THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY

Court of Common Pleas

Carmen T. Mullen, Circuit Court Judge

Case No. 2010-CP-07-5078

Dorris W. Green, Jr. as Guardian Ad Litem for Inman G., a minor, ... Appellant,

v.

United Services Automobile Association, ... Respondent.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF THE CASE

This lawsuit was commenced on October 15, 2010 when the plaintiff filed a complaint for declaratory judgment relief. (R. pp. 12-15) Before USAA answered this complaint the plaintiff filed an amended complaint on October 21, 2010. (R. pp. 17-20) The plaintiff's amended complaint raised an issue of liability insurance coverage and underinsured motorist coverage for an accident on July 19, 2009 in Beaufort, South Carolina. (Amended Complaint, ¶ IV) (R. p. 18) This accident occurred when the minor plaintiff's mother, Linda G. , allegedly turned left in front of an oncoming vehicle. (Amended Complaint, ¶ IV) (R. p. 18)

USAA answered the plaintiff's amended complaint and denied liability coverage and underinsurance motorist coverage for the July 19, 2009 accident. (R. pp. 22-24)

On March 11, 2011 USAA moved for summary judgment. (R. pp. 121, 122) The ground for the motion was that USAA's insurance policy was written in the State of Florida, insured a vehicle licensed in the State of Florida and was subject to Florida law, not South

Carolina law. The motion asserted that under Florida law the exclusion of liability coverage in question was a valid, enforceable exclusion. The motion further asserted the plaintiff was not entitled to underinsured motorist coverage. (R. p. 121)

On June 6, 2011 Judge Carmen Mullen heard USAA's motion for summary judgment. (R. pp. 30-42) USAA submitted a memorandum in support of its motion for summary judgment and the plaintiff submitted a memorandum opposing the motion for summary judgment. (R. pp. 124-130; R. pp. 132-136) On June 23, 2011 Judge Mullen signed an order granting USAA's motion for summary judgment. (R. pp. 6-10) The plaintiff did not file a motion to alter or amend the judgment under SCRCP 59. Instead, the plaintiff served a notice of appeal on August 15, 2011.

STATEMENT OF THE FACTS

On July 19, 2009 Linda Green was involved in an accident in Beaufort, South Carolina while driving a 2002 Honda. (Amended Complaint, ¶ IV) (R. p. 18) The minor plaintiff was a passenger in the car at the time of the accident. (Amended Complaint, ¶ IV) (R. p. 18) The car driven by Linda G. and in which the minor plaintiff was a passenger was insured with USAA. The policy insuring this car was written in the State of Florida. (Amended Complaint, ¶ VI) (R. p. 18) The declarations page of the policy insuring the 2002 Honda listed Dorris G. . as the named insured, stated that it was a "Florida auto policy", listed Dorris G. 's address as Sharps, Florida and stated that the 2002 Honda was principally garaged at the address in Sharps, Florida. (R. p. 66)

USAA's policy included a definitions section. (R. p. 82) This section defined "**family member**" as "a person related to **you** by blood, marriage, or adoption who is a resident of **your** household. This includes a ward or foster child." (Page 3 of Form 5100 FL (01)) (R.

p. 82) The policy defined "**you**" as the named insured on the Declarations Page and spouse if a resident of the same household. (Page 3 of Form 5100 FL (01)) (R. p. 82)

The policy provided liability coverage in part A. (R. p. 83) Part A of the policy defined "**covered person**" as "**you** or any **family member** for the ownership, maintenance or use of any auto or **trailer**." (Page 4 of Form 5100 FL (01)) (R. p. 83) It is undisputed that Linda G. falls within this definition of "covered person." (Plaintiff's Initial Brief, p. 2 - "Doris G. is married to Linda G. .")

A section of part A set forth exclusions to liability coverage. (R. pp. 84, 85) Subsection C contained what is known as the "family member" exclusion of liability coverage. (R. p. 85) That exclusion stated that:

> There is no coverage for **BI** [bodily injury] for which a **covered person** [here, Linda G.] becomes legally responsible to pay to a member of that **covered person's** family residing in that **covered person's** household [here, the minor plaintiff]. (Page 6 of Form 5100 FL (01)) (R. p. 85)

Because Linda G. fell within the definition of covered person by virtue of being married to the named insured Dorris G. . and the minor plaintiff was a member of Linda G. 's family residing in her household, the family member exclusion applied such that Linda G. had no liability coverage for a claim against her by the minor plaintiff.

Part C of USAA's policy provided uninsured motorist coverage. (R. pp. 93-96) One of the definitions of an uninsured motor vehicle is a motor vehicle with limits for bodily injury and liability not enough to pay the full amount the covered person is legally entitled to recover as damages.[1] (R. p. 93)

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[1] A motor vehicle with insufficient limits of liability coverage, as opposed to having no liability coverage at all, is known under South Carolina law as an underinsured motor vehicle. (§ 38-

The policy also provided that an uninsured motor vehicle does not include any vehicle owned by or furnished or available for the regular use of the named insured or any family member unless:

> a) It is **your covered auto** to which Part A of the policy applies, and
>
> b) Liability coverage is excluded for any person other than **you** or any **family member** for damages sustained in the accident by **you** or any **family member**. (Page 14 of Form 5100 FL (01)) (R. p. 93)

There is no dispute that the 2002 Honda listed on the declaration page of the policy was owned by or furnished or available for the regular use of Dorris G. . or his wife Linda G. . (R. p. 50, 51)

The appellant's Initial Brief does not contend there is a question of fact precluding summary judgment. Even if such a question existed, the appellant cannot now raise it for the first time in a reply brief. Beaufort County School District v. United National Insurance Company, 709 S.E.2d 85, footnote 5 (S.C. App. 2011) Accordingly, this appeal solely involves questions of law and this Court need not review all ambiguities, conclusions and inferences in a light most favorable to the non-moving party.

ARGUMENT

I. THE TRIAL COURT CORRECTLY CONCLUDED THAT THE LAW OF FLORIDA APPLIES TO QUESTIONS REGARDING THE VALIDITY AND INTERPRETATION OF THE CONTRACT OF INSURANCE.

Although the plaintiff argues the doctrine of *lex loci delecti* applies (Plaintiff's Initial Brief, p. 6-7), this case does not involve the law applicable to a tort. Indeed, if a tort was

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77-160) However, under USAA's policy issued in Florida a motor vehicle with insufficient liability limits is a type of uninsured motor vehicle.

involved the plaintiff would have filed an action for damages instead of filing a declaratory judgment action. In such case the plaintiff would need to allege and prove the elements of a tort: duty, breach of duty, proximate causation and injury. Troutman v. Facetglas, Inc., 316 S.E.2d 424 (S.C. App. 1984) Under no construction of the Amended Complaint can it be construed to allege a tort. Therefore, the question is not which state's law applies to a tort. Instead, this case involves the validity of a contractual exclusion of liability coverage in an insurance policy and the applicability of uninsured motorist coverage.

The statute cited by the plaintiff giving the minor plaintiff the right to sue his mother in tort may very well apply to a lawsuit by the minor plaintiff against his mother, but this case is not that case. Instead, this case is filed pursuant to South Carolina's declaratory judgment statute (Amended Complaint, ¶ IV) (R. p. 18) and seeks a judgment declaring that USAA's policy should be reformed to allow the minor plaintiff to recover damages covered by the liability and underinsured policy limits. (Amended Complaint, ¶ VIII) (R. p. 19) Accordingly, in determining which state's law applies the doctrine of *lex loci contractus* governs. Lister v. NationsBank, 494 S.E.2d 449, 455 (S.C. App. 1997)

Unless the parties agree to a different rule, the validity and interpretation of a contract is ordinarily determined by the law of the state in which the contract was made. Unisun Insurance Company v. Hertz Rental Company, 436 S.E.2d 182, 184 (S.C. App. 1993) In construing insurance policies, South Carolina courts apply the law of the state where the policy was issued. Companion Property & Casualty Insurance Company v. Airborne Express, 631 S.E.2d 915, 916 (S.C. App. 2006) Florida has the same rule which is that the law of the jurisdiction where the contract was executed governs interpretation of substantive issues regarding the contract and that the *lex loci contractus* rule determines the choice of law for

interpretation of provisions in an automobile insurance policy. Lumbermen's Mutual Casualty Company v. August, 530 So. 2d 293 (Fla. 1988) It is undisputed and, in fact, the plaintiff's Amended Complaint even alleges that USAA's policy insuring the 2002 Honda was written in the State of Florida. (Amended Complaint, ¶ VI) (R. p. 18)

The case most directly on point in determining whether South Carolina law or Florida law governs the validity of the family member exclusion is Newton v. Progressive Northwestern Insurance Company, 554 S.E.2d 437 (S.C. App. 2001). This case was cited in USAA's Memorandum in Support of its Motion for Summary Judgment. (R. p. 126) The trial court's order also relied upon Newton in concluding that the law of Florida governs the validity and interpretation of the family member exclusion. (R. pp. 7, 8) However, despite the fact that USAA and the trial court relied upon Newton, the plaintiff's 11 page Initial Brief contains no mention of this case.

In Newton, Progressive Northwestern Insurance Company issued a policy in Georgia to Newton. Several months after issuance of the policy Newton was involved in an automobile accident in South Carolina. Newton claimed the policy required reformation to include the minimum uninsured motorist coverage required by South Carolina law. The trial court granted summary judgment to Progressive. On appeal Newton argued the terms of the policy had to be reformed to comply with South Carolina's liability policy requirements. 554 S.E.2d at 438 In affirming the grant of summary judgment to Progressive the Court of Appeals held that a policy issued and delivered outside of South Carolina is not a policy issued or delivered in South Carolina and the fact that an accident which is within the risk covered by a policy occurred in a certain state does not make the contract one of that state. The Court of Appeals concluded that South Carolina's financial responsibility law did not require reformation of the

Georgia policy. 554 S.E.2d at 440 Applying Newton to the facts of this lawsuit, South Carolina's automobile insurance statutes and case law are not applicable in determining whether USAA's policy issued to an insured with a Florida address insuring a car garaged in Florida require reformation of the Florida policy.

II. THE TRIAL COURT CORRECTLY CONCLUDED THAT THE FAMILY MEMBER EXCLUSION DOES NOT VIOLATE THE PUBLIC POLICY OF SOUTH CAROLINA.

As stated in the trial court's order, the family member exclusion is valid under Florida law. Chrysler Credit Corporation v. United Services Automobile Association, 625 So. 2d 69 (Fl. Ct. App. 1993); Fitzgibbon v. Government Employees Insurance Company, 583 So. 2d 1020 (Fla. 1991); Mitchell v. State Farm Mutual Automobile Insurance Company, 678 So. 2d 418 (Fl. Ct. App. 1996) (R. p. 8) The reason for the exclusion is obvious: to protect the insurer from overfriendly or collusive lawsuits between family members. Florida Farm Bureau Insurance Company v. Government Employees Insurance Company, 387 So. 2d 932, 934 (Fla. 1980)[2] This case specifically rejected the contention that family member exclusions of coverage are void as against public policy. 387 So. 2d at 934 As recently as August 2011 the Supreme Court of Florida upheld and applied the family member exclusion. State Farm Mutual Automobile Insurance Company v. Menendez, 70 So. 3d 566 (Fla. 2011)

[2] Whether this specific accident or the specific lawsuit of the minor plaintiff against his mother, Linda G. is collusive is not at issue. Even if there is no reason to believe the accident or the potential lawsuit by the minor plaintiff against the mother would be collusive, that does not invalidate the public policy reason for the family member exclusion. Additionally, even if the accident itself is in no way collusive, there can be collusion to the extent of damages claimed by the plaintiff. In fact, the family member exclusion has been upheld even in a case where one party to the accident is deceased such that there is no opportunity for collusion. Amica Mutual Insurance Company v. Wells, 507 So. 2d 750, 752 (Florida 5th DCA 1987)

Family member exclusions of coverage have been upheld in other states as well as Florida. Walker v. American Family Mutual Insurance Company, 340 N.W.2d 599 (Iowa 1983); Porter v. Farmers Insurance Company of Idaho, 627 P.2d 311 (Idaho 1981); Allstate Insurance Company v. Boles, 481 N.E.2d 1096 (Ind. 1985) In addition to these jurisdictions, there is also a "mountain of appellate case law in Florida upholding family exclusion clauses..." Mitchell v. State Farm Mutual Automobile Insurance Company, 678 So.2d 418, 420 (Fla. 1996)

Nonetheless, even if Florida law applies in determining the validity of the family member exclusion South Carolina courts will not apply foreign law if it violates the public policy of South Carolina. Boone v. Boone, 546 S.E.2d 191, 193 (S.C. 2001) Accordingly, the *lex loci* rule is inapplicable where it would violate the public policy of South Carolina to apply foreign law. Boone, supra

The plaintiff's argument that the family member exclusion violates the public policy of South Carolina conflates two distinct concepts - allowing a suit for a tort versus liability coverage for that tort. Although it is the public policy of South Carolina to allow minors to sue parents for torts (§ 15-5-210) it does not follow that it is the public policy of South Carolina to require liability insurance for these torts. As noted in the order of the trial court, "the USAA policy does not prevent Inman G. from suing his mother Linda G. . Instead, it only provides that if that occurs Linda G. will have no liability coverage for that claim." (R. p. 9)

The Supreme Court of Idaho has noted this distinction by stating that:

> [t]he right to sue a spouse for injuries caused by that spouse is an entirely separate matter from the contractual obligation of an insurance company to pay for those injuries. The fact that there is or is not an insurance

> policy in force covering an accident does not affect the right of one spouse to sue and obtain a judgment against another spouse.

Porter v. Farmers Insurance Company of Idaho, 627 P.2d 311, 315 (Id. 1981); See also, Allstate Insurance Company v. Boles, 481 N.E.2d 1096 (Ind. 1985) The abolition of intra-family tort immunities has no effect on the validity of the family exclusion. Allstate Insurance Company v. Elwell, 513 A.2d 269, 273 (Me. 1986)

USAA does not dispute the right of the minor plaintiff to pursue a claim against his mother for personal injuries. But the minor plaintiff's right to sue his mother does not equate to a public policy requirement that there be liability coverage for such a lawsuit. Any rule otherwise would require liability insurance coverage for every type of lawsuit allowed under the law.

The courts of this state should be hesitant to invalidate a contractual provision expressly approved by the courts of another state and which does not clearly and explicitly violate the public policy of South Carolina. The fact that the law of two states may differ does not necessarily imply that the law of one state violates the public policy of the other. Dawkins v. State of South Carolina, 412 S.E.2d 407, 408 (S.C. 1991); Rauton v. Pullman Company, 191 S.E. 416 (S.C. 1937) Although some contracts may violate public policy, a sound public policy requires the enforcement of contracts deliberately made, which do not clearly contravene some positive law or rule of public morals. Courts should not annul contracts on doubtful grounds of public policy. In such matters it is better that the legislature should first speak. Wilson v. Builders Transport, 498 S.E.2d 674, 679 (S.C. App. 1998) As stated in Wilson, it is also the public policy of this state to enforce contracts deliberately made which do not clearly contravene some positive law or rule of public morals. That public policy will be violated by abrogating the family member exclusion.

III. THE TRIAL COURT CORRECTLY CONCLUDED THAT THE PLAINTIFF IS NOT ENTITLED TO UNDERINSURED MOTORIST COVERAGE.

The trial court's order explains that USAA's policy provides that an uninsured motor vehicle does not include any vehicle owned by or furnished or available for the regular use of the named insured or any family member. (R. p. 9) The plaintiff does not dispute the factual conclusion in the trial court's order that the 2002 Honda involved in the accident of July 19, 2009 was furnished for the regular use of Dorris G. 's wife, Linda G. . (R. p. 9) Accordingly, the plaintiff is not entitled to underinsured motorist coverage (again, under the USAA Florida policy underinsured motorist coverage is a type of uninsured motorist coverage) unless the plaintiff comes within both categories of an exception to the exclusion of uninsured motorist coverage. These exceptions are:

> (a) Part A of the policy (liability coverage) applies to your covered auto which is defined in the policy as any vehicle shown in the declarations, and
>
> (b) Liability coverage is excluded for any person other than you (the named insured and the spouse if a resident of the same household) for any damages sustained in the accident by you or any family member. (R. p. 93)

Neither exception to the exclusion of uninsured motorist coverage applies to the undisputed facts. First, liability coverage does not apply because of the family member exclusion. Second, liability coverage is not excluded for a person other than you or any family member - here, Doris G. and his wife Linda G. . Instead, liability coverage is excluded for the named insured and for any family member for damages sustained in the accident by the named insured or any family member.

The contention that the plaintiff is entitled to underinsured motorist coverage is based upon two invalid arguments. (Plaintiff's Initial Brief, p. 10-11) First, the plaintiff claims that the second part of the exception to the exclusion of underinsured motorist coverage is ambiguous. (Plaintiff's Initial Brief, p. 10) As explained in Part IV of this brief, the plaintiff never raised the issue of ambiguity to the trial court, the trial court never ruled on this issue and it is not preserved for appellate review. As explained in Part V of this brief the section is in any event not ambiguous.

The plaintiff further argues that the first requirement to come within the exception to the exclusion of uninsured motorist coverage is satisfied because liability coverage is available because the family member exclusion in the policy is void as against the public policy of South Carolina. (Plaintiff's Initial Brief, p. 11) As explained in Part II of this brief liability coverage is not available to the plaintiff because the family member exclusion has been approved in multiple decisions of the Florida appellate courts and it is not violative of the public policy of South Carolina.

Small v. New Hampshire Indemnity Company, 915 So. 2d 714 (Fla. 5th DCA 2005) is on point.[3] In that case the plaintiff was injured while riding as a passenger in the insured vehicle driven by her husband who was at fault in causing the accident. 915 So. 2d at 715 The insurer denied liability coverage based upon the family member exclusion. The plaintiff then sought underinsured motorist benefits by claiming that because the insurer had denied liability coverage for the husband, the husband was an uninsured motorist. The insurer denied uninsured motorist coverage because the vehicle did not meet the definition of an uninsured

[3] Again, the law of Florida governs the interpretation of contractual provisions in a policy issued in the State of Florida.

motor vehicle. The language in the New Hampshire Indemnity Company policy was virtually identical to the language in the USAA policy:

> Uninsured motor vehicle does not include any vehicle . . . owned by or furnished or available for the regular use of you or any "family member" unless it is a "covered auto" to which Part A of the policy applies and liability coverage is excluded for any person other than you or any "family member" for damages sustained in the accident by you or any "family member". 915 So. 2d at 715

As here, the plaintiff in Small argued this provision was ambiguous. 915 So. 2d at 716 The Florida District Court of Appeals disagreed and concluded that "it is not ambiguous." 915 So. 2d at 716 The court explained that the exclusion of uninsured motorist coverage excludes resident relative automobiles from the definition of uninsured motor vehicle but carves out an exception to the resident relative exception which applies when:

> (1) an individual who is not a resident relative is driving the insured vehicle, and
>
> (2) injures a resident relative, and
> (3) liability coverage is excluded for the driver under some other exclusion other than the resident's relative exclusion. 915 So. 2d at 716

See also, Amica Mutual Insurance Company v. Wells, 507 So. 2d 750 (Fla. 5th DCA 1987); Nationwide Mutual Fire Insurance Company v. Olah, 662 So. 2d 980 (Fla. 2nd DCA 1995) - where a vehicle is insured under the liability portion of the policy it cannot be uninsured under the UM portion of the policy. It is insured and it does not become uninsured because liability coverage may not be available to a particular individual. 662 So. 2d at 982; Reid v. State Farm Fire and Casualty Company, 352 So. 2d 1172 (Fla. 1978) - the family car does not become uninsured because liability coverage may not be available to a particular individual. 352 So. 2d at 1173 Additionally, courts have almost uniformly rejected claims by passengers to collect under both the vehicle's liability coverage and the underinsurance

coverage under the same policy. One cannot be insured with respect to liability coverage and underinsured with respect to UM coverage under the same policy. Travelers Insurance Company v. Warren, 678 So. 2d 324 (Fla. 1996)

Under the doctrine of *lex loci contractus* this court should follow the decisions of the Florida appellate courts and conclude the plaintiff is not entitled to uninsured motorist coverage.

IV. THE PLAINTIFF HAS NOT PRESERVED FOR APPELLATE REVIEW THE ARGUMENT IN THE PLAINTIFF'S BRIEF THAT USAA'S POLICY IS AMBIGUOUS.

The plaintiff now argues for the first time in his Initial Brief that a section of USAA's uninsured motorist coverage is ambiguous. (Plaintiff's Initial Brief, p 10-11) This argument was not asserted in the plaintiff's complaint or amended complaint. It was not mentioned in the plaintiff's memorandum in opposition to USAA's motion for summary judgment. The plaintiff never mentioned this argument at the hearing on June 6, 2011 on USAA's motion for summary judgment. This issue was not ruled upon by the trial court and the plaintiff never filed a Rule 59 motion for a ruling on this issue. Finally, the issue of ambiguity is not mentioned in the plaintiff's statement of issues on appeal. See, Rule 208(b)(1)(B), SCACR.

Issue preservation rules are designed to give the trial court a fair opportunity to rule on the issues, and thus provide an appellate court with a platform for meaningful appellate review. At a minimum, issue preservation requires that an issue be raised to and ruled upon by the trial judge. It is axiomatic that an issue cannot be raised for the first time on appeal. Imposing such a requirement on the appellant is meant to enable the lower court to rule properly after it has considered all relevant facts, law and arguments. Herron v. Century BMW, South

Carolina Supreme Court Opinion 26805 (refiled December 19, 2011) Preserving issues for appellate review is a fundamental component of appellate practice. McClurg v Deaton, 716 S.E.2d 887, 888, footnote 1 (S.C. 2011) The plaintiff has therefore failed to preserve for appellate review the issue of whether USAA's policy is ambiguous and this issue cannot be addressed for the first time on appeal.

V. USAA'S POLICY IS NOT AMBIGUOUS.

The law of Florida on construction of insurance policies is similar to that of South Carolina. In interpreting an insurance contract the courts of Florida are bound by the plain meaning of a contract's text. If the language used in an insurance policy is plain and unambiguous the court must interpret the policy in accordance with the plain meaning of the language used so as to give effect to the policy as it was written. A provision is not ambiguous, however, simply because it is complex or requires analysis. State Farm Mutual Automobile Insurance Company v. Menendez, 70 So. 3d 566, 569, 570 (Fla. 2011)

The provision the plaintiff now claims is ambiguous was held not to be ambiguous in Small v. New Hampshire Indemnity Company, 915 So. 2d 714 (Fla. 5th DCA 2005). In response to the plaintiff's argument that the uninsured motorist exclusion was not only ambiguous but incomprehensible, the Fifth District Court of Appeal of Florida concluded the clause is not ambiguous. 915 So. 2d at 716 As explained in Section III, the uninsured motorist provision at issue in Small is identical to the uninsured motorist provision in USAA's policy.

CONCLUSION

This appeal involves an insurance policy issued in the State of Florida to an insured with a Florida address insuring a car principally garaged at an address in Florida. (Declarations Page of Policy 02219 99 87U 7102 3) (R. p. 66) Under South Carolina's

conflict of law principals, the law applicable to construing and interpreting a contract is the law of the state in which the contract is issued. Accordingly, Florida law, not South Carolina law, determines issues about the construction and validity of the family member exclusion in USAA's policy.

The Florida appellate courts have repeatedly upheld the family member exclusion against challenges that it violates public policy. Nonetheless, if a provision not violative of the public policy of Florida is violative of the public policy of South Carolina it will not be enforced in the courts of South Carolina. However, the family member exclusion does not violate the law of South Carolina because it does not prevent a minor from suing a parent. Instead, the family member exclusion simply provides that there is no liability coverage for the defendant in such a lawsuit. Additionally, South Carolina has a public policy of enforcing contracts as written and an abrogation of the family member exclusion which in no way prevents the minor plaintiff from suing his mother would violate that public policy.

The other argument advanced by the plaintiff is entitlement to underinsured motorist coverage which under the USAA policy is a type of uninsured motorist coverage. As explained by the trial court that coverage is inapplicable to the plaintiff's claim. Additionally, the provision excluding uninsured motorist coverage to the plaintiff is not ambiguous as explained by a Florida appellate court which has construed that very provision. In any event, the plaintiff failed to preserve the issue of ambiguity for appellate review by raising the issue to the trial court and having the issue ruled upon by the trial court. For all of these reasons USAA respectfully requests that the order of the trial court be affirmed.

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February 6, 2012

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In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY

Court of Common Pleas

Carmen T. Mullen, Circuit Court Judge

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v.

United Services Automobile Association,..... Respondent.

CERTIFICATE OF COMPLIANCE WITH SCACR 211(b)

I hereby certify that the Respondent's Final Brief complies with SCACR 211(b).

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PROOF OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, counsel for USAA, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by Federal Express, to the following addresses:

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February 8, 2012