, and able to participate in deliberations. We picked fourteen, but we can only use twelve and quite often, you know, one or two falls by the wayside. You know, one got caught in traffic this morning. She made it in the nick of time. The other might have needed to leave, but she worked that out, so they were able to hang in there with us. So, you all won't be able to participate in deliberations. That means that we are through with you all and you are done with jury service.

Are they done for the week?

CLERK: Yes, sir, I think.

THE COURT: All right, and any final words for them?

CLERK: Well, on behalf of Ms. Jeanette McBride, which is the clerk of court here in Richland County, we do thank you again, as Judge said, for your time and your service this week. I do have work excuses if you need them, or -- so, we do thank you, and you're good for three years.

BAILIFF: If you want to hang around, you can wait for the verdict.

THE COURT: And you don't have to obviously. We don't know how long they will be deliberating, but you are free to stay if you want to, but for the next year you're not eligible to serve again, and for two additional years you may choose not to serve because no person can be required to serve on jury duty in this court more often than once every three years. And, of course, many people never get called, it seems. So, thank y'all very much, and you're good to go.

(A PAUSE.)

THE COURT: So, if you all will check the exhibits and make sure that everything that's going back there are the proper exhibits.

Okay, we'll be at ease, see what the jury is going to do.

(OFF THE RECORD AS JURY DELIBERATIONS BEGIN AT 4:48 PM.)

THE COURT: All right, let's bring them in.

(THE JURY ENTERS AT 5:58 PM.)

THE COURT: All right, Madame Forelady, if you'll stand for me. Have you reached a verdict?

FOREPERSON: Yes.

THE COURT: Is it unanimous?

FOREPERSON: Yes.

THE COURT: All right, if you would pass it up. You may be seated.

CLERK: Here you are, Your Honor.

THE COURT: Thank you.

(A PAUSE.)

THE COURT: You may publish the verdict by reading it out.

CLERK: Yes, sir.

VERDICT

CLERK: State of South Carolina, County of Richland, *Tasha Jones and Shaniqua Thompson*, plaintiffs, *v. Lyndon Southern Insurance Company*, defendant, civil action case number 2019-CP-40-04650. As to breach of contract, we, the jury, unanimously find for the plaintiffs in the amount of for Tasha Jones $50,300 actual damages, Shaniqua Thompson $50,000 actual damages. As to bad faith refusal to pay, we, the jury, unanimously find for the plaintiffs. As to bad faith refusal to pay the damages, we will award to each plaintiff as a consequence of bad faith refusal to pay: for Tasha Jones $75,000 damages, Shaniqua Thompson $75,000 damages.

The plaintiffs have proven by clear and convincing evidence that the defendant, Lyndon Southern, acted recklessly, willfully, or wantonly in causing the damages to the plaintiffs, and they unanimously said yes. So, the state of punitive damages they are awarding to each plaintiff: for Tasha Jones is $350,000 punitive damages, Shaniqua Thompson $350,000 punitive damages.

This has been signed by Madame Forelady on today, the 22nd day of June 2023.

THE COURT: All right. Ask them whether that's the verdict.

CLERK: This is the verdict?

THE COURT: Madame Forelady, if that is -- here's how you say it.

CLERK: I'm sorry. Yes, Your Honor.

THE COURT: Madame Forelady and members of the jury, if that is your verdict, let it be known by raising your right hands.

CLERK: Raise your right hand.

(JURORS COMPLY.)

THE COURT: That's how you're supposed to say it.

CLERK: I'm sorry. Okay, Your Honor.

THE COURT: I know. Not a problem.

Let me -- so, the parties can review the verdict form.

CLERK: You want them to review it?

THE COURT: Yes.

CLERK: Okay.

THE COURT: The lawyers can review the verdict form.

CLERK: Yes, sir.

(A PAUSE.)

THE COURT: The verdict appears to be in proper form.

Any polling, individual polling of the jurors requested?

MR. LAKE: None from the plaintiff, Your Honor.

MR. HELMLY: None from defense, Your Honor.

THE COURT: Any post-trial motions?

MR. LAKE: None from the plaintiff, Your Honor.

MR. HELMLY: None from defendant, Your Honor.

THE COURT: All right.

Well, ladies and gentlemen, this is your verdict. You have listened intently to the testimony in the case, and you all have deliberated, and you have come to a unanimous decision. That's the best we have in the law, to have twelve people listen to both sides and listen to the law and then deliberate and come back with a unanimous verdict. And that verdict is what you were asked to do, and that's what you have done. And there are no post-trial motions, so this is a final verdict in this case.

And I want to thank you for your service. You've had your thirteenth juror there, Ms. Asia Cooper, really intently sitting and waiting to see what you all were going to do, and we really appreciate it when jurors are so interested that they remain to get the end result of things.

You know, of course, we never know when we might be involved in these situations. You know, we all carry insurance for one reason or the other, and insurance is a contract. Every -- each party to the contract has a right to have certain expectations, and in this case things went astray and resulted in the case being here in court, and now you've decided this case. It's been pending for a number of years, and glad that you all helped get this resolved.

So, that's all we have, and you are done with jury duty and serving for the next year. You're not qualified to serve, and for two additional years you may choose not to serve. So, you've put in three days here, and that's taken care of your jury duty for three years. Isn't that pretty good?

JURORS: [EN MASSE] Yes. Yes.

THE COURT: Three years and, you know, I know that jurors don't like to sit in that spot and listen to the lawyers ask question after question after question after question, and you're trying to stay awake and stay focused because you're not used to being in those seats nailed down like that. You know, it's tough for me and for Gabbie, my law clerk as well, but we have computers here and we have all kinds of things to help us stay focused that you cannot have access to, but you all did well. I caught a couple of you yawning, some more so yesterday than today, but you made it through, and I want to thank you for that. I want to speak with you all out here in the -- in the back, and I think the clerk has work excuses for anyone who may need them. You all are through with service for this week.

And I will come back and talk with the lawyers after speaking with the jury -- jurors in case you all have any issue or question about anything.

So, the jury is excused.

(THE JURY EXITS AT 6:06 PM.)

(OFF THE RECORD.)

THE COURT: Okay, are there any other matters we need to attend to on this case?

MR. LAKE: Your Honor, I think the only other matter that I -- want to make sure that I have an understanding of the judgment, one, and there is an outstanding damages hearing as it relates to Jupiter. They are in default, and I don't know whether Justice Toal had said anything to you about that. I thought she indicated that would happen somewhere around the same timeframe or whether it needs to rescheduled for another time, which is fine with me as well.

THE COURT: Yeah. Yeah, I'm not -- and all that is kind of news to me, that Jupiter...

MR. LAKE: They're in default and have been in default now for a while, and we were supposed to have a damages hearing scheduled for us again.

THE COURT: Are they represented by counsel?

MR. LAKE: Well, Your Honor, that's kind of interesting. They actually had Adam Yount that was -- who initially appeared. He attempted to get the order vacated. Judge Jocelyn Newman denied that. It was scheduled for a damages hearing. At that time Mr. Yount said they didn't have any money. They couldn't afford to pay them, but he's never filed a formal motion to be relieved.

No. I think he said something to Gabbie in terms of an email. I think he responded to an email saying he's kind of around but he hasn't been retained. So, I don't know the whole story.

THE COURT: Is he from Columbia or where?

MR. LAKE: From Charleston.

THE COURT: From Charleston.

MR. LAKE: I think he's with Haynesworth, Sinkler, I believe, but I'm not exactly sure of the firm itself. I don't know how the court wanted to handle that.

THE COURT: Well, that damages hearing, is it nonjury or jury?

MR. LAKE: It would be nonjury.

THE COURT: Well, I'm not certain as to the notice requirement for a damages hearing. We'll be here doing nonjury next week, Monday, Tuesday, Wednesday morning, and Thursday morning, and I don't know what's scheduled either.

(A PAUSE.)

THE COURT: So for that one, I might need to go back to the chief administrative judge to figure out the scheduling because, you know, if he's not -- they're not here now, so we just can't jump into it.

MR. LAKE: Yes, sir.

THE COURT: He made an appearance, right?

MR. LAKE: He made an appearance, but he hasn't appeared ever since then.

THE COURT: Yeah.

MR. LAKE: He appeared for, I think, maybe two matters.

THE COURT: Yeah.

MR. LAKE: We've had a number of depositions. He's basically indicated that he ought to be compensated.

THE COURT: Yeah, but once you make an appearance, then you're -- unless you're relieved by the order of the court, then as a lawyer you have to continue with the case, yeah.

MR. LAKE: I did want a little bit of clarity on the -- and I probably should have said this before we recessed. Based upon the verdict, and I know the court had ruled directed verdict, so that means the plaintiffs are entitled to the initial judgment of the $50,000 plus interest plus the other three awards. Is that right?

THE COURT: Well, the...

MR. LAKE: So, the consequential damages would flow from the breach. That didn't have anything to do with the original damages as owed. So, my thought process was, was that because the court ruled in favor of our briefs, that meant that they were entitled to the $50,000 apiece plus the interest. Now the jury has ordered additional damages for consequential, bad faith, and punitive. I just wanted to make sure my understanding of all that is correct.

THE COURT: Well, consequential and bad faith is the

-- is the same, 75,000.

Yes, sir.

MR. HELMLY: I was just -- I -- everything was before the jury on this case, and I think their award encompassed all of the damages that were presented before them.

THE COURT: Yeah. Well, it's an interesting legal question that I'm not going to try to interpret because it may require additional work on you all's part.

MR. LAKE: Because I don't think they can lower the other court's judgment because that's a final judgment. It has not been appealed.

THE COURT: Well, not only could they not -- can lower it, it's a question as to whether or not they can nullify it. Of course, the amount was the exact amount of the admitted loss. You know, you have 350,000 and then 50,000. That was pretty much the acknowledged loss based on Judge Hood's award plus the 300 deductible that was admitted. So, that's, I guess ---

MR. LAKE: That's separate and apart.

MR. HELMLY: It would be a double recovery essentially, you know, because that was the measure of damages was Judge Hood's award. That was the basis for your breach of contract.

THE COURT: Yeah. Right. So, so, you have that, but, of course, the ---

MR. LAKE: Well, wouldn't that be the conse -- I would think that that would be the consequential damages or something close to the consequential damages. It would appear, if you go by that, because your bad faith was separate from the breach itself, is you can have a breach without bad faith.

THE COURT: You know, they awarded 50,000 for the breach, 75,000 for the bad faith, and 350 for punitive. Now, whether or not -- the question you are all sort of posing, whether the $50,000 for the breach has already been awarded by Judge Hood or whether it's separate and apart from Judge Hood's order, and I'm not -- there is nothing before me. Y'all are just asking me questions. There are no -- there's nothing pending before me.

MR. LAKE: So, declaratory judgment's at issue.

THE COURT: Yeah. You know, I don't know. There's -- well, you're sitting pretty regardless, it appears, as long as you can collect.

MR. HELMLY: Your Honor, we, we obviously haven't adjourned. I just -- I know you mentioned post-trial motions in, in front of the jury. I didn't know if we were to hear those in front of the jury or -- I just want to renew my directed verdict motion.

THE COURT: Yes. We'll indicate that it was properly made, directed verdict motion, but no post-trial motions were made.

Okay.

MR. LAKE: Thank you, Your Honor.

THE COURT: All right.

--- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON THE 21ST AND 22ND DAYS OF JUNE, 2023.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

/S/Elizabeth B. Harris, CVR-M-CM

COLUMBIA, SOUTH CAROLINA
FEBRUARY 11TH, 2024

CCC ONE MARKET VALUATION REPORT

Prepared for JUPITER MANAGING GENERAL AGENCY, INC.

REPORT SUMMARY

CLAIM INFORMATION

Owner	Jones, Tasha 4653 Broad River Rd Columbia, Sc 29210, SC 29210
Loss Vehicle	2006 Kia Sedona EX Automatic
Loss Incident Date	06/15/2017
Claim Reported	06/29/2017

INSURANCE INFORMATION

Report Reference Number	85101254
Claim Reference	DMA-0181235
Adjuster	Campbell, Robert
Appraiser	Claims, Jupiter
Odometer	190,399
Last Updated	06/29/2017 05:35 PM

VALUATION SUMMARY

Base Vehicle Value	**$ 3,603.00**
Adjusted Vehicle Value	**$ 3,603.00**
Vehicular Tax (5%) Tax reflects applicable state, county and municipal taxes.	+ $ 180.15
Total	**$ 3,783.15**

The total may not represent the total of the settlement as other factors (e.g. license and fees) may need to be taken into account.

The CCC ONE® Market Valuation Report reflects CCC Information Services Inc.'s opinion as to the value of the loss vehicle, based on information provided to CCC by JUPITER MANAGING GENERAL AGENCY, INC..

Loss vehicle has 21% greater than average mileage of 157,600.

PENGAD 800-631-6989
EH PLAINTIFF'S EXHIBIT XD
6
6-21-23

BASE VEHICLE VALUE

This is derived from comparable vehicle(s) available or recently available in the marketplace at the time of valuation, per our valuation methodology described on the next page.

ADJUSTED VEHICLE VALUE

This is determined by adjusting the Base Vehicle Value to account for the actual condition of the loss vehicle and certain other reported attributes, if any, such as refurbishments and after factory equipment.

Inside the Report

Total Loss Valuation

2006 Kia Sedona
VIN: KNDMB233X66050682
Odometer: 190,399
Loss / Policy: SC Loss / SC Pol
Location: Copart lot 32707457
Rental: No
Est: 5283.40 (hard rear end impact)
Salvg: High: 662.00 Pro: 662.00 Low: 475.00 (comsearch est / pics)
ACV: 3603.00 (tax 180.15)

Total Loss Figures

--I/R—

$3,603.00	TLV		
$3,603.00	ACV		
$180.15	Tax	$39.00	Fees
$500.00	Deductible		
$3,322.15	Company retain		

--O/R--

$3,603.00	ACV
$662.00	Salvage Deduction
$500.00	Deductible
$2,441.00	Owner retain

LYNDON SOUTHERN INSURANCE COMPANY
CLAIMS ADMINISTRATION C/O JUPITER
PO BOX 190675 NASHVILLE, TN 37219
PHONE: 615-921-5642 TOLL FREE: 855-280-5642 FACSIMILE: 615 921-5599

PLAINTIFF'S EXHIBIT EH 9 XD
6-21-23
PENGAD 800-631-6989

October 31, 2017

The Lake Law Firm

Attn: Dietrich Lake
Fax (803) 750-8312

RE:
Claim No: DMA-0181235
Date of Loss: 6/15/2017
Claimant: Tasha L. Jones and Shaniqua Thompson

Dear Mr. Lake;

We have reviewed your demand for Tasha L. Jones and Shaniqua Thompson. Their medical bills went through an audit. We can make an offer of $7500.00 for Tasha Jones and $8660.00 for Shaniqua Thompson. We look forward to resolving this matter. Please contact me after you have relayed this to your client's.

Sincerely,

Philip R. Levesque
Claims Service Representative
Jupiter Claims Administration
On Behalf of Lyndon Southern Insurance Company
(855) 280-5642 ext. 136
615-921-5681 direct dial
615-921-5599 fax
Email- plevesque@jupiterauto.com

PENGAD 800-631-6989
PLAINTIFF'S
EXHIBIT
13
6-22-23

Lyndon Southern Insurance Company
10151 Deerwood Park Blvd Bldg 100 Ste 500
Jacksonville, FL 32256

Renewal Declaration

CIS, Inc.
PO Box 8910
Savannah, GA 31412
1-800-280-0955

THIS DECLARATION PAGE COMPLETES THE POLICY

Policy Number	**Policy Type**	**Inception**	**Expiration**
CH4154345-02	SOUTH CAROLINA PRIVATE PASSENGER	03/03/2017	09/03/2017

Named Insured(s) and Garaging Address
TASHA JONES
100 RIPPLEMEYER AVE APT 30D
COLUMBIA SC 29203

To make any changes please contact:
SAFECHOICE INSURANCE, LLC
4864 AUGUSTA RD
LEXINGTON, SC 29073
(803) 996-0400
391724

Operator(s)	**Driver's License No.**	**Excluded**	**Birth Date**	**Gender**	**Marital Status**	**Class**	**Filings**	**Points**
1 TASHA JONES	101956528	N	03/18/1992	F	S		NO	4
2 TERESA JONES	007327454	N	03/31/1966	F	S		NO	0

Vehicles(s)		**VIN**	**Class**	**Territory**	**Symbol**	**Points**
1 2006 KIA	SEDONA LX/SED(	KNDMB233X66050682		18	12	4

Loss Payee(s)

Any under Coverage E and F is Payable To The Named Insured And Loss Payee As Interest May Appear.

1
LIBERTY FINANCIAL SERVICES
1920 AUGUSTA HWY
WEST COLUMBIA, SC 29169

Additional Insured(s)/Interest(s)

Additional Information

There is NO COVERAGE AFFORDED while any vehicle is operated by an EXCLUDED driver.
*Uninsured Motorist Property Damage limit less $200 deductible
*Towing Limit: $50 per disablement
*Rental Reimbursement Limit: $20 a day/$400 maximum

Endorsements and/or Exclusions Forming Part of the Policy
CIS PAPSC (05/16)

Credits, and/or Discounts Applied to the Policy
Renewal,

CIS SC DEC 1 (06/14)

Insured Copy

Countersigned by: ______________________

ABSENCE OF PREMIUM IN ANY CATEGORY MEANS NO COVERAGE AFFORDED. THE LIMIT(S) OF THE COMPANY'S LIABILITY IS AS STATED BELOW

	Coverages	**Limits and Deductibles *($)***	**Premiums ($)**			
	Liability	*(Per Person / Per Accident)*	**Veh #1**	**Veh #2**	**Veh #3**	**Veh**
A	BODILY INJURY	$25,000/$50,000	$369			
B	PROPERTY DAMAGE	$25,000	$302			
C	MEDICAL PAYMENTS	$1,000 Medical Limit	$59			
D	UNINSURED MOTORIST BODILY INJURY	$25,000/$50,000	$41			
	UNINSURED MOTORIST PROPERTY DAMAGE*	$25,000	$29			
DI	UNDERINSURED MOTORIST BODILY INJURY	$25,000/$50,000	$45			
	UNDERINSURED MOTORIST PROPERTY DAMAGE	$25,000	$6			

	Physical Damages(Deductible Per Accident)	**Veh #1**	**Veh # 2**	**Veh # 3**	**Veh #4**	
E	COMPREHENSIVE less Deductible	$500				$258
F	COLLISION less Deductible	$500				$365
G	TOWING *	$50 per disablement				$5
H	RENTAL REIMBURSEMENT *	$20 a day/ $400 maximum				$23

UM FUND FEE	$1
PER VEHICLE PREMIUM	$1,502
POLICY FEE	$30
SR22 FEE	

Transaction Premium Change:

Changes Effective: Effective Date: 03/03/2017 12:00 AM

Total Policy Premium = 1533

This is NOT a bill.

Countersigned by: ____________________

NOTICE

THE INSURER CAN CANCEL THIS POLICY FOR WHICH YOU ARE APPLYING WITHOUT CAUSE DURING THE FIRST 90 DAYS. THAT IS THE INSURERS CHOICE. AFTER THE FIRST 90 DAYS, THE INSURER CAN ONLY CANCEL THIS POLICY FOR REASONS STATED IN THE POLICY.

IMPORTANT NOTICE

In addition to the Insurance coverage required by law to protect you against a loss caused by an Uninsured Motorist, if you have purchased Liability Insurance coverage that is higher than that required by law to protect you against liability rising out of the ownership, maintenance, or use of the motor vehicles covered by this policy, and you have not already purchased Uninsured Motorist Insurance Coverage equal to your Liability Insurance Coverage;

1) Your Uninsured and Underinsured Motorist Insurance Coverage has increased to the limits of your liability coverage and this increase will cost you an Extra Premium Charge; and

2) Your total Premium Charge for your Motor Vehicle Insurance Coverage will increase if you do not notify your agent or insurer of your desire to reduce coverage within the twenty (20) day of the mailing of the policy or the Premium Notice, as the case may be.

3) If this is a new policy and you have already signed a written rejection of such higher limits in connection with it, paragraphs (1) and (2) of this notice do not apply.

NOTIFICATION OF RESIDENT ADJUSTER

Please report all claims to 1 -855-605-7639. Please note the resident adjuster noted below:

Kayla Buchanan

Counter Signed by : W. Dale Bullard

LYNDON SOUTHERN INSURANCE COMPANY

Administrative Office: 10151 Deerwood Park Boulevard, Building 100, Suite 500 Jacksonville, Florida 32256 (800) 888-2738

(herein called the Company)

SOUTH CAROLINA

Private Passenger Auto Policy

For Claims Call (855) 605-7639

For any questions that You may have write us or call:

CIS, INC.
PO Box 8910
Savannah, GA 31412
Call (800) 280-2955
Fax (912) 236-8397

CONTENTS

SOUTH CAROLINA PERSONAL AUTO POLICY

AGREEMENT

The Personal Auto Policy is a binding contract between **You** and **us. Your** policy consists of the Personal Auto Policy contract, **Your** insurance application, the **Declarations**, and all endorsements and attachments to this policy. If **Your** premium payment is paid, **We** will insure **You** subject to the terms, exclusions, conditions, and limitations of this policy. The **Declarations** show a premium for each coverage purchased. **You** must pay the premium for the coverage to apply in order for the policy to be in force for the duration of the policy.

The statements that **You** made while **You** were applying for coverage are **representations**. To determine **Your** premium and eligibility for coverage under this policy, **We** rely on the **representations** that **You** made when **You** applied for coverage. If **You** or any applicant made any false, fraudulent, or misleading **representations** in **Your** application for insurance, this policy will not provide coverage. Examples of false, fraudulent, or misleading **representations** include, but are not limited to, **Your** failure to disclose: all persons residing in **Your** home; all **family members** age 14(fourteen) and over, whether or not residing in the household; traffic violations, **accidents**, or driver's license suspensions and revocations; commercial use of **Your auto**; or **Your** correct address(es).

If **We** are required by law to pay any claim despite this provision, then **We** reserve the right to recover from **You** all damages and/or expenses **We** incur.

In return for payment of premium for each coverage indicated on the **Declarations**, and subject to the terms, exclusions, conditions, and limitations of this policy, **We** agree with **You** as follows:

DUTY TO REPORT CHANGES

You must promptly notify us within 14 days when any of the following occurs:

1. **Your** mailing or residence address changes.

2. The address where **Your covered auto** is principally garaged (as shown on the application, the Declarations, or an endorsement changes.

3. **Any family member** who turn age 14 (fourteen) during the policy term.

4. There are additional drivers, as **family members** and **residents** of **Your** household.

5. A listed driver's license has expired, been suspended, or revoked.

6. **Your covered auto** has been sold or leased.

GENERAL **DEFINITIONS**

Certain words and phrases are defined by using boldface type. The defined terms have the same meaning whether in the singular, plural, or any other form. They are defined as follows:

1. **You** and **Your** refer to:
   a. the **named insured** shown in the **Declarations**; and
   b. the spouse of the **named insured** shown in the **Declarations**, if a **resident** of the same household, unless the spouse is an excluded driver.
2. **We, Us** and **Our** refer to the insurance company providing insurance, as shown in the **Declarations**.
3. **Accident** means a sudden, unexpected and unintended event that arises out of the ownership, maintenance, or use of an **auto** as expected, which causes **bodily injury** or **property damage** during the policy period.
4. **Additional auto** means any **auto You own** that is in addition to any **auto** shown in the **Declarations**, if:
   a. the **auto** is acquired during the policy period;
   b. no other insurance policy provides coverage for the **auto**;
   c. **You** ask us to insure the **auto** within 14 days after **You** become the **owner** of the **auto**; and
   d. **We** insure all **autos** in **Your** household.
   An **additional auto** will have the broadest coverage **We** provide for any **auto** shown in the **Declarations**.
5. **Auto** or **Motor** Vehicle or **Vehicle** means any self-propelled private passenger motor vehicle with four

wheels designed principally for use on paved public streets and highways, provided it has a gross vehicle weight (as determined by the manufacturer's specifications) of 12,000 pounds or less and is not a step-van, parcel delivery van, cargo cutaway van or other van with the cab separate from the cargo area.

6. **Bodily injury** means bodily harm, sickness or disease, including death resulting from bodily harm, sickness or disease.
7. **Business** means any full or part-time profession, occupation, trade or commercial enterprise which includes, but is not limited to, anything related to selling, repairing, servicing, storing, parking vehicles, road testing, and delivery. Any vehicle engaged in **Business Use** is not covered under this policy.
8. **Declarations** or **Declarations page** means the Personal Auto Policy Declarations that list the **named insured**, the **autos** to be covered, the coverages that apply, the limits of liability, the policy period, and other information applicable to **Your** policy when purchased from **Us**.
9. **Family member** means a person related to **You** by blood, marriage or adoption who is a **resident** of **Your** household, including a ward or foster child. **Family members** include **Your** unmarried dependent children living temporarily away from home, provided they are not emancipated. All **family members**, including unmarried children, wards, and foster children, must be disclosed on the application and on the **Declarations**, or added by endorsement in order for coverage to apply.
10. **Named insured** means the person or persons listed in the **Declarations** as insured.

Non-owned auto means any private passenger **auto**, pickup, van or **trailer** not **owned** by, furnished, or available for the regular use by **You** or any **family member** while in the custody and/or operated by, **You** or any **family member** that is not **Your covered auto**. This includes any rental or temporary substitute for **Your covered auto.**

12. **Property damage** means damage to or destruction of property, including any loss of use.
13. **Resident** means a non **family** member actually living in the household in which **You** reside. Any **resident** must be listed in **Your** application and listed on **Your Declarations**, or added by endorsement, for coverage to apply.
14. **Occupying** means being in, upon, getting in, on, out or off.
15. **Owned** means, with respect to a private passenger type **auto**, the person:
    a. holds legal title; or
    b. has legal possession under a written lease or loan agreement for a continuous period of at least six months.
16. **Replacement auto** means any **auto** that permanently replaces the previous **auto** on the **Declarations**. A **replacement auto** will have the same coverages as the **auto** it replaces provided that no other insurance provides coverage for the **replacement auto** and it is acquired during the policy period. If **You** wish to continue coverage under Part D – Damage to **Your** Auto for the **replacement auto, You** must tell **Us** to provide coverage within 14 days after **You** become the **owner** of the **replacement auto**. If the **auto** it replaces does not have coverage under Part D – Damage to **Your** Auto, **You** must tell us to add the coverage and **You** must pay the additional premium prior to the effective date for coverages that are added.
17. **Trailer** means a non-motorized vehicle designed to be pulled by a:
    a. private passenger **auto**; or
    b. pickup, van or panel truck.

    It also means a farm wagon or farm implement while being towed by a vehicle listed in a. or b. above. It does not include travel trailers, camper trailers or any **trailers** used for commercial purposes such as: an office, a store, display purposes, or to transport passengers.
18. **Your covered auto** means:
    a. any **auto** shown in the **Declarations** for the coverages applicable to that **auto**;
    b. any **additional auto**;
    c. any **replacement auto**; and/or
    d. any **trailer owned** by **You** while attached to **Your covered auto**.

19. **Punitive** or **Exemplary Damages** means any additional money, or punishment imposed to a wrongdoer and to deter others from similar acts.

20. **Representation** means any statement **You** made while buying this policy. The grouping of these statements used while buying this policy are deemed to be **Your representations**.

NAMED DRIVER EXCLUSION

Lyndon Southern Insurance Company will not provide coverage for any claim arising from an **accident** or loss incurred when a **covered auto** or any other **auto** is operated, maintained, or used by a driver specifically excluded from coverage at the time of application or by endorsement. This exclusion applies whether or not the use is with the **named insured's** permission.

This includes any claim for damages made against **You**, a **family member**, a **resident**, or any other person or organization for negligent entrustment, vicarious liability, or any other similar theory.

This does not apply to Uninsured Motorist coverage unless the named insured rejects Uninsured Motorist coverage in writing under this policy and all renewals and changes thereof.

PART A -- LIABILITY COVERAGE

INSURING AGREEMENT

If **You** pay **us** the premium when due for this coverage, **We** will pay damages (**bodily injury** and **property damage**) for which any **insured person** becomes legally responsible due to an **accident**. Damages include prejudgment interest awarded against an **insured person**.

We will defend and/or settle, at **our** expense and as **We** consider appropriate, any claim or suit asking for these damages. Attorneys selected by **us** will provide a defense to such suit after it is tendered to **us**. **Our** duty to defend and/or settle ends when **our** limit of liability for this coverage has been exhausted by payment, settlement or judgment.

We have no duty to defend any suit or settle any claim for **bodily injury** or **property damage** not covered under this policy. **We hold the option to** recover from an **insured person** any amounts **We** have paid to defend the **insured person** in a lawsuit if it is determined that **We** had no duty to defend the **insured person**.

ADDITIONAL DEFINITIONS

When used in this Part A:

1. **Insured person** means:
    a. **You**, any **family member**, who resides at the principal residence, or any other person listed as an additional driver in the **Declarations** with respect to an **accident** arising out of the ownership, maintenance or use of **Your covered auto** or **non-owned auto**;
    b. Any person with respect to an **accident** arising out of that person's maintenance or use of **Your covered auto** with **Your** express or implied permission;
    c. Any person or organization vicariously liable for the acts or omissions of a person described in paragraph a or b above; and
    d. The personal representative of any person included in a or b above.

EXCLUSIONS THAT APPLY TO PART A – LIABILITY COVERAGE

We do not provide Liability Coverage and **We** have no duty to settle or defend any claim or lawsuit:

1. For **bodily injury** or **property damage** caused purposely by, or at the direction of, any **insured person**, even if the actual injury or damage is different than that which was intended or expected;
2. For damage to property owned by, used by, rented to, being transported by, or in the care, custody or control of an **insured person**. This exclusion does not apply to damages to a rented residence or rented private garage.
3. For **bodily injury** to an employee of an **insured person** during the course of employment. This exclusion does not apply to **bodily injury** to a domestic employee unless workers' compensation benefits, disability benefits or similar benefits are required or available for that domestic employee.
4. For **bodily injury** or **property damage** arising out of the ownership, maintenance or operation of any vehicle while it is being used to carry persons or property for compensation or a fee, including but not limited to the pickup or delivery or return from a pick-up or delivery of products, documents, newspapers, or food. This exclusion does not apply to a share-the-expense car pool.
5. For **bodily injury** or **property damage** arising out of the ownership, maintenance or use of any vehicle by a person who is employed or otherwise engaged in any **business.**
6. For **bodily injury** or **property damage** arising out of the maintenance or use of any vehicle while an **insured person** is employed or otherwise engaged in any business.
7. For **bodily injury** or **property damage** arising due to or as a result of the use of any **auto** without the owner's express or implied permission or without a reasonable belief that person was entitled to do so.
8. For **bodily injury** or **property damage** for which an **insured person**:
    a. Is an insured under a nuclear energy liability policy; or
    b. Would be an insured under a nuclear energy liability policy but for its termination upon exhaustion of its limit of liability.

A nuclear energy liability policy is a policy issued by any of the following or their successors:
  a. American Nuclear Insurers;
  b. Mutual Atomic Energy Liability Underwriters; or
  c. Nuclear Insurance Association of Canada.

9. For **bodily injury** to **You** or a **family member** above the minimum limits of liability required by the South Carolina Motor Vehicle Financial Responsibility Act.
10. For liability assumed by an **insured person** under any contract or agreement.
11. Arising out of the ownership, maintenance or use of any vehicle, other than **Your covered auto** which is:
    a. **Owned** by **You**; or
    b. Furnished or available for **Your** regular use.
12. Arising out of the ownership, maintenance or use of any vehicle, other than **Your covered auto**, which is:
    a. **Owned** by any **family member** or any person specifically listed as an additional driver in the **Declarations**; or
    b. Furnished or available for the regular use of any **family member** or any person specifically listed as an additional driver in the **Declarations**. This exclusion does not apply to **Your** maintenance or use of such vehicle.
13. For **bodily injury** or **property damage** arising out of the ownership or operation of any vehicle while it is being used in any racing, speed, or demolition event or contest or stunting activity or in preparation for such an event, contest, or activity. This exclusion applies regardless of whether the event, contest, or activity is pre-arranged.
14. For **bodily injury** or **property damage** arising out of the ownership or operation of any vehicle while it is being used to commit a felony or other criminal activity. The exclusion applies regardless of whether the **insured person** is actually charged with, or convicted of, a crime.
15. For **bodily injury** or **property damage** arising out of the ownership or operation of any vehicle while it is being used to flee any law enforcement agent or crime scene.
16. For any obligation for which the United States Government is liable under the Federal Tort Claims Act.
17. Arising out of the ownership, maintenance or use of **Your covered auto** while it is rented to or leased by another.
18. Arising out of the ownership, maintenance or use of any vehicle that is principally designed for use not on public roads.
19. For charges, fees and administrative expenses for services performed by law enforcement and municipal personnel when responding to a motor vehicle **accident** or loss.

LIMIT OF LIABILITY

The bodily injury liability limit for "each person" as shown in the **Declarations** is the maximum **We** will pay for **bodily injury** sustained by any one person in any one **accident**, including all resulting claims which include, but are not limited to, loss of consortium, loss of services, loss of companionship, or injury to any personal relationship. **Bodily injury** to any one **person** includes all injury and damages to others resulting from this **bodily injury**.

Subject to the bodily injury liability limit for "each person", the bodily injury liability limit for "each accident" as stated in the **Declarations** is the maximum **We** will pay for **bodily injury** sustained by two or more persons in any one **accident**.

The property damage liability limit for each **accident** as stated in the **Declarations** is the maximum **We** will pay for all **property damage** arising out of any one **accident**. The limit of liability shown in the **Declarations** is the most **We** will pay regardless of the number of vehicles involved in the **accident**, **insured persons**, claims made, lawsuits brought, premiums paid, or the number of vehicles or premiums shown in the **Declarations**.

No one is entitled to duplicate payments for the same element of damages. Any amount payable under Part A-Liability Coverage to a person for **bodily injury** shall be reduced by all sums paid to that person, or for their benefit, under Part C – Uninsured/Underinsured Motorist Coverage.

FINANCIAL RESPONSIBILITY

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

OTHER INSURANCE

Any insurance **We** provide under Part A shall be additional over any other collectible insurance, self-insurance protection and/or any other source of recovery, except for the insurance **We** provide for the ownership, maintenance and use of **Your covered auto**. If other insurance, self-insurance, protection and/or other source of recovery with the same priority applies, **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 insurance limits, self-insurance amounts or limits, and/or other sources of recovery.

PART B – MEDICAL PAYMENTS COVERAGE

INSURING AGREEMENT

If **You** pay **us** the premium when due for this coverage, **We** will pay the reasonable expenses incurred for necessary medical and funeral services due to **bodily injury** caused by an **accident** and sustained by an **insured person**. **We** will pay only those expenses incurred within 1 year from the date of the **accident**.

ADDITIONAL DEFINITIONS

When used in this Part B:

1. **Insured person** means:
    - a. **You**, any **family member** or any driver listed in the **Declarations**:
        - i. while **occupying** any **auto**; or
        - ii. when struck as a pedestrian by an **auto**;
    - b. Any other person **occupying Your covered auto**.
2. **Medical services** means those services provided by or under the supervision of a licensed **physician.**
3. **Physician** means an individual licensed by a state or territory of the United States or District of Columbia to practice medicine, practice surgery, and prescribe drugs.
4. **Medical expenses** means reasonable and necessary medical expenses incurred for services rendered to or on behalf of an **insured person** for medical, surgical, x-ray, and dental services performed by or under the supervision of a licensed **physician.**

EXCLUSIONS THAT APPLY TO PART B – MEDICAL PAYMENTS COVERAGE

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

1. Arising out of the ownership, maintenance or operation of any vehicle while it is being used to carry persons or property for compensation or a fee, including but not limited to the pickup or delivery or return from a pick-up or delivery of products, documents, newspapers, or food. This exclusion does not apply to a share-the-expense car pool.
2. Sustained while **occupying** any vehicle while being used as a residence or premises.
3. For **bodily injury** arising out of the ownership, maintenance or use of any vehicle by a person who is employed or otherwise engaged in the **business.**
5. 4.For **bodily injury** arising out of the maintenance or use of any vehicle while an **insured person** is employed or otherwise engaged in any business. Occurring during the course and scope of employment if workers' compensation or disability benefits are required or available for the **bodily injury**.
6. Sustained while **occupying** or when struck by any vehicle other than **Your covered auto** which is:
    - a. **owned** by **You**; or
    - b. furnished or available for **Your** regular use.
7. Sustained while **occupying** or when struck by any vehicle other than **Your covered auto** which is:
    - a. **owned** by any **family member** or any person specifically listed as an additional driver in the **Declarations**; or
    - b. furnished or available for the regular use of any **family member** or any person specifically listed as an additional driver in the **Declarations**. This exclusion does not apply to **Your** maintenance or use of such vehicle.
8. Sustained while **occupying** a vehicle without the owner's express or implied permission or without a reasonable belief that the person was entitled to do so.
9. Sustained while **occupying** a vehicle operated by any person who has had their driving privileges permanently revoked.
10. Caused by or as a consequence of:
    - a. discharge of a nuclear weapon (even if accidental);
    - b. war (declared or undeclared) or civil war;
    - c. insurrection, rebellion or revolution.
11. From, or as a consequence of the following, whether controlled or uncontrolled or however caused:
    - a. nuclear reaction;
    - b. radiation; or
    - c. radioactive contamination.
12. While **occupying** any vehicle that is being used in any racing, speed, or demolition event or contest or stunting activity or preparation for such an event, contest, or activity. This exclusion applies regardless of

whether the event, contest, or activity is pre-arranged.

13. While **occupying** any vehicle while being used to flee a law enforcement agent or a crime scene.
14. Caused intentionally by, or at the direction of, any **insured person**, even if the actual injury or damage is different than that which was intended or expected.
15. Arising out of the ownership or operation of any vehicle while it is being used to commit a felony or other criminal activity. The exclusion applies regardless of whether the **insured person** is actually charged with, or convicted of, a crime.
16. For which the United States Government is liable under the Federal Tort Claims Act.
17. Arising out of the ownership, maintenance or use of **Your covered auto** while it is rented to or leased to another.
18. Arising out of the ownership, maintenance or use of any vehicle that is principally designed for use off public roads.
19. For which an **insured person**:
    a. Is an insured under a nuclear energy liability policy; or
    b. Would be an insured under a nuclear energy liability policy but for its termination upon exhaustion of its limit of liability.

    A nuclear energy liability policy is a policy issued by any of the following or their successors:
    a. American Nuclear Insurers;
    b. Mutual Atomic Energy Liability Underwriters; or
    c. Nuclear Insurance Association of Canada.

LIMIT OF LIABILITY

The limit of liability shown in the **Declarations** for this coverage is the most **We** will pay for each **insured person** injured in any one **accident**. This is the most **We** will pay regardless of the number of:

1. **Insured persons;**
2. Claims made;
3. Lawsuits brought;
4. Vehicles or premiums shown in the **Declarations;**
5. Premiums paid; or
6. Vehicles involved in the **accident**.

PART C – UNINSURED/UNDERINSURED MOTORIST COVERAGE

INSURING AGREEMENT – UNINSURED MOTORIST COVERAGE

If **You** pay **us** the premium when due for this coverage, **We** will pay for damages an **insured person** is legally entitled to recover from the owner or operator of an **uninsured motor vehicle** because of **bodily injury** or **property damage** sustained by an **insured person,** caused by an **accident**, and arising out of the ownership, maintenance or use of an **uninsured motor vehicle**.

INSURING AGREEMENT – UNDERINSURED MOTORIST COVERAGE

If **You** pay **us** the premium when due for this coverage, **We** will pay for damages an **insured person** is legally entitled to recover from the owner or operator of an **underinsured motor vehicle** because of **bodily injury** or **property damage** sustained by an **insured person,** caused by an **accident**, and arising out of the ownership, maintenance or use of an **underinsured motor vehicle**.

We will pay under Part C only after the limits of liability under all liability policies applicable to an **uninsured motor vehicle** have been exhausted by payment of judgments or settlements.

We will pay under Part C only after the limits of liability under all liability bonds and policies applicable to an **underinsured motor vehicle** have been exhausted by payment of judgments or settlements.

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

An **insured person** must notify **us** in writing at least 30 days before entering into any settlement with the owner or operator of an **uninsured motor vehicle** or **underinsured motor vehicle**, or that person's liability insurer. If, within 30 days after **We** receive notice of tentative settlement from the **insured person**, **We** notify the **insured person** that **We** refuse to consent to a proposed settlement, the **insured person** must protect and preserve **our** right of subrogation to the claim against the operator or **owner** of any **uninsured motor vehicle** or **underinsured motor vehicle** who is liable for the **accident**.

ADDITIONAL DEFINITIONS

When used in this Part C:

1. **Insured person** means:
   a. **You,** any **family member** or any other person listed as an additional driver in the **Declarations**;
   b. Any other person while occupying **Your covered auto**, provided the actual use thereof is with the permission of the **named insured**; and
   c. Any person entitled to recover damages for **bodily injury** covered under Part C of this policy sustained by a person meeting the definition of an **insured person** in 1.a. or 1.b. above.
2. **Property damage** means physical damage to, or destruction of **Your** tangible property..
3. **Underinsured motor vehicle** means a land motor vehicle or **trailer** of any type to which a **bodily injury** liability policy applies at the time of the **accident** but the sum of all applicable limits of liability for **bodily injury** is less than the amount of the **insured person's** damages.
4. **Uninsured motor vehicle** means a land motor vehicle or **trailer** of any type:
   a. For which no bodily injury or property damage liability policy, bond, or deposit of cash or securities applies at the time of the **accident**;
   b. For which the owner of the **vehicle** has not qualified as a self-insurer in accordance with the applicable provisions of the law;
   c. To which a liability policy applies at the time of the **accident** but the insuring company:
      i. Denies coverage; or
      ii. Is or becomes insolvent, declared bankrupt, or subject to the appointment of a receiver;
   d. Which is a hit-and run-vehicle whose owner or operator cannot be identified and which hits:
      i. **You** or any **family member**;
      ii. A vehicle which **You** or any **family member** are **occupying**; or
      iii. **Your covered auto;**

   Provided that an **insured person** or his/her representative reports the **accident** to the police or civil authority within 24 hours or as soon as practicable after the **accident.** There must be actual physical contact with the hit-and-run vehicle. If there is no physical contact then no right of recovery exists unless:

      i. An **insured person** was not negligent in failing to determine the identity of the other **vehicle** and the driver of the other **vehicle** at the time of the **accident**;
      ii. The **accident** was witnessed by someone other than the owner or operator of the insured vehicle; and
      iii. The **accident** witness signs an affidavit attesting to the truth of the facts of the **accident**. The following language must be contained prominently on the face of the affidavit: "A FALSE STATEMENT CONCERNING THE FACTS CONTAINED IN THIS AFFIDAVIT MAY SUBJECT THE PERSON MAKING THE FALSE STATEMENT TO CRIMINAL PENALTIES AS PROVIDED BY LAW".

   However, **uninsured motor vehicle** does not include any vehicle:
   a. **Owned** by an **insured person** or furnished or available for the regular use of an **insured person**;
   b. **Owned** or operated by a self-insurer within the meaning of any motor vehicle financial responsibility law, motor carrier law or any similar law;
   c. **Owned** by the United States of America, Canada, a state, a political subdivision of any such government or an agency of any such government;
   d. Operated on rails or crawler-treads or while located for use as a residence or premises and not as a vehicle;
   e. That is a farm-type tractor or equipment designed for use principally off public roads, except while actually upon public roads;
   f. Not required to be registered with the Department of Motor Vehicles, including but not limited to mopeds, scooters, snowmobiles, golf carts, go-carts, and all-terrain vehicles.
   g. That is an **underinsured motor vehicle**; or
   h. For which coverage under Part A applies.

EXCLUSIONS THAT APPLY TO PART C – UNINSURED/UNDERINSURED MOTORIST COVERAGE

Coverage under Part C does not apply:

1. if the **insured person** or their legal representative settles or prosecutes to a judgment a claim for **bodily injury** or **property damage** without our consent.
2. to **bodily injury** or **property damage** arising out of the ownership, maintenance or operation of any vehicle while it is being used to carry persons or property for compensation or a fee, including but

not limited to the pickup or delivery or return from a pick-up or delivery of products, documents, newspapers, or food. This exclusion does not apply to a share-the-expense car pool.

3. to **bodily injury** or **property damage** when an **insured person** is using a vehicle without a reasonable belief that the person is entitled to do so.
4. to **bodily injury** or **property damage** sustained by any person while **occupying** or when struck by a **trailer** of any type used with a motor vehicle **owned** by **You** or any **family member** or any other person specifically listed as an additional driver listed in the **Declarations** which is not insured for this coverage under this policy.
5. directly or indirectly to benefit:
   a. Any **insured person** or self-insurer under any of the following or similar law:
      i. workers' compensation law;
      ii. disability benefits law;
      iii. the State Accident Insurance Fund; or
   b. An insurer of property.
6. directly to the benefit of the United States or any State or political subdivision thereof.
7. for **bodily injury** or **property damage** arising out of the ownership or operation of any vehicle while it is being used to commit a felony or other criminal activity. The exclusion applies regardless of whether the **insured person** is actually charged with, or convicted of, a crime.
8. for **bodily injury** or **property damage** arising out of the ownership or operation of any vehicle while it is being used to flee a law enforcement agent or crime scene.
9. for **bodily injury** or **property damage** arising out of the ownership or operation of any vehicle while it is being used in any racing, speed, or demolition event or contest or stunting activity or in preparation for such an event, contest, or activity. This exclusion applies regardless of whether the event, contest, or activity is pre-arranged or not.
10. for the first two hundred dollars ($200) of the property loss or damage under a claim for Uninsured Motorist Coverage.
11. Uninsured and Underinsured Motorist Coverage does not apply:
    To a claim for diminution in value of your insured automobile.

LIMIT OF LIABILITY

The limit of Uninsured/Underinsured Motorist Bodily Injury Liability or Uninsured Motorist Property Damage Liability shown in the Schedule or in the **Declarations** is the most **We** will pay regardless of the number of:

1. **Insured persons;**
2. Claims made;
3. Vehicles or premiums shown in the **Declarations**;
4. Vehicles involved in the **accident**; or
5. Premiums paid.

If **You** or **a family member** sustains **bodily injury** or **property damage** in an **accident** while **occupying Your covered auto, our** limit of liability for all the damages resulting from the **accident** will be the sum of the limits of liability shown in the **Declarations** for Uninsured Motorist Coverage.

If **You** or **a family member** sustains **bodily injury** or **property damage** in an **accident** while **occupying** a car other than **Your** own or while not **occupying** a vehicle, **our** limit of liability for all damages resulting from the **accident** will be the highest limit of liability shown in the **Declarations** for any one of **Your covered autos.**

If an insured, other than **You** or a **family member**, sustains **bodily injury** or **property damage** in an **accident** while occupying **Your covered auto our** limit of liability will be the limit of liability shown in the **Declarations** applicable **to Your covered auto** that is involved in the **accident.**

The Uninsured/Underinsured Motorist Bodily Injury limit for each person as shown in the **Declarations** is the maximum **We** will pay for **bodily injury** or **property damage** sustained by any one person in any one **accident**, including all derivative claims which include, but are not limited to, loss of consortium, loss of services, loss of companionship, or injury to any personal relationship. **Bodily injury** or **property damage** to any one **person** includes all injury and damages to others resulting from this **bodily injury** or **property damage.**

Subject to the Uninsured/Underinsured Motorist Bodily Injury limit for each person, the bodily injury or property damage limit for each **accident** as stated in the **Declarations** is the maximum **We** will pay for **bodily injury** or **property damage** sustained by two or more persons in any one **accident**.

Our maximum limit of liability for all damages for **property damage** resulting from any one **accident** will be the lesser of:

not limited to the pickup or delivery or return from a pick-up or delivery of products, documents, newspapers, or food. This exclusion does not apply to a share-the-expense car pool.

3. to **bodily injury** or **property damage** when an **insured person** is using a vehicle without a reasonable belief that the person is entitled to do so.
4. to **bodily injury** or **property damage** sustained by any person while **occupying** or when struck by a **trailer** of any type used with a motor vehicle **owned** by **You** or any **family member** or any other person specifically listed as an additional driver listed in the **Declarations** which is not insured for this coverage under this policy.
5. directly or indirectly to benefit:
    a. Any **insured person** or self-insurer under any of the following or similar law:
        i. workers' compensation law;
        ii. disability benefits law;
        iii. the State Accident Insurance Fund; or
    b. An insurer of property.
6. directly to the benefit of the United States or any State or political subdivision thereof.
7. for **bodily injury** or **property damage** arising out of the ownership or operation of any vehicle while it is being used to commit a felony or other criminal activity. The exclusion applies regardless of whether the **insured person** is actually charged with, or convicted of, a crime.
8. for **bodily injury** or **property damage** arising out of the ownership or operation of any vehicle while it is being used to flee a law enforcement agent or crime scene.
9. for **bodily injury** or **property damage** arising out of the ownership or operation of any vehicle while it is being used in any racing, speed, or demolition event or contest or stunting activity or in preparation for such an event, contest, or activity. This exclusion applies regardless of whether the event, contest, or activity is pre-arranged or not.
10. for the first two hundred dollars ($200) of the property loss or damage under a claim for Uninsured Motorist Coverage.
11. Uninsured and Underinsured Motorist Coverage does not apply:
    To a claim for diminution in value of your insured automobile.

LIMIT OF LIABILITY

The limit of Uninsured/Underinsured Motorist Bodily Injury Liability or Uninsured Motorist Property Damage Liability shown in the Schedule or in the **Declarations** is the most **We** will pay regardless of the number of:

1. **Insured persons**;
2. Claims made;
3. Vehicles or premiums shown in the **Declarations**;
4. Vehicles involved in the **accident**; or
5. Premiums paid.

If **You** or **a family member** sustains **bodily injury** or **property damage** in an **accident** while **occupying Your covered auto, our** limit of liability for all the damages resulting from the **accident** will be the sum of the limits of liability shown in the **Declarations** for Uninsured Motorist Coverage.

If **You** or **a family member** sustains **bodily injury** or **property damage** in an **accident** while **occupying** a car other than **Your** own or while not **occupying** a vehicle, **our** limit of liability for all damages resulting from the **accident** will be the highest limit of liability shown in the **Declarations** for any one of **Your covered autos.**

If an insured, other than **You** or a **family member**, sustains **bodily injury** or **property damage** in an **accident** while occupying **Your covered auto our** limit of liability will be the limit of liability shown in the **Declarations** applicable **to Your covered auto** that is involved in the **accident.**

The Uninsured/Underinsured Motorist Bodily Injury limit for each person as shown in the **Declarations** is the maximum **We** will pay for **bodily injury** or **property damage** sustained by any one person in any one **accident**, including all derivative claims which include, but are not limited to, loss of consortium, loss of services, loss of companionship, or injury to any personal relationship. **Bodily injury** or **property damage** to any one **person** includes all injury and damages to others resulting from this **bodily injury** or **property damage**.

Subject to the Uninsured/Underinsured Motorist Bodily Injury limit for each person, the bodily injury or property damage limit for each **accident** as stated in the **Declarations** is the maximum **We** will pay for **bodily injury** or **property damage** sustained by two or more persons in any one **accident**.

Our maximum limit of liability for all damages for **property damage** resulting from any one **accident** will be the lesser of:

1. The limit of Uninsured Motorist Property Damage Liability shown in the **Declarations**;
2. The actual cash value of **Your covered auto**, reduced by the salvage value if **You** or the owner of the property retain the salvage; or
3. The amount to repair the vehicle or property;

reduced by:

a. All sums paid for the **property damage** by or on behalf of any persons or organizations that may be legally liable;
b. Any amounts paid under this policy for the same elements of **property damage** or loss;
c. **A deductible of $200; and**
d. If the **auto** is repaired, all sums that represents any increase in:
    i. The value of the **auto**, when repair of prior damage increases the value of the **auto** to a condition that was better than it was prior to the **accident**; and
    ii. The value of the increase of useful life of replaced parts that have a useful life shorter than the auto's useful life, including but not limited to, tires, batteries and struts. Any amount payable under the terms of this coverage because of **bodily injury** or **property damage** sustained in an **accident** by a person who is an **insured person** under this coverage shall be reduced by:
        1. All sums paid on account of the **bodily injury** or **property damage** by or on behalf of the owner or operator of the uninsured vehicle and by or on behalf of any other person or organization jointly or severally liable together with the owner or operator for the **bodily injury** or **property damage**, including all sums paid under Part A – Liability Coverage of this policy; and
        2. The amount paid and the present value of all amounts payable on account of the **bodily injury** or **property damage** under any worker's compensation law, disability benefits law, or any similar law.

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

OTHER INSURANCE

If there is other applicable similar insurance, **We** will not pay for any damages which would duplicate any payment made for damages under such similar insurance. Additionally, **We** will not pay for any damages due under similar insurance but not paid.

The coverage of the vehicle occupied at the time of the **accident** by an **insured person** shall be primary. Any coverage for which such person is a **named insured** shall be secondary. In the event there is other coverage applicable, that coverage shall be excess.

In the event there is more than one excess or secondary policy, each policy will pay the proportioned share that its limits bear to the total of all the respective excess limits or secondary limits. The maximum amount that an **insured person** can receive as a result of an uninsured or underinsured motorist claim is the highest amount available under the primary, secondary, or any of the applicable excess policies.

In the event that an **insured person** is injured while occupying an **owned** vehicle, only the uninsured and underinsured motorist coverage applicable to that vehicle will apply, and no other policies or provisions of coverage will apply. Any reductions or credits allowable shall be first applied to reduce any payment due under this policy.

If there is any other applicable Uninsured Motorists coverage or Underinsured Motorists coverage available to an **insured person, We** will pay only **our** share of the damages of the **insured person. Our** share is the proportion that **our** limit of liability bears to the total of all applicable limits. But, when **occupying** a motor vehicle **You** do not own, coverage under Part C is excess over any other applicable Uninsured Motorists coverage or Underinsured Motorists coverage and the coverage shall then apply only in the amount by which the limits of liability for this coverage exceeds the applicable limits for such other insurance.

PART D – DAMAGE TO YOUR AUTO

INSURING AGREEMENT – COLLISION COVERAGE

If **You** pay **us** the premium for Collision Coverage when due, **We** will pay for damage to **Your covered auto** or **non-owned auto** resulting from **collision**.

INSURING AGREEMENT – COMPREHENSIVE COVERAGE

If **You** pay **us** the premium for Comprehensive Coverage when due, **We** will pay for comprehensive loss to **Your covered auto** or **non-owned auto**. A comprehensive loss is a loss caused by the following:

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

Any deductible listed on the **Declarations** page shall not apply to damage to automobile safety glass.

RENTAL REIMBURSEMENT COVERAGE

If **You** pay **us** the premium for Rental Reimbursement Coverage when due, **We** will pay for the cost incurred by **You** for rental of an **auto** from an auto rental agency or a vehicle repair shop while **Your covered auto** for which this coverage is purchased is inoperable as a result of **collision** or a comprehensive loss to which coverage under this Part D applies. **We** will not pay Rental Reimbursement when **Your covered auto** is inoperable due to wear and tear, freezing, mechanical or electrical breakdown or failure, or road damage to tires.

The limit of liability for Rental Reimbursement Coverage is the amount shown in the **Declarations** as the daily limit, for up to 20 days, up to a maximum of $400, for each **accident**, loss or theft. Coverage under Transportation Expenses shall not apply for a rental of an **auto** when Rental Reimbursement Coverage applies.

Rental charges will be reimbursed beginning when:

1. **Your covered auto** cannot be driven due to a loss; or
2. if **Your covered auto** can be driven, when **You** deliver or **Your** representative delivers **Your covered auto** to an auto repair shop for repairs due to the loss.

Rental charges will end when **Your covered auto** has been repaired or replaced. If **Your covered auto** is determined by **us** to be a total loss, coverage for rental charges will end 48 hours after **We** make an offer to pay the actual cash value of **Your covered auto**.

You must provide **us** written proof of **Your** rental charges. Duplicate recovery for identical elements of damages is not permitted under this policy.

This Rental Reimbursement Coverage for a **non-owned auto** is subject to all of the policy limitations and exclusions stated within this policy. Damage to the **non-owned auto** is therefore <u>not covered</u>.

TOWING AND LABOR COVERAGE

If **You** pay **us** the premium for Towing And Labor Coverage for **Your covered auto** when due, **We** will reimburse **You** for towing and labor costs incurred as a result of the disablement of that **auto**, up to the limit of the coverage stated in the **Declarations** of this policy, provided that:

1. The labor, if any, is performed at the place of disablement; or
2. If towed, the **auto** is towed to the nearest qualified repair facility and the towing is necessary due to:
    a. mechanical or electrical breakdown;
    b. battery failure;
    c. insufficient supply of fuel, oil, water, or other fluid;
    d. flat tire;
    e. lock-out; or
    f. entrapment in snow, mud, water or sand, within 100 feet of a road or highway.

ADDITIONAL DEFINITIONS

When used in this Part D:

1. **Collision** means the upset of **Your covered auto** or **non-owned auto** or its impact with another vehicle or object.

EXCLUSIONS THAT APPLY TO PART D – DAMAGE TO YOUR AUTO

Coverage under this Part D does not apply for loss:

1. to **Your covered auto** or **non-owned auto** while it is being used to carry persons or property for compensation or a fee, including but not limited to the pickup or delivery or return from a pick-up or delivery of products, documents, newspapers, or food. This exclusion does not apply to a share-the-expense car pool.
2. to **Your covered auto** or **non-owned auto** while it is being rented to others or hired for a fee.
3. to any vehicle that is due and confined to:
    a. Wear and tear;
    b. Deterioration including but not limited to rust, rot or mold;
    c. Latent or inherent defects;
    d. Freezing;
    e. Mechanical or electrical breakdown or failure;
    f. Road damage to tires;
    g. Lack of maintenance, including but not limited to lack or loss of lubricants, oil, transmission fluid, or coolant; or
    h. Leakage or seepage of water, whether or not wind driven, unless entering the vehicle through an opening caused by a covered peril. This exclusion does not apply if the damage results from the total theft of **Your covered auto**.
4. to any vehicle due to or as a consequence of:
    a. Radioactive contamination;
    b. Discharge of any nuclear weapon (even if accidental);
    c. War (declared or undeclared);
    d. Civil war, insurrection, rebellion or revolution.
5. to sound or video producing or recording equipment or navigation equipment for amounts in excess of $1,000 per component over the applicable deductible even though factory or dealer installed, and then only for the amount in excess of the deductible on the applicable coverage.
6. to tapes, records, CD's, DVD's, video or other devices for use with equipment designed for the reproduction of sound or video.
7. to any **non-owned auto** when used by **You** or any **family member** or any person specifically listed as an additional driver in the **Declarations** without the owner's express or implied permission to do so.
8. to any vehicle operated by any person who has had their driving privileges permanently revoked.
9. to TV antennas, awnings, cabanas, or equipment designed to create additional living facilities.
10. to any of the following or their accessories:
    a. Citizen band radio;
    b. Two-way mobile radio;
    c. Telephone;
    d. Scanning monitor receiver; or
    e. Radar detectors or similar devices.
11. to any custom furnishings or equipment in or upon any vehicle unless such equipment was factory-installed by the original manufacturer or authorized dealer at the time of purchase. Custom furnishings or equipment include but are not limited to:
    a. special carpeting and insulation, furniture, bars or television receivers;
    b. facilities for cooking and sleeping;
    c. height-extending roofs;
    d. equipment designed or used for the detection or location of radar;
    e. custom car kits;
    f. custom grills, louvers, scoops, continental kits, and custom spoilers;
    g. custom paint, including but not limited to lacquer paint, and upholstery, other than that installed by the original manufacturer, or objects including but not limited to murals, paintings or other decals or graphics;
    h. custom wheels, other than factory installed;
    i. custom chrome parts;
    j. ground effects, running boards, or mud flaps;
    k. bed liners;
    l. camper shells or custom enclosures for pickups;
    m. any other equipment, device, accessory, or enhancement which alters the appearance or performance of a vehicle and is not factory installed; or
    n. global positioning systems (GPS).
12. to any part of the vehicle, or its equipment, that is not permanently attached to the vehicle at the time of loss.
13. to any **non-owned auto** being maintained or used by any person while employed or otherwise engaged in any **business.**
14. to any vehicle being towed by **Your covered auto**, which is not shown in the **Declarations** and for

which premium has not been paid. This exclusion does not apply to a **trailer**.

15. due to the cost of delay in repair, nor will **We** pay more than the cost of repair and/or replacement of automobiles of standard makes and similar type, and **We** will not pay for any extraneous items or any finish or special customizing of such vehicle other than as originally and normally manufactured.
16. to any specially built body, food vending equipment, catering equipment, or refrigeration equipment, nor to travel trailers, unless such equipment is described in the application and a premium charged therefore.
17. to any vehicle while it is being used in any racing, speed, or demolition event or contest or stunting activity or preparation for such an event, contest, or activity. This exclusion applies regardless of whether the event, contest, or activity is pre-arranged or not.
18. to any vehicle arising out of or during its commercial use for the transportation of any explosive substance, flammable liquid, or similar hazardous material, except transportation incidental to **Your** ordinary household or farm activities.
19. due to taking or confiscation by governmental or civil authority, for any purpose, including temporary taking or temporary confiscation.
20. due to illegal sale, or repossession of a motor vehicle by the rightful owner.
21. due to theft, embezzlement or other unlawful conversion of **Your covered auto** or **non-owned auto** after custody of said **auto** has been entrusted to another party for the purpose of subleasing, leasing or selling said automobile, whether under a consignment or not. This exclusion will apply whether the theft, embezzlement or unlawful conversion of the automobile was committed by the person to whom the vehicle was entrusted or by any other person.
22. due to the destruction of any vehicle, in whole or in part, intentionally caused by, or at the direction of **You**, any **insured person**, a **family member**, or any person listed as a driver in the **Declarations**.

23 covered by **collision** under this policy if any vehicle is being operated by any person:
   a. not listed on the policy, who has been a **resident** of **Your** household for more than 30 days. **You** must notify us within 30 days of the time when a person becomes a **resident** who was not listed on the policy. However, this exclusion (23.a.) shall not apply if the vehicle is operated by a person residing in **Your** household who, at the time of the loss, is insured by one of **our** affiliated companies under a private passenger auto insurance policy; or
   b. not listed on the policy, who does not have a current valid license to drive a motor vehicle, regardless of where that person resides. However, this exclusion (23.b.) shall not apply if the vehicle is operated by a person who, at the time of the loss, is insured by one of **our** affiliated companies under a private passenger auto insurance policy.

24. to any vehicle due to diminution of value.
25. arising out of the ownership, maintenance or use of **Your covered auto** or **non-owned auto** while it is rented to or leased to another.
26. arising out of the ownership, maintenance or use of any vehicle that is principally designed for use off public roads.
27. arising out of the ownership or operation of any vehicle while it is being used to commit a felony or other criminal activity. The exclusion applies regardless of whether the insured person is actually charged with, or convicted of, a crime.
28. arising out of the ownership or operation of any vehicle while it is being used to flee a law enforcement agent or crime scene.
29. Repaired before our authorized representative has viewed your insured automobile. This requirement can be waived only by us.

30. Due to theft of the insured automobile and a police report has not been filed within 24 hours of the loss.

31. Due to damage caused by a hit-and-run driver and a police report has not been filed within 24 hours of the loss.

32. Due to theft of the insured automobile where there is no visible signs of forced entry into the insured automobile.

LIMIT OF LIABILITY

Our limit of liability for loss to **Your covered auto** or **non-owned auto** is the lowest of:

1. The actual cash value of the stolen or damaged property at the time of the loss, but not to exceed $45,000, reduced by the applicable deductible;
2. The amount necessary to replace the stolen or damaged property, but not to exceed $45,000, reduced by the applicable deductible; or
3. The amount necessary to repair the damaged property to its pre-loss condition reduced by the applicable deductible.

Our limit of liability for loss to a **trailer** is $500.00.

Our limit of liability for storage charges for **Your covered auto** incurred related to an **accident You** report to **us** is $150.00

Payments for loss to **Your covered auto** or **non-owned auto** are subject to the following provisions:

1. **We** reserve the right to make payment for repairs or replacement of property with other property of like kind and quality, specifically including the vehicle age, use and condition and/or parts supplied by a source other than the manufacturer of the vehicle such as aftermarket, used, recycled, rebuilt, restored, or exchanged parts.
2. If the repair or replacement results in the betterment of the property or part, meaning that the value of the repaired or replaced property or part has been increased above its pre-loss market value as a result of the repair or replacement, **You** may be responsible, subject to applicable laws and regulation, for the amount of the betterment.
3. Deductions for betterment or depreciation will be taken only for parts or specific repair process normally subject to repair or replacement during the useful life of the vehicle. Deductions will be limited to an amount equal to the proportion that the expired life of the part or specific repair process to be repaired or replaced bears to the normal life of that part or repair process.
4. In the event of a total loss, an adjustment for depreciation and physical condition will be made in determining the actual cash value of the vehicle.
5. **Our** payment will be reduced by the value of the salvage when **You** or the **owner** of the vehicle retains the salvage.
6. No person may receive a duplicate recovery under this policy for the same elements of damages.
7. No deductible will apply to a loss to window glass.
8. Actual cash value is determined by the market value, age, and condition of the vehicle at the time of the loss.

TOTAL LOSS

In the event that **We** determine **Your** vehicle to be a total loss, **You** must, or allow **us,** to move **Your** vehicle to a free storage location of **our** choice. **We** reserve the right to retain **Your** vehicle and/or its salvage property after **Your** vehicle's total loss is settled.

PAYMENT OF LOSS

We may pay for loss in money or repair or replace the damaged or stolen property. **We** may make this payment to **You** or any loss payee as the person or entity's interest appears. **We** may, at **our** expense, return any stolen property to:

1. **You**; or
2. The address shown in this policy. If **We** return stolen property, **We** will pay for any damage resulting from the theft. **We** may keep all or part of the property at an agreed or appraised value.

LOSS PAYABLE CLAUSE

Loss or damage under this policy shall be paid as interest may appear to **You** and the loss payee shown in the **Declarations.** If **You** surrender possession of **Your covered auto** to the loss payee or the loss payee repossesses **Your covered auto, We** will not pay the loss payee for loss occurring after the date the loss payee or its agent takes possession of the **auto.** The interest of a loss payee shall be no greater than **Your** interest under this policy.

When **We** pay a loss payee, **We** will not pay the loss payee more than the repair costs of **Your covered auto,** actual cash value of **Your covered auto** or the existing loan balance as of the date of loss, whichever is less, reduced by any applicable deductible and salvage value if **We** do not retain the salvage. Any insurance covering the interest of a loss payee shall not be protected and shall become invalid for any damage, destruction or other loss resulting from **Your** illegal or fraudulent acts and/or omissions. Additionally, **We** will not pay for any loss caused by conversion, embezzlement, or concealment by **You** or anyone acting on **Your** direction or behalf. **We** will not pay for any destruction or damage and/or loss to an **auto** caused by any intentional act done by, at the direction of, or on behalf of any **insured person.** If **We** pay the loss payee for any loss that is not covered under this policy, **We** shall, to the extent of that payment, be subrogated to the loss payee's rights to recovery against **You** or any other **insured person.**
We reserve the right to cancel the policy as permitted by the policy terms. Cancellation shall terminate the policy and this agreement as to the loss payee's interest. **We** will give notice of cancellation to the loss payee and **named insured** as required under the law.

NO BENEFIT TO BAILEE

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

OTHER INSURANCE

If other insurance also covers 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 insurance, self-insurance, and/or protection limits or amounts regardless of source. However, any insurance **We** provide with respect to a **non-owned auto** shall be excess over any other collectible insurance, self-insurance, and any other source of recovery applicable to the loss.

APPRAISAL

If **We** and **You** do not agree on the amount of loss, then **We** and **You** may agree to an appraisal of the loss. If **We** and **You** agree to an appraisal, each party will select a competent appraiser and notify the other party in writing of the appraiser's identity within 30 days of the request for appraisal. The two appraisers will select an umpire. The appraisers will state separately the amount of loss. If they fail to agree, they will submit their differences to the umpire. A written decision agreed to by any two will be binding. Each party will:

1. Pay its chosen appraiser; and
2. Bear the expenses of the appraisal and umpire equally. **We** do not waive any

of **our** rights under this policy by agreeing to an appraisal.

PART E - DUTIES AFTER AN ACCIDENT OR LOSS

For coverage to apply under this policy, **You** or the person seeking coverage must promptly report to **us** how, when and where the **accident** or loss happened, including the names and addresses of any injured persons and of any witnesses within 24 hours of the loss.

A person seeking any coverage must:

1. Cooperate with **us** in the investigation, settlement or defense of any claim or suit.
2. Promptly send **us** copies of any notices or legal papers received in connection with the **accident** or loss.
3. Submit, as often as **We** reasonably require:
    a. To physical exams by physicians **We** select. **We** will pay for these exams.
    b. To examinations under oath at a place of our choosing, within 75 miles of the residence of the **named insured**, and require the person to correct and sign under oath the transcript of the examination(s) under oath.
    c. To a request for production of documents at the time of the examination under oath and any other time, and allow the copying of any documents **We** or our designated representative requests. This includes, but is not limited to, all documents concerning **Your** income (payroll records, profit and loss statements, etc.), finances, credit, and any other documents **We** indicate are reasonable and necessary to investigate and process **Your** claim. Such documents must be provided to **us** or **our** designated representative in a timely manner, and if requested, prior to an examination under oath.
4. Authorize **us** to obtain:
    a. Medical reports;
    b. Any documents **We** indicate are necessary to investigate and process **Your** claim; and
    c. Event data recorders and/or sensing and diagnostic modules or any other recording device for the purpose of retrieving data following an **accident** or loss.
5. Submit a proof of loss when required by **us**.
6. Provide any statements to **us** when **We** request them, whether in writing, oral, or recorded form, or in person, at our option.

A person seeking Uninsured/Underinsured Motorist Coverage must also:
. Notify the police within 24 hours of an accident in which a hit-and-run driver is involved, and provide a statement under oath to us within 30 days of the accident involving a hit-and-run driver.

1.
2. Provide **us**, within 30 days of the date of filing, with a copy of the complaint, if a lawsuit is brought by the **insured person** against the owner or operator of the **uninsured motor vehicle** or **underinsured motor vehicle**, or against the owner or operator of any other vehicle in the **accident**.

3. Within a reasonable time, make available at **our** expense all pleadings and depositions, if an **insured person** brings a lawsuit against the owner or operator of the **uninsured motor vehicle** or **underinsured motor vehicle**, or against the owner or operator of any other vehicle in the **accident**.
4. Provide **us** with proof that the limits of liability under any liability policies applicable to an **uninsured motor vehicle** have been exhausted by payment of judgments or settlements. Provide **us** with proof that the limits of liability under any liability bond or policies applicable to an **underinsured motor vehicle** have been exhausted by payment of judgments or settlements.
5. Notify **us** or **our** agent in writing within 10 business days of the **accident** for Uninsured Motorist Property Damage coverage.
6. An occupant of the insured vehicle presenting a UMBI claim must be listed on the police report.

A person seeking coverage under Part D - Damage to **Your** Auto must also take reasonable steps after loss, at **Your** expense, to protect **Your covered auto** or a **non-owned auto** and its equipment from further loss.

1. Notify the police, within 24 hours of discovery of the event, if **Your covered auto** is stolen or vandalized.
2. Permit **us** to inspect and appraise the damaged property as often as **We** reasonably require before its repair or disposal.
3. Send **us**, within 30 days of the loss, **Your** signed sworn statement in proof of loss in the form provided to **You**; or, if no form is provided to **You**, a form of **Your** own creation, sworn to under oath, and showing the date and time of loss, the cause of loss, the actual cash value and amount of loss to **Your covered auto**, and attaching detailed repair estimates.

PART F - GENERAL PROVISIONS

TERMS CONFORMED TO STATUTES

This policy shall be deemed amended to conform to the statutes of the state listed in **Your** application if any provision fails to conform to such statutes. Any dispute as to coverages or the provisions of this policy shall be determined and governed by the law of the state listed in **Your** application as **Your** residence.

COVERAGE DEEMED GRANTED BY OUT-OF-STATE-STATUTE

If an **accident** to which this policy applies occurs in any state or province other than the one in which **Your covered auto** is principally garaged, and if a statute of that state or province that is applicable to **us** deems out-of-state automobile or motor vehicle policies issued by **us** to provide particular forms or limits of coverage not provided for in this policy when **Your covered auto** is involved in an **accident** in that state, then for purposes of that **accident** only, **We** will interpret **Your** policy as providing the minimum coverage deemed to be provided, at the minimum amounts permitted by law, and subject to the exclusions set forth in any coverage part of this policy, to the fullest extent permissible by law. All such coverage shall be excess over any other collectible insurance, to the fullest extent permissible by law. Further, **our** obligation to pay such coverage shall be reduced by other available insurance, to the fullest extent permissible by law. Nothing contained herein constitutes a choice of law provision or consents to the application of the law of any particular state or province. No one will be entitled to duplicate payments for the same elements of loss.

BANKRUPTCY

Bankruptcy or insolvency of the **insured person** shall not relieve **us** of any obligations under this policy. If execution of a judgment against an **insured person** under Part A - Liability Coverage is returned unsatisfied for 30 days because of the insolvency or bankruptcy of the **insured person**, a person claiming payment for damages under Part A – Liability Coverage may maintain an action against **us** for the portion of the judgment that does not exceed **our** Limit of Liability, subject to all the terms and conditions of this policy.

CHANGES

This policy, any endorsements to this policy, the **Declarations**, and **Your** application contain all the agreements between **You** and **us.** Their terms may not be changed or waived except by endorsement issued by **us**. If a change requires a premium adjustment, **We** will adjust the premium as of the effective date of change.

The premium for this policy is based on the information **You** provided to **us** or other sources **We** use. **You** agree to cooperate with **us** in determining if this information is accurate and complete. **You** agree to notify **us** of any changes during the policy period. If this information is incomplete, incorrect, or changes during the policy period, **You** agree that **We** may adjust **Your** premium, or take other legally permissible action.

Changes that may result in a premium change include, but are not limited to, **You** or a **family member** obtaining a driver's license or operator's permit, or changes in:

1. **Your** address;
2. **Your** garaging address;
3. **resident** drivers and additional frequent drivers;
4. the number, type, or use classifications of **Your covered autos**; and
5. coverages, deductibles, or limits of liability.

You must notify **us** within 30 days of the time when a person becomes a **resident** of **Your** household who was not previously listed on the policy.

MISREPRESENTATION OR FRAUD

This policy includes the **Declarations page** and the amendments. This policy includes the application and the endorsements. The statements that **You** made while **You** were applying for coverage are **representations.** To determine **Your** premium and eligibility for coverage under this policy, **We** relied on the **representations** that **You** made when **You** applied for coverage. If **You,** or any applicant made any false, fraudulent, or misleading **representations** in **Your** application for insurance, this policy will not provide coverage. In such a case, **We** will not be liable for any claims that would otherwise be covered in the absence of the fraud or misrepresentation.

Your failure to completely and accurately inform **us** of persons residing in **Your** home may constitute fraud or misrepresentation. All **family members** age 14(fourteen) and over MUST be included on the application. No coverage will be afforded to any **family member** or **resident** in **Your** household unless named in the application for coverage and/or listed on the **Declarations page** or added by endorsement.

If **We** are required by law to pay any claim despite this provision, then **We** reserve the right to recover from **You** any payments made as a result of **Your** misrepresentation or fraud.

Any statements **You** made or will make in a notification of change to **Your** policy are also considered **representations** and are subject to the provisions set out above.

We may void this policy if **You** or any insured have concealed or misrepresented any material fact or circumstance or engaged in fraudulent conduct, at the time application was made. **We** may void this policy or deny coverage for an **accident** or loss if **You** or any insured have concealed or misrepresented any material fact or circumstance, or engaged in fraudulent conduct, in connection with the presentation or settlement of a claim.

LEGAL ACTION AGAINST US

No legal action may be brought against **us** until there has been full compliance with all the terms and conditions of this policy. In addition, under Part A – Liability Coverage of this policy, no legal action may be brought against **us** until:
1. **We** agree in writing that the **insured person** has an obligation to pay; or
2. The amount of that obligation has been finally determined by judgment after trial.

No person or organization has any right under this policy to bring **us** into any action brought to determine the liability of an **insured person.**

Under Part B –Medical Payments Coverage or Part D – Coverage for Damage to **Your** Auto, no legal action may be brought against **us** on or upon this policy, or arising out of any activities of the Company in any way related to this policy, or claims **You** have presented, unless filed within three years of the **accident** or loss.

The **insured person** and **We** agree that no cause of action shall accrue to the insured under Part C – Uninsured/Underinsured Motorist Coverage unless within 3 years from the date of the **accident**:
1. Agreement as to the amount due under the policy has been concluded;
2. The **insured person** has filed an action against **us** in a court of competent jurisdiction; or
3. Suit for bodily injury has been filed against the uninsured motorist in a court of competent jurisdiction and, within 1 year from the date of settlement or final judgment against the uninsured motorist, the **insured person** has formally instituted arbitration proceedings or filed an action against **us** in a court of competent jurisdiction.

OUR RIGHT TO RECOVER PAYMENT

If **We** make a payment under this policy, and the person to or for whom payment was made has a right to recover damages from another, **We** shall be subrogated to that right. **We** shall be entitled to the payment, reimbursement, and subrogation as provided in this section, regardless of whether the total amount of the

recovery of the person (or his or her estate, parent or legal guardian) on account of the injury, illness or property damage is less than the actual loss suffered by the person (or his or her estate, parent or legal guardian). That person shall do:
1. Whatever is necessary to enable **us** to exercise **our** rights; and
2. Nothing after loss to prejudice **our** rights.

However, **our** rights in this provision do not apply under Part D – Coverage for Damage to **Your** Auto, against any person using **Your covered auto** with a reasonable belief that that person is entitled to do so.

If **We** make a payment under this policy and the person to or for whom payment is made recovers damages from another, that person shall:
1. Hold in trust for **us** the proceeds of the recovery; and
2. Reimburse **us** to the extent of **our** payment within 30 days of receipt of the proceeds of any recovery.

If payment is made to an **insured person** under Part B – Medical Payment Coverage, **We** are entitled to reimbursement to the extent of **our** payment, reduced by **our** share of the expenses, costs, and attorney fees incurred by the **insured person** in connection with any recovery from a liable person.

If an **insured person** under this policy makes recovery from a responsible party, other than the owner or operator of an **underinsured motor vehicle**, without our written consent, the **insured person's** right to payment under any affected coverage will no longer exist.

If **We** exercise our right to recovery against another, **We** will also attempt to recover any deductible incurred by an **insured person** under this policy. **We** reserve the right to compromise or settle the deductible and property damage claims against the responsible parties for less than the full amount. **We** reserve the right to reduce reimbursement of the deductible by the proportion that the amount **We** recover bears to the total amount of **our** subrogated claim. **We** will also reduce reimbursement of the deductible by the proportionate share of the collection expenses including attorney fees incurred with **our** recovery efforts. **We** will not recover the deductible if **You** instruct **us** not to.

POLICY PERIOD AND TERRITORY

This policy applies only to **accidents** and losses that occur during the policy period as shown in the **Declarations** and within the policy territory. The policy territory is:
1. The United States of America, its territories or possessions;
2.
3. Canada.

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

CANCELLATION

You may cancel this policy by calling **us** or giving **us** advance notice of the future date cancellation is to take effect. If **Your** initial premium is paid by check, draft, credit card, electronic funds transfer, or similar form of remittance, and the remittance is not honored or is returned due to non-sufficient funds, the policy shall be deemed void from inception. However, within the first 60 days after the effective date of this policy, **You** may cancel only if:
1. **You** furnish proof from the Department of Highways and Public Transportation that:
    a. **Your covered auto** shown on the Declarations page has been sold or disposed of; or
    b. **You** have surrendered the tags and registration of **Your covered auto**.
2. **You** have secured another policy that meets the financial responsibility requirements of the state of South Carolina.

We may cancel this policy at any time for nonpayment of premium by providing at least 15 days notice to **You** at the address shown in **our** records.

We may cancel this policy, as provided below, by mailing notice of cancellation to **You** at the address shown in **our** records or by delivering the notice to **You** not less than 15 days prior to the effective date of cancellation.
1. During the first 60 days after the initial policy term, **We** may cancel for one of the following reasons:
    a. Nonpayment of premium; or
    b. A check or bank draft tendered by **You** for payment is returned for insufficient funds or any other reason by **Your** financial institution.
2. After the first 61 days, but less than 90 days after the initial policy term for any reason at all.
3. After this policy is in effect for 90 days, or if this is a renewal or continuation policy, **We** may cancel only for one or more of the following reasons:

a. nonpayment of premium;
b. If **Your** driver's license or that of:
   1. Any driver who lives with **You**; or
   2. Any driver who customarily uses **Your covered auto**; has been permanently suspended or revoked during the policy period, or if the

   policy is a renewal, during the policy period or the 180 days immediately preceding the renewal date. However, **We** will not cancel the policy if a suspension of driving privileges is ordered by a court based on a non-driving offense;
c. The policy was obtained through fraud or material misrepresentation;
d. Any **insured person** violated any of the terms or conditions of the policy;
e. Any **insured person** made a false or fraudulent claim, or knowingly aided or abetted another in the presentation of such a claim; or
f. Any other reason permitted by law.

The effective date and time of cancellation stated in the notice shall become the end of the policy period. Any cancellation will be effective for all coverages for all persons and all vehicles.

NONRENEWAL

If **We** decide not to renew or continue this policy, **We** will mail notice to **You** at the address shown in **our** records. Notice will be mailed at least 15 days before the end of the policy period.

PREMIUM REFUND

If this policy is canceled, **You** may be entitled to a premium refund. Any refund due will be computed on a daily pro rata basis. **Our** making or offering to make a refund is not a condition of cancellation.

AUTOMATIC TERMINATION

If **We** offer to renew or continue and **You** or **Your** representative do not accept, this policy will automatically terminate at the end of the current policy period. If **You** fail to pay the required renewal or continuation premium when due, this shall mean that **You** have not accepted **our** offer. All coverage associated with any vehicle **You** own will automatically terminate upon the sale or transfer of vehicle ownership.

PROOF OF MAILING

We may deliver any notice instead of mailing it. Proof of mailing of any notice shall be sufficient proof of notice.

TRANSFER OF YOUR INTEREST IN THIS POLICY

Your rights and duties under this policy may not be assigned without **our** written consent. However, if a **named insured** shown in the **Declarations** dies, coverage will be provided for:

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

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

TWO OR MORE AUTO POLICIES

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

CLAIMS SETTLEMENT

To assist **us** in determining the amount of damages, expenses, or loss payable under the terms of this policy, **We** may use estimating, appraisal, or injury evaluation systems developed by **third parties or us** and may include the use of computer software, databases and other specialized technology.

NAMED DRIVER EXCLUSION

If **You** have elected to exclude a driver who may, by law, be excluded, coverage under this policy shall not apply nor shall any benefit accrue to the benefit of **You**, any third party claimant, or any other person, while any **auto** is being operated by the driver that has been excluded (listed on the Application and/or **Declarations** and/or a Named Driver Exclusion acknowledgment), regardless of where the person resides or whether the person is licensed to drive.

This exclusion applies to the policy, or any continuation, renewal, or replacement of the policy by the **named insured**, or reinstatement within 30 days of any lapse thereof.

Chris Romaine

Secretary

W. Dale Bullard

President

[Re-Order #:]

Claim Notes by Claim

Report Criteria: **Filter = Claim Number = 'DMA-0181235'**

Group 1: FH Claim is DMA-0181235

FH Claim Loss Date	Tier Claim Company Name	Party Name Type	Received Date File Status	Loss Cause Claim Type	File Handler Policy Number
DMA-0181235 June 15, 2017	CH4154345-03 Lyndon_Fortegra-CIS_07-01-16_To_06-30-1	TASHA JONES Insured	June 16, 2017 Reopened	Rearend CV to IV Blank (no selection)	Phil Levesque 123456789

PLAINTIFF'S EXHIBIT
14
6-21-23
PENGAD 800-631-6989

1/21/2019 11:14:18AM Levesque, Phil Activity Log

recvd court court hearing on dmagaes set for 1/30/2019- emailed def cnsl to respond. Urgent Urgent ! DMA 0181235 Court hearing on damnages.
Philip Levesque <plevesque@jupiterauto.com>
Attachments
11:13 AM (0 minutes ago)
to Randy, Terry, Howard
Randy please see attached and respond accordingly.Thank you.
--
Best Regards,
Philip Levesque
Claims Adjuster
Jupiter Managing General Agency, Inc.
Policy and Claims Administration for:
Federated National Insurance Company
Lyndon Southern Insurance Company
Bankers Insurance Company
Insurance Company of the South
P. O. Box 190675

11/27/2018 1:01:13PM Levesque, Phil Activity Log

emailed def cnsl re: claim- status -Our File No. DMA-0181235: Claimants; jones, Mac and Thompson
Inbox
x
to Randy, me, Terry
Randy,

Update on this file. Liability analysis? Damages? Settlement value?

Thank you,

Report Criteria: **Filter = Claim Number = 'DMA-0181235'**

Group 1: FH Claim is DMA-0181235

FH Claim	Tier Claim	Party Name	Received Date	Loss Cause	File Handler
Loss Date	Company Name	Type	File Status	Claim Type	Policy Number
DMA-0181235	CH4154345-03	TASHA JONES	June 16, 2017	Rearend CV to IV	Phil Levesque
June 15, 2017	Lyndon_Fortegra-CIS_07-01-16_To_06-30-1	Insured	Reopened	Blank (no selection)	123456789

6/28/2018 4:54:55PM	Levesque, Phil	Activity Log	going through files and came across suit attached in file. sent to def cnsl Randy Helmsly new lawsuit claim DMA-0181235 Philip Levesque <plevesque@jupiterauto.com> Attachments4:54 PM (0 minutes ago) to Randy I found this one in the files I was going throughpls see attached. -- Best Regards, Philip Levesque Claims Adjuster Jupiter Managing General Agency, Inc. Policy and Claims Administration for: Federated National Insurance Company Lyndon Southern Insurance Company Bankers Insurance Company Insurance Company of the South P. O. Box 190675 Nashville, TN 37219 615-921-5681 (direct) 615-921-5599 (fax)
2/1/2018 4:19:30PM	James, Terry	Activity Log	NEW LAWSUIT RECD
11/13/2017 2:34:29PM	James, Terry	Supervisor Note	APPROVED PAYMNET $9865.00
11/13/2017 2:06:23PM	Levesque, Phil	Settlement Recap	clmnt sent in umbi rls. signed- $9865.00 -clmnt responsible for all claims

Report Criteria: **Filter = Claim Number = 'DMA-0181235'**

Group 1: FH Claim is DMA-0181235

FH Claim	Tier Claim	Party Name	Received Date	Loss Cause	File Handler
Loss Date	Company Name	Type	File Status	Claim Type	Policy Number
DMA-0181235	CH4154345-03	TASHA JONES	June 16, 2017	Rearend CV to IV	Phil Levesque
June 15, 2017	Lyndon_Fortegra-CIS_07-01-16_To_06-30-1	Insured	Reopened	Blank (no selection)	123456789

11/7/2017 5:27:13PM	Levesque, Phil	Activity Log	copy of email Fwd: UM release please sign and notarize Philip Levesque <plevesque@jupiterauto.com> Attachments5:26 PM (0 minutes ago) to joeysingleton20 ---------- Forwarded message ---------- From: Philip Levesque <plevesque@jupiterauto.com> Date: Fri, Nov 3, 2017 at 5:15 PM Subject: Fwd: UM release please sign and notarize To: krepomack99@gmail.com ---------- Forwarded message ---------- From: Philip Levesque <plevesque@jupiterauto.com> Date: Fri, Nov 3, 2017 at 2:33 PM Subject: UM release please sign and notarize To: Krepo841@gmail.com fax back to 615 921 5599 or email back. Release attached. -- Best Regards, Philip Levesque Claims Adjuster Jupiter Managing General Agency, Inc. Policy and Claims Administration for: Federated National Insurance Company Lyndon Southern Insurance Company Bankers Insurance Company Insurance Company of the South P. O. Box 190675
11/7/2017 5:25:12PM	Levesque, Phil	Activity Log	emailed rls to ernest at joeysingleton20@gmail.com per req
11/7/2017 2:37:10PM	Levesque, Phil	Activity Log	issued $300 check for med review

Report Criteria: **Filter = Claim Number = 'DMA-0181235'**

Group 1: FH Claim is DMA-0181235

FH Claim Loss Date	Tier Claim Company Name	Party Name Type	Received Date File Status	Loss Cause Claim Type	File Handler Policy Number
DMA-0181235 June 15, 2017	CH4154345-03 Lyndon_Fortegra-CIS_07-01-16_To_06-30-1	TASHA JONES Insured	June 16, 2017 Reopened	Rearend CV to IV Blank (no selection)	Phil Levesque 123456789

11/3/2017 2:34:14PM	Levesque, Phil	Activity Log	UM release please sign and notarize Philip Levesque <plevesque@jupiterauto.com> Attachments2:33 PM (0 minutes ago) to Krepo841 fax back to 615 921 5599 or email back. Release attached. -- Best Regards, Philip Levesque Claims Adjuster Jupiter Managing General Agency, Inc. Policy and Claims Administration for: Federated National Insurance Company Lyndon Southern Insurance Company Bankers Insurance Company Insurance Company of the South P. O. Box 190675 Nashville, TN 37219 615-921-5681 (direct) 615-921-5599 (fax) Like Us On Facebook Follow Us On Tw
11/3/2017 2:22:18PM	Levesque, Phil	Activity Log	$10,699.26 Total Unnecessary/Unrelated based upon Peer Review: $0.00 Total Unreasonable Charges based upon U&C Guidelines: $1,833.81 Total Recommended Payment: $8,865.45 called Ernest Mack $9865.00 he accepted told him if he wants whol check he will have to negotiate the meds w/ the providers on his own. I advised him med pay 1k was already paid. he accepted emailed rls to Krepo841@gmail.com
10/31/2017 12:12:23PM	Levesque, Phil	Activity Log	Made offers Via email and lttr to rppd clmnts Tasha Jones 7500- Shaniqua Thompson 8660-

Report Criteria: **Filter = Claim Number = 'DMA-0181235'**

Group 1: FH Claim is DMA-0181235

FH Claim	Tier Claim	Party Name	Received Date	Loss Cause	File Handler
Loss Date	Company Name	Type	File Status	Claim Type	Policy Number
DMA-0181235	CH4154345-03	TASHA JONES	June 16, 2017	Rearend CV to IV	Phil Levesque
June 15, 2017	Lyndon_Fortegra-CIS_07-01-16_To_06-30-1	Insured	Reopened	Blank (no selection)	123456789

10/31/2017 12:10:29PM	Levesque, Phil	Meds Rcvd	Bie umbi - BIE snap shot Um claims –cv r/e iv and dcv fled scene- - moderate /hard impact to raer of iv Tasha Jones (repped)- 9586.95 in meds-audited to $6600.18 – er and chiro. Soft tissue injury neck/back Range to settle 1-2500 over audited meds Range 7500-9100 Shaniqua Thompson (repped) -$9780.81 in original meds Audited down to 7663.14 –soft tissue injury –neck and back, er and chiro Range 1000-2500 over meds- Range to settle 8660-9900.00 Ernest Mack- pro se-er and ems only$11,439.25 200- 1000 over meds to settle. Sent bills to med review.Will negotiate meds w/ providers
10/31/2017 12:09:09PM	Levesque, Phil	Activity Log	sent mack's meds for review - he had er only Mack meds for review DMA-0181235 med bill audit requested Philip Levesque <plevesque@jupiterauto.com> Attachments12:08 PM (0 minutes ago) to Peer – Best Regards, Philip Levesque Claims Adjuster Jupiter Managing General Agency, Inc. Policy and Claims Administration for: Federated National Insurance Company Lyndon Southern Insurance Company Bankers Insurance Company Insurance Company of the South P. O. Box 190675 Nashville, TN 37219 615-921-5681 (direct) 615-921-5599 (fax) Like Us On Facebook Follow Us On Twitter
10/31/2017 11:29:52AM	Levesque, Phil	Activity Log	issued pymnts on 2 med rev invcs 420.00 for jones and Thompson
10/27/2017 1:15:09PM	Levesque, Phil	Activity Log	rtrnd call- I advised dmnd just recvd and sent to med rev for other 2 clmnts need to eval and get a global settlement out will contact him when done. he u/s.

Report Criteria: **Filter = Claim Number = 'DMA-0181235'**

Group 1: FH Claim is DMA-0181235

FH Claim Loss Date	Tier Claim Company Name	Party Name Type	Received Date File Status	Loss Cause Claim Type	File Handler Policy Number
DMA-0181235 June 15, 2017	CH4154345-03 Lyndon_Fortegra-CIS_07-01-16_To_06-30-1	TASHA JONES Insured	June 16, 2017 Reopened	Rearend CV to IV Blank (no selection)	Phil Levesque 123456789

10/24/2017 10:06:58AM Levesque, Phil Activity Log

sent 2 dmnds to med review. Fwd: Claim DMA-0181235
Philip Levesque <plevesque@jupiterauto.com>
Attachments10:04 AM (2 minutes ago)
to Peer
med bill audits requested on 2 clmnt's Tasha Jones and Shaniqua Thompson
---------- Forwarded message ----------
From: Law Clerk <lakelawclerk@yahoo.com>
Date: Tue, Oct 10, 2017 at 1:24 PM
Subject: Re: Claim DMA-0181235
To: Philip Levesque <plevesque@jupiterauto.com>
Thanks, Phillip. Please see the attached invoices. Also, please make the MedPay checks payable to the clients and the Lake Law Firm.

Nicolette Nesbitt
Legal Assistant
The Lake Law Firm
1034 Briargate Circle, Suite 201
Columbia, SC 29210
803-750-8311 Phone
803-750-8312 Fax
lakelawclerk@yahoo.com

10/24/2017 10:06:06AM Levesque, Phil Activity Log

responded to legal asst Re: Claim DMA-0181235
Philip Levesque <plevesque@jupiterauto.com>
9:57 AM (8 minutes ago)
to Law
Issuing check for med pay $1,000.00 a piece now.
On Tue, Oct 10, 2017 at 1:24 PM, Law Clerk <lakelawclerk@yahoo.com> wrote:
Thanks, Phillip. Please see the attached invoices. Also, please make the MedPay checks payable to the clients and the Lake Law Firm.

Nicolette Nesbitt
Legal Assistant
The Lake Law Firm
1034 Briargate Circle, Suite 201
Columbia, SC 29210
803-750-8311 Phone
803-750-8312 Fax
lakelawclerk@yahoo.com

10/24/2017 9:55:57AM Levesque, Phil Activity Log

issued mack 1k under med pay

Report Criteria: **Filter = Claim Number = 'DMA-0181235'**

Group 1: FH Claim is DMA-0181235

FH Claim	Tier Claim	Party Name	Received Date	Loss Cause	File Handler
Loss Date	**Company Name**	**Type**	**File Status**	**Claim Type**	**Policy Number**
DMA-0181235	CH4154345-03	TASHA JONES	June 16, 2017	Rearend CV to IV	Phil Levesque
June 15, 2017	Lyndon_Fortegra-CIS_07-01-16_To_06-30-1	Insured	Reopened	Blank (no selection)	123456789

10/24/2017 9:50:25AM	Levesque, Phil	Activity Log	paid 1k for jones - med pay and 1k Thompson under med pay- dmnds recvd
10/24/2017 9:48:20AM	Levesque, Phil	Activity Log	recvd dmnds on Jones and Thompson sent to med review....need global settlement done
10/18/2017 9:46:15AM	Levesque, Phil	Activity Log	called lake law- for update. legal asst could not give me a answer for the other 2 clmnts as paralegal thahandles file was not in and file wasx gone w/ the attrny - she will tell paralegal to contact me.
10/18/2017 9:36:51AM	Levesque, Phil	Activity Log	spoke to clmnt - I advised numerous times to clmnt I CANNOT make him an offer until I get the other 2 clmnt meds in for a full global eval. He u/s. ended call. I advised I will call him once I have full authority to settle this case. I advised I will call the other 2 clmnt's attrny (they have same attrny) so I can get a rough eta on this.He sts that neither are treating any longer.
10/16/2017 11:27:24AM	Levesque, Phil	Activity Log	spoke w/ ernest- I advised him since his bills are 11k approx. and there are 2 other clmnt's in this matter I would be unable to settle w/ him at this point.we will need all clmnt's meds/dmnds for a global settlement, he placed me on hold and there was a big argument going on in the background, placed on hold for many minutes and I ended call.
10/16/2017 10:52:45AM	Thompson, Judy	Activity Log	s/w clmt- phone kept breaking up. He faxed in med bills. Looks like he went to ER twice. No other txmt. Bills approx. 11,500. Phone connection real bacd, he kept wanting to say that he would pay his own medical bills. Expl, no, we pay med bills direct to providers and he would get separate check. Advised him Phil would need to write up eval for authority to settle. He will call back.

Report Criteria: **Filter = Claim Number = 'DMA-0181235'**

Group 1: FH Claim is DMA-0181235

FH Claim Loss Date	Tier Claim Company Name	Party Name Type	Received Date File Status	Loss Cause Claim Type	File Handler Policy Number
DMA-0181235 June 15, 2017	CH4154345-03 Lyndon_Fortegra-CIS_07-01-16_To_06-30-1	TASHA JONES Insured	June 16, 2017 Reopened	Rearend CV to IV Blank (no selection)	Phil Levesque 123456789

10/10/2017 12:41:57PM Levesque, Phil   Activity Log

responded to email Claim DMA-0181235
Philip Levesque <plevesque@jupiterauto.com>
12:41 PM (0 minutes ago)
to lakelawclerk
Please send all documents to me.Matt is no longer w/ the company. You can also fax them to 615 921 5599
--
Best Regards,
Philip Levesque
Claims Adjuster
Jupiter Managing General Agency, Inc.
Policy and Claims Administration for:
Federated National Insurance Company
Lyndon Southern Insurance Company
Bankers Insurance Company
Insurance Company of the South
P. O. Box 190675
Nashville, TN 37219
615-921-5681 (direct)
615-921-5599 (fax)
Like Us On Facebook
Follow Us On Twitter
CONFIDENTIALITY NOTICE
Terry James
12:35 PM (6 minutes ago)
to me
For you sir. Thanks
--
Best Regards,

Terry James
Claims Manager
cid:image002.jpg@01CE98C5.C15E8720
Jupiter Managing General Agency, Inc.
Policy and Claims Administration for:
Federated National Insurance Company
Insurance Company of the South
Lyndon Southern Insurance Company
Bankers Insurance Company
P. O. Box 190675

Report Criteria: **Filter = Claim Number = 'DMA-0181235'**

Group 1: FH Claim is DMA-0181235

FH Claim Loss Date	Tier Claim Company Name	Party Name Type	Received Date File Status	Loss Cause Claim Type	File Handler Policy Number
DMA-0181235 June 15, 2017	CH4154345-03 Lyndon_Fortegra-CIS_07-01-16_To_06-30-1	TASHA JONES Insured	June 16, 2017 Reopened	Rearend CV to IV Blank (no selection)	Phil Levesque 123456789

			Nashville, TN 37219 615-921-5672 (direct) 615-921-5673 (fax) Like us on Facebook Follow us on Twitter CONFIDENTIALITY NOTICE This e-mail message is intended only for the individual or entity to which it is addressed. This e-mail may contain information that is privileged, confidential and exempt from disclosure under applicable law. If you are not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you received this e-mail by accident, please notify the sender immediately and destroy this e-mail and all copies of it. ---------- Forwarded message --------- From: Law Clerk <lakelawclerk@yahoo.com> Date: Tue, Oct 10, 2017 at 12:17 PM Subject: Claim DMA-0181235 To: "mwhite@jupiterauto.com" <mwhite@jupiterauto.com> Good Afternoon Matthew: Inquiring if you are the assigned Bi adjuster on the claim referenced above? I would like to forward invoices re: MedPay, thanks. Nicolette Nesbitt Legal Assistant The Lake Law Firm 1034 Briargate Circle, Suite 201 Columbia, SC 29210 803-750-8311 Phone 803-750-8312 Fax lakelawclerk@yahoo.com
10/5/2017 11:47:48AM	Levesque, Phil	Activity Log	recvd call. ivgp wanted status/settle. er and ems I asked him to send in meds for review. p/r not in w/ cv info. ivgp - umbi
9/27/2017 4:17:17PM	Levesque, Phil	Activity Log	paid copart invc $13.50
8/15/2017 12:19:06PM	White, Matt	Activity Log	IGP STATES CV TAG NUMBER MIGHT BE AVAILABLE IGF Mack states police might have CV tag. Advised that information hasn't been provided to us. IGP will see if he can obtain that information and call us back.
7/31/2017 12:16:47PM	White, Matt	Activity Log	IGP REQ STATUS Advised pending amended PR to determine if there is CC and CVO info

Report Criteria: **Filter = Claim Number = 'DMA-0181235'**

Group 1: FH Claim is DMA-0181235

FH Claim Loss Date	Tier Claim Company Name	Party Name Type	Received Date File Status	Loss Cause Claim Type	File Handler Policy Number
DMA-0181235 June 15, 2017	CH4154345-03 Lyndon_Fortegra-CIS_07-01-16_To_06-30-1	TASHA JONES Insured	June 16, 2017 Reopened	Rearend CV to IV Blank (no selection)	Phil Levesque 123456789

7/28/2017 11:23:05AM	White, Matt	Activity Log	LH REQ STATUS LH rep Dale req status, advised payment has been requested. VM from LH rep Allison req payment status, 803-791-9177 ________________ PC to LH rep 803-791-9177 account 64702 S/W Allision Allision advised she spoke to Dale and understands payment has been requested
7/26/2017 9:37:23AM	White, Matt	Activity Log	IV T/L PAYMENT BREAKDOWN Settlement 3322.15 LoG for 525.56 by 7/31/17 Remaining to insured: 2796.59
7/26/2017 9:35:37AM	White, Matt	Activity Log	ADVISED OF T/L PAYMENT PC to NI 786-719-4762 S/W Tasha Confirmed address, advised t/l payment approved and I am requesting chk. Advised settlement 3322.15, LoG for 525.56 and remaining 2796.59 is to NI. NI u/s
7/25/2017 1:54:54PM	James, Terry	Supervisor Note	APPROVED PAYMENT; IV T/L RECAP 2006 Kia Sedona VIN: KNDMB233X66050682 Company Retain 3322.15 Copart Lot 32707457 LH INFO Liberty Financial Services, Inc ph: 803-791-9177 Account: 64702 Account holder: Tahsa Latoya Jones Docs Obtain IV and Keys at Copart SC PoA signed properly at Copart (copy in attachments) LoG and CoT attached

Report Criteria: **Filter = Claim Number = 'DMA-0181235'**

Group 1: FH Claim is DMA-0181235

FH Claim Loss Date	Tier Claim Company Name	Party Name Type	Received Date File Status	Loss Cause Claim Type	File Handler Policy Number
DMA-0181235 June 15, 2017	CH4154345-03 Lyndon_Fortegra-CIS_07-01-16_To_06-30-1	TASHA JONES Insured	June 16, 2017 Reopened	Rearend CV to IV Blank (no selection)	Phil Levesque 123456789

7/25/2017 9:30:22AM	White, Matt	Activity Log	***IV T/L RECAP**** 2006 Kia Sedona VIN: KNDMB233X66050682 Company Retain 3322.15 Copart Lot 32707457 LH INFO Liberty Financial Services, Inc ph: 803-791-9177 Account: 64702 Account holder: Tahsa Latoya Jones Docs Obtain IV and Keys at Copart SC PoA signed properly at Copart (copy in attachments) LoG and CoT attached
7/25/2017 9:30:08AM	White, Matt	Activity Log	REQ IV T/L PAYMENT AUTH IV T/L RECAP 2006 Kia Sedona VIN: KNDMB233X66050682 Company Retain 3322.15 Copart Lot 32707457 LH INFO Liberty Financial Services, Inc ph: 803-791-9177 Account: 64702 Account holder: Tahsa Latoya Jones Docs Obtain IV and Keys at Copart SC PoA signed properly at Copart (copy in attachments) LoG and CoT attached
7/25/2017 9:20:15AM	White, Matt	Activity Log	ATTNY IS HANDLING UMBI ONLY PC to attny 803-750-8311 S/W Nicholette Attny rep advised we can discuss PD w/ NI directly and attny is pending amended PR report
7/25/2017 9:19:25AM	White, Matt	Activity Log	***IV PoA AT COPART*** Placed in file PoA signed; Tasha Latoya Jones

Claim Notes by Claim

Report Criteria: **Filter = Claim Number = 'DMA-0181235'**

Group 1: FH Claim is DMA-0181235

FH Claim Loss Date	Tier Claim Company Name	Party Name Type	Received Date File Status	Loss Cause Claim Type	File Handler Policy Number
DMA-0181235 June 15, 2017	CH4154345-03 Lyndon_Fortegra-CIS_07-01-16_To_06-30-1	TASHA JONES Insured	June 16, 2017 Reopened	Rearend CV to IV Blank (no selection)	Phil Levesque 123456789

7/25/2017 9:17:27AM	White, Matt	Activity Log	NI REQ STATUS NI called s/w Tasha NI asked on IV T/L status. Reviewed LoR and apologized and advised due to LoR stating we can't discuss claim status with you I can't provide status and will call attny
7/25/2017 8:40:15AM	White, Matt	Activity Log	HERTZ INVOICE 20 days 20 a day 400.00
7/24/2017 9:46:09AM	White, Matt	Activity Log	LOR FOR NI AND IGP THOMPSON LAKE LAW FIRM PH# 803-750-8311
7/24/2017 9:45:15AM	White, Matt	Activity Log	IGP MACK REQ STATUS Advised still pending amended PR
7/17/2017 2:30:25PM	White, Matt	Activity Log	VM from IGP Mack req call back 803-351-8088 ________________ PC to IGP Mack 803-351-8088 s/w Earnest Advised PR obtained however the police report is being amended as it did not include CV and CVO info.
7/13/2017 10:23:20AM	White, Matt	Activity Log	IV T/L PENDING IV / Keys at Copart LoG / CoT in attachments Pending NI to get SC PoA to Copart Review T/L ppwk UM INVESTIGATION STATUS Supposedly police report will be amended w/ CV and CVO info Pending this amended police report to determine if there will be UM exposure or not.

Report Criteria: **Filter = Claim Number = 'DMA-0181235'**

Group 1: FH Claim is DMA-0181235

FH Claim Loss Date	Tier Claim Company Name	Party Name Type	Received Date File Status	Loss Cause Claim Type	File Handler Policy Number
DMA-0181235 June 15, 2017	CH4154345-03 Lyndon_Fortegra-CIS_07-01-16_To_06-30-1	TASHA JONES Insured	June 16, 2017 Reopened	Rearend CV to IV Blank (no selection)	Phil Levesque 123456789

7/13/2017 10:22:46AM	White, Matt	Activity Log	EMAILED COT AND COPART INFO TO NI tashalajones@gmail.com Page 2 of the attachment is a copy of the title When signing the power of attorney, please sign it Tasha Latoya Jones The power of attorney will need to be sent to the address below: Mailing Address: Copart Lot: 32707457 PO BOX 849 Gaston, SC 29053 Physical Address: Copart Lot 32707457 4324 Highway 321 South Gaston, SC 29053 Phone: 803-794-3252 Hours: Mon - Fri 8am - 5pm Copart may have a title clerk available who can also show you how to sign, but I would call before hand to make sure one will be available if you drive to Copart.
7/13/2017 9:34:20AM	White, Matt	Activity Log	PR BEING AMMENDED NI advised that the police report was made by a police officer who was still new and he forgot to list CV and CVO info on PR. NI is working with police to have PR amended.
7/13/2017 9:30:52AM	White, Matt	Activity Log	--PR RECAP-- DoL 6/15/17 ToL 11:45pm EST Location: Koon Rd and Ames Rd in Columbia SC Confirmed NI is driving IV. IV is registered to NI. No info for CV listed, no carrier info or drvr info Narrative IV is E/B on Koon Rd and CV is traveling S/b on Ames Rd. CV failed to yield to the right of way and struck IV on the drvr side.
7/13/2017 8:28:05AM	White, Matt	Activity Log	LOG / COT REC'D NAME ON TITLE TASHA LATOYA JONES LOG FOR 525.56

Report Criteria: **Filter = Claim Number = 'DMA-0181235'**

Group 1: FH Claim is DMA-0181235

FH Claim Loss Date	Tier Claim Company Name	Party Name Type	Received Date File Status	Loss Cause Claim Type	File Handler Policy Number
DMA-0181235 June 15, 2017	CH4154345-03 Lyndon_Fortegra-CIS_07-01-16_To_06-30-1	TASHA JONES Insured	June 16, 2017 Reopened	Rearend CV to IV Blank (no selection)	Phil Levesque 123456789

7/12/2017 2:40:22PM	White, Matt	Activity Log	LH SENDING LOG AND COT PC to IV LH 803-791-9177 s/w Mary Advised company retain ttoal loss for 3322.15. LH will fax LoG to us. LH will also fax CoT. 525.56 Payoff until 7/31/17.
7/12/2017 2:39:36PM	White, Matt	Activity Log	Liberty Financial Services ph# 803-791-9177 Account holder: Tasha Jones Account Number: 64702 Tasha Jones's SSN: 248-89-2995
7/12/2017 2:29:35PM	White, Matt	Activity Log	VM from NI req call back 786-719-4762 _______________ PC to NI 786-719-4762 S/W Tasha Advised rental has been extended and advised we are pending LH contact. NI advised she has ph# 803-791-9177 for LH. Advised I'll contact LH.
7/12/2017 10:41:55AM	White, Matt	Activity Log	VM from IGP Mack req call back 803-351-8088 _______________ PC to IGP Mack 803-351-8088 S/W Earnest Advised we are pending state police report to determine if this is a UM claim or not.
7/11/2017 9:35:22AM	White, Matt	Activity Log	IGP WILL FAX PR TO US IGP Thompson will obtain PR and fax it to us.

Report Criteria: **Filter = Claim Number = 'DMA-0181235'**

Group 1: FH Claim is DMA-0181235

FH Claim Loss Date	Tier Claim Company Name	Party Name Type	Received Date File Status	Loss Cause Claim Type	File Handler Policy Number
DMA-0181235 June 15, 2017	CH4154345-03 Lyndon_Fortegra-CIS_07-01-16_To_06-30-1	TASHA JONES Insured	June 16, 2017 Reopened	Rearend CV to IV Blank (no selection)	Phil Levesque 123456789

7/7/2017 10:07:14AM	White, Matt	Activity Log	EMAILED POA & INSTRUCTIONS TashaLAJones@gmail.com Matt White <mwhite@jupiterauto.com> Attachments10:07 AM (0 minutes ago) to TashaLAJones Attached is the power of attorney. Please only fill out the date and have the owners sign and print their name and provide their address with anybody signing as witness who is present. When signing the power of attorney, each person's name on the title will need to sign a power of attorney or the same power of attorney (It will not matter if you have all title owners sign or a separate power of attorney per person). The signature and printed name have to match the way the name appears on the title. For example if your name on the title was Franklin, John (last name first) . You would need to sign John Franklin. I've attempted to contact your lien holder and their phone number was not in service, I left a message and requested a call back on their website. Once I obtain a copy of the title, I will forward it to you. – Best Regards, Matthew White Claims Adjuster Jupiter Managing General Agency, Inc. Policy and Claims Administration for: Federated National Insurance Company Lyndon Southern Insurance Company Bankers Insurance Company
7/7/2017 9:56:33AM	White, Matt	Activity Log	LH CONTACT ATTEMPT Used LH's website and requested call back for LoG and CoT for IV. Thank You. A Liberty Financial Services representative will contact you shortly to complete your commercial lending application based on the information you provided. If you would like to speak to a Liberty Financial Services representative immediately we encourage you to call us at 800-661-6615. Our offices are open Monday through Friday 9:00am to 7:00pm pacific time.
7/7/2017 9:10:53AM	White, Matt	Activity Log	LH CONTACT ATTEMPT PC TO LIBERTY FINANCIAL SERVICES 800-661-6615 Automatic msg states number is out of service. (Same results for 3 tries in a row)
7/7/2017 8:25:04AM	White, Matt	Activity Log	**IV LH INFO** Liberty Financial Services ph# 800-661-6615 Account holder: Tasha Jones Tasha Jones's SSN: 248-89-2995

Report Criteria: **Filter = Claim Number = 'DMA-0181235'**

Group 1: FH Claim is DMA-0181235

FH Claim	Tier Claim	Party Name	Received Date	Loss Cause	File Handler
Loss Date	Company Name	Type	File Status	Claim Type	Policy Number
DMA-0181235	CH4154345-03	TASHA JONES	June 16, 2017	Rearend CV to IV	Phil Levesque
June 15, 2017	Lyndon_Fortegra-CIS_07-01-16_To_06-30-1	Insured	Reopened	Blank (no selection)	123456789

7/7/2017 8:23:43AM	White, Matt	Total Loss - Settled	COMPANY RETAIN TOTAL LOSS W/ LH. 3322.15 VM from NI req call back 786-719-47692 PC to NI 786-719-4762 s/w Tasha Explained T/L and ACV. IV is registered and titled to NI and somebody else, NI can't recall who's names appear on the title. Obtained LH info (see seperate note). Company Retain 3322.15 accepted. NI wants PoA Emailed to: TashaLAJones@gmail.com
7/5/2017 10:05:23AM	James, Terry	Total Loss - Authority	APPROVED TL FIGURES PER ADJ. NOTES
7/3/2017 3:00:50PM	White, Matt	Total Loss - Authority	IV T/L EVAL AND ACV REQUEST Total Loss Valuation 2006 Kia Sedona VIN: KNDMB233X66050682 Odometer: 190,399 Loss / Policy: SC Loss / SC Pol Location: Copart lot 32707457 Rental: No Est: 5283.40 (hard rear end impact) Salvg: High: 662.00 Pro: 662.00 Low: 475.00 (comsearch est / pics) ACV: 3603.00 (tax 180.15) Total Loss Figures --I/R-- $3,603.00 TLV $3,603.00 ACV $180.15 Tax $39.00 Fees $500.00 Deductible $3,322.15 Company retain --O/R-- $3,603.00 ACV $662.00 Salvage Deduction $500.00 Deductible $2,441.00 Owner retain

Report Criteria: **Filter = Claim Number = 'DMA-0181235'**

Group 1: FH Claim is DMA-0181235

FH Claim Loss Date	Tier Claim Company Name	Party Name Type	Received Date File Status	Loss Cause Claim Type	File Handler Policy Number
DMA-0181235	CH4154345-03	TASHA JONES	June 16, 2017	Rearend CV to IV	Phil Levesque
June 15, 2017	Lyndon_Fortegra-CIS_07-01-16_To_06-30-1	Insured	Reopened	Blank (no selection)	123456789

7/3/2017 1:36:20PM	White, Matt	Activity Log	VM from NI req call back 786-719-4762 ____________ PC to NI 786-719-4762 s/w Tasha NI req status. Advised we are still pending state police report and IV T/L report came in and pending T/L Eval
6/29/2017 3:54:49PM	White, Matt	Activity Log	VM from IGP Thompson req call back 803-724-0086 ____________ PC to IGP Thompson 803-724-0086 S/W Shaneqa Advised we are pending the PR as it appears Columbia PD doesn't have a report and metro reporting is checking w/ SC Hwy Patrol.
6/29/2017 2:55:01PM	White, Matt	Activity Log	VM FROM IGP THOMPSON REQ CALL BACK (803) 724-0086 ____________ PC to IGP Thompson 803-724-0086 VM not set up
6/29/2017 2:51:30PM	White, Matt	Activity Log	NI REQ STATUS NI CALLED S/W Tasha NI req status, advised memo for PR came in stating no PR found w/ Columbia PD and Metro reporting is searching w/ SC Hwy Patrol now. NI req est / pics status. Reviewed copart and advised it appears IV has arrived at copart and pending est / pics and CCC report. Advised I'll check w/ intake to determine status. NI req me to call her back ____________ Checked w/ intake, appears comsearch est / pics rec'd yesterday and forwarded to QC for CCC report. ____________ PC to NI 786-7194762 Left VM Advised est rec'd and sent to QC for CCC report.
6/29/2017 1:38:47PM	White, Matt	Activity Log	PR PENDING MEMO REC'D Metro reporting sent a memo stating no record of the report was found and Metro is reordering it from SCHP** and once rec'd it will be forwarded to us

Report Criteria: **Filter = Claim Number = 'DMA-0181235'**

Group 1: FH Claim is DMA-0181235

FH Claim Loss Date	Tier Claim Company Name	Party Name Type	Received Date File Status	Loss Cause Claim Type	File Handler Policy Number
DMA-0181235 June 15, 2017	CH4154345-03 Lyndon_Fortegra-CIS_07-01-16_To_06-30-1	TASHA JONES Insured	June 16, 2017 Reopened	Rearend CV to IV Blank (no selection)	Phil Levesque 123456789

6/21/2017 3:18:17PM	White, Matt	Activity Log	NI REQ STATUS VM from NI req status, 786-719-4762 ______________ PC to NI 786-719-4762 S/W Tasha Advsied appears IV arrived at Copart 6/20/17 around 2pm and we are pending IV est / pics and CCC report.
6/19/2017 3:55:37PM	White, Matt	Activity Log	IGP THOMPON INJURY INFO IGP THOMPSON CALLED Updated information IGP was sitting in the rear drvr seat when loss happened. Post loss ambulance transport to ER same day of loss. ER examination, no diagnostic. IGP was diagnosed w/ soft-tissue whiplash type injuries. NO other examination or treatment since loss and plans on going back to ER due to increased pain with headaches. IGP has no issues w/ headaches. IGP did have issues w/ neck due to a cyst on her spine which caused fluid on her brain. Advised covg investigation is still pending.
6/19/2017 3:25:25PM	White, Matt	Activity Log	VM from IGP Thompson, req call back 803-724-0086 ______________ PC to IGP Thompson 803-724-0086 VM not set up
6/19/2017 3:02:41PM	White, Matt	Activity Log	IGP MACK INJURY INFO VM from IGP req call back 803-351-8088 ______________ PC to IGP 803-351-8088 S/W Ernest Updated IGP contact info. IGP states his neck and back were hurting post loss. IGP was sitting in IV front pnsgr seat. Post loss ambulance transport to ER. ER examination, x-rays and CT scans. Nothing broken, diagnosed with a concussion. IGP states he was wearing hit seat belt. 2nd ER visit 1 day post loss, ER examination and CT scan and IGP was told his has a concussion. IGP is thinking about possibly going back to ER again due to neck / back pain. Occupation: unemployed. IGP denies prior issues w/ neck and back before. IGP was involved in a prior accident about 3 years ago but was not hurt. Advised, investigation for UMBI covg is pending at this time.

Report Criteria: **Filter = Claim Number = 'DMA-0181235'**

Group 1: FH Claim is DMA-0181235

FH Claim	Tier Claim	Party Name	Received Date	Loss Cause	File Handler
Loss Date	**Company Name**	**Type**	**File Status**	**Claim Type**	**Policy Number**
DMA-0181235	CH4154345-03	TASHA JONES	June 16, 2017	Rearend CV to IV	Phil Levesque
June 15, 2017	Lyndon_Fortegra-CIS_07-01-16_To_06-30-1	Insured	Reopened	Blank (no selection)	123456789

6/16/2017 3:03:45PM	White, Matt	ECLDA Note (Evnt, Cov, Liab, Dmg:	E - CV rear ended IV and CD fled scene on foot, reportedly CV was stolen C - Active policy for loss, veh / drvr on pol Liab 25/50/25, Comp / Coll 500.00 ded, Rent 20 a day 400.00 max, UMPD / UIM and UMBI 25/50/25 L - Pending, appears CD at fault D - Pending, IV likely total loss, moved IV to copart. A - 1. Obtain and review PR 2. Update CD / CV info 3. CV stolen? CC taking over dmgs? 4. Medpay or UMPD / UMBI exposures? 5. Resolve accordingly R - Coll, Rental S - Pending.
6/16/2017 3:02:54PM	White, Matt	Activity Log	REQ PR Order Confirmation - Request ID# 8323496 Account#: 06225D Insured: Tasha Jones Date of Loss: 06/15/2017 Adjuster: Matthew White Claim#: DMA-0181235 Policy#: CH4154345-02 Time: Phone#: 615-921-5614 Fax#: 615-921-5599 Email: MWHITE@JUPITERAUTO.COM cc: Report Type: Accident Loss Information Standish and Farrow Rd Columbia, SC Police Dept Barracks Case# Columbia PD unknown Veh2 rear ended Veh1 and reportedly veh2 was stolen. Veh2 driver fled scene on foot Vehicle Information Year: Vehicle Type: VIN: Plate State Plate#: 2006 Kia Sedona KNDMB233X66050682 Driver Information Driver Other Person Tasha Jones unk unk 100 Ripplemeyer Ave, Apt 30D Columbia, SC 29203 DOB: 03/18/1992 DOB: License# State SC
6/16/2017 2:56:09PM	White, Matt	Activity Log	EXPLAINED RENTAL COVG TO NI

Report Criteria: **Filter = Claim Number = 'DMA-0181235'**

Group 1: FH Claim is DMA-0181235

FH Claim Loss Date	Tier Claim Company Name	Party Name Type	Received Date File Status	Loss Cause Claim Type	File Handler Policy Number
DMA-0181235 June 15, 2017	CH4154345-03 Lyndon_Fortegra-CIS_07-01-16_To_06-30-1	TASHA JONES Insured	June 16, 2017 Reopened	Rearend CV to IV Blank (no selection)	Phil Levesque 123456789

6/16/2017 2:55:10PM White, Matt Activity Log

HERTZ FOR NI
Reservation Confirmation

Location Address: 508 GERVAIS STREET
Location City: COLUMBIA
Location Phone: 803-252-2561
Renter Name: TASHA JONES
Claim Number: DMA-0181235
Confirmation Number: 037-8110556
Authorized Days: 10
Authorized Rate: $20.00

Adjuster: Matthew White
Adjuster Phone: 615-921-5614
Claims Office: Lyndon Southern INS CO-Lyndon Southern

6/16/2017 2:39:03PM White, Matt Activity Log

COPART FOR IV
Your assignment has been successfully created.
Seller CS52 CHAPPELL INSURANCE SERVICES Adjuster MATTHEW WHITE
Claim# DMA-0181235 Insured TASHA JONES
Owner TASHA JONES Description 06 KIA SEDONA EX/ UK
Lot Number 32707457 VIN KNDMB233X66050682
Location Assigned 056 SC - COLUMBIA Location Address 4324 HIGHWAY 321 SOUTH
GASTON SC 29053
Location Phone (803) 794-3252 Location Fax (803) 794-3718
Title Mailing Address COPART AUTO AUCTIONS
P.O. BOX 849
GASTON SC 29053 Title Mailing Phone (803) 794-3252
Salvage Type VEHICLES Date of Loss 06/15/2017
Assignment Date 06/16/2017
Estimated Advance Charge $0.00
Seller Reference# N/A
Comments N/A

Report Criteria: **Filter = Claim Number = 'DMA-0181235'**

Group 1: FH Claim is DMA-0181235

FH Claim	Tier Claim	Party Name	Received Date	Loss Cause	File Handler
Loss Date	Company Name	Type	File Status	Claim Type	Policy Number
DMA-0181235	CH4154345-03	TASHA JONES	June 16, 2017	Rearend CV to IV	Phil Levesque
June 15, 2017	Lyndon_Fortegra-CIS_07-01-16_To_06-30-1	Insured	Reopened	Blank (no selection)	123456789

6/16/2017 2:19:28PM	White, Matt	Activity Log	FOL w/ NI NI called in claim ***FoL w/ NI*** DoL 6/15/17 ToL 11:40pm Location: Standish and Farrow Rd Columbia, SC ***Event*** IV was stopped on a stop sign and waiting to make a right turn on Farrow Rd. CV rear ended IV, after impact IV was pushed on Farrow. NI moved IV into the median not to block traffic and NI called police. CV was stopped almost across the street from IV but CD couldn't see who was driving IV. It was raining and NI waited in IV for police. Police responded and police asked NI who was driving IV and NI didn't know who was driving IV. No known witnesses. 2 veh loss only. NI thinks Columbia City PD responded and made a report. CV was a smaller pick up truck. Confirmed 2 IGPS in IV. NI and 2 IGPS went to ER Via ambulance. No broken bones reported. All parties had x-rays, diagnosed soft-tissue injuries and possibly sore for 1 week. ***Dmgs*** -IV: Rear bumper, rear drvr door doesn't open, both rear tires damaged by body crunching. St Andrews Towing ph# 803-772-2151 -CV: Front end dmg. Unknown if drivable.
6/16/2017 2:19:11PM	White, Matt	Activity Log	No lapses in coverage
6/16/2017 2:17:14PM	White, Matt	Activity Log	**Prior claim recap** DMA-0178088 DoL 12/17/16 2006 Kia Sedona (same vehicle) IV changed Ins and struck while CV was making left turn. Liab determined 50/50 by DMA No IV est / pics. IV reported to have dmgs to rear dvr wheel well area.

PENGAD 800-631-6989 PLAINTIFF'S EXHIBIT 15

6-21-23

CLAIMS ADMINISTRATION AGREEMENT

by and between

Lyndon Southern Insurance Company
(collectively hereinafter the "Company")

and

Jupiter Managing General Agency, Inc.
(hereinafter the "Claims Administrator")

WHEREAS, Company is an insurance company which issues private passenger automobile insurance policies in Oklahoma, Tennessee and Arkansas;

WHEREAS, the Company desires to employ Claims Administrator to perform claims adjustment and administrative services for certain claims and losses arising out of policies issued by the Company through the Jupiter Managing General Agency program;

WHEREAS, the parties desire to enter into a Claims Administration Agreement (hereinafter, the "Agreement") that will outline their primary duties and obligations with respect to this engagement;

NOW THEREFORE, in consideration of mutual promises and agreements, the parties agree as follows:

I. DEFINITIONS

A. The term "Administered Claim" shall mean a claim assigned by Company to Claims Administrator.

B. The term "Feature" shall mean any separate coverage exposure within a claim. For example, one claim might have a Collision feature and one or more Bodily Injury or Property Damage features.

C. The term "Claims Adjusting Services" as used herein shall mean the furnishing by the Claims Administrator to the Company and as required by the Company, of the following services in compliance with the terms of the applicable insurance policy, the laws and regulations of the applicable state(s), and industry-wide standards:

1) Review all Company's claims and loss reports: and

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2) Receive from Company coverage information for the applicable policy for the claim or loss reported. If authorized by Company, where coverage is in question, draft reservation of rights letters to be reviewed by the Company prior to sending to the insured. When Claims Administrator is advised by Company that no coverage exists, draft declination letters, which are to be reviewed by the Company as required, prior to sending to the insured. When appropriate, advise interested parties of the extent of coverage; and

3) If instructed by the Company, establish records for incidents or occurrences reported by the insured that are not claims but may become claims at a later date; and

4) Establish and adequately reserve each Administered Claim and Feature, and code such claim in accordance with Company's statistical data requirements. Claims Administrator shall adopt and agree upon guidelines for reserving Features that comply with Company's guidelines and are consistent with industry standards; and

5) Conduct a prompt and detailed investigation of each Administered Claim. Company and Claims Administrator shall adopt and agree upon guidelines for referring claims investigation to field investigators and adjusters that comply with Company's guidelines and are consistent with industry standards; and

6) Adjust Administered Claims for Property and/or Physical Damage by obtaining itemized estimates and/or appraisals of damage; and

7) Assure that there is sufficient evidence and documentation gathered and recorded in the Company's claims system on a Administered Claim, to allow the adjuster to properly evaluate the merits of the claim; and

8) Provide, in accordance with the Company's procedures and authority, an initial report and periodic reports on the status of each Administered Claim in excess of the reporting level or otherwise reportable; and

9) Perform all necessary administrative work in connection with Administered Claims; and

10) Prepare a reply in draft format to any inquiry, complaint or request received from an insurance department or any other regulatory agency within three (3) business days of receipt and submit such draft to Company, including relevant documents, for review and written approval by Company. Respond promptly to any inquiry, complaint or request received from a client, claimant, agent, broker, or other interested party in connection with a Claim or with the Claims Adjusting Services. Maintain complaint register, as provided by Company, consisting of complaints received from insurance

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department or any other regulatory agencies, client, insured, agent, broker or other interested party in connection with a claim or with the Claim Adjusting Services; and

11) Process each Administered Claim utilizing industry-wide standard forms where applicable; and

12) Attend, where appropriate and approved by the Company, mediation, arbitration, court-related or other dispute resolution hearings and/or conferences; and

13) Maintain files for all Administered Claims in the Claims Administrator's claims system, that may include, where necessary, a) defense of claims; b) other litigation (such as subrogation, contribution or indemnity); c) other proceedings; d) claims handling activities; and e) expense control and disbursements; and

14) Pursue all reasonable possibilities of subrogation, salvage, contribution or indemnity on behalf of the Company; and

15) Adjust, settle or otherwise resolve claims in accordance with authority levels granted; and

16) Pay or recommend payment where appropriate, all Administered Claims and Allocated Loss Adjustment Expenses, on a timely basis and in accordance with authority granted by the Company; and

17) Pursue recovery of third party liability deductibles; and

18) Maintain closed claim files in accordance with state regulations and/or Company requirements.

19) Reporting required by the Medicare, Medicaid, and SCHIP Extension Act of 2007 (MMSEA).

D. The term "Claims Files" shall mean all information and documentation in written, electronic, photographic, or audio form gathered as part of the Claims Adjusting Services.

II. SERVICES

A In consideration of service fees paid by the Company as set forth in the Compensation Schedule attached hereto and made part of this Agreement, Claims

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Administrator agrees to provide Claims Adjusting Services with respect to all Administered Claims, including those in excess of the Claims Administrator's authority level.

B. Claims exceeding the authority level are to be immediately reported by email to the Company. Claims Administrator shall seek the Company's prior written approval on all Administered Claim settlements in excess of the authority level. However, ultimate determination of settlement and reserve amounts shall be retained by the Company.

C. Claims Administrator warrants and represents that: 1) it shall perform all Claims Adjusting Services that are necessary and appropriate directly or through licensed independent claims adjusters; and 2) it and/or its employees hold all adjuster licenses as required by law to perform the designated services; and 3) it and its employees and persons under contract to Claims Administrator will at all times observe the requirements of laws and regulations of each state in the territory in which it operates, specifically including but not limited to the privacy laws, fair claims practices acts, and fair trade practices acts.

III. TERM AND TERMINATION

A. This Agreement shall be effective June 1, 2015 and shall continue in full force and effect for two (2) years, with an automatic one (1) year renewal until and unless terminated in a manner specified in this Agreement. Either party may terminate this Agreement by sending not less than ninety (90) days written notice, stating the effective date of termination.

B. In the event any license necessary to conduct the Claims Administrator's business expires or terminates, for any reason, the Claims Administrator shall notify the Company within two (2) business days and this Agreement shall automatically terminate as of the date of such license's expiration or termination unless, within seven (7) calendar days from the date the Company receives notice of the license expiration or termination from the Claims Administrator, the Company agrees, in writing, to modify the provisions of this paragraph so as to allow the Agreement to continue.

C. This Agreement may be terminated immediately upon written notice to either party if there has been an event of fraud, abandonment, insolvency, gross negligence, or gross or willful misconduct on the part of the other party.

D. Notwithstanding the foregoing, if the Claims Administrator shall commit any material breach of the terms of this Agreement, or fail to comply with any material instruction or direction by the Company, the Company shall notify the Administrator in writing of said material breach or failure to comply with any

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material instruction or direction of the Company. The failure of the Claims Administrator to cure said material breach or failure to comply with the instructions or directions of Company within thirty (30) days after written notice thereof has been given to the Claims Administrator, may, in its sole discretion, immediately upon notice, suspend or terminate any or all authority of the Claims Administrator. Upon receipt of such notice, the Claims Administrator shall thereupon cease to exercise such power or powers in accordance with such notice.

E. Notwithstanding the foregoing, if the Company shall commit any material breach of the terms of this Agreement, or fail to fulfill its obligations under the Agreement, Claims Administrator shall notify the Company in writing of said material breach or failure to fulfill its obligations under the Agreement. The Company shall have thirty (30) days to cure such breach or failure to fulfill its obligations under the Agreement. If breach or failure to fulfill its obligations under the Agreement is not cured within thirty (30) days the Claims Administrator may immediately upon notice, suspend and/or terminate all claims handling under this Agreement.

F. If the Agreement is terminated as per the provisions above, the Claims Administrator, at Company's election, shall provide possession of claim files and all open Features, or shall transfer all open Features, to the Company at termination. The Company shall pay Claims Administrator all service fees earned up to the date of termination according to the Compensation Schedule attached hereto. Any time and expenses incurred by the Claims Administrator in the return of such files will be billed to the Company, with supporting documentation for such billing, and the Company shall pay such billing to the Claims Administrator within thirty (30) days from billing date.

IV. DUTIES AND OBLIGATIONS OF CLAIMS ADMINISTRATOR

A. Claims Administrator shall maintain all industry standard claim information necessary in the jurisdictions in which Claims Administrator performs Claims Adjusting Services.

B. Claims Administrator shall comply with reasonable requests of the Company to achieve compliance with applicable state insurance statutes and regulations regarding the creation and maintenance of a Special Investigative Unit for the business of this Agreement.

C. Claims Administrator shall cooperate with requests of the Company to achieve compliance with the U.S. Treasury Department's Office of Foreign Assets Control (OFAC) relative to Company's obligation to assure that illicit transactions involving target countries and Specifically Designated Nationals are not processed. To the extent that the Claims Administrator incurs out-of-pocket costs for such

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compliance that solely benefits the Company, the Company will reimburse prior approved expenses.

D. Claims Administrator shall comply with the Company's Privacy Policy under the Gramm-Leach-Bliley Act of 1999, as set forth below:

> Company does not disclose any nonpublic personal information about individual policyholders or claimants to any affiliate or any non-affiliate third party other than those permitted by law and only for the purpose of transacting the business of the policyholder's insurance coverage or claim.

Claims Administrator shall fulfill any obligation of the Company to provide claimants with a copy of the Privacy Policy of the Company as may be required by law.

E. Claims Administrator shall at all times be an independent contractor and shall not for any purpose be deemed to be or hold itself out to be an employee of or affiliated with the Company.

F. Claims Administrator shall keep separate records of Claims administered under this Agreement, and shall submit such reports and any supporting documentation to the Company as required. Claims Administrator shall maintain such records for the Claims in question for the longest of:

(i) five (5) years following individual Policy expiration; or
(ii) the minimum time limit required by Law; or
(iii) while providing any continuing services hereunder for the Policy in question.

G. Claims Administrator shall report to the Company, and upon the Company's request simultaneously to the Company's designated private passenger auto statistical agent for the Territory, the data necessary to meet the specifications of insurance regulatory bodies, including reporting statistical data as required from time to time.

V. DUTIES AND OBLIGATIONS OF COMPANY

A. Company will provide all applicable policy coverage information and coverage status relevant to particular claims to Claims Administrator in order for Claims Administrator to fulfill its duties and obligations as set out in this Agreement.

B. Company has ultimate authority and responsibility for authorizing claims payment and settlement of claims under this Agreement.

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C. Company will provide to Claims Administrator access to Company's claims system and policy and coverage information as required by Claims Administrator to perform its authorized duties under this Agreement.

VI. INSURANCE AND INDEMNIFICATION

A. As a condition precedent and an ongoing obligation throughout the term of this Agreement, Claims Administrator shall, no less than annually, provide the Company with evidence of a policy of insurance providing Errors and Omissions insurance coverage for services performed pursuant to this Agreement, from an insurance carrier acceptable to the Company, with a Limit of Liability no less than $1,000,000 per claim and $3,000,000 in the aggregate. Claims Administrator shall notify the Company within two (2) business days in the event of any cancellation, non-renewal, or reduction of coverage on any such policy.

B. Claims Administrator agrees to defend and indemnify the Company from any and all claims, suits or demands asserted by anyone against the Company, as a result of any errors or omissions of Claims Administrator, its officers, directors, employees or successors. If the Company becomes legally obligated to pay damages due to the errors or omissions of Claims Administrator, Claims Administrator agrees to indemnify the Company and to reimburse the Company for any costs, damages and expenses, of any nature whatsoever incurred or sustained by the Company, including but not limited to attorney's fees and other expenses, in connection with investigating and defending any actions, claims or suits against the Company as a result thereof. Claims Administrator agrees to cooperate with the Company in the investigation and defense of any such claims.

C. The Company agrees to defend the Claims Administrator from any and all claims, suits or demands asserted by anyone against the Claims Administrator, as a result of any errors or omissions of Company, its officers, directors, employees or successors. If the Claims Administrator becomes legally obligated to pay damages due to the errors or omissions of Company, Company agrees to indemnify the Claims Administrator and to reimburse the Claims Administrator for any costs, damages and expenses, of any nature whatsoever incurred or sustained by the Claims Administrator, including but not limited to attorney's fees and other expenses, in connection with investigating and defending any actions, claims or suits against the Claims Administrator as a result thereof. Company agrees to cooperate with the Claims Administrator in the investigation and defense of any such claims.

VII. MISCELLANEOUS PROVISIONS

6·19·15

A. This Agreement shall be interpreted in accordance with the laws of the state of Florida. Any cause of action brought arising out of the rights or obligations of this Agreement shall be brought in Duval County, Florida.

B. Any forbearance or failure by the Company or Claims Administrator to enforce any right, provision, or power established under this Agreement or by operation of law shall not operate as a modification or waiver of such right, provision or power, and the Company or Claims Administrator may, at any time, pursue all rights or remedies available to it to enforce all terms and conditions of this Agreement.

C. This Agreement and any exhibit represents the full and complete understanding of the parties as to the subject matter herein, superseding all previous agreements, whether written or verbal. This Agreement may be modified or altered only by written amendment to this Agreement signed by duly authorized representatives of the parties.

D. Claims Administrator understands and agrees that it shall retain liability for any loss or damage arising out of any work performed by any subcontractor retained by Claims Administrator to perform its duties under this Agreement.

E. Claims Administrator understands and agrees that it shall retain liability for any loss or damage directly or indirectly caused by or arising out of Claims Administrator's access or use of Company's claims and policy systems.

F. To be validly given, all notices, requests, consents, and other communications arising out of this Agreement must be in writing and mailed, postage paid, to the address of the party provided for in this Agreement. As an ongoing obligation throughout the term of this Agreement, each party shall notify the other of any change of address.

G. This Agreement shall not become effective until signed by a duly authorized representative of both the Company and Claims Administrator.

H. Headings on titles to the several sections herein are for identification purposes only and shall not be construed as forming a part hereof.

I. In the event that any section, sub-section, or provision of this Agreement is declared by statute or by a court of competent jurisdiction to be illegal or void, such section, sub-section, or provision shall be deemed severed from the Agreement, and all other sections, sub-sections, terms, conditions and provisions shall remain in full force and effect.

J. During the course of this Agreement, the parties will have access to proprietary, confidential information of each other. The parties will protect such information and treat it as strictly confidential, and shall not provide it to any third party or utilize it in any fashion outside of the scope of this Agreement, except as expressly

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authorized in writing by the parties or as required by law. The Claims Administrator agrees to adhere to all reasonable confidentiality policies as adopted from time to time by the Company regarding the protection of the Company's information.

For purposes of this Agreement, "proprietary information" means any non-public information regarding or relating to the business operations, technology, insureds, customers, employees, business methods and other non-public information about Company and/or Claims Administrator. Such non-public business and technical information collectively constitutes trade secrets. For purposes of this Agreement, "confidential information" shall include, without limitation, information concerning insureds or prospective insureds, claimants, and employees and agents of Company and employees, methods, claims administrative procedures, metrics and other work practices of Claims Administrator.

K. The Company, its authorized agents, officers and employees, and Claims Administrator mutually agree that until one (1) year after termination of this Agreement, they will not solicit, recruit or hire the other party's officers, employees, contractors or agents.

L. Any notice under this Agreement shall be sent, postage prepaid, to the addresses provided below:

If to the Company:

Lyndon Southern Insurance Company
10151 Deerwood Park Blvd,
Building 100, Suite 300
Jacksonville, Florida 32256
Phone (904) 350-9660
Fax (904) 421-5917
Attn: Joseph Alberti
Copy to: Christopher Romaine
General Counsel

If to the Claims Administrator:

Jupiter Managing General Agency, Inc.
Brian Brown
Suite 1700, 424 Church Street
Nashville, TN 37219
Phone: 615-921-5600

M. Dispute Resolution. Any controversy or claim arising out of or relating to this Agreement or the breach thereof, shall be addressed first by mediation between the parties. The costs of mediation shall be borne by both parties. If not resolved by mediation, the matter shall be addressed and settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court

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having jurisdiction thereof. All parties to this Agreement and their authorized agents, officers and employees agree that during the dispute resolution process and afterwards, they will not at any time disparage, defame or hold up to public embarrassment or ridicule the other parties involved.

LYNDON SOUTHERN INSURANCE COMPANY

By: Chris

Its: EVP, General Counsel & Secretary

Date: 6/22/15

JUPITER MANAGING GENERAL AGENCY, INC.

By:

Its: President

Date: 6-19-2015

SCHEDULE A

COMPENSATION SCHEDULE

This Compensation Schedule incorporates by reference that certain Claims Administration Agreement effective June 1, 2015, (hereinafter referred to as the "Agreement") by and between the Company as identified in the Agreement, and Claims Administrator as identified in the Agreement.

The following is the compensation to be paid to the Claims Administrator for all services rendered and expenses incurred by the Claims Administrator in the handling of the Administered Claims assigned to it by the Company.

1) Eight percent (8.0%) of Collected Premium.

These fees include all ALAE and ULAE claims adjusting expenses.

At the end of each month the Company will calculate the Claims Administrator's fee based on 8.0% of Collected Premium for that month, and will forward to the Claims Administrator by email the data used in this calculation. Company will pay Claims Administrator this fee by settlement of amounts due hereunder within forty five (45) days after the end of the month via payment by the Company's Program Administrator.

LYNDON SOUTHERN INSURANCE COMPANY

By:
Its: EVP, General Counsel & Secretary
Date: 6/22/15

JUPITER MANAGING GENERAL AGENCY, INC.

By:
Its: President
Date: 6.19.2015

SCHEDULE B

CLAIMS PROCESS AND REPORTING

Reserving and Payment Authority Levels

Automobile Bodily Injury Liability	$25,000 each person $50,000 each accident
Automobile Property Damage Liability	$25,000 each accident
Automobile Uninsured Motorist's Bodily Injury	$25,000 each person $50,000 each accident
Automobile Uninsured Motorist's Property Damage	$25,000
Automobile Comprehensive/Collision	$75,000 any one vehicle
Automobile Medical Payments	$5,000 each person
Personal Injury Protection	$5,000 Medical $5,000 Accidental Death 70% Income Benefit
Automobile Underinsured Motorist's	$25,000 each person
Tenant's	$15,000 Property $100,000 Liability
Towing and Labor	$35.00 per disablement
Rental Reimbursement	$1,200 Maximum
Accidental Death	$10,000 Maximum

- Claims Administrator will utilize Company's reserving process
- No reserving process necessary for LAE
- Should policy limits be lower than those stated Payment Authority Levels above, the policy limit shall be the Claims Administrator Payment Authority Level

Payment Audit Process for Claims Administrator

- All checks issued are approved by a Claims Administrator manager

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- At 3pm each day, a report is issued which lists payments approved that day. Claims Administrator program manager reviews all payments and approves or denies these payments. Claims administrator then issues the checks and matches report with checks issued
- Claims Administrator has read only access

Claims Requiring Company Notification within 24 hours of Exposure Recognition

- Serious injuries including but not limited to fatalities, brain injuries, disfiguring scars, fractures requiring surgery, and disfiguring burns
- Department of Insurance complaints
- New litigation suits
- Any bad faith allegations
- Extra-contractual exposures

Claims Situations Requiring Company Prior Approval:

- Fraud investigations – use of vendors, fraud denials
- Coverage – coverage denials and declaratory actions
- Legal – ongoing action plans including the use of approved defense counsel
- Department of Insurance complaints
  - All DOI complaints will be logged and this log will be provided to Company monthly
  - All new DOI complaints will be sent to Company after receipt so we can log them into our system
- All new litigation exposures
- Any bad faith allegations
- Extra-contractual situations

Reporting:

- Weekly Reporting to be provided by Claims Administrator:
  - Total open and closed features & new to close ratio
  - Total open and closed features by coverage type
  - Pending inventory by coverage type
  - Subrogation and salvage proceeds reported weekly
  - A list of pending subrogation and salvage claims will be listed
- Monthly Reporting: (provided between the 15th & 20th each month)
  - Monthly claims operational summary (scorecard)
  - Severity by coverage type
  - A list of all features closed during the month
  - Monthly log for all DOI complaints
  - All completed Quality Assurance reviews completed by Claims Administrator for the month (these will be completed on the Claims Administrator system)
  - A monthly subrogation and salvage proceed reconciliation report
- Ongoing:
  - Logs for all coverage and fraud denials

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    - Logs for department of insurance complaints

Quality Assurance/Audit:

- **Claims Administrator QA:** Claims Administrator will conduct monthly QA file reviews in their system. Company will have access to these reviews to complete QA of QA.

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AMENDMENT ONE TO THE CLAIMS ADMINISTRATION AGREEMENT

This Amendment No. 1 (the "Amendment") to the Claims Administration Agreement (as defined below) is effective as of April 1, 2017 (the "Effective Date"), and is entered into by and among Lyndon Southern Insurance Company and Insurance Company of the South (collectively, "COMPANY") and Jupiter Managing General Agency, Inc. ("ADMINISTRATOR"). Capitalized terms used but not defined herein have the meanings set forth in the Claims Administration Agreement between the parties effective as of June 1, 2015 (together with any exhibits or attachments thereto and as further amended, restated or otherwise modified from time to time, the "Agreement").

WHEREAS, the parties entered into the Agreement effective June 1, 2015; and

WHEREAS, the parties wish to amend the Agreement to add Insurance Company of the South as a party to the Agreement and to add Georgia and Texas as authorized states of the Jupiter Managing General Agency program; and

WHEREAS, the parties wish to amend the Agreement to document that ADMINISTRATOR will take over the claims administration for the in-force business deemed the "CIS program"; and

WHEREAS, the parties wish to amend the Agreement as described herein by this written amendment signed by the parties pursuant to Section VII (C) of the Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and promises described herein and in the Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Agreement is hereby amended as follows:

I. Insurance Company of the South is hereby added as a party to the Agreement. Any and all reference to COMPANY shall collectively mean both Lyndon Southern Insurance Company and Insurance Company of the South.

II. Schedule A – Compensation Schedule is hereby amended in its entirety to read as follows:

SCHEDULE A

COMPENSATION SCHEDULE

This Compensation Schedule incorporates by reference that certain Claims Administration Agreement effective June 1, 2015, (hereinafter referred to as the "Agreement") by and between the Company as identified in the Agreement, and Claims Administrator as identified in the Agreement.

The following is the compensation to be paid to the Claims Administrator for all services rendered and expenses incurred by the Claims Administrator in the handling of the Administered Claims assigned to it by the Company.

1. Service fees for Administered Claims in Arkansas, Oklahoma, Texas and Tennessee:

    a) Eight percent (8.0%) of Collected Premium.

    These fees include all ULAE claims adjusting expenses. Any ALAE or DCCE will be allocated to each individual file and corresponding Losses Incurred and paid for by the Company.

2. Service fees for Administered Claims in Georgia:

    b) Nine percent (9.0%) of Collected Premium.

    These fees include all ALAE and ULAE claims adjusting expenses and shall not be allocated to each individual file and corresponding Losses Incurred and paid for by the Claims Administrator.

At the end of each month the Company will calculate the Claims Administrator's fee based on the respective percentage of Collected Premium for that month, and will forward to the Claims Administrator by email the data used in this calculation. Company will pay Claims Administrator this fee by settlement of amounts due hereunder within forty five (45) days after the end of the month via payment by the Company's Program Administrator.

III. In Schedule B – Claims Process and Reporting, the Reserving and Payment Authority Levels chart is hereby deleted and replaced with the following:

Reserving and Payment Authority Levels in Arkansas, Oklahoma & Tennessee:

Automobile Bodily Injury Liability	$25,000 each person $50,000 each accident
Automobile Property Damage Liability	$25,000 each accident

Automobile Uninsured Motorist's Bodily Injury	$25,000 each person $50,000 each accident
Automobile Uninsured Motorist's Property Damage	$25,000
Automobile Comprehensive/Collision	$75,000 any one vehicle
Automobile Medical Payments	$5,000 each person
Personal Injury Protection	$5,000 Medical $5,000 Accidental Death 70% Income Benefit
Automobile Underinsured Motorist's	$25,000 each person
Tenant's	$15,000 Property
	$100,000 Liability
Towing and Labor	$35.00 per disablement
Rental Reimbursement	$1,200 Maximum
Accidental Death	$10,000 Maximum

Reserving and Payment Authority Levels in Texas:

Automobile Bodily Injury Liability	$30,000 each person $60,000 each accident
Automobile Property Damage Liability	$25,000 each accident
Automobile Uninsured Motorist's Bodily Injury	$30,000 each person $60,000 each accident
Automobile Uninsured Motorist's Property Damage	$25,000
Automobile Comprehensive/Collision	$75,000 any one vehicle
Personal Injury Protection	$2,500 Medical
Towing and Labor	$70.00 maximum per disablement

Rental Reimbursement	$750 maximum

Reserving and Payment Authority Levels in Georgia:

Automobile Bodily Injury Liability	$25,000 each person $50,000 each accident
Automobile Property Damage Liability	$27,500 each accident
Automobile Uninsured Motorist's Bodily Injury	$25,000 each person $50,000 each accident
Automobile Uninsured Motorist's Property Damage	$27,500
Automobile Comprehensive/Collision	$50,000 any one vehicle
Medical Payments	$5,000 each person
Towing and Labor	$50.00 per disablement
Rental Reimbursement	$1,200 Maximum
Accidental Death & Dismemberment	$10,000 Maximum

IV. The new schedule below, titled Schedule C – Administration of CIS Program, is hereby added to the Agreement:

SCHEDULE C

ADMINISTRATION OF CIS PROGRAM

1. **Duties and Obligations of Claims Administrator:**

   Claims Administrator agrees to provide the Claims Adjusting Services, as defined in the Agreement, for all pending or reopened Features and all new and pending Losses arising from the business COMPANY assigns as the "CIS Program" in the states of Alabama, Georgia, Mississippi, and South Carolina. All of the rights, duties, obligations and requirements set forth in the Agreement shall apply to the claims administration services covered by this Schedule C.

2. **Compensation:**

   In consideration for taking over the claims administration of this program, Company shall pay Claims Administrator as agreed to in writing by Claims Administrator and Company.

Except as expressly provided hereby, all of the terms and provisions of the Agreement and all subsequent Amendments and all related schedules are and shall remain in full force and effect and are hereby ratified and confirmed by the Parties including, without limitation, that the provisions of the Agreement shall continue to apply to all unfinished business to the end that all obligations and liabilities incurred by each Party as a result of the Agreement are fully performed and discharged.

IN WITNESS WHEREOF the Parties, by their respective duly authorized officers, have caused this Amendment to become effective upon execution by the Parties in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument as of the Effective Date.

LYNDON SOUTHERN INSURANCE COMPANY
INSURANCE COMPANY OF THE SOUTH

By: ______________________

Name: MICHAEL VRBAN

Title: TREASURER

JUPITER MANAGING GENERAL AGENCY, INC.

By: ______________________

Name: E. Brian Brown

Title: President

AMENDMENT TWO TO THE CLAIMS ADMINISTRATION AGREEMENT

This Amendment No. 2 (the "Amendment Two") to the Claims Administration Agreement (as defined below) is effective as of May 1, 2018 (the "Effective Date"), and is entered into by and among Lyndon Southern Insurance Company and Insurance Company of the South (collectively, "COMPANY") and Jupiter Managing General Agency, Inc. ("ADMINISTRATOR"). Capitalized terms used but not defined herein have the meanings set forth in the Claims Administration Agreement between the parties effective as of June 1, 2015 (together with any exhibits or attachments thereto and as further amended, restated or otherwise modified from time to time, the "Agreement").

WHEREAS, the parties entered into the Agreement effective June 1, 2015; amended by Amendment One on April 10, 2017; and

WHEREAS, the parties wish to amend the Agreement to change the Compensation Schedule; and

WHEREAS, the parties wish to amend the Agreement as described herein by this written amendment signed by the parties pursuant to Section VII (C) of the Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and promises described herein and in the Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Agreement is hereby amended as follows:

1. Schedule A – Compensation Schedule, Subsection 2. is hereby amended to read as follows:

2. Service fees for Administered Claims in Georgia for policies underwritten and distributed by Jupiter Managing General Agency, Inc.:

   a) Eight percent (8.0%) of Collected Premium.

   These fees include all ALAE and ULAE claims adjusting expenses.

   At the end of each month the Company will calculate the Claims Administrator's fee based on the respective percentage of Collected Premium for that month, and will forward to the Claims Administrator by email the data used in this calculation. Company will pay Claims Administrator this fee by settlement of amounts due hereunder within forty five (45) days after the end of the month via payment by the Company's Program Administrator.

Except as expressly provided hereby, all of the terms and provisions of the Agreement and all subsequent Amendments and all related schedules are and shall remain in full force and effect and are hereby ratified and confirmed by the Parties including, without limitation, that the provisions of the Agreement shall continue to apply to all unfinished business to the end that all obligations and liabilities incurred by each Party as a result of the Agreement are fully performed and discharged.

IN WITNESS WHEREOF the Parties, by their respective duly authorized officers, have caused this Amendment Two to become effective upon execution by the Parties in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument as of the Effective Date.

LYNDON SOUTHERN INSURANCE COMPANY
INSURANCE COMPANY OF THE SOUTH

By: Mike Vrban

Name: MIKE VRBAN

Title: TREASURER

JUPITER MANAGING GENERAL AGENCY, INC.

By:

Name: E. Brian Brown

Title: President

Lyndon Southern Insurance Company
10151 Deerwood Park Blvd Bldg 100 Ste 500
Jacksonville, FL 32256

New Declaration

PLAINTIFF'S
EXHIBIT
19
6-21-23
PENGAD 800-631-6989

CIS, Inc.
PO Box 8910
Savannah, GA 31412
1-800-280-0955

THIS DECLARATION PAGE COMPLETES THE POLICY

Policy Number	**Policy Type**	**Inception**	**Expiration**
CH4154345-00	SOUTH CAROLINA PRIVATE PASSENGER	03/03/2016	09/03/2016

Named Insured(s) and Garaging Address
TASHA JONES
100 RIPPLEMEYER AVE APT 30D
COLUMBIA SC 29203

To make any changes please contact:
SAFECHOICE INSURANCE, LLC
4864 AUGUSTA RD
LEXINGTON, SC 29073
(803) 996-0400
391724

Operator(s)	**Driver's License No.**	**Excluded**	**Birth Date**	**Gender**	**Marital Status**	**Class**	**Filings**	**Points**
1 TASHA JONES	101956528	N	03/18/1992	F	S	SF23	NO	8
2 TERESA JONES	007327454	N	03/31/1966	F	S	SF49	NO	0

Vehicles(s)	**VIN**	**Class**	**Territory**	**Symbol**	**Points**
1 2006 KIA SEDONA LX/SED(	KNDMB233X66050682	SF23	18	12	8

Loss Payee(s)
Any under Coverage E and F is Payable To The Named Insured And Loss Payee As Interest May Appear.

1
LIBERTY FINANCIAL SERVICES
1920 AUGUSTA HWY
WEST COLUMBIA, SC 29169

Additional Insured(s)/Interest(s)

Additional Information

There is NO COVERAGE AFFORDED while any vehicle is operated by an EXCLUDED driver.
*Uninsured Motorist Property Damage limit less $200 deductible
*Towing Limit: $50 per disablement
*Rental Reimbursement Limit: $20 a day/$400 maximum

Endorsements and/or Exclusions Forming Part of the Policy
CIS PAPSC (06/14)

Credits, and/or Discounts Applied to the Policy

Insured Copy

Countersigned by: ____________________

ABSENCE OF PREMIUM IN ANY CATEGORY MEANS NO COVERAGE AFFORDED. THE LIMIT(S) OF THE COMPANY'S LIABILITY IS AS STATED BELOW

Coverages		**Limits and Deductibles *($)***	**Premiums ($)**			
Liability		*(Per Person / Per Accident)*	**Veh #1**	**Veh #2**	**Veh #3**	**Veh**
A	BODILY INJURY	$25,000/$50,000	$578			
B	PROPERTY DAMAGE	$25,000	$473			
C	MEDICAL PAYMENTS	$1,000 Medical Limit	$75			
D	UNINSURED MOTORIST BODILY INJURY	$25,000/$50,000	$38			
	UNINSURED MOTORIST PROPERTY DAMAGE*	$25,000	$27			
DI	UNDERINSURED MOTORIST BODILY INJURY	$25,000/$50,000	$42			
	UNDERINSURED MOTORIST PROPERTY DAMAGE	$25,000	$5			

Physical Damages(Deductible Per Accident)		**Veh #1**	**Veh #2**	**Veh #3**	**Veh #4**	
E	COMPREHENSIVE less Deductible	$500				$405
F	COLLISION less Deductible	$500				$572
G	TOWING *	$50 per disablement				$5
H	~~RENTAL REIMBURSEMENT~~ *	$20 a day/ $400 maximum				$23

UM FUND FEE	$1
PER VEHICLE PREMIUM	$2,243
POLICY FEE	$20
SR22 FEE	

Transaction Premium Change:

Changes Effective: Effective Date: 03/03/2016 10:57 AM

Total Policy Premium = 2264

This is NOT a bill.

Insured Copy

Countersigned by: ____________________

PENGAD 800-631-6989
PLAINTIFF'S EXHIBIT
20
6-21-23

CIS

P.O. Box 8910
Savannah, GA 31412
(800) 280-0955

Lyndon Southern Insurance Company
10151 Deerwood Park Blvd Bldg 100 Ste 300
Jacksonville, FL 32256

South Carolina Private Passenger Auto Application

APPLICANT

Name First TASHA Middle Last JONES

Mailing Address 100 RIPPLEMEYER AVE APT 30D

City COLUMBIA County RICHLAND State SC Zip 29203 Terr 18

Home Phone (786) 719-4762

Work Phone

Garaging Address (if different than Mailing address)

City County State Zip Terr

PROD

Producer Name SAFECHOICE INSURANCE, LLC

Producer Number 391724-000-000

Address

City LEXINGTON State SC Zip 29073

Producer Phone (803) 996-0400

LIMITS

Liability BI/PD	25/50/25
Uninsured Motorist BI/PD Underinsured Motorist BI/PD	25/50/25 ($200 deductible applies to UMPD) ☐ NONE ☒ 25/50/25 ($200 deductible applies to UMPD)
Medical Payments	☐ NONE ☐ $500 ☒ $1000

DISCOUNTS

- ☐ Transfer 0 day lapse
- ☐ Multi-Car
- ☐ Homeowner
- ☐ Paid in Full

POLICY

Term: 6 months with policy period:

From: 03/03/2016

To: 09/03/2016

Time: 10:57 AM

VEHICLE

	Year	Make	Model	Driver	VIN	Sym
1	2006	KIA	SEDONA LX/SEDONA EX	TASHA JONES	KNDMB233X66050682	12
2						
3						
4						

COVERAGES

Veh	Liab BI/PD Premium	UM/UIM BI/PD Premium	Med Pay Premium	Comp/Collision Deductible	Comp. Premium	Collision Premium	Rental Reimburse.	Towing & Labor
1	$578 /$473	[illegible]	$75.00	☐ No ☐ 250 ☒ 500 ☐ 1000	$405.00	$572.00	YES	YES
2				☐ No ☐ 250 ☐ 500 ☐ 1000				
3				☐ No ☐ 250 ☐ 500 ☐ 1000				
4				☐ No ☐ 250 ☐ 500 ☐ 1000				

DRIVERS

All residents of the household age 14 and over must be listed, including all unmarried children, wards, and foster children that are not emancipated, even if not a resident of the household. NO COVERAGE FOR UNLISTED DRIVERS. For each show name, date of birth, sex, and marital status even if not an operator. Any person whose license is suspended must be excluded.

	Driver Name	Driver's License	State	Date of Birth MM/DD/YY	Social Security	Sex	M/S	DD/GS	SR-22
1	TASHA JONES	101956528	SC	03/18/1992	248892995	F	S	N/N	NO
2	TERESA JONES	007327454	SC	03/31/1966	045646159	F	S	N/N	NO
3									
4									
5									

Check if any operator of the automobile has ever had: ☐Epilepsy ☐Stroke ☐Diabetes ☐Loss of Eye ☐Cerebral Palsy ☐Heart Attack ☐Loss of Limb
If any item is checked, a Physician's Statement or Altered Vehicle Statement must be attached.

POINTS

Statement of all accidents and traffic violations during the past 36 months for all drivers:

	Driver Name	Date MM/DD/YY	Description	Pts
1	TASHA JONES	09/17/2013	At-Fault Accident	4
2	TASHA JONES	07/21/2014	At-Fault Accident	4
3				

THE INSURER CAN CANCEL THIS POLICY FOR WHICH YOU ARE APPLYING WITHOUT CAUSE DURING THE FIRST 90 DAYS. THAT IS THE INSURER'S CHOICE. AFTER THE FIRST 90 DAYS, THE INSURER CAN ONLY CANCEL THIS POLICY FOR REASONS STATED IN THE POLICY.

AMT. DUE

		Paid in Full	Pay Plan
Total Premium	=	$ 2243	$ 2243
Down payment	=	20	20
Subtotal	=		20%
+ Policy Fee + SR22 Fee + UM Fund Fee + MVR Fee		$ 2263.00 $ 0 $ 1 $	$ 452.60 $ 0 $ 1 $
Amount Due	=	$ 2264.00	$ 453.60

Has applicant been advised that failure to disclose all accidents and violations will jeopardize his coverage? ☐ Yes ☐ No

☐ Agency Check ☐ Insured Check Check Number:

LIEN HOLDER

Vehicle Number	Name	Address	City	State	Zip	Phone
1	LIBERTY FINANCIAL	1920 AUGUSTA HWY	WEST COLUMBIA	SC	29169	
Vehicle Number	Name	Address	City	State	Zip	Phone
Vehicle Number	Name	Address	City	State	Zip	Phone

UIM SELECT / REJECT FORM

Automobile liability insurance coverage pays other motor vehicle drivers and their passengers for 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 vehicles or property.

Under South Carolina law, an insurance company may refuse to write your automobile liability insurance for a number of reasons. If an insurance company decides to write your automobile liability insurance coverage, however, it must provide at least $25,000 of bodily injury coverage for each person whom you may injure in any single accident and $50,000 of bodily injury coverage for two or more people whom you may injure in any single accident. The insurance company must also provide at least $25,000 in property damage coverage for each accident 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 an insurance company offer higher than minimum limits of automobile liability insurance coverage. If your insurance company does offer more than 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 uninsured motorist coverage and optional underinsured motorist coverage, respectively. You may also see them referred to as UM and/or UIM. By law, your automobile insurance policy automatically provides uninsured motorist coverage of $25,000/$50,000/$25,000. There is a $200 deductible for uninsured property damage claims. If you decide to purchase optional underinsured motorist coverage, you will be required to pay an additional premium for it.

Uninsured motorist coverage compensates you, or the 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

Underinsured motorist 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 motorist coverage. However, you have the right to buy, and your insurance company is required to offer, optional underinsured motorist coverage in various limits up to the limits of liability coverage you have purchased. The limits of optional underinsured motorist coverage which your insurer is authorized to write and for which you are eligible are shown on this form, together with the additional premium for those limits. You may not purchase underinsured motorist coverage with limits in excess of your liability limits.

If you reject the optional underinsured coverage shown in this form and if you are involved in an automobile accident that is not your fault, this form may be used by your insurance company as evidence against you if you make a claim for optional underinsured motorist coverage.

If you do not complete this form and return it to your insurance company or insurance agent within 30 days, your insurance company is required by law to add optional underinsured motorist coverage, in the same limits as your automobile liability insurance, to your automobile insurance policy. You will be required to pay an additional premium for this coverage 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 optional underinsured motorist coverage, you must contact either your insurance agent or your insurance company. You will not be presented with another copy of this form by your insurance agent or current insurance company when you extend, change, supersede, or replace you automobile liability insurance policy.

Please read this form carefully. Your insurance agent or your insurance company must answer any questions which you may have. 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, South Carolina 29201, PO Box 100105, Columbia, South Carolina 29202-3105, (803) 737-6180, (800) 768-3467. Email address: consumers@doi.sc.gov

Optional Underinsured Motorist Coverage Offer

Coverage of $25,000/$50,000/$25,000 is available. Premiums for this coverage can be $23.40 or more.

Check one of the following:

☒ I accept Underinsured Motorists Coverage with limits shown on the application for insurance.

☐ I reject Underinsured Motorists Coverage entirely. I understand that this rejection applies to my present auto insurance policy and to all future renewals or replacements of this policy. If I want to request Underinsured Motorists Coverage at some future time, I must let the Company or my agent know in writing.

Applicant's Acknowledgement

By my signature, I acknowledge that I have read – or I have had read to me – the above explanation and offer of optional underinsured motorist coverage. I understand that the above explanation of this coverage is intended only to be a brief description of optional underinsured motorist coverage and that payment of benefits under this coverage is subject both to the terms and conditions of my automobile insurance policy and the laws of the state of South Carolina.

My signature below further acknowledges that I understand the coverage as it has been explained to me, and the coverage has been selected by me. This is the type and amount of insurance coverage I wish to purchase.

Signature of Applicant: Date: 3/3/14

MP SELECT / REJECT FORM

Check one of the following:

☒ I accept Medical Payments Coverage with limits shown on the application for insurance.

☐ I reject Medical Payments Coverage entirely. I understand that this rejection applies to my present auto insurance policy and to all future renewals or replacements of this policy. If I want to request Medical Payments Coverage at some future time, I must let the Company or my agent know in writing.

Signature of Applicant: Date: 3/3/16

CANCEL POLICY

I understand that if I cancel this policy for any reason or if the Company cancels it due to my failure to pay any premium when due, the pro-rata policy fee is in addition to any premium the Company has earned for the coverage provided by this policy and may be deducted from any refund to which I am entitled.

Signature of Applicant: Date: 3/3/16

INSPECTION

I have personally inspected the vehicle(s) described on this application and: ☐ The vehicle identification number(s) has been verified, ☐ Inspection Form and Photos have been enclosed for each vehicle(s) qualifying for the Safe Vehicle Discount and ☐ Inspection Form and Photo(s) have been submitted for any vehicle with existing damage.

Signature of Agent: Date: 03-03-16

UNLISTED RESIDENT DRIVER EXCLUSION

I understand and agree that I am required to list drivers and motor vehicles in the application. I understand and agree that all members and residents of the household age 15 and over are listed on the application. I understand and agree that failure to completely and accurately inform the company of all members and residents of the household age 15 and over may constitute fraud or misrepresentation. I understand and agree that the company will provide no coverage for any claim arising from an accident or loss incurred when a listed vehicle is operated by any unlisted member or resident of the household age 15 and over. I UNDERSTAND AND WARRANT TO LYNDON SOUTHERN INSURANCE COMPANY THAT ALL DRIVERS IN MY HOUSEHOLD ARE LISTED ON PAGE ONE (ABOVE) OF THIS APPLICATION. IF ANY UNLISTED RESIDENT OF MY HOUSEHOLD OPERATES ONE OF THE VEHICLES INSURED UNDER THIS POLICY, SUCH USE WOULD BE STRICTLY WITHOUT MY EXPRESSED OR IMPLIED PERMISSION.

Signature of Applicant: Date: 03/03/16

NAMED DRIVER EXCLUSION

First Excluded Driver NAME	First	Middle	Last	Date of Birth	Relationship
Second Excluded Driver NAME	First	Middle	Last	Date of Birth	Relationship

All regular drivers, members or residents of the household age 15 and older must be rated for coverage or excluded from coverage. I agree with the company that no coverage for any claim arising from an accident or loss incurred when a covered auto or any other auto is operated, maintained, or used by a driver(s) specifically excluded from coverage at the time of application or by endorsement. This exclusion applies whether or not the use is with my permission. This includes any claim for damages made against me, or a family member or resident or any other person or organization for negligent entrustment, vicarious liability, or any other similar theory. This exclusion does not apply to Underinsured Motorist coverage unless I reject Underinsured Motorist coverage in writing. This exclusion under this policy will apply to all renewals and changes thereof.

Individuals may be excluded from your policy if:

1) They have turned in their driver's license to the Department of Public Safety, or
2) They obtained a policy of insurance (or other security) to enable them to drive vehicles.

Signature of Applicant: Date: 3/3/16

APPLICANT STATEMENT

I hereby apply to the Company for a policy of insurance as set forth in this application on the basis of the statements contained herein. The undersigned represent that the statements and answers recorded on this application are true and complete to the best of their knowledge and belief. I further certify all persons age 15 years or older who live with me are shown above. The undersigned agree that any policy issued from this application shall be null and void from inception if any of these answers are false, incomplete, or given with intent to deceive; or, if a check presented to the agent or the company is not honored by the bank upon which it is drawn. I understand that Lyndon Southern Insurance Company (Company) may obtain consumer reports (which may include a driver history report, credit report or credit score) or personal or privileged information from third parties and I grant them the authority to do so. I must pay any additional premium due if there are chargeable traffic offense(s) not included on this application; otherwise coverage under this policy will be canceled. Should a Motor Vehicle Report disagree with the information furnished on this application, or if other rating discrepancies be determined, I hereby consent to pay any resultant additional premium and agree to pay the late/lapse fee and the NSF fee, if applicable, before any premium will be applied. Upon request, additional information as to the nature and scope of the report, if one is made, will be provided. Applicants selecting the installment option are charged a non-refundable installment fee. Having had all of the optional coverages and optional limits offered and explained to me, I hereby sign for the acceptances or rejections for this policy and any renewal, replacement, reinstatement, transfer, or substitute thereof, and for any addition or substitution of any motor vehicle covered by such policy.

Signature of Applicant: Date: 3/3/16

PRODUCER STATEMENT

I, the undersigned Producer, hereby certify that to the best of my knowledge, all information listed is correct. The statements listed are those of the applicant who has signed this form in my presence. The applicant and the undersigned are retaining a duplicate signed copy of this form. I am legally qualified to submit this form on behalf of the applicant. I have inspected the applicant's vehicle(s) and found it free of all damage, except as noted on this application.

Signature of Producer: Date: 03-03-16

Fraud Warning: Any person with intent to defraud or knowing that he is facilitating a fraud against an insurer, or submits an application or files a claim containing false or deceptive statement is guilty of insurance fraud.

CIS
VEHICLE INSPECTION FORM

CIS, INC.
PO BOX 8910
Savannah, GA 31412-8910
Phone (800) 280-0955 ◊ Fax (912) 236-8397

One form per vehicle on policy is required.

Insured may submit a MSO/BOS or complete a self inspection signed by the agent and insured, as long as no damage is present on the vehicle.

If damage is present, two photos are required to be submitted with the application along with agent and insured signatures.

Policy Number: CH4154345-00 Insured Name TASHA JONES

Vehicle # 1 **Year** 2006 **Make/Model** KIA/SEDONA LX/SEDONA EX

VIN # KNDMB233X66050682

Odometer Reading (*Required***)** 164,671

Vehicle Condition: ☐ Excellent ☑ Good ☐ Fair ☐ Poor

Describe any damage on the vehicle including which panel is involved: ____________________

X ERMAL NDREU
Agent Printed Name

X ________ 03-03-16
Signature of Agent Date

X Tasha Jones
Applicant Printed Name

X ________ 3/3/16
Signature of Applicant Date

CIS SC 011 (06/14)

Merchant: Safe Choice Insurance

4864 AUGUSTA ROAD
LEXINGTON, SC 29073
US

(803) 996-0400

Order Information

Description:
Order Number:
Customer ID:

P.O. Number:
Invoice Number:

Billing Information
tasha jones

Shipping Information

Shipping:	0.00
Tax:	0.00
Total:	**USD 453.60**

Visa XXXX6304

Date/Time:	03-Mar-2016 08:54:53 MST
Transaction ID:	8037792183
Transaction Type:	Authorization w/ Auto Capture
Transaction Status:	Captured/Pending Settlement
Authorization Code:	360837
Payment Method:	Visa XXXX6304

Safe Choice Insurance LLC
4864 augusta rd lexington, SC 29073
(803) 996-0400

Named Insured:	Tasha Jones (555603031610581413)		
Company:	CIS		
Payment Date:	3/3/2016	**Payment Time:**	11:02 AM
Payment Method:	Credit Card to Agency		
Check Number:			
Agency Staff:	Ermal	**Receipt Num**	63554

Payment To	Policy or Contract Number	Payment Type	Amount Due
CIS	4154345	New Business visa to capital bnk card	$453.60

Amount Due:	$453.60
Amount Tendered:	$453.60
Change Amount:	$0.00

Policy or Service Fee Consent In accordance with ANN. & 38-3-110(2002)prior to the rendering of any services by Safe Choice Insurance LLC, or it's authorized representatives, the insured hereby freely and voluntarily consents to the payment to Safe Choice Insurance LLC, of the above fee(s) for , the rendering of services associated with application for and issuance of the insured's policy or policies of insurance: or for the renewal of such policy or policies. The insured understands that said fee is in addition to the filed and approved premiums for such insurance policy or policies.

I understand the above statements and agree to the payment of the specified fee.

Insured's Signature:

I have explained the above mentioned coverages, payment terms, and fees to the insured.

0303161102

Safe Choice Insurance LLC

I, Tasha Jones, hereby understand and acknowledge that a representative of Safe Choice Insurance LLC has explained to me the policy(ies) for which I am applying for. I have selected the following limits/coverages:

Bodily Injury Liability	25/50
Property Damage Liability	25
Uninsured Motorist Bodily Injury	25/50
Uninsured Motorist Property Damage	25
Underinsured Motorist Bodily Injury	25/50
Medical Payments	1000
Travel Accident Coverage (AD&D)	Rejected
Emergency Roadside Coverage	Rejected
Towing & Rental Plan	
Other	

		Deductibles			
Year	Make	Comp	Coll	Tow	Rent
2006	KIA	500	500	50	20

The down payment, monthly payments, and other terms of the premium financing have been explained to me, and I understand there are higher liability limits available but I choose what is indicated above. I have been offered the higher limits.

Policy or Service Fee Consent

Policy or Service Fee Consent

In accordance with ANN. & 38-3-110(2002) Policy or Service Fees, prior to the rendering of any services by Safe Choice Insurance LLC, or it's authorized representatives, the insured hereby freely and voluntarily consents to the payment to Safe Choice Insurance LLC The insured understands that said fee is in addition to the filed and approved premiums for such insurance policy or policies. I understand the above statements and agree to the payment of the specified fee.

The insured understands that said fee is in addition to the filed and approved premiums for such insurance policy or policies. The insured grants this agency the right to make changes to insured's insurance policy without express written consent by insured at time of change if requested by insured, spouse, auto dealership or financial institution. The insured grants this agency the right to cancel insurance policy if check written to agency by insured is returned by the financial institution due to insufficient funds. The insured understands that it is the responsibility of the insured to notify the agency if changing name or address. I attest that I am a resident of South Carolina and that all vehicles listed on this policy are garaged in South Carolina, any misrepresentation of South Carolina residency can result in the denial of claims made.

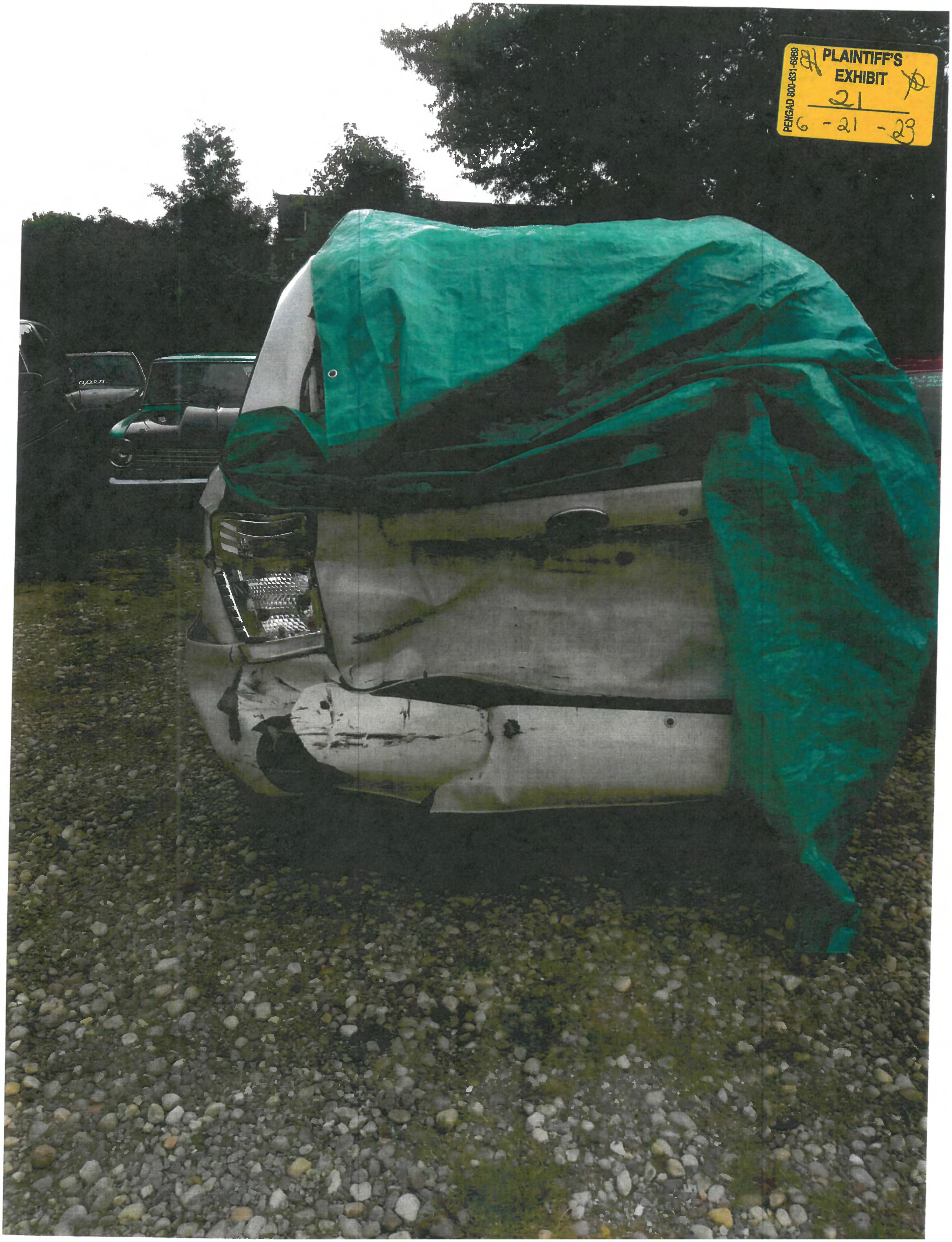
I understand the above statements and agree to the payment of the specified fee.

Insured's Signature: ______________________ 3/3/2016

I have expained the above mentioned coverages, payment terms, and fees to the insured.

Agent's Signature: ______________________ 3/3/2016

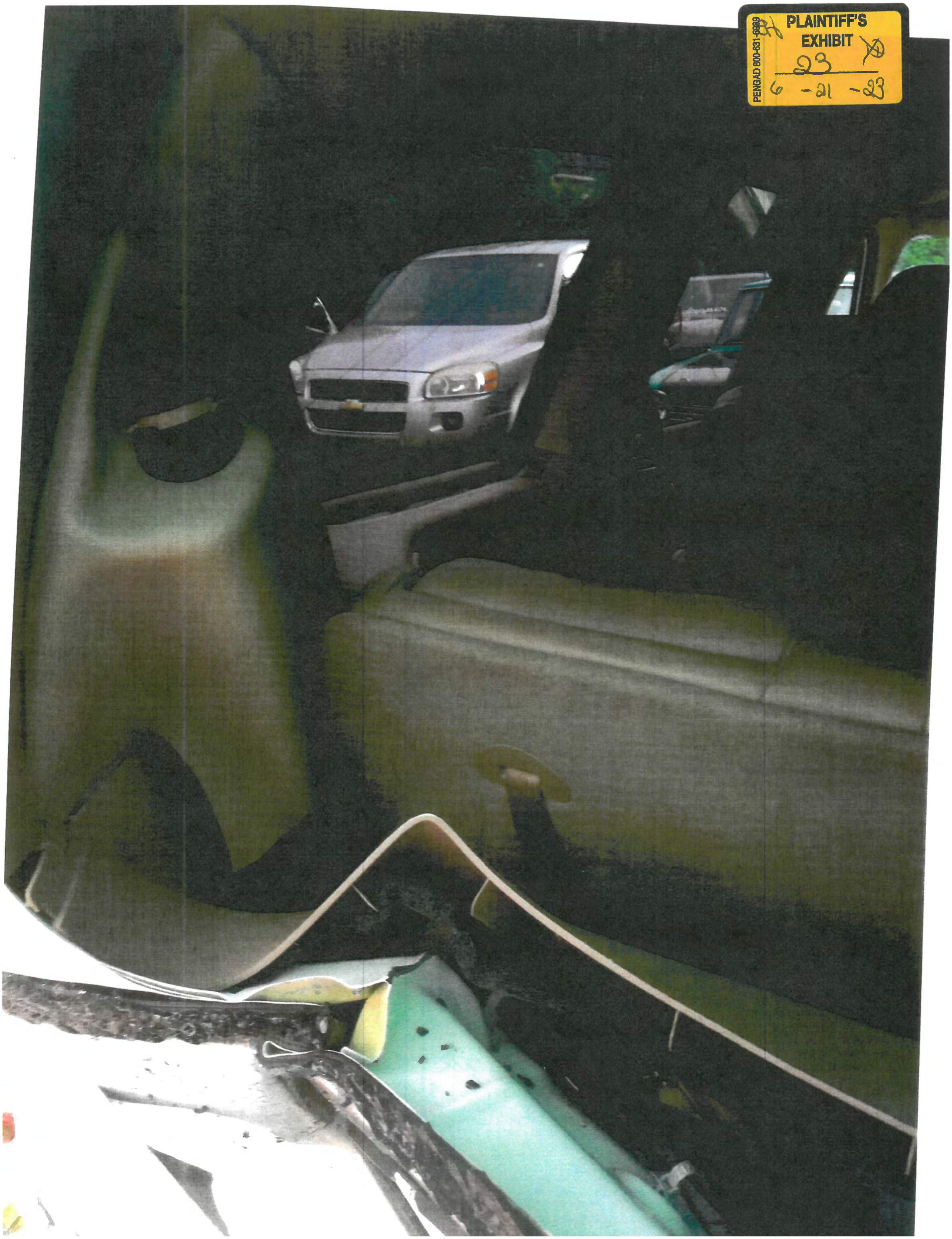
PLAINTIFF'S EXHIBIT
21
6-21-23

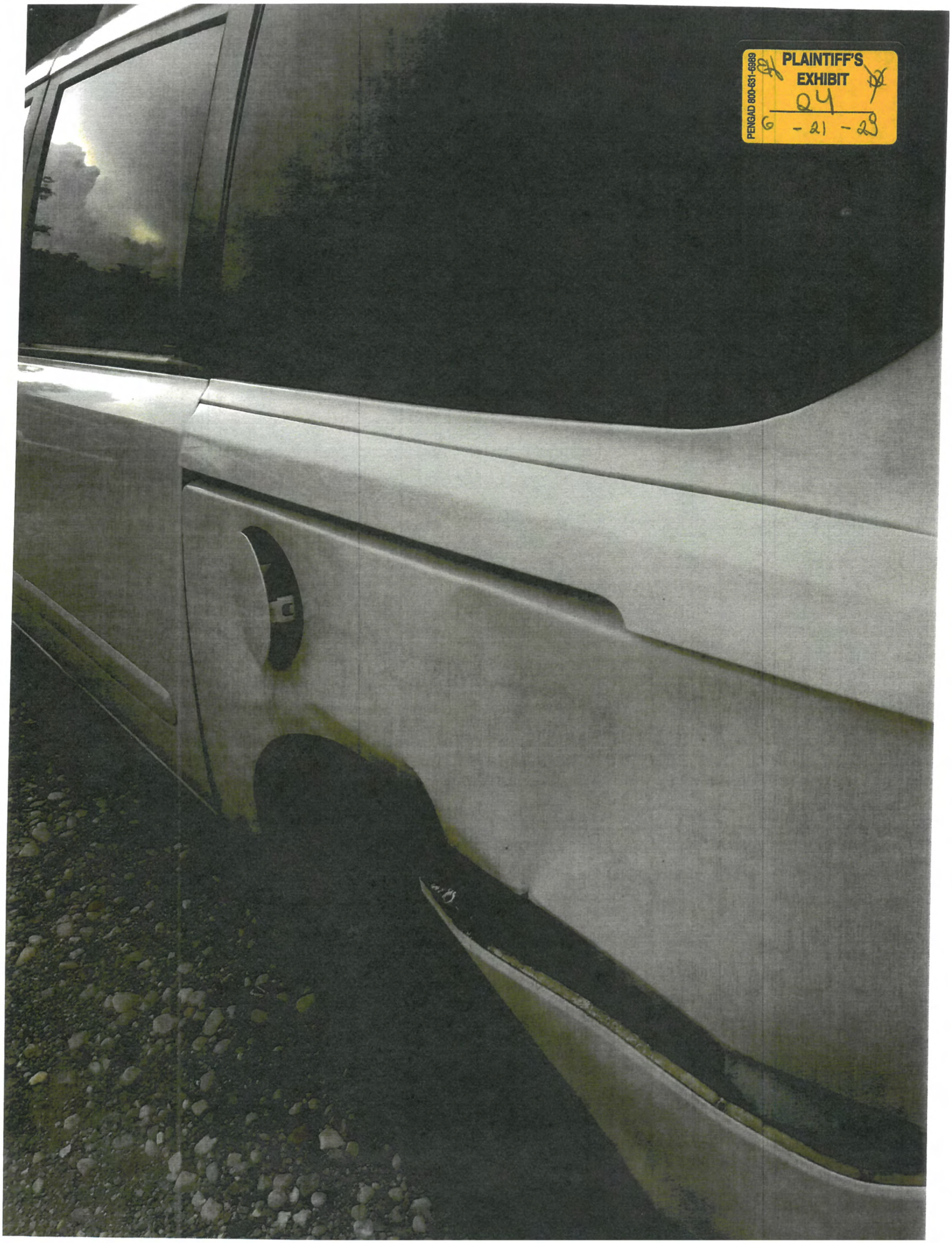


PENGAD 800-631-6989
PLAINTIFF'S EXHIBIT
22
6-21-23

PENGAD 800-631-6989

PLAINTIFF'S
EXHIBIT
23
6-21-23



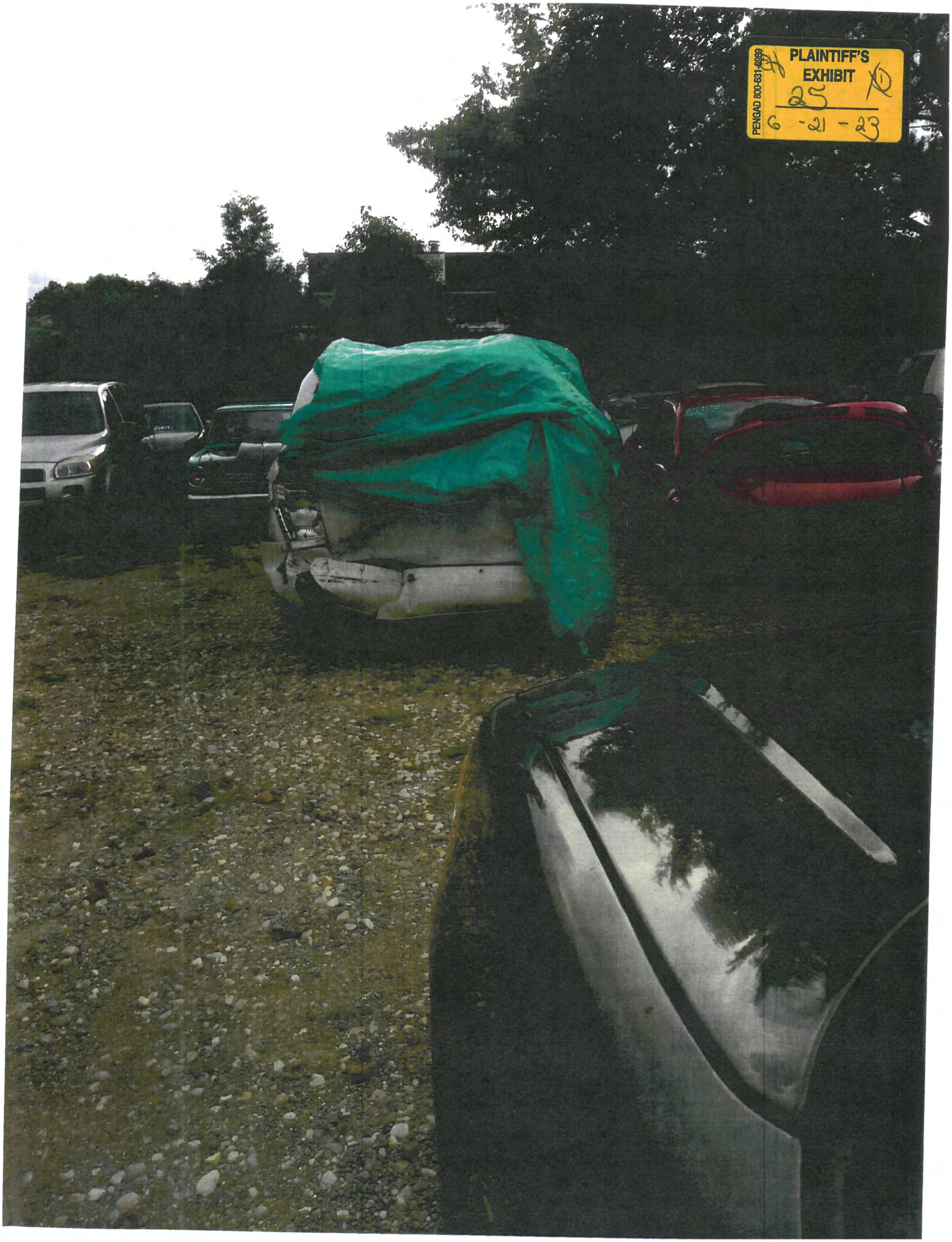


PENGAD 800-631-6989

PLAINTIFF'S EXHIBIT

Q4

6-21-23



PLAINTIFF'S EXHIBIT
25 ID
6-21-23
PENGAD 800-631-6989

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
Tasha Jones; and)
Shaniqua Thompson)
)
Plaintiffs,)
)
vs.)
)
John Doe)
)
Defendant.)
)

IN THE COURT OF COMMON PLEAS

Civil Action No: 2017-CP-40

SUMMONS

RICHLAND COUNTY
FILED
2018 JAN 18 PM 12:32
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

TO THE ABOVE NAMED DEFENDANT:

You are hereby summoned and required to serve upon Dietrich A. Lake, plaintiff's attorney, whose address is 1034 Briargate Circle, Suite 201, Columbia, SC 29210, an Answer to the Complaint which is herewith served upon you, within 30 days after service of this summons upon you, exclusive of the day of service.

If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Dietrich A. Lake #69649
The Lake Law Firm
1034 Briargate, Circle, Suite 201
Columbia, SC 29210
803/750-8311 *office*
803/750-8312 *fax*
ATTORNEY FOR PLAINTIFFS

January 17, 2018
Columbia, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
Tasha Jones; and)
Shaniqua Thompson)
)
Plaintiffs,)
)
vs.)
)
John Doe)
)
Defendant.)
)

IN THE COURT OF COMMON PLEAS

Civil Action No: 2018-CP-40

COMPLAINT

(Jury Trial Requested)

RICHLAND COUNTY
FILED
2018 JAN 18 PM 12:32
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

The Plaintiffs; complaining of the Defendant, alleges:

1. The Plaintiff Tasha Jones is a citizen and resident of Richland County, South Carolina.

2. The Plaintiff Shaniqua Thompson is a citizen and resident of Richland County, South Carolina.

3. Upon information and belief, the Plaintiff has no knowledge of the residency of the Defendant John Doe.

4. The parties hereto, the subject matter hereof, and all things and matters hereinafter alleged are within the jurisdiction of the Honorable Court.

5. On or about the 15th day of June, 2017, the Plaintiffs were stopped at the intersection of Farrow Road and Standish Street in Richland County, Columbia, South Carolina.

6. The Tasha Jones was the driver of the vehicle while the Plaintiff Shaniqua Thompson was a passenger in that same vehicle.

7. The Defendant John Doe was driving a vehicle that was travelling behind the Plaintiff's vehicle on Standish Street in Richland County, Columbia, South Carolina.

8. The Defendants' vehicle struck the Plaintiff's vehicle in the rear and fled the scene of the accident.

FOR A FIRST CAUSE OF ACTION

9. All the allegations in Paragraphs 1 through 8 are hereby incorporated herein as if they had been set forth fully hereunder.

10. The injuries and damages as hereinafter set forth were caused by the negligent and reckless conduct of the Defendant in the following particulars:

a) In failing to maintain a proper lookout;

b) In driving too fast for conditions;

c) In failing to exercise that degree of care which a reasonably prudent person would have exercised under the same or similar circumstances;

d) In driving recklessly;

e) In leaving the scene of an accident; and,

f) In failing to maintain proper control of a motor vehicle.

11. As a direct and proximate result of the Defendant's negligence, the Plaintiff Tasha Jones suffered injuries to her neck, back and body; furthermore, the Plaintiff Tasha Jones' injuries were of such a nature as to require her to expend monies for hospitalization, doctor's care, and other medical necessities.

12. The Plaintiff Tasha Jones has suffered and will continue to suffer great pain and mental anguish as a result of this collision.

13. As a direct and proximate result of the Defendant's negligence, the Plaintiff Shaniqua Thomson suffered injuries to her head, neck, back and body; furthermore, the Plaintiff Shaniqua Thompson's injuries were of such a nature as to require her to expend monies for hospitalization, doctor's care, and other medical necessities.

14. The Plaintiff Shaniqua Thompson has suffered and will continue to suffer great pain and mental anguish as a result of this collision.

WHEREFORE, the Plaintiffs pray judgment against the Defendant for actual damages and punitive damages in an appropriate amount, and for the costs of this action.

Dietrich A. Lake #69649
The Lake Law Firm
1034 Briargate Circle, Suite 201
Columbia, SC 29210
803/750-8311 office
803/750-8312 fax
ATTORNEY FOR PLAINTIFFS

January 17, 2018
Columbia, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
Tasha Jones; and)
Shaniqua Thompson)
)
Plaintiffs,)
)
vs.)
)
)
John Doe)
)
Defendant.)
)

IN THE COURT OF COMMON PLEAS

Civil Action No: 2018-CP-40-00337

AFFIDAVIT OF SERVICE

PERSONALLY APPEARED BEFORE ME the undersigned attorney, Dietrich A. Lake, who upon oath, deposes and says that he is the attorney for the Plaintiffs in the above-entitled action.

The undersigned counsel states the following:

1. That a cause of action exists between the Plaintiffs and the Defendant;
2. That service was made upon the Defendant John Doe through the South Carolina Department of Insurance pursuant to S.C Code Ann. § 38-5-70 and S.C Code Ann. § 38-77-150;
3. That counsel for the Plaintiffs mailed the Summons and Complaint to the South Carolina Department of Insurance on or about January 26, 2018;
4. That the South Carolina Department of Insurance accepted service of the Summons and Complaint on or about January 29, 2018;
5. That the South Carolina Department of Insurance notified the insurer of such acceptance of service for said Summons and Complaint; and

6. That such notice to the insurer placed the insurer on notice that the South Carolina Department of Insurance's acceptance of service on January 29, 2018, constituted service upon the insurer.

s/Dietrich A. Lake
Dietrich A. Lake #69649
The Lake Law Firm
1034 Briargate, Circle, Suite 201
Columbia, SC 29210
803/750-8311 *office*
803/750-8312 *fax*
ATTORNEY FOR PLAINTIFFS

ELECTRONICALLY FILED - 2018 Sep 28 11:14 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4000337

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP4000337

Tasha Jones
PLAINTIFF(S)

John Doe
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled);
☐ Other

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

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

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

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

Plaintiff's Motion for Default Judgment filed on 3/5/2018 is GRANTED. Matter to be scheduled for a damages hearing.

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 09/28/2018 .

John Doe

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.

Richland Common Pleas

Case Caption: Tasha Jones , plaintiff, et al vs John Doe

Case Number: 2018CP4000337

Type: Order/Electronic Form 4

So Ordered

Jocelyn Newman

Electronically signed on 2018-09-28 10:59:03 page 3 of 3

The Lake Law Firm, LLC

1034 Briargate Circle, Suite 201
Columbia, SC 29210

Dietrich A. Lake

Office 803/ 750-8311
Fax 803/ 750-8312

January 19, 2019

Director for Department of Insurance
c/o Steven Du Bois
S.C. Department of Insurance
PO Box 100105
Columbia, SC 29202

Re: Tasha Jones, et al, v. John Doe
Civil Action No.: 2018-CP-40-00337
Notice of Damages Hearing

Dear Mr. Du Bois:

Please find enclosed the Notice of Damages Hearing for the UM carrier, Lyndon Southern Insurance Company, in the above-mentioned case. The carrier failed to answer the Summons and Complaint in this case.

This notice places the carrier on notice that this damages hearing is scheduled for January 30, 2019, at 2:00pm, at the Richland County Judicial Center, Courtroom 2-E, located at 1701 Main Street, Columbia, SC 29201.

Please feel free to contact my office should you have any additional questions.

With kind regards,

Dietrich A. Lake

Enclosure
DAL/nn

CC: Mathew White (via email only)
Jupiter Managing General Agency, Inc.
P.O. Box 190675
Nashville, TN 37219

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	Civil Action No.: 2018-CP-40-00337
	)	
Tasha Jones; and Shaniqua Thompson	)	
	)	
Plaintiffs	)	
	)	
vs.	)	NOTICE OF DAMAGES HEARING
	)	
John Doe	)	
	)	
Defendant	)	
	)	

PLEASE TAKE NOTICE that a damages hearing has been scheduled in the above-stated matter for January 30, 2018, at 2:00pm, at the Richland County Judicial Center, Courtroom 2-E, located at 1701 Main Street, Columbia, SC 29201. You may appear as you see fit for adjudication in this matter.

s/Dietrich A. Lake
Dietrich A. Lake #69649
The Lake Law Firm
1034 Briargate Circle, Ste. 201
Columbia, SC 29201
803-750-8311 *office*
803-750-8312 *facsimile*
ATTORNEY FOR PLAINTIFFS

January 19, 2019
Columbia, South Carolina

Ex. A

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS 2018CP4000337
County of Richland	)	
	)	
TASHA JONES,	)	
PLAINTIFF,	)	
vs.	)	TRANSCRIPT OF RECORD
JOHN DOE,	)	
DEFENDANT,	)	

January 30, 2019
Columbia, South Carolina

BEFORE:

THE HONORABLE ROBERT E. HOOD, JUDGE.

APPEARANCES:

DIETRICH LAKE, ESQ.
Attorney for the Plaintiff

RANDALL HELMSLY, ESQ.
Attorney for the Defendant

KAREN AMBROZIAK
Official Court Reporter

CONTENTS

INDEX OF EXHIBITS:

(There were no exhibits introduced.)

INDEX OF WITNESSES:

(There were no witnesses called.)

THE COURT: We're on the record in 2018-CP-40-337, Tasha Jones and others vs. John Doe. Mr. Lake is here present representing the plaintiff.

We're here for purposes of a damages hearing; is that correct?

MR. LAKE: Yes, sir, Your Honor.

THE COURT: Are you ready to go forward?

MR. LAKE: Yes, sir. My understanding -- I'll let counsel speak. Good afternoon, Your Honor. Randy Helmly, Helmly Law Firm out of Mt. Pleasant on behalf of Mall Insurance Company (phonetic) who is UM carrier in this case. I had the pleasure of being thrown into this briar patch within the past several days trying to get up to speed on this case.

I understand Mr. Lake has a motion and his clients are here today. I would respectfully ask the court for a continuance to give myself a chance to, I guess, sort of through this maze and this mess.

Again, this file just landed in my lap in the middle of last week. Due to some other court-related obligations, it's been a little bit difficult for me to wrap my head around the history of the case, the issues involved.

THE COURT: What's the history of the case, Mr. Lake?

MR. LAKE: This is an automobile accident that happened back in 2016, and I mean, we filed -- it's an uninsured motorist claim.

We filed a summons and complaint, filed it to the insurance commissioner. It was properly served. An order of default was issued some time ago. We understand counsel has just gotten involved in this particular matter. I think he told me he reached out to me this morning, but I was actually in court in Newberry. I apologize, that's why we're a little bit late. He just introduced himself to me.

THE COURT: That's okay.

MR. LAKE: This is the first time I realized there was somebody involved with it. I told him I understand his situation. My clients are here, but I understand that he's in a difficult spot. So I'll leave it in the Court's discretion to decide how we should go forward.

THE COURT: All right. I'll grant your continuance, Mr. Helmly. You need to file --

MR. HELMLY: Notice of appearance, Your Honor.

THE COURT: You took the words out of my mouth. Thank you, a notice of appearance. You also need to file a continuance order along with a $25 filing fee, and what I'm going to do is I'm going to have y'all put on for the nonjury docket whatever's in the month of March.

MR. LAKE: Yes, sir.

THE COURT: That will give you some time.

MR. HELMLY: Absolutely, Judge. I do appreciate that. Certainly, I apologize. I don't mean to waste Ms. Thompson and Ms. Jones time, but I do appreciate the courtesy extended by Mr. Lake here.

THE COURT: Great. Thank you. Get it all filed electronically and we'll get it taken care of.

(Whereupon, the proceedings were concluded.)

CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, Karen Ambroziak, Official Court Reporter for the 5th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Richland County, South Carolina, on the 30th day of January, 2019.

February 5, 2020

Karen Ambroziak

Karen Ambroziak, RPR
Circuit Court Reporter

Randy Helmly

From: Dietrich Lake <dietrichlake@yahoo.com>
Sent: Wednesday, June 5, 2019 9:59 PM
To: Randy Helmly
Subject: Re: Jones/Thompson v. Doe

Randy:

Sorry for the late follow up but I was unable to reach my clients to get their position on resolving this matter.

Let me know if you can get at least $30k a piece to settle the case. Your client could use the remaining liability coverage and use some coverage under the UMPD coverage to supplement the liability coverage. The carrier is in default and I believe there are some elements of bad faith in them letting this case get to this point. I think it would be in their best interest to settle and not risk a hearing, but that would be there call.

I have told Mr. Witherspoon to recommend to the client that they take that offer if you can get it.

I will be out of the loop in the morning but hope this case can be settled.

Dietrich A. Lake

Sent from my iPhone

On Jun 5, 2019, at 4:31 PM, Randy Helmly <rhh@helmlylaw.com> wrote:

> Thanks
>
> Regards,
>
> Randy
>
> Ransome H. Helmly
> Law Office of Ransome H. Helmly, LLC
> 409 Coleman Blvd., Suite 200
> Mt. Pleasant, SC 29464
> P: 843-884-0184
> F: 843-284-9871
> rhh@helmlylaw.com
>

EXHIBIT
2

State of South Carolina)
)
County of Richland)

In The Court of Common Pleas
Fifth Judicial Circuit
2018-CP-40-0337

Tasha Jones and Shaniqua Thompson,

Plaintiffs,

vs.

John Doe,

Defendant.

Transcript of Record

June 6, 2019
Columbia, South Carolina

BEFORE:

The Honorable Robert E. Hood, Judge

APPEARANCES:

Michael Witherspoon, Esquire
Attorney for the Plaintiffs

ALSO PRESENT:

James Saxton, Esquire

Elizabeth B. Harris, CVR-M-CM
Circuit Court Reporter

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EXHIBITS

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THE COURT: The next case on the docket is 2018-CP-40-337, *Tasha Jones vs. John Doe.*

And tell me your name, sir.

MR. WITHERSPOON: My name is Mike Witherspoon. I'm here for Dietrich Lake.

THE COURT: Okay. Great.

All right, and who are you?

MR. SAXTON: Your Honor, James Saxton. I'm here for the carrier and John Doe.

UNIDENTIFIED WOMAN: I'm assisting counsel.

THE COURT: Okay. Have y'all filed a notice of appearance in the case?

MR. SAXTON: I don't believe we have. We have, we have a sudden conflict that led us to a situation that I just got put on this case yesterday, Your Honor, so.

THE COURT: Okay.

MR. WITHERSPOON: Your Honor, I would object to them being here, given the fact that I think in January, Mr. Lake indicated that he had a hearing and you ordered that they file a motion of appearance and, and continuance, and they didn't do it. And now they're here today and no motion of appearance has been filed, so they don't really have any standing to be here.

MR. SAXTON: I, I was unaware that there was a need for the notice of appearance, Your Honor. I was, was under the understanding that the grant -- the continuance was granted and, you know, such that's, that's where we stand.

THE COURT: So, who do you represent?

MR. SAXTON: Lyndon Southern Insurance Company, U.M. carrier, and on behalf of John Doe in the place of counsel Randy Helmly.

THE COURT: And why do y'all don't think y'all don't have to file a notice of appearance?

MR. SAXTON: I mean, if I were able to make that motion now, I would certainly do so.

THE COURT: Well, how? I mean...

MR. WITHERSPOON: You ordered them to do this in January I understand, Your Honor.

THE COURT: I'm trying to find the summons. Let me see. Hold on.

(A PAUSE.)

THE COURT: I'm not saying someone didn't order them to do something in January, but I don't know that I ordered them to do something in January. I wasn't here for most of January, but I'm trying to find it. Do you have an order to that effect, Mr. Witherspoon?

MR. WITHERSPOON: My, my understanding is the clients were here. They confirmed that you were the judge and we, we had it continued to now, and they was ordered to file a motion of appearance, and a continuance was never filed.

THE COURT: I don't see that.

MR. WITHERSPOON: That was in January.

THE COURT: I don't see that.

MR. WITHERSPOON: We might have a copy of it.

(A PAUSE.)

THE COURT: I don't see any orders out of hearings in January at all. I see a notice of a hearing.

MR. WITHERSPOON: We attended that and someone showed up that day, my understanding was, for the first time and this, this case was filed back in ---

THE COURT: January of 2018.

MR. WITHERSPOON: --- January, right, and for the first time at the default hearing or the damage hearing, someone showed up. Wasn't identified by Mr. Lake and you had ordered, my understanding, that they file a notice of appearance and file a continuance, and now it's June and that still hasn't been done. And again it's my position that they don't have standing to be here to represent Mr. Doe and should not be allowed to ask any questions of my client because again we -- no one has ever put anyone on notice of their appearance for Mr. Doe, and Mr. Doe is not here.

THE COURT: Judge Gravely ruled in your case. Judge Gravely ruled in the case back in August of 2018.

(A PAUSE.)

THE COURT: I see there's a notice for a hearing. There's a notice for a hearing for the date of January the 30th, but there's no -- it appears Mr. Lake didn't do the order that he was supposed to do to say what happened in that hearing.

MR. WITHERSPOON: Oh, Mr. Lake was supposed to do it?

THE COURT: Yeah. There's no defense attorneys. I mean, the ---

MR. WITHERSPOON: Right.

THE COURT: --- to continue it, or I guess the other side didn't. It could be the other side didn't do it either.

MR. WITHERSPOON: Right. Someone appeared and we didn't get that attorney's name.

Mr. Saxton, do you know that attorney's name?

MR. SAXTON: It would be Randy Helmly.

THE COURT: And does he work with y'all, or does he represent ---

MR. SAXTON: He represents the ---

THE COURT: --- the insurance company?

MR. SAXTON: Yes, sir. Yes, Your Honor.

THE COURT: And where is he?

MR. SAXTON: Unfortunately, he had a conflict. Couldn't make it today, and I ---

THE COURT: What conflict did he have?

MR. SAXTON: He had a -- already scheduled fundraiser that he was attending up in Greenville.

THE COURT: Is it literally a fundraiser?

MR. SAXTON: Yes.

THE COURT: Did those words just come out of your mouth?

MR. SAXTON: I, I believe that's the, the understanding that I was given.

THE COURT: What's the name of the firm Mr. Helmly works for?

MR. SAXTON: The Law Office of Ransome Helmly.

THE COURT: All right, I'm not going to allow them to appear in the case. They've had opportunities since January of 2019 to file notice of appearances in the case, file something in the case, and they've done nothing.

All right, you may call your first witness.

CLERK: Could you state your full name, please?

WITNESS: Tasha Latoya Jones.

TASHA LATOYA JONES, BEING DULY SWORN, TESTIFIES AS FOLLOWS:

(A PAUSE.)

THE COURT: All right, you may go forward.

DIRECT EXAMINATION BY MR. WITHERSPOON:

Q. Ms. Jones, state your full name and address.

A. Tasha Latoya Jones, 309 Carterhill Drive, West

Columbia, South Carolina, 29172.

Q. And, Ms. Jones, the date and time of this accident, do you remember the date and time of the accident?

A. June the 15th of 2017. I believe it was around midnight.

Q. Okay, and where were you going at the time of the accident?

A. I was, I was heading home.

Q. Okay, and, and what happened in the accident?

A. I was at a stop sign turning off of Standish on to Farrow Road when a car hit me from behind at the stop sign.

Q. And was your car totaled at the time?

A. Yes.

Q. Okay, and I show you a photo of this vehicle.

MR. WITHERSPOON: May I approach, Your Honor?

THE COURT: Yes, sir.

BY MR. WITHERSPOON:

Q. Is this the true and correct photo of your vehicle?

A. Yes.

Q. Okay.

MR. WITHERSPOON: Your Honor, I'd like to enter this into evidence.

THE COURT: All right. Plaintiff's Exhibit Number 1.

(PHOTOGRAPH MARKED INTO EVIDENCE AS PLAINTIFF'S EXHIBIT NUMBER 1.)

BY MR. WITHERSPOON:

Q. And what type of damage was caused to your vehicle?

A. The whole rear end was pushed into the back seat.

Q. Was the vehicle totaled?

A. Yes. It was total lost.

Q. And did the insurance company pay for your damage to your vehicle?

A. The insurance company did cover the vehicle.

Q. Was it entirely the whole thing covered? Did you have any deductible?

A. Not that I recall.

Q. Okay, and the standard deductible in a U.M. case is, like, $200.

A. I didn't have to pay anything.

Q. Okay. Okay, and can you describe to me what type of injuries did you receive as a result of this?

A. Yes. I had back injury and neck injury.

Q. Okay. Did you go from the scene by EMS?

A. Yes.

Q. Okay, and what hospital did you go to?

A. I went to Providence.

Q. Okay, and from Providence, what other type of treatment did you receive?

A. I went to Lexington Medical Center until I was able to get in to see my primary physician, and then I did physical therapy as well.

Q. Okay, and did you incur bills as a result of this accident?

A. Yes.

Q. And how many -- how much bills did you incur? Do you remember?

A. I don't remember the exact amount.

Q. Ms. Jones, does $9,586.95 sound familiar?

A. Yes.

Q. In terms of the total medicals? Would these be the total medicals that you incurred?

A. Yes.

MR. WITHERSPOON: And I'd liked to enter these into evidence, mark as exhibit.

THE COURT: All right, Plaintiff's Exhibit 2.

(MEDICAL BILLS MARKED INTO EVIDENCE AS PLAINTIFF'S EXHIBIT NUMBER 2.)

BY MR. WITHERSPOON:

Q. And, Ms. Jones, in the accident, did the vehicle that hit you, did they leave the scene from the accident?

A. Yes. When the officers got there, they said no one was in the other vehicle, but the vehicle was still there.

Q. Okay, and so you never got out of your vehicle at the time?

A. No, sir.

Q. So, you didn't know. Did they run away or did they drive away?

A. I didn't see them. I didn't know until the officer got there. I was sitting -- my car was sitting in a completely different angle as theirs.

Q. And did you have, as a result of this accident, any type of limitations as a result of this accident? Are you still having problems?

A. At the time, I couldn't do everything to the full capability as far as cooking, cleaning, and doing thing for my kids, and working. Now, every now and then I have a little bit of pain, and I just do the therapy -- what the therapist told me to do, as well as taking, like, a Tylenol for pain relief.

Q. All right.

MR. WITHERSPOON: I don't have any further questions.

THE COURT: All right.

All right. Thank you, ma'am. You may step down.

(THE WITNESS EXITS THE STAND.)

MR. WITHERSPOON: Call Ms. Thompson.

THE COURT: All right, please come forward and be sworn.

CLERK: Would you state your full name, please?

WITNESS: Shaniqua Chiffon Thompson.

CLERK: Could you say it louder?

WITNESS: Shaniqua Chiffon Thompson.

SHANIQUA C. THOMPSON, BEING DULY SWORN, TESTIFIES AS FOLLOWS:

DIRECT EXAMINATION BY MR. WITHERSPOON:

Q. Ms. Thompson, would you state your full name and address?

A. Shaniqua Chiffon Thompson, 4311 Catherines Avenue, Columbia.

Q. Ms. Thompson, do you recall the date of the accident?

A. June 15, 2017.

Q. And about what time?

A. Midnight.

Q. And what happened in the accident?

A. We were on our way back home, and someone hit us at a stop sign, and we were in the middle of the media [sic] by the time the ambulance got there, what I could recall. I was actually in the backseat.

Q. And you were transported from the scene by EMS?

A. Yes, sir.

Q. And what hospital did you go to?

A. I actually went to Providence.

Q. Okay, and did you go to another hospital after Providence?

A. Yes, sir. I actually went to Lexington because my primary care -- I don't have a primary care doctor. I didn't have a primary care doctor at the time, excuse me.

Q. And your total medical bills, do you recall the number, what your total medical bills were?

A. No, sir.

Q. Okay. Does this look familiar, breakdown of all your bills, $9,780.71?

A. Yes, sir.

Q. Okay.

MR. WITHERSPOON: I'd like to mark this as Exhibit Number 3, I guess.

THE COURT: All right, Plaintiff's Exhibit Number 3.

(MEDICAL BILLS MARKED INTO EVIDENCE AS PLAINTIFF'S EXHIBIT NUMBER 3.)

BY MR. WITHERSPOON:

Q. As a result of the accident, Ms. Thompson, what type of injuries did you suffer?

A. I had chest and back pains.

Q. And are you still having any problems as a result of the accident?

A. I have problems here and there. I use Tylenol. I get my fiance to massage me in my lower back.

Q. Okay, and -- okay.

MR. WITHERSPOON: No further questions, Your Honor.

THE COURT: All right, ma'am, you may step down.

(THE WITNESS EXITS THE STAND.)

THE COURT: Any further witnesses?

MR. WITHERSPOON: No further witnesses.

THE COURT: Okay, and what is the plaintiff requesting?

MR. WITHERSPOON: We are requesting $50,000 each, given the fact that the person rear ended her vehicle, left the scene, didn't stay, has never shown up, has never contacted them. So, we are requesting, again based on the medicals, $50,000 each for pain and suffering, punitive damages.

THE COURT: All right, that request is granted. You are to do an order to that effect.

Mr. Saxton, will you spell your name for me?

MR. SAXTON: Yes. It's James S-a-x-to-n.

THE COURT: And are you a member of the South Carolina Bar?

MR. SAXTON: Yes, sir.

THE COURT: Okay, and the gentleman who was here in January is who?

MR. SAXTON: I, I believe it would have been Randy Helmly.

THE COURT: And would you spell his last name?

MR. SAXTON: H-e-l-m-l-y and, Your Honor, I just want to briefly state that Mr. Lake was in correspondence with Mr. Helmly last night and were agreeing that I was representing on his behalf and that Mr. Witherspoon was -- or he -- so, I'm -- I just want to kind of make that aware to the court that this was not out of nowhere that we were coming to appear.

MR. WITHERSPOON: It is from nowhere. I mean, we just last night heard from defense counsel, and I don't know the extent of what Mr. Lake talked about, but I think it was, like, a 4:00 call. So.

THE COURT: Well, I've found my notes from January the 30th of 2019, and at that point in time, defense counsel appeared, requested a continuance. I granted the continuance and told them to file -- needed to file the continuance order and the notice of appearance order in the case so that they could be properly noticed for the case, and neither one of those things occurred in any way, shape, or form. So, the hearing stands.

Mr. Witherspoon, prepare the order. You may efile it. Thank you all very much. Have a great day.

--- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON THE 6TH DAY OF JUNE, 2019.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

/S/Elizabeth B. Harris, CVR-M-CM

COLUMBIA, SOUTH CAROLINA
JANUARY 27TH, 2020

Ex. F.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF RICHLAND) Civil Action No: 2018-CP-40-00337
)
Tasha Jones; and)
Shaniqua Thompson)
)
Plaintiffs,)
)
vs.) ORDER OF JUDGMENT
)
John Doe)
)
Defendant.)
)

THIS MATTER is before the Court upon a Judgment against Defendant John Doe by the Plaintiffs Tasha Jones and Shaniqua Thompson.

The Court, being fully advised, finds the following:

1. The Court has jurisdiction of the parties and the subject matter herein;
2. The Plaintiffs Tasha Jones and Shaniqua Thompson presented testimony of their respective medical expenses, injuries, and pain and suffering as a result of the accident which is the subject of this action.
3. The Plaintiffs Tasha Jones testified that she incurred total medical expenses of $9586.95 as a result of this accident which is the subject of this action.
4. That Shaniqua Thompson testified that he incurred total medical expenses of $9780.71 as a result of this accident which is the subject of this action.
5. That Plaintiffs Tasha Jones and Shaniqua Thompson testified how their respective quality of life was affected by this accident and that they still

experience some difficulties they associate with this accident which is the subject of this action.

6. That the Defendant John Doe was served with notice of the damages hearing by letter dated May 14, 2019, which advised him/her of the hearing on June 6, 2019, at 9:30 a.m. at the Richland County Judicial Center; and
7. That the Defendant John Doe did not appear at this hearing; furthermore, no counsel made a timely appearance at this hearing in this matter pursuant to this Court's direction on the record of January 30, 2019, stating that counsel for John Doe was required to formally file an appearance with the Court and that counsel for John Doe needed to formally file a motion of continuance for that January 30, 2019, damages hearing date.
8. That no notice of appearance was timely filed and received with this Court before the hearing on June 6, 2019; furthermore, that no motion for continuance was ever filed for the original January 30, 2019 damages hearing date.
9. That James Saxton was present at the hearing for Defendant. He explained to the Court that Randy Helmly was defense counsel, but that he could not attend the hearing due to a fundraiser in Greenville, South Carolina. This Court exercised its discretion in not allowing any counsel for Defendant John Doe at this damages hearing of June 6, 2019, to present any testimony or to otherwise respond to the Plaintiffs' damages claims and/or testimony and/or admission into evidence of the Plaintiffs' medical records at the damages hearing pursuant to counsel for Defendant John Doe failing to comply with this Court's orders of

January 30, 2019, to file a notice of appearance and to file a motion of continuance in the above-stated case.

That this Court, based upon the finding of facts and record in this case, hereby finds Judgment in favor of the Plaintiff, Tasha Jones, against the Defendant John Doe, and award the amount of **$50,000.00** to the Plaintiff, Tasha Jones; and the Court hereby finds Judgment in favor of the Plaintiff, Shaniqua Thompson, against the Defendant John Doe, and award the amount of **$50,000.00** to the Plaintiff, Shaniqua Thompson.

IT IS SO ORDERED AND ADJUDGED.

____
Presiding Judge

June ____, 2019
Columbia, South Carolina

Richland Common Pleas

Case Caption: Tasha Jones , plaintiff, et al vs John Doe

Case Number: 2018CP4000337

Type: Order/Judgment and Form 4

So Ordered

s/ R.E. Hood #2164

Electronically signed on 2019-06-19 10:11:54 page 4 of 4

Ex. G

The Lake Law Firm, LLC
1034 Briargate Circle, Ste. 201
Columbia, SC 29210

Dietrich A. Lake

Office 803/750-8311
Fax 803/750-8312

June 20, 2019

Ransome H. Helmly
Ransome H. Helmly, LLC
409 Coleman Boulevard, Ste. 200
Mt. Pleasant, SC 29464

Re: Tasha Jones; and Shaniqua Thompson v. John Doe
Civil Action No.: 2018-CP-40-0337

Dear Ransom:

Enclosed please find herewith the Order of Judgment in the above-mentioned case.

We are respectfully requesting payment of the judgement amount within fifteen (15) business days from receipt of this letter. Please note it is our understanding that the legal rate of interest for judgments and money decrees is 8.50% compounded annually.

In addition, we believe the carrier's actions throughout this action have been in bad faith. We contend a failure to pay this judgment within fifteen (15) business days would be in bad faith considering the carrier's inaction throughout this civil action. At that point, we would have no choice but to pursue a bad faith action against the carrier.

I trust that you will promptly convey this demand to your client and the representatives of their insurer. I would assume that you join us in this position, since it is your duty to protect your client and its best interests. Your client should be advised to retain separate counsel to represent its interests in this matter. I have enclosed two additional copies of this correspondence (one for your client and one for the attorney your client retains to represent it in a bad faith action).

My clients are willing to accept this judgment as satisfaction of all claims against your client instead of exposing the insurer to a bad faith verdict. It is incumbent on the parties to settle this matter to reduce further ill will from your policyholder, and to save the expense and time in litigating this matter.

Please feel free to contact me should you have any additional questions.

Sincerely,

Dietrich A. Lake

Enclosures

ELECTRONICALLY FILED - 2020 Jun 18 5:59 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4000337

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	C.A. No. 2018-CP-40-00337
Tasha Jones; and Shaniqua Thompson,	)	
	)	
Plaintiff,	)	
	)	**RULE 60(b) MOTION FOR RELIEF FROM JUDGMENT**
vs.	)	
	)	
John Doe,	)	
	)	
Defendant.	)	
	)	

TO: DIETRICH A. LAKE, ESQUIRE, ATTORNEY FOR PLAINTIFFS:

PLEASE TAKE NOTICE that ten (10) days after service hereof, Defendant, by and through undersigned counsel, shall respectfully move this Court for an order voiding, vacating, setting aside, and/or otherwise relieving the entry of judgment against Defendant pursuant to 60(b), SCRCP and any other applicable South Carolina law.

Pursuant to Rule 60(b), Defendant asserts that relief from judgment is appropriate for the following reasons: 1) the judgment occurred as a result of mistake, excusable neglect, and/or surprise; 2) there exists newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); and 3) there was material misrepresentation on the part of an adverse party.

Specifically, Defendant asserts that it made a formal appearance in the action and was entitled to participate in the damages hearing and that counsel appearing on behalf of the plaintiff misrepresented certain issues regarding communications with defense counsel and defense counsel's appearance.

This motion will be supported by the pleadings, affidavits filed in support of the relief sought, necessary exhibits, legal memoranda, and any other appropriate law or legal principle necessary to ensure that justice is preserved.

Respectfully submitted,

s/Ransome H. Helmly

Ransome H. Helmly
SC Bar #78081
Law Office of Ransome H. Helmly, LLC
409 Coleman Blvd., Ste. 200
Mt. Pleasant, SC 29464
p: (843) 884-0184
f: (843) 884-9871
rhh@helmlylaw.com
Attorney for Defendant

June 18, 2020
Mount Pleasant, South Carolina

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF RICHLAND)	Civil Action No: 2018-CP-40-00337
)	
Tasha Jones; and)	
Shaniqua Thompson)	
)	
Plaintiffs,)	
)	
vs.)	MEMORANDUM IN SUPPORT OF DENYING
)	DEFENDANT'S RULE 60(B) MOTION
John Doe)	
)	
Defendant.)	
______________________)	

The Plaintiffs, through their attorney, Dietrich A. Lake, submits this Memorandum in response to the Defendant's motion to seek relief from a judgment pursuant to Rule 60(b), SCRCP. The Plaintiff requests a denial of the Defendant's motion to vacate the judgment.

Factual and Procedural Background

This case arises out of an automobile accident that occurred on or about June 15, 2017, at the intersection of Farrow Road and Standish Street in Richland County, Columbia, South Carolina. That as a result of this accident, that the Plaintiffs sustained injuries that caused them to incur the following medical expenses: Plaintiff Tasha Jones - $9586.95; Plaintiff Shaniqua Thompson - $9780.71. These injuries and damages were proximately caused by the negligence the Defendant John Doe.

The above-stated civil action was filed against the Defendant on January 18, 2018, for negligence related to said automobile accident. Service of process was properly made on the Defendant pursuant to S.C. Ann. § 38-77-150 (uninsured motorist) on January 29, 2018; therefore, the Defendant's Answer to the complaint was due on or about March 2, 2018. The Defendant John Doe failed to appear, answer, or otherwise defend in the above-listed action. The Plaintiff's motion for Default Judgment was granted on September 28, 2018.

The matter of the default judgment was set for a damages hearing on January 30, 2019, before the Honorable Robert E. Hood; the Defendant John Doe was properly served with notice of this hearing. Randall Helmsly, Esquire, counsel for the Defendant, appeared at the hearing and requested a continuance to allow him an opportunity to review the case. The Court granted defense counsel's motion for continuance but required Mr. Helmsly to file a notice of appearance and a motion for continuance in this matter. (Ex. A; Tr. pp 3-4). Neither the notice of appearance or motion for the continuance were filed after the hearing of January 30, 2019.

This case came before the Honorable Robert E. Hood on June 6, 2019, for a damages hearing. Counsel for the Defendant never filed the motion for continuance in this matter; he filed his notice of appearance after 5:00pm on June 5, 2019. James Saxton, Esq. and an unidentified woman appeared on behalf of the Defendant John Doe at the damages hearing; neither party filed a notice of appearance in the case before the damages hearing. Mr. Helmly was at a fundraiser at the time of the hearing and did not appear at court. The Court would not allow Mr. Saxton appear as Mr. Helmsly had not complied the requirements from the hearing of January 30, 2019. (Ex. B; Tr. pp 3-7).

The Plaintiffs presented testimony at the damages hearing regarding their bodily injuries, their medical expenses, and the property damage to the vehicle they were in at the time of the accident. (See, Ex. B). The Court entered an Order of Judgment in favor of the Plaintiff Tasha Jones against the Defendant John Doe and awarded her $50,000.00. The Court entered an Order of Judgment in favor of the Plaintiff Shaniqua Thompson against the Defendant John Doe and awarded her $50,000.00. (Ex. C).

The Defendant did not file a motion to reconsider or alter or amend the judgment pursuant to Rule 59, SCRCP. The Plaintiffs sought satisfaction of the judgment by written request to counsel for the Defendant with a deadline to pay said judgments. (Ex. D). The Defendant failed to respond or otherwise pay said judgments. Civil Action No. 2019-CP-40-04650 was brought against Lyndon Southern Insurance Company alleging breach of contract, bad faith, and for collection of the judgments. (Ex. E). The Plaintiff Tasha Jones was insured by Lyndon Southern Insurance Company, the party who was responsible for satisfying her judgment and the judgment of her passenger.

On June 19, 2020, one year from the date of the Order of Judgment, the Defendant filed its motion seeking relief from the judgment pursuant to Rule 60 (b)(1) & (3), SCRCP.

LAW ANALYSIS

Relief from Judgment, Rule 60(b) SCRCP

Upon a motion, a circuit court may relieve a party from a final judgment pursuant to Rule 60(b) SCRCP pursuant to the following reasons only:

1) mistake, inadvertence, surprise, or excusable neglect;
2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);
3) fraud, misrepresentation, or other misconduct of an adverse party;
4) the judgment is void;
5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application.

Rule 60 goes on to state that the motion shall be made within a reasonable time and no longer than one (1) year if subsections 1, 2, or 3 apply.

Our Courts have held that the moving party in a Rule 60(b) motion has the burden of presenting evidence entitling him to relief; furthermore, our courts have held that a memorandum in support of a motion is not evidence. *McClurg v. Deaton*, 395 S.C. 85,87, 716 S.E.2d 887, 888 (2011). This evidence is usually produced in the form of affidavits proving the facts needed to entitle him to relief. *Bowers v. Bowers*, 304 S.C. 65, 67 , 403 S.E.2d 127, 129 (Ct.App.1991). Whether to grant or deny a motion pursuant to Rule 60(b) is within the sound discretion of the court. *Graybar Elec. Co., Inc. v. Rice*, 339 S.E.2d 883, 287 S.C. 518 (S.C. App. 1985).

The Defendant contends that he is entitled to relief pursuant to subsections 1 and 3 of Rule 60(b). Subsection (1) refers to relief based upon mistake, inadvertence, surprise, or excusable neglect, while subsection (3) refers to relief based upon fraud, misrepresentation, or other misconduct of an adverse party. Counsel for Defendant admits that he failed to follow the order of the Court in timely filing a notice of appearance; he also acknowledges that he never filed the motion for continuance. It is not clear in Counsel for the Defendant's memorandum if he is seeking relief from his mistake of not following the court's order as this issue is not quite clearly articulated in his memorandum.

Counsel for Defendant also cites "surprise" as a reason for requesting relief because James Saxton, Esquire, was not allowed to represent the Defendant John Doe at the hearing; Mr. Saxton never filed a notice of appearance nor had he ever appeared on behalf of the Defendant at any point in this case.

Our courts have held that the negligence of an attorney is ordinarily imputed to the client. *Mitchell Supply Co., Inc. v. Gaffney*, 375 S.E.2d 321, 297 S.C. 160 (S.C. App. 1988). Counsel for the Defendant provides no explanation as to why the notice of appearance or the motion for continuance were not filed immediately, or shortly thereafter the hearing on January 30, 2019. Counsel for the Defendant provides no explanation as to why James Saxton, Esq. never filed a notice of appearance in this matter. The Plaintiffs exercised their right to object to questioning from Mr. Saxton and the court was within its sound discretion to deny Mr. Saxton an opportunity to question the Plaintiffs about their damages as he had never filed a notice of appearance in this matter nor was the Court in receipt of Counsel for Defendants notice of appearance at the time of the hearing.

Counsel for the Defendant's memorandum never addresses subsection (3) of Rule 60(b) nor does counsel provide any extrinsic evidence of fraud, misrepresentation, or other misconduct of an adverse party: therefore, the Plaintiffs would contend as a matter of law that this subsection should not be considered in this Court's analysis as to whether relief should be granted in this matter. Our Courts have held that a judgment may be set aside on the ground of fraud only if the fraud is extrinsic and not intrinsic. *Robinson v. Estate of Harris*, 388 S.C. 645, 698 S.E.2d 229 (2010). Furthermore, the Court when on to define that extrinsic fraud is "fraud that induces a person not to present a case or deprives a person of the opportunity to be heard." *Id.*

The judgment in the above-stated case arises from a damages hearing rendered against the Defendant on June 6, 2019. There is no evidence of fraud in the default or the award amount nor has the Defendant offered any extrinsic evidence of fraud in the previously stated. There is no evidence of misconduct by the Plaintiffs or their counsel in securing the damages award nor has the Defendant offered any extrinsic evidence of attorney misconduct in the award. The Plaintiffs contend that Rule 60(b)(3) is not applicable in this case as the Defendant provided no extrinsic evidence to substantiate his claim of fraud or misconduct.

Our Supreme Courts have held that the standard for granting relief from a default judgment under Rule 60(b), SCRCP "is more rigorous" that the good cause standard articulated in Rule 55(c) because it requires a more particularized showing of mistake, inadvertence, excusable neglect, surprise, newly discovered evidence, fraud, misrepresentation, or 'other misconduct of an adverse party. *Sundown Operating Co. v. Intedge Industries, Inc.*, 383 S.C. 601, 608, 681 S.E.2d 885, 888 (2009).

In addition, our courts require that a Defendant seeking relief pursuant to Rule 60(b) must also make a "prima facie showing of a meritorious defense in order to prevail on a motion" to modify a judgment. See, *McClurg*. The Defendant provided no evidence through affidavits or other proof that he had a meritorious defense; again, affidavits are typically required for such a showing. See, *Bowers*. The standard of proof for this evidence is by clear and convincing evidence. *Id*. The Defendant presented no clear and convincing evidence of his meritorious defense.

The Plaintiff contends that the Defendant has failed to meet its' rigorous burden in showing evidence that he is entitled to relief; the Defendant has merely provided a memorandum with unsubstantiated allegations. The Defendant also has provided no clear and convincing evidence of a meritorious defense to warrant granting him relief in this matter. The Plaintiffs are currently pursuing a civil action against the representative of the Defendant under Civil Action No. 2019-CP-40-04650 for breach of contract, bad faith, and failure to pay the judgment upon request. The Plaintiffs would be prejudiced if this court granted relief in this matter as it would in effect end the previously stated action without the issues being decided on the merits. In addition, the Plaintiffs are further prejudiced because this accident occurred in June 2017, and granting relief in this matter would further delay the Plaintiff's opportunity to timely and reasonably recover damages from this accident.

In addition, the Plaintiffs would contend that the Defendant's motion pursuant to Rule 60(b) was not made within a reasonable time. The Defendant's motion for relief was filed exactly one (1) year to the day of the judgment even though the Defendant was aware of the judgment on June 6, 2019. The Defendant's motion for relief was filed 302 days after the Plaintiffs filed their bad faith action against the representatives of the Defendant in this matter.

CONCLUSION

For the reasons stated above, this Court should deny the Defendant's motion requesting relief pursuant to Rule (60)(b)(1) or (3). This Court should determine that in the light most favorable to the Plaintiff, that the Defendant failed to meet its' rigorous burden of presenting evidence entitling him to relief and has failed to provide any evidence of a meritorious defense. This Court should determine that the Defendant's delay in requesting relief was not reasonable.

Finally, this Court should determine that the Plaintiffs would be prejudiced if relief was granted to the Defendant.

Respectfully submitted,

s/Dietrich A. Lake
The Lake Law Firm #69649
1034 Briargate Circle, Suite 201
Columbia, SC 29210
803/750-8311 *office*
803/750-8312 *fax*
ATTORNEY FOR PLAINTIFFS

July 17, 2020
Columbia, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

Tasha Jones; and Shaniqua Thompson,)
)
Plaintiff,)
)
vs.)
)
John Doe,)
)
Defendant.)
)

IN THE COURT OF COMMON PLEAS

C.A. No. 2018-CP-40-00337

DEFENDANT'S AMENDED MEMORANDUM IN SUPPORT OF RULE 60(b) MOTION FOR RELIEF FROM JUDGMENT

Defendant John Doe (hereinafter "Defendant") submits this memorandum in support of its Motion for Relief from Default Judgment against Plaintiffs Tasha Jones and Shaniqua Thompson (hereinafter "Plaintiffs"). Pursuant to Rule 60(b)(1), SCRCP, the requested relief should be granted as the judgment was the result of mistake, inadvertence, and/or surprise.

PROCEDURAL HISTORY

Plaintiffs commenced this negligence action, arising from a June 15, 2017 automobile accident, against Defendant John Doe on January 18, 2018. Pursuant to S.C. Code Ann. § 38-77-150, Plaintiff Jones served a copy of the Summons and Complaint on Plaintiffs' uninsured motorist carrier on January 29, 2018. No appearance having been made on behalf of the Defendant, Plaintiffs filed a motion for default judgment on March 5, 2018. The motion came before the Court on August 6, 2018, but due to procedural deficiencies the motion was continued. On September 28, 2018, Plaintiff's motion was again before the Court and this time a default was entered and a damages hearing was ordered. The damages hearing was subsequently set for January 30, 2019. Plaintiffs' counsel served notice of the damages hearing on the carrier on or around January 19, 2019, which was then forwarded to defense counsel on January 21, 2019.

On January 30, 2019, defense counsel attended the hearing and appeared on the record before the Court for purposes of contesting damages. However, after preliminary discussions with counsel for both parties, the Court continued the matter and instructed defense counsel to file an electronic notice of appearance along with the appropriate motion for continuance and filing fee. The damages hearing was subsequently rescheduled for June 6, 2019. Inadvertently, the notice of appearance was not filed until June 5, 2019, the day before the hearing. As a result, the Court precluded the Defendant from appearing and contesting damages at the hearing. The Court then issued an order on June 19, 2019 awarding damages in the amount of $50,000 to each Plaintiff.

ARGUMENT

As a foundational matter, "it is the policy of our state to resolve cases on the merits." Caldwell v. Wiquist, 402 S.C. 565, 575, 741 S.E.2d 583, 588 (Ct. App. 2013). Accordingly, rules and statutes that address relief from default "should be liberally construed to see that justice is promoted." Rochester v. Holiday Magic, Inc., 253 S.C. 147, 169 S.E.2d 387 (1969). To this end, Rule 60(b)(1), SCRCP provides that "[o]n motion and upon such terms as are just, the court may relieve a party *or his legal representative* from a final judgment, order, or proceeding for … mistake, inadvertence, surprise, or excusable neglect."

In determining whether a default judgment should be set aside for mistake, inadvertence, surprise, or excusable neglect pursuant to 60(b)(1), the court considers four factors: 1) the promptness with which relief is sought; 2) the reasons for the failure to act promptly; 3) the existence of a meritorious defense; and 4) the prejudice to the other parties. See McClurg v. Deaton, 380 S.C. 563, 671 S.E.2d 87 (Ct. App. 2008), *aff'd*, 395 S.C. 85, 716 S.E.2d 887 (2011). Whether or not to grant such relief lies within the sound discretion of the court and will not be disturbed absent abuse of discretion which arises where trial judge was controlled by error of law or where order was based on factual conclusions without evidentiary support. Tri-County Ice and Fuel Co. v. Palmetto Ice Co. 303 S.C. 237, 399 S.E.2d 779 (1990).

I. Trial Court's Denial of Defendant's Right to Contest Damages was Based on a Totality of Circumstances Involving Mistake, Inadvertence, and/or Surprise.

Defense counsel became involved in this case on January 21, 2019 and made his first appearance on behalf of the Defendant at the January 30, 2019 damages hearing. (Helmly Aff. ¶ 1). Due to the circumstances, namely the recency of having been retained, the Court continued the hearing and instructed defense counsel to file an electronic notice of appearance along with a motion for continuance and requisite filing fee. The hearing was rescheduled for June 6, 2019. Due to a conflict with a scheduled family trip, counsel arranged for a colleague, James Saxton, to attend the hearing. (Helmly Aff. ¶ 5).

On June 5, 2019, the day before the damages hearing, Plaintiffs' and Defense counsel, had multiple communications, both by email and phone call. (Helmly Aff. ¶ 6-7). The substance of those communications involved mainly two things: 1) the potential for settlement prior to the damages hearing; and 2) that due to mutual conflicts, both would have colleagues appearing on their behalf – Michael Witherspoon for the Plaintiffs and Mr. Saxton for the Defendant. (Helmly Aff. ¶ 6-7). Neither Plaintiffs' nor defense counsel raised any objection to this arrangement.[1] That same day, having realized the notice of appearance had not been filed, defense counsel e-filed it and received confirmation of the same. (Helmly Aff. – Ex. B). Communications continued into the night of June 5, 2019. At around 10:00 p.m., defense counsel received an email from Plaintiffs' counsel which included a settlement demand. (Helmly Aff. ¶ 9). The email also indicated that Mr. Witherspoon had been made aware of the communications that had taken place between Plaintiffs' counsel and defense counsel.[2] (Helmly Aff. – Ex. A). Because of the late hour of the demand, as well as the nature of demand, defense counsel had little choice but to proceed with the damages hearing.

At the outset of the June 6, 2019 hearing, the issue of the prior continuance and the Court's instructions regarding the same was raised. Despite having been filed, the Court could not locate the June 5, 2019 electronic notice of appearance. The Court, understandably, took issue with the absence of a motion and filing fee. Mr. Witherspoon took the opportunity to object Mr. Saxton's appearance and argue lack of standing. (Ex. 2 - June 6, 2019 Hrg. Trans. p. 3, lines 17-23). In response, Mr. Saxton informed the Court that Plaintiffs' and defense counsel had communicated about the hearing and, more importantly, who would be appearing on each other's behalf. Nevertheless, Mr. Witherspoon either denied or downplayed the extent of his knowledge regarding those communications (despite Plaintiffs' counsel's email to the contrary) and the Court denied Mr. Saxton the opportunity to argue and contest damages. (Ex. 2 - June 6, 2019 Hrg. Trans.

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[1] Notably, neither Mr. Saxton nor Mr. Witherspoon filed formal notices of appearance with the Court. Nonetheless, Mr. Witherspoon was allowed to appear and proceed, and Mr. Saxton was not.

[2] Specifically, Mr. Witherspoon was instructed by Plaintiffs' counsel to advise Plaintiffs to accept a certain settlement amount if offered.

p. 5, lines 12-22). This sequence of events and the resulting judgment forms the primary basis for this motion for relief from judgment.

A. Mistake and Inadvertence

At the June 6, 2019 hearing, defense counsel was instructed by the Court to e-file a formal notice of appearance along with a motion for continuance and the requisite filing fee. (Helmly Aff. ¶ 4). Due to a conflict with a scheduled family trip, counsel arranged for a colleague, James Saxton, to attend the hearing. (Helmly Aff. ¶ 5). On June 5, 2019, while reviewing the file and assisting Mr. Saxton in his preparation for the hearing, defense counsel realized that a notice of appearance had not been filed. The notice of appearance was immediately e-filed and email confirmation of the same was received within minutes. (Helmly Aff. ¶ 8). The morning of the hearing, defense counsel checked the online index and motions roster and confirmed he was, in fact, listed as counsel of record. (Helmly Aff. – Ex. C). Believing the issue was corrected and, more importantly, understood by Plaintiffs' counsel, it was not addressed with Mr. Saxton. At the hearing, the Court was inexplicably unable to confirm that the notice of appearance had been filed. (Ex. 2 - June 6, 2019 Hrg. Trans. p. 3, lines 17-23). Mr. Saxton was unable to offer satisfactory explanation. Armed with Mr. Witherspoon's objection, the Court prohibited Mr. Saxton and the Defendant from participating.

The Court's denial of the opportunity to appear and contest damages was the result of inadvertence and mistake. It was also a drastic remedy under the circumstances and an error of law. In <u>Stearns Bank Nat. Ass'n v. Glenwood Falls, LP</u>, the Court of Appeals stated "[a]n appearance may be expressly made by formal written or oral declaration, or record entry, or it may be implied from some act done with the intention of appearing and submitting to the court's jurisdiction. No specific act constitutes an appearance, as a defendant may choose to come into court with trumpets, or quietly by the back door. Accordingly, courts decide on a case by case basis whether a defendant's act demonstrates an intent to submit to the court's jurisdiction." 373 S.C. 331, 338, 644 S.E.2d 793, 796 (Ct. App. 2007) (internal citations and quotations omitted). Irrespective of the filing mishap, counsel made an in-person appearance on the record at the January 30, 2019 hearing and filed an electronic notice of appearance on June 5, 2019. (Ex. 3 - January 30, 2019 Hrg. Trans. p. 3, lines 9-12). The Court's inability to locate the notice of appearance seems to have been glitch as defense counsel was listed as counsel of record for the Defendant the morning of the hearing. (Helmly Aff. – Ex. C). Nonetheless, defense counsel demonstrated a clear intent to submit to the court's jurisdiction in this case. In the eyes of our courts, these actions were entirely sufficient to constitute an appearance and thus Mr. Saxton should have been allowed to appear and participate in the hearing.[3]

In addition to the issue surrounding the notice of appearance, Mr. Witherspoon posited that the Defendant did not have standing to participate. Any reliance on this argument would clearly be an error of law. Not only does the Defendant have statutory standing pursuant to § 38-77-150, standing was conferred by the Plaintiffs through pleading and conduct. <u>Richland Cty. v. S.C. Dep't of Revenue</u>, 422 S.C. 292, 305, 811 S.E.2d 758, 765 (2018) (a party who names [another party] in a complaint and motion cannot thereafter claim [that party] lacks standing to appear and defend itself in the action). Here, the

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[3] That it was Mr. Saxton and not defense counsel should be of no consequence. Mr. Saxton appeared at the request of and in defense counsel's stead. Mr. Witherspoon appeared in the exact same manner – at the request of and in Plaintiffs' counsel's stead. The Court was unaware that either would be appearing, yet it allowed Mr. Witherspoon to appear and participate and denied Mr. Saxton the same opportunity.

Plaintiffs' actions with respect to the carrier ought to preclude them from conferring standing in seeking a remedy and then disclaiming it when advantageous to do so.

B. Surprise

The objection by Mr. Witherspoon, and thus implicitly by Plaintiffs' counsel, to Mr. Saxton's appearance constitutes surprise within the meaning of Rule 60(b)(1). As outlined above, Plaintiffs' and defense counsel had consistent communications the day before the hearing and a mutual understanding of who would be attending. As mentioned above, those communications continued until 10:00 p.m. the night before hearing. At no point did Plaintiffs' counsel indicate that he had an objected to Mr. Saxton's appearance or that of the Defendant, in general. In fact, the communications suggest the opposite – that both Plaintiffs' counsel and defense counsel were aware of who would be appearing on behalf of whom and that each would let their respective colleagues know. Departure from a pattern of direct communication with opposing counsel satisfies the "surprise" prong of Rule 60(b)(1). C.f. McClurg v. Deaton, 395 S.C. 85, 716 S.E.2d 887 (2011) (Toal, J., dissenting) (opining that surprise element of rule was met when plaintiff's counsel filed suit against at-fault driver without informing insurer, with whom counsel had been in settlement discussions). Certainly, the pattern of communications between Plaintiffs' counsel and defense counsel created a reasonable expectation that the appearance of Mr. Saxton was and would be without objection. Mr. Witherspoon's objection was an about-face and a complete surprise from what defense counsel believed was a mutual understanding of who would be participating in the damages hearing.

The above, when considered in conjunction with the long-standing position our courts have taken – that damages are to be ascertained with defense counsel's participation limited to cross-examination and objection to plaintiff's evidence – Defendant should have been allowed to appear and participate. Howard v. Holiday Inns, Inc., 271 S.C. 238, 241, 246 S.E.2d 880, 882 (1978).

B. Defendant has a Meritorious Defense

To obtain relief from a default judgment under Rule 60(b)(1), not only must the movant make a proper showing it is entitled to relief based upon one of the specified grounds, he must also make a prima facie showing of a meritorious defense. See Stearns at 341, 644 S.E.2d at 798. "To establish that [a party] has a meritorious defense, a complainant need not show that [it] would prevail on the merits, but only that [its] defense is meritorious. A meritorious defense need not be perfect nor one which can be guaranteed to prevail at a trial. It need be only one which is worthy of a hearing or judicial inquiry because it raises a question of law deserving of some investigation and discussion or a real controversy as to real facts arising from conflicting or doubtful evidence." Thompson v. Hammond, 299 S.C. 116, 120, 382 S.E.2d 900, 903 (1989).

Certainly, Defendant has a meritorious defense as to damages. First, the South Carolina Traffic Collision Report Form TR-310 generated as a result of the subject accident indicates minor injuries sustained.[4] (Ex. 4 – Accident Report). While the report itself is not dispositive or admissible at trial, the evidence, for purposes of the present motion, demonstrates the existence of a real controversy and some probability that a decision on the merits might render a different result than that reached by the trial court. See McClurg v. Deaton, 395 S.C. 85, 716 S.E.2d 887, fn. 6 (2011) (Toal, C.J., dissenting in separate opinion) (the evidentiary standard for purposes of examining a meritorious defense argument is

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[4] Two accident reports were generated for this accident, causing considerable confusion as to the facts and circumstances and delay in addressing nature and substance of Plaintiffs' claim.

significantly lower than that which is used to determine admissibility of evidence at trial). At the very least, it is evidence of a controversy worthy of exploring.

In addition, the damages claimed by Plaintiffs both pre-suit and after the initiation of the lawsuit have been in dispute – even right up to the night before the hearing.[5] (Helmly Aff. – Ex. A) (demanding damages related to property damage despite not having plead such damages). Certainly, as one of four elements in a negligence action, a defense related to causation and damages would raise "as question of law deserving of some investigation." And while not accepted or rejected in South Carolina, "courts in other jurisdictions have held that in the context of a Rule 60(b) motion, an allegation that the amount of damages could be different from what was awarded under the default judgment, is sufficient to satisfy the meritorious defense requirement." See McClurg v. Deaton, 380 S.C. 563, 671 S.E.2d 87 (Ct. app. 2008) (Hearn C.J., concurring in part and dissenting in part) (internal citations omitted); see also McClurg v. Deaton, 395 S.C. 85, 716 S.E.2d 887, (2011) (Toal, C.J., dissenting in separate opinion) (allegation relating to the amount of damages satisfies the meritorious defense requirement).

C. Defendant's Motion is Timely

Rule 60(b), SCRCP provides that a motion shall be made within a reasonable time, and, relevant here, not more than one year after the judgment, order or proceeding was entered or taken. Here, the motion for relief was filed within one-year of the judgment and, more importantly, in compliance with the rule.

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[5] Defendant is not attempting to inject coverage issues into this motion. Reference to this communication is for the sole purpose of illustrating a viable and ongoing disagreement as to damages.

D. Plaintiffs will not Suffer Prejudice

Defendant does not seek to deprive the Plaintiffs of any of his rights or to a lawful recovery – only to have the opportunity to have the case resolved on its merits rather than a technicality. As stated by one legal commentator:

> Prejudice is not significant unless it is something greater than would be experienced by the ordinary litigant in being required to litigate on the merits. Some delay will necessarily result when a default is reopened, but delay in gaining judgment is not considered by itself to be undue prejudice that would justify denying relief.

Moore's Federal Practice § 55.70[2][c] (3d. Ed. 2010). Accordingly, granting relief will not prejudice the plaintiff in any significant manner.

CONCLUSION

For the reasons set forth above, Defendant respectfully request that the judgment be set aside and that it be permitted to appear and contest damages.

Respectfully submitted,

s/Ransome H. Helmly

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SC Bar #78081
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Mt. Pleasant, SC 29464
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Attorney for Defendant

Dated: July 20, 2020

Mount Pleasant, South Carolina

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) C.A. No. 2018-CP-40-00337

Tasha Jones; and Shaniqua Thompson,)
)
Plaintiff,)
)
vs.)
)
John Doe,)
)
Defendant.)

AFFIDAVIT

PERSONALLY appeared before me, Ransome H. Helmly, who first being duly sworn, deposes and says that:

1. I am counsel of record for the Defendant in this case.

2. I was assigned the defense of this UM claim on January 21, 2019 and made aware of a pending damages hearing set for January 30, 3019.

3. I personally appeared at the damages hearing and, after discussions with the Court and Plaintiffs' counsel, was granted a continuance in order to familiarize myself with the matter.

4. I was further instructed by the Court to e-file a formal notice of appearance along with a motion for continuance and the requisite filing fee.

5. The hearing was rescheduled for June 6, 2019. Due to a conflict with a scheduled family trip, I arranged for a colleague, James Saxton, to attend the hearing for the purpose of contesting damages.

6. On June 5, 2019, the day before the hearing, Plaintiffs' counsel and I had several communications. By phone we discussed certain facts and circumstances of the case and the potential for resolution prior to the hearing. Ex. A.

EXHIBIT
1

7. We also discussed that, due to mutual conflicts, we both would have colleagues covering the hearing for us. I informed counsel that Mr. Saxton would be covering the hearing for me and Plaintiff's counsel informed me that Michael Witherspoon would be covering the hearing for him. We agreed to stay in touch in the event further discussions were needed. Ex. A.

8. On June 5, 2019, while reviewing the file and assisting Mr. Saxton in his preparation for the hearing, I realized that the notice of appearance had not been filed. From what I can tell, it was the result of administrative error within my office. I e-filed it immediately and received email confirmation within minutes. Ex. B.

9. Around 10:00 p.m. that same night, I received an email from Plaintiffs' counsel with a settlement demand. Given the late hour, as well as the amount the demand, it appeared that the hearing would be going forward. Ex. A.

10. Early on the morning of June 6, 2019, I checked the online index and the motions roster and confirmed that the notice of appearance had been received and that I was listed as counsel of record. Ex. C. Believing the issue was corrected and, more importantly, understood by Plaintiffs' counsel, it was not addressed with Mr. Saxton.

11. At the hearing, the Court was unable to confirm that my notice of appearance had been filed. Understandably caught off-guard, Mr. Saxton was unable to offer satisfactory explanation to the Court. Mr. Witherspoon, appearing for Plaintiffs' counsel, ironically objected to Mr. Saxton's appearance. As a result, the Court prohibited Mr. Saxton from participating.

12. I was surprised when I learned this considering that I was listed as counsel of record as of 1:00 a.m. the morning of the hearing. I was also completely surprised at

the objection of Mr. Witherspoon considering that communications that had taken place between Plaintiffs' counsel and me.

13. The inadvertent failure to file the notice of appearance was just that – inadvertent. However, I appeared in person on January 30, 3019 and stated my appearance on the record. I then e-filed a notice of appearance on June 5, 2019, which was seemingly acknowledged by the e-filing system.

14. Had I known of Plaintiffs' objection or that there would be an issue with the filing, I would have taken additional precautions or made alternative arrangements.

FURTHER AFFIANT SAYETH NOT.

Ransome H. Helmly

Subscribed and sworn before me this
20th day of July, 2020.
Elizabeth R (L.S.)
Notary Public for the State of South Carolina

My commission expires: 11.4.2020

Randy Helmly

From: Dietrich Lake <dietrichlake@yahoo.com>
Sent: Wednesday, June 5, 2019 9:59 PM
To: Randy Helmly
Subject: Re: Jones/Thompson v. Doe

Randy:

Sorry for the late follow up but I was unable to reach my clients to get their position on resolving this matter.

Let me know if you can get at least[redacted]a piece to settle the case. Your client could use the remaining liability coverage and use some coverage under the UMPD coverage to supplement the liability coverage. The carrier is in default and I believe there are some elements of bad faith in them letting this case get to this point. I think it would be in their best interest to settle and not risk a hearing, but that would be there call.

I have told Mr. Witherspoon to recommend to the client that they take that offer if you can get it.

I will be out of the loop in the morning but hope this case can be settled.

Dietrich A. Lake

Sent from my iPhone

On Jun 5, 2019, at 4:31 PM, Randy Helmly <rhh@helmlylaw.com> wrote:

> Thanks
>
> Regards,
>
> Randy
>
> Ransome H. Helmly
> Law Office of Ransome H. Helmly, LLC
> 409 Coleman Blvd., Suite 200
> Mt. Pleasant, SC 29464
> P: 843-884-0184
> F: 843-284-9871
> rhh@helmlylaw.com
>
>

EXHIBIT
A

From: Dietrich Lake <dietrichlake@yahoo.com>
Sent: Wednesday, June 5, 2019 4:31 PM
To: Randy Helmly <rhh@helmlylaw.com>
Subject: Re: Jones/Thompson v. Doe

Mike Witherspoon

Dietrich A. Lake
The Lake Law Firm
1034 Briargate Circle, Ste. 201
Columbia, SC 29210
803/750-8311 (o)
803/750-8312 (f)

On Wednesday, June 5, 2019, 4:07:58 PM EDT, Randy Helmly <rhh@helmlylaw.com> wrote:

What's the name of the lawyer you have scheduled to cover?

From: Randy Helmly
Sent: Wednesday, June 5, 2019 4:07 PM
To: dietrichlake@yahoo.com
Subject: Jones/Thompson v. Doe

Dietrich –

Thanks for returning my call on this one. My contact info is below. My cell is 843-557-3820.

Regards,

Randy

Ransome H. Helmly

Law Office of Ransome H. Helmly, LLC

409 Coleman Blvd., Suite 200

Mt. Pleasant, SC 29464

P: 843-884-0184

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Randy Helmly

From: efiledonotreply@sccourts.org
Sent: Wednesday, June 5, 2019 6:29 PM
To: Randy Helmly
Subject: Received Notice: Your filing, Re: 2018CP4000337 - (320) Motor Vehicle Accident - Notice/Notice of Appearance, was received

To: Ransome Hayward Helmly rhh@helmlylaw.com
From: efiledonotreply@sccourts.org
Date: 2019-06-05 18:28:28.953
Subject: Your electronic filing, Re: 2018CP4000337 - (320) Motor Vehicle Accident - Notice/Notice of Appearance, was received by CIRCUIT COURT.

Case Number: 2018CP4000337
Case Type: (320) Motor Vehicle Accident
Document Type: Notice/Notice of Appearance

EXHIBIT
B

Richland County Fifth Judicial Circuit - Roster Details

MOTION ROSTER JUNE 6, 2019 COURTROOM 2A

Court Agency	**Richland County Common Pleas**	**Judge**	**Hood**	**Roster Id**	**1400**
Roster Type	**Motions Non Jury Roster**	**Roster Begin Date**	**06/06/2019**	**Roster End Date**	**06/06/2019**

Number of motions = 21

#	Date	Time	hr:mn	Description	Filing Party	Filed Date	Case	Sub Type	Plaintiff Attorney	Defendant Attorney	Notes
1	06/06/2019	9:30 AM	0:30	Motion/Damages	Kenneth L Tisdale-PLT	05/01/2019	2019CP4000342 Kenneth L Tisdale vs Joe A Solomons , defendant, et al	Breach of Cont 140	Vannie Williams Jr. (803) 799-1703		
2	06/06/2019	9:30 AM		Motion/Default Judgment	Kenneth L Tisdale-PLT	04/12/2019	2019CP4000342 Kenneth L Tisdale vs Joe A Solomons , defendant, et al	Breach of Cont 140	Vannie Williams Jr. (803) 799-1703		
3	06/06/2019	9:30 AM		Motion for Damages	Kenneth L Tisdale-PLT	04/25/2019	2019CP4000342 Kenneth L Tisdale vs Joe A Solomons , defendant, et al	Breach of Cont 140	Vannie Williams Jr. (803) 799-1703		
4	06/06/2019	9:30 AM		Motion for Damages	Leonard Garcia-PLT	04/25/2019	2018CP4005231 Leonard Garcia vs David Charles Grant	Auto Arbri ($5)	Trevor Penrose Eddy (803) 250-5402		
5	06/06/2019	9:30 AM		Motion/Damages	Tasha Jones-PLT	09/28/2018	2018CP4000337 Tasha Jones , plaintiff, et al vs John Doe	Motor Veh Accid 320	Dietrich Andre' Lake (803) 750-8311	Ransome Hayward Helmly (843) 884-0184	
6	06/06/2019	9:30 AM		Motion/Withdraw	Suncrete Of Carolina Inc-DEF	11/27/2018	2014CP4007229 Group III Management Inc vs Suncrete Of Carolina Inc , defendant, et al	Use AP Case Type 900	Scott A. Elliott (803) 771-0555 Charles L.A. Terreni (803) 771-7228	Alan Ross Belcher Jr. (843) 720-3460	
7	06/06/2019	9:30 AM		Motion for emergancy hearing	Julian Rochester #171519-PLT	04/12/2019	2014CP4005372 Julian Rochester #171519 vs A Jeffcoat , defendant, et al	Inmate Pet/Other 599	Julian Rochester #171519	Brandon Michael Briggs (803) 806-8222 William H. Davidson II (803) 806-8222 Jeffcoat	
8	06/06/2019	9:30 AM	0:20	Motion to Dismiss	A Jeffcoat-DEF	10/31/2016	2014CP4005372 Julian Rochester #171519 vs A Jeffcoat , defendant, et al	Inmate Pet/Other 599	Julian Rochester #171519	Brandon Michael Briggs (803) 806-8222 William H. Davidson II (803) 806-8222 Jeffcoat	
9	06/06/2019	9:30 AM	0:15	Motion/Compel	Jh Development Llc-DEF	01/25/2019	2018CP4004089 Andre Clemmons vs Marcus Clemmons , defendant, et al	Motor Veh Accid 320	Kenneth Thomas David (843) 614-8888 Lane Douglas Jefferies (843) 614-8888 Eric Marc Poulin (843) 614-8888 Roy T. Willey IV (843) 614-8888	Julie Jeffords Moose (803) 227-2231	
10	06/06/2019	9:30 AM	1:0	Motion/Injunction	Sharef Bhojani-PLT	01/25/2019	2019CP4000488 Sharef Bhojani , plaintiff, et al vs	Conversion 310	Lester McGill Bell Jr. (803) 796-9160	Jeffery Kyle McClain (314) 724-0358	

EXHIBIT
2
tabbies

EXHIBIT
tabbies
4

ORIGINAL

SOUTH CAROLINA DPS/OHS & DMV USE ONLY

Page # 1 Of 1

SOUTH CAROLINA
TRAFFIC COLLISION REPORT FORM
TR-310 (Rev. 11/2011)

Of Units: 02

Amended - Attach Copy of Original Report / Corrected

Notified: 2350

Arrived: 2355

Date: 06-15-2017

Time of Collision: 2345

County: 40

1- Interstate / 2- US Primary / [✓ 3- SC Primary] / 4- Secondary / 5- County / 6- PP

Collision Location (Rt. # / Name): On 555 / FARROW RD

[✓ 0- Main Line] / 2-Alternate / 5-Spur / 6-Connection / 7-Business

Miles: .05

Dir.: [✓ N] E S W

In [✓ Near] City or Town of: COLUMBIA

Lane # / Dir.: # 2 Of 1 N E [✓ S] W

Distance Offset: .04 [✓ Miles] Feet

Direction: N E [✓ S] W

1- Interstate / 2- US Primary / 3- SC Primary / [✓ 4- Secondary] / 5- County / 6- Other

Base Intersection (Rt. # / Name): From 1768 / GUERNSEY DR

[✓ 0- Main Line] / 2-Alternate / 5-Spur / 6-Connection / 7-Business / 9-Other

GPS COORDINATES 00 00' 00.00" DEGREES MINUTES SECONDS

Latitude: 34° 02' 38.96"

Longitude: 81° 01' 04.27"

R.R. Id.:

Ramp Only: From N E S W / 1- Entrance / 2- Exit / To N E S W

1- Interstate / 2- US Primary / 3- SC Primary / [✓ 4- Secondary] / 5- County / 6- Other

Second Intersection (Rt. # / Name): Toward 92 / STANDISH ST

[✓ 0- Main Line] / 2-Alternate / 5-Spur / 6-Connection / 7-Business / 9-Other

K-018697

[✓ Driver]/Pedestrian's Full Name: TASHA LATOYA JONES

Unit #: 01
Sex: F
Race: B
Street:
#Occ: 3
Birth Date:
City, State, & Zip: COLUMBIA
State: SC
Driver's License #: 10195628
Class: D
Insurance Company: LYNDON SOUTHERN
Year: 2006
Body: VN
Vehicle Make: KIA
VIN #: KNDMB233X66050682
State: SC
Year: 2017
License Plate #: MDM145
Owner's D.L. #: 10195628
Home Telephone:
Owner's Full Name: TASHA LATOYA JONES
Bus. Telephone: ( )
Street:
Contributed To Collision: Yes [✓ No]
City, State, & Zip: COLUMBIA
Estimated Speed: 20
Speed Limit: 35
C.D.L. Req: Yes [✓ No]
T/B S Req: Yes [✓ No]
Alc/Drg Info (see back): Yes [✓ No]
Summons #:
Code:
Summons #:
Code:
Towed By: [✓ Yes] No

K-018698

[✓ Driver]/Pedestrian's Full Name: HIT AND RUN

Unit #: 02
Sex:
Race: U
Street:
#Occ: 1
Birth Date:
City, State, & Zip:
State:
Driver's License #: UNKNOWN
Class:
Insurance Company: UNKNOWN
Year:
Body:
Vehicle Make:
VIN #:
State:
Year:
License Plate #: UNKNOWN
Owner's D.L. #:
Home Telephone: ( )
Owner's Full Name:
Bus. Telephone: ( )
Street:
Contributed To Collision: [✓ Yes] No
City, State, & Zip:
Estimated Speed: 70
Speed Limit: 35
C.D.L. Req: Yes [✓ No]
T/B S Req: Yes [✓ No]
Alc/Drg Info (see back): Yes [✓ No]
Summons #:
Code:
Summons #:
Code:
Towed By: [✓ Yes] No

Driver/Pedestrian's Full Name:
Unit #:
Sex:
Race:
Street:
#Occ:
Birth Date:
City, State, & Zip:
State:
Driver's License #:
Class:
Insurance Company:
Year:
Body:
Vehicle Make:
VIN #:
State:
Year:
License Plate #:
Owner's D.L. #:
Home Telephone:
Owner's Full Name:
Bus. Telephone: ( )
Street:
Contributed To Collision: Yes No
City, State, & Zip:
Estimated Speed:
Speed Limit:
C.D.L. Req: Yes No
T/B S Req: Yes No
Alc/Drg Info (see back): Yes No
Summons #:
Code:
Summons #:
Code:
Towed By: Yes No

Dir. of Travel: Unit 1: N S [✓ E] W Unit 2: N S [✓ E] W Unit 3: N S E W

Unit 1 Dam.	Unit 2 Dam.	Unit 3 Dam.	Prop.Dam. 1	Prop. Dam. 2
$ 10000	$ 2400	$	$	$

Property Owner/Witness:
Address:
State: Zip: Phone:

Property Owner/Witness:
Address:
State: Zip: Phone:

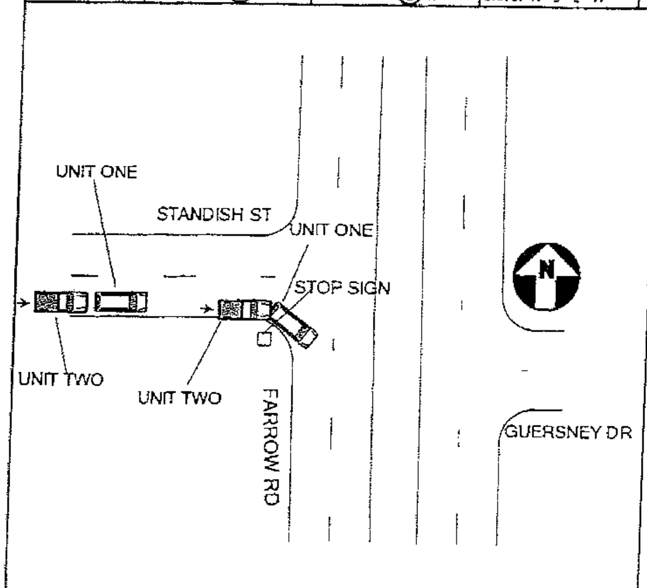


Photo: Y [✓ N]

Describe What Happened (Refer to Units by Number):

UNIT ONE WAS ATTEMPTING A RIGHT HAND TURN ONTO FARROW RD AT THE STOP SIGN. UNIT TWO WAS FOLLOWING TO CLOSLEY TO UNIT ONE. UNIT TWO STRUCK UNIT ONE IN THE BACK WITH UNIT TWO FRONT CAUSING SEVERE DAMAGE.

NOTICE - THE TR-310 IS FOR STATISTICAL REPORTING PURPOSES ONLY AND IS A REFLECTION OF THE OFFICER'S BEST KNOWLEDGE, OPINION AND BELIEF COVERING THE COLLISION BUT NO WARRANT IS MADE AS TO THE FACTUAL ACCURACY THEREOF.

Investigating Officer's Name	Rank	Badge #	Jurisdiction Code	Review Date	Reviewer's Name	Rank	Internal Agency Code
JONES W	PTL	24277	4001	07-07-2017	Antonio Green	Cpl.	170017230

Unit:	Date of Birth	Sex:	Race	INJ:		Seat:	R/SD	A.B.D.		Eject	LAI:	Tran:		Name	Street Address	Zip Code
01		F	B	1		01	13	3	9	1	3	1	1	TASHA LATOYA JONES		29203
02			U	0		01	99	4	9	1	1	2		HIT AND RUN		
01		M	B	1		03	13	3	9	1	3	1	1			
01		F	B	1		04	13	3	9	1	3	1	1	SHANIQUA , THOMP		29203

Race A - Asian/Pacific Islander W - Caucasian
B - African American H - Hispanic O - Other
I - Alaskan Native or American Indian U - Unk.

a) Injury Status 2-Non-incapacitating
0-Not Injured 3-Incapacitating
1-Possible injury 4-Fatal

Seating Loc.
01 02 03
04 05 06
07 08 09
20-Pedestrian 60-Sleeper of Cab
30-Trailing Unit 70-Riding on Unit Exterior
40-Bus or Van (4th row or Higher) 80-Lap
50-Other Enclosed Area (nontrailing) 99-Unk./NA
51-Other Unenclosed Area (nontrailing)

Restraint/Safety Device
00-None Used 21-Child Safety Seat
11-Shoulder belt 88-Other
12-Lap Belt Only 99-Unk.
13-Shoulder & Lap Belt
Pedestrian, Motor/Pedalcycle Only
31-Helmet 51-Reflective Clothing
41-Protective Pads 61-Lighting

Air Bag Deployment / Switch
a) 1-Deployed Front 4-Not Deployed
2-Deployed Side 7-Not Applicable
3-Deployed Both 9-Deployment Unk.
b) 1-Switch in On Position 3-No Switch
2-Switch in Off Position 9-Unknown

Ejection
1-Not Ejected
2-Part. Ejected
3-Tot. Ejected
7-Not App.
9-Unk.

b) 2 or 3 Wheel Motorized Vehicle
Head Injury 1-Yes 2-No

Location After Impact 3-Freed (non-mech.)
1-Not Trapped 4-Not Applicable
2-Extricated (Mechanical Means) 9-Unknown

a) **Transported to Medical Facility**
1-Yes 2-No 3-Unknown
b) By: 1-EMS 2-Police 8-Other 9-Unk.

Sequence of Events

Non-Collision
01-Cargo/Equip Loss or Shift
02-Cross Median/Center
03-Downhill Runaway
04-Equipment Failure
05-Fire/Explosion
06-Immersion
07-Jackknife
08-Overturn/Rollover
09-Ran off Road Left
10-Ran off Road Right
11-Separation of Units
12-Spill (Two-Wheeled Veh.)
18-Other Non-collision
19-Unk. Non-collision

Event 1	Event 2	Event 3	Event 4	Most Hrmfl	1st Hrmfl
1 22	1	1	1	1 22	22
2 22	2	2	2	2 22	
3	3	3	3	3	

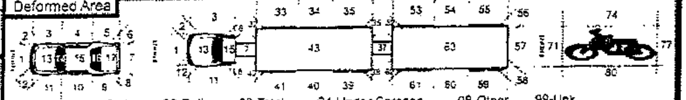
Collison: Not Fixed
20-Animal (Deer Only)
21-Animal (All Other)
22-Motor Veh. (In Transport)
23-Motor Veh. (Stopped)
24-Motor Veh. (Other Roadway)
25-Motor Veh. (Parked)
26-Pedalcycle
27-Pedestrian
28-Railway Veh.
29-Work Zone Maint. Equip.
38-Other Movable Object
39-Unk. Movable Object

Collison: Fixed Object
40-Bridge Overhead Structure
41-Bridge Parapet End
42-Bridge Pier or Abutment
43-Bridge Rail
44-Culvert
45-Curb
46-Ditch
47-Embankment
48-Equipment
49-Fence
50-Guardrail End
51-Guardrail Face
52-Highway Traffic Sign Post
53-Impact Attenuator/Crash Cushion
54-Light/Luminaire Support
55-Mail Box
56-Median Barrier
57-Overhead Sign Support
58-Other (Post, Pole, Support, Etc.)
59-Other (Wall, Building, Tunnel, Etc.)
60-Tree
61-Utility Pole
62-Work Zone Maint. Equipment
68-Other
69-Unk.

Manner of Collision (Struck Veh.)
1
2 10
3
1st Harmful Collision
00-Not Coll. w/ Motor Veh.
10-Rear End
20-Head On
30-Rear-to-Rear
41-Angle (↘|↙)
42-Angle (→|←)
43-Angle (↗|↖)
50-Sideswipe Same Dir.
60-Sideswipe Opposite Dir.
70-Backed Into
99-Unknown

1st / Most Deformed Area

1st Deformed	1 17	2 1	3	Most Deformed	1 17	2 1	3



21-Pedestrian 81-None 92-Rollover 93-Total 94-Under Carriage 98-Other 99-Unk.

Vehicle Type:
1 16
2 12
3
01-Automobile
12-Pickup Truck
13-Truck Tractor
14-Other Truck
15-Full Size Van
16-Mini Van
17-Sport Utility
25-Motorcycle
26-Other Motorbike
27-Pedalcycle
32-Animal Drawn Veh.
39-Animal (Ridden)
41-Pedestrian
51-Train
61-School Bus
62-Passenger Bus
98-Other
99-Unk. (Hit and Run Only)

Vehicle Use Code
1 01
2 01
3
01-Personal
02-Driver Training
03-Construction/Maint.
04-Ambulance
05-Military
06-Transport Passengers
07-Transport Property
08-Farm Use
09-Wrecker or Tow
10-Police
11-Government
12-Fire Fighting
13-Logging
18-Other
41-Pedestrian

Vehicle Attachment
1 1
2 1
3
1-None
2-Mobile Home
3-Semi-Trailer
4-Utility Trailer
5-Farm Trailer
6-Trailer w/Boat
7-Camper Trailer
8-Towed Motor Vehicle
9-Petroleum Tanker
A-Lowboy Trailer
B-Autocarrier Trailer
C-Other Tanker
D-Flat Bed
E-Twin Trailers
F-Other

Action Prior to Impact
1 06
2 06
3
(Vehicle)
01-Backing
02-Changing lanes
03-Entering traffic lane
04-Leaving traffic lane
05-Making U-turn
06-Movements Essentially Straight Ahead
07-Overtaking/passing
08-Parked
09-Slowing or Stopped in traffic
10-Turning left
11-Turning right
(Non-motorist)
21-Approaching/Leaving Vehicle
22-Entering/Crossing Location
23-Playing/Working on Vehicle
24-Pushing Vehicle
25-Standing
26-Walking, Playing, Cycling
27-Working
88-Other 99-Unk.

A1 D1 / A2 D2 / A3 D3

Alcohol / Drug Test Given
1-Given - Known Results
2-Given - Unusable
3-Given - Pending
4-None
5-Refused

Test Type
1-Breath (Alc Only)
2-Blood
3-Urine
4-Serum
8-Other

Drug Results
1-Amphetamines
2-Cocaine
3-Marijuana
4-Opiates
5-PCP
8-Other

Alc Test Results
A1-
A2-
A3-

Special Use Only

1	2	3	4	5	6	7

Underride/Override 1 6 / 2 6 / 3
1-Under-Compartment Intrusion
2-Under-No Intrusion
3-Under-Unknown
4-Over-MV in transport
5-Over-Other Vehicle
6-None
9-Unk.

Extent of Deformity 1 4 / 2 3 / 3
0-None/Minor
2-Functional Damage
3-Disabling Damage
4-Severe/Totaled
5-Not Applicable
9-Unk.

Trafficway 1
1-Two-way, Not Divided
2-Two-way, Divided, Unprotected Median
3-Two-way, Divided, Barrier
4-One-Way
8-Other

1st Harmful Event Loc. A: 4 B: 2
A: 1-Gore 2-Island 3-Median 4-Roadside 5-Roadway 6-Shoulder 7-Sidewalk 8-Outside Trafficway 9-Unk.
B: X-walk: 1-Y 2-N 9-U

Road Character 1
1-Straight - Level
2-Straight - On grade
3-Straight - Hillcrest
4-Curve - Level
5-Curve - On grade
6-Curve - Hillcrest

Road Surface Condition 2
1-Dry 2-Wet 3-Snow 4-Slush 5-Ice 6-Contaminate 7-Water (Standing, etc.) 8-Other 9-Unk.

Traffic Control Type 31
01-Stop and Go Light
02-Flashing Traffic Signal
11-RR (X-bucks Lights & Gates)
12-RR (X-bucks & Lights)
13-RR (X-bucks Only)
21-Officer or Flagman
22-Oncoming Emergency Vehicle
31-Pavement Markings (only)
41-Stop Sign
42-School zone Sign
43-Yield Sign
44-Work Zone
45-Other Warning Signs
51-Flashing Beacon
98-None
99-Unk.

Weather Condition 2
1-Clear (no adverse conditions)
2-Rain
3-Cloudy
4-Sleet, Hail
5-Snow
6-Fog, Smog, Smoke
7-Blowing Sand, Oil, Dirt or Snow
8-Severe Crosswinds
9-Unk.

Light Condition 5
1-Daylight
2-Dawn
3-Dusk
4-Dark (Lighting Unspecified)
5-Dark (Street Lamp Lit)
6-Dark (Street Lamp Not Lit)
7-Dark (No lights)

Junction Type 13
01-Crossover
02-Driveway
03-Five/More Points
04-Four-way Intersection
05-Railway Grade Crossing
07-Shared Use Paths or Trail
08-T-Intersection
09-Traffic Circle
12-Y-Intersection
13-Nonjunction
99-Unk

School Bus Involved: 3
1-Yes, Directly 2-Yes, Indirectly 3-No 9-Unk.

Work Zone: 2
1-Yes 2-No

Work Zone Location
1-Before 1st Sign 2-Advanced Warning Area 3-Transition Area 4-Activity Area 5-Termination Area

Work Zone Type
1-Shoulder/Median Work 2-Lane Shift/Crossover 3-Intermittent/Moving Work 4-Lane Closure 8-Other 9-Unk.

Workers Present:
1-Yes 2-No

Contributing Factors
Primary 08
Others:

Driver
01-Disregarded Signs, Signals, Etc.
02-Distracted/Inattention
03-Driving Too Fast for Conditions
04-Exceeded Authorized Speed Limit
05-Failed to Yield Right of Way
06-Ran off Road
07-Fatigued/Asleep
08-Followed Too Closely
09-Made an Improper Turn
10-Medical Related
12-Aggressive Operation of Vehicle
13-Over-correcting/Over-steering
14-Swerving to Avoiding Object
15-Wrong Side or Wrong Way
16-Under the Influence
17-Vision Obscured (Within Unit)
18-Improper lane Usage/Change
19-Cell Phone
20-Texting
28-Other Improper Action 29-Unk.

Roadway
30-Debris
31-Non-highway Work
32-Obstruction in Roadway
33-Road Surface Condition (I.e., Wet)
34-Rut, Holes, Bumps
35-Shoulders (None, Low, Soft, High)
36-Traffic Control Device (I.e., Missing)
37-Work Zone (Const./Maint./Utility)
38-Worn, Travel-Polished Surface
48-Other
49-Unk.

Non-Motorist
50-Inattentive
51-Lying &/or Illegally in Roadway
52-Failure to Yield R. of W.
53-Not Visible (Dark Clothing)
54-Disregard Signs, Signals, Etc.
55-Improper Crossing
56-Darting
57-Wrong Side of Road
58-Other 59-Unk.
66-Under the Influence
67-Other Person Under Influence

Environmental
60-Animal in Road
61-Glare
62-Obstruction
63-Weather Cond.
68-Other 69-Unk.

Vehicle Defect
70-Brakes
71-Steering
72-Power Plant
73-Tires/Wheel
74-Lights
75-Signals
76-Windows/Shield
77-Restraint System
78-Truck Coupling
79-Cargo
80-Fuel System
88-Other 89-Unk.

ELECTRONICALLY FILED - 2020 Jul 24 2:20 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4000337

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP4000337

Tasha Jones
PLAINTIFF(S)

John Doe
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled);
☐ Other

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

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

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

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

Motion to Set Aside Default (filed 6/18/2020) was heard on July 22, 2020. Parties to submit proposed orders within 10 days.

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 07/24/2020 .

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.

SOUTH CAROLINA

Richland Common Pleas

Case Caption: Tasha Jones , plaintiff, et al vs John Doe

Case Number: 2018CP4000337

Type: Order/Electronic Form 4

So Ordered

s/L. Casey Manning, 2061

Electronically signed on 2020-07-24 13:23:26 page 3 of 3

ELECTRONICALLY FILED - 2020 Aug 04 11:22 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4000337

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	Civil Action No: 2018-CP-40-00337
Tasha Jones; and Shaniqua Thompson	)	
Plaintiffs,	)	
vs.	)	ORDER OF JUDGMENT
John Doe	)	
Defendant.	)	

THIS MATTER was before the Court upon the motion by the Defendant to set aside a judgment in the above-listed case.

The Court, being fully advised, finds the following:

1. The Court has jurisdiction of the parties and the subject matter herein.
2. That service of process was proper in this case as an uninsured motorist claim and that the Defendant had notice of the Summons and Complaint.
3. That default was granted against the Defendant on September 28, 2018, after the Defendant failed to otherwise answer and/or appear and/or request an extension in time to answer the Complaint.
4. That a damages hearing was scheduled on January 30, 2019, where counsel for the Defendant, Ransome H. Helmly, Esquire, appeared and requested a continuance in this matter.
5. That the Honorable Robert E. Hood ordered counsel for the Defendant to file a formal notice of appearance and a motion to continue the matter.

6. That counsel for the Defendant did not timely file a formal notice of appearance before the damages hearing of June 6, 2019.
7. That Counsel for the Defendant never filed a motion to continue the January 30, 2019, as ordered by the Court.
8. That Counsel for the Defendant did not appear at the damages hearing on June 6, 2019; James Saxton, Esquire, appeared on behalf of the Defendant at the damages hearing.
9. That James Saxton, Esquire, never filed a notice of appearance in this matter; furthermore, Ransome H. Helmly, Esquire did not timely file his formal notice of appearance in this case, nor did Mr. Helmly seek leave or permission of the court to appear before the court without the formal notice, nor Did Mr. Helmly seek leave or permission of the court for Mr. Saxton to appear on John Doe's behalf, nor did Mr. Helmly seek a second continuance in the matter.
10. That the Honorable Robert E. Hood exercised his discretion in denying counsel for Defendant an opportunity to otherwise respond to the Plaintiffs' damages claims and/or testimony and/or admission into evidence of the Plaintiffs' medical records at the damages hearing due to failing to follow the Court's order in filing a formal notice of appearance and in filing a motion for continuance in the January 30, 2019, hearing.
11. That the Court issued a judgment in favor of the Plaintiff, Tasha Jones, against the Defendant John Doe, and award the amount of **$50,000.00** to the Plaintiff, Tasha Jones; and the Court hereby finds Judgment in favor of the Plaintiff, Shaniqua Thompson, against the Defendant John Doe, and award

the amount of **$50,000.00** to the Plaintiff, Shaniqua Thompson; the final Order of Judgment was signed by the court on June 19, 2019.

12. That the Defendant did not file a motion for reconsideration pursuant to Rule 59 or any motion for a new trial or took any appeal of the judgment.
13. That the Plaintiffs requested a timely payment of the judgment from the Defendant, their carrier, with no response.
14. That Civil Action No.: 2019-CP-40-04650 was filed on August 22, 2019, against Lyndon Southern Insurance Company (the Plaintiffs' carrier) for breach of contract and bad faith for failing to pay the judgment in Civil Action No: 2018-CP-40-00337.
15. That the Defendant did not file his motion to set aside a judgment pursuant to Rule 60(b)(1) until June 18, 2020; three-hundred and sixty-five (**365**) days after the date of the final judgment.
16. That the Defendant's delay in filing his motion for relief pursuant to Rule 60(b)(1) was not reasonable as the Defendant was aware of the judgment after June 19, 2019, and the Defendant's filing date was the last day that the Defendant could file this Rule 60 (b)(1) motion; furthermore, the Defendant's filing date was three-hundred and four (**304**) days after the Plaintiffs filed suit against the insurance carrier for breach of contract and bad faith.
17. The Defendant failed to provide any evidence as to why he failed to act promptly in seeking relief from the judgment.
18. That the Defendant did not make a prima facie showing of a meritorious defense to this action as to liability; the Defendant has presented no

meritorious defense as to the damages alone as the trial court heard the testimony and made the award following a damages hearing related to a default judgment which was not challenged by the Defendant.

19. That the Plaintiffs would be prejudiced by granting relief from this judgment as there is a pending breach of contract and bad faith action against the Plaintiff's carrier for failure to pay the judgment from her uninsured motorist claim; the Plaintiffs would lose their cause of action under Civil Action No.: 2019-CP-40-04650 if the judgment is vacated in this action.
20. That the Plaintiffs would suffer further prejudice if relief is granted because this action arises out of an accident that occurred 2017, and witnesses and/or evidence may no longer be available due to the length of time since this accident.
21. That the Defendant has presented no clear and convincing evidence of mistake, inadvertence, excusable neglect or surprise in the judgment to warrant relief from the judgment.

That this Court, based upon the finding of facts and record in this case, hereby **DENY** the Defendant's request for relief from the judgment in the above-stated case due to the Defendant's unreasonable delay in making this request for relief 365 days after the judgment was entered; furthermore, the Defendant failed to provide any reasons why he failed to act promptly in seeking relief from the judgment. The Defendant's relief is further **DENIED** because the Defendant failed to provide any clear and convincing evidence of mistake, inadvertence, excusable neglect or surprise. The Defendant also failed to provide any prima facie evidence of a meritorious defense to this judgment. The Defendant's request for relief is also **DENIED** because the Plaintiffs would suffer prejudice if the Defendant's request relief for this judgment is granted.

IT IS SO ORDERED AND ADJUDGED.

____
L. Casey Manning
Presiding Judge

July ___, 2020
Columbia, South Carolina

Richland Common Pleas

Case Caption: Tasha Jones , plaintiff, et al vs John Doe

Case Number: 2018CP4000337

Type: Order/Other

So Ordered

s/L. Casey Manning, 2061

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