

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable George C James, Jr , Circuit Court Judge

Case No 2009-CP-40-8344

Delores Williams, Personal
Representative of the Estate of
Edward Murry, Deceased, and
Matthew Whitaker, Jr , as
Personal Representative of the
Estate of Annie Mae Murry,
Deceased,

Appellants,

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SC Court of Appeals

v

GEICO Employees Insurance
Company,

Respondent

RECORD ON APPEAL

William H Bowman, III
ROGERS, TOWNSEND & THOMAS, PC
220 Executive Center Drive
Columbia, South Carolina 29210
(T) 803 771 7900
(F) 803 343 7017

ATTORNEY FOR RESPONDENT

Terry E Richardson, Jr
Christopher J Moore
RICHARDSON, PATRICK, WESTBROOK &
BRICKMAN, LLC
1730 Jackson Street
Barnwell, South Carolina 29812
T 803 541 7850

-AND-

Robert A McKenzie
McDONALD, McKENZIE, RUBIN, MILLER
AND LYBRAND, LLP
1704 Main Street, 2nd Floor
Columbia, South Carolina 29202
T 803 252 0500

ATTORNEYS FOR APPELLANTS

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STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Delores Williams, Personal
Representative of the Estate of Edward
Murry, Deceased, and Matthew Whitaker,
Jr , as Personal Representative of the
Estate of Annie Mae Murry, Deceased,

Plaintiffs,

vs

Government Employees Insurance
Company,

Defendant

IN THE COURT OF COMMON PLEAS

DOCKET NUMBER 09-CP-40-8344

ORDER GRANTING JUDGMENT TO
DEFENDANT

This matter was tried without a jury on May 11, 2011. Appearing for Plaintiffs was Robert A. McKenzie, Esquire and Matthew D. Hamrick, Esquire and appearing for Defendant was William H. Bowman, III Esquire.

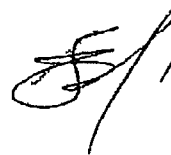
After considering the pleadings, the Stipulation of Facts, the arguments of counsel, and the evidence submitted at trial, the Court enters judgment in favor of the Defendant.

FINDINGS OF FACT

1 Defendant GEICO issued a policy of motor vehicle liability insurance to Edward Murry and Annie Murry under policy number 0685-44-55 04, effective September 2, 2006 until March 2, 2007 covering among other vehicles a 1999 Jaguar VIN No SAJKD604XXC871601 (hereinafter referred to as the Policy.)

2 On September 3, 2006, Annie Mae Murry and Edward Murry were the sole occupants of the 1999 Jaguar insured under the Policy when it was struck by a train.

Page 1 of 6



3 Annie Mae Murry and Edward Murry both died from injuries resulting from the collision with the train

4 It is unknown and disputed by the heirs and statutory beneficiaries of Annie Mae Murry and Edward Murry as to who was driving the Jaguar and who was riding as a passenger at the time of the collision with the train

5 Plaintiffs have agreed or will hereafter agree to a disposition of any liability insurance proceeds payable from the Policy as a result of the accident on September 3 2006, upon completion of this litigation Underinsurance proceeds on the other vehicles have been agreed upon and tendered

6 Defendant takes the position that only Fifteen Thousand and no/100 (\$15 000 00) Dollars is owed to Plaintiffs under the liability section of the Policy as a result of the following provision under Exclusions

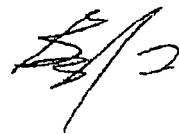
We do not provide liability coverage under Exclusions 1, 2, 3, and 8, in excess of the minimum limits of liability required by South Carolina law

1 ***Bodily injury*** to any ***insured*** or any ***relative*** of an ***insured*** residing in his household is not covered

Exclusion 1 above is hereinafter referred to as 'the Family Member Exclusion

7 Plaintiffs contend that the Family Member Exclusion is not an exclusion but a retraction of coverage Plaintiff cites to the declarations page of the Policy which shows liability limits of \$100,000/\$300,000 per person and asserts that there is an ambiguity in coverage when reading the declaration page and the Policy provisions together Plaintiffs take the position that, in order for the Family Member Exclusion to be effective, the declarations page should have a notation showing the reduction in liability coverage if an

Page 2 of 6



insured or resident relative is injured Plaintiffs claim that as a result of this ambiguity the Policy should be construed in their favor and that they are entitled to the full limits of liability coverage of One Hundred Thousand and no/100 (\$100,000 00) Dollars under the Policy

Based upon the Findings of Fact, I find and conclude as a matter of law as follows

CONCLUSIONS OF LAW

1 An insurance contract is subject to the general rules of contract construction *Universal Underwriters Ins Co v Metropolitan Property and Life Ins Co* 298 S C 404 406, 380 S E 2d 858, 860 (Ct App 1989) Where the terms of a contract are clear and unambiguous then its construction is for the Court However, where the terms of the contract are ambiguous, then the question of the parties intent must be submitted to the fact finder *Hansen v United Services Automobile Assoc* 350 S C 62, 68 565 S E 2d 114 116-117 (Ct App 2002)

2 A contract is ambiguous when it is capable of more than one meaning when viewed objectively by a reasonably intelligent person who has examined the context of the entire integrated agreement and who is cognizant of the customs practices usages and terminology as generally understood in the particular trade or business *Hansen v United Services Automobile Assoc* 350 S C 62 68 565 S E 2d 114 117 (Ct App 2002) , *Universal Underwriters Ins Co v Metropolitan Property and Life Ins Co* , 298 S C 404, 406 380 S E 2d 858 860 (Ct App 1989)



3 In construing an insurance contract, all of its provisions rather than isolated portions should be considered *Hansen v United Services Automobile Assoc* 350 S C 62, 68, 565 S E 2d 114, 117 (Ct App 2002) , *Universal Underwriters Ins Co v Metropolitan Property and Life Ins Co* , 298 S C 404 406 380 S E 2d 858 860 (Ct App 1989)

4 Where an insurance contract is ambiguous, or where it is capable of two reasonable interpretations the construction which is most favorable to the insured should be adopted *Hansen v United Services Automobile Assoc* , 350 S C 62, 68, 565 S E 2d 114 117 (Ct App 2002)

5 The declarations page which lists a \$100,000/\$300 000 per person liability limit, cannot be read in isolation to create an ambiguity but instead must be construed with all of the Policy provisions

6 Under South Carolina law, an insurer may limit its liability and impose whatever conditions it desires upon an insured provided that the limitations or conditions are not in contravention of any statute or public policy *Hansen v United Services Automobile Assoc* , 350 S C 62, 71-72, 565 S E 2d 114, 118 (Ct App 2002), *United Services Automobile Assoc v Markosky*, 340 S C 223 226 530 S E 2d 660 662 (Ct App 2000), *Universal Underwriters Ins Co v Metropolitan Property and Life Ins Co* 298 S C 404 409 380 S E 2d 858 861 (Ct App 1989)

7 The South Carolina Motor Vehicle Financial Responsibility Act (hereinafter referred to as 'the Act') requires that an automobile insurance policy contain a provision insuring the persons defined as insured against loss from the liability imposed

by law for damages arising out of the ownership, maintenance or use of a motor vehicle and specifies minimum limits of liability coverage that a policy must provide S C Code Ann § 38-77-140 At the same time the Act permits coverage beyond the mandatory minimum limits

8 A policy provision that limits coverage to the statutory minimum is not contrary to public policy and does not violate the Act *Hansen v United Services Automobile Assoc* 350 S C at 72 565 S E 2d at 118 199 (Ct App 2002) *Universal Underwriters Ins Co v Metropolitan Property and Life Ins Co* , 298 S C at 410, 380 S E 2d at 861 862 (Ct App 1989) In *Hansen*, the court concluded that a family member exclusion that limited liability coverage to the statutory minimum limits was valid and enforceable

9 The Policy provides liability coverage in excess of the minimum limits However, the Family Member Exclusion cited above specifically limits liability coverage to the minimum limits required by South Carolina law where there is bodily injury to any insured or any relative of an insured residing in his household The Family Member Exclusion is unambiguous and when read together with the rest of the Policy including the declarations page is capable of only one reasonable interpretation

10 Both Annie Mae Murry and Edward Murry are insureds under the Policy Regardless of whether Annie Mae Murry or Edward Murry was driving the accident resulted in bodily injury to an insured

11 The Family Member Exclusion in the Policy does not violate public policy or the Act and is therefore valid and applies to the accident of September 3 2006



12 On June 14, 2006, S C Code Ann § 38 77 140 was amended to require minimum liability coverage of \$25 000 00 for policies issued or renewed on or after January 1 2007 Prior to January 1, 2007, the statute required minimum limits of liability coverage of \$15 000 00 Because the Policy was issued on September 2 2006 the \$15,000 00 minimum limit applies to this situation

13 The Family Member Exclusion applies to limit Plaintiffs' recovery of liability proceeds under the Policy to the statutory minimum limits of \$15 000 00

CONCLUSION

I find that Defendant is entitled to judgment that the Family Member Exclusion in the Policy applies to limit liability coverage to \$15,000 00 for damages arising out of the accident of September 3, 2006

IT IS THEREFORE ORDERED that \$15 000 00 in liability coverage is due to Plaintiffs under the Policy

AND IT IS SO ORDERED

Sumter, South Carolina

Dated

5/26/11


George C. James Jr
Circuit Court Judge



STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) THIRD JUDICIAL CIRCUIT
09-CP-40 8344

Deloris Williams, Personal Representative)
of the Estate of Edward Murry Deceased,)
and Matthew Whitaker, Jr, as Personal)
Representative of the Estate of Annie)
Mac Murry, Deceased,)

Plaintiffs)

vs)

GEICO Employees Insurance Company)

Defendant)

ORDER

RICHLAND COUNTY
FILED
2011 JUL -6 PM 2.12
JEANETTE V McBRIDE
C C P & GS

This matter is before the court pursuant to plaintiffs' timely filed motion to reconsider this court's ruling that the GEICO family member step-down provision in the plaintiffs' insurance policy is valid under South Carolina law. A hearing was held at the Sumter County Courthouse on June 21, 2011. Matthew D. Hambrick, Esquire and Robert A. McKenzie, Esquire, appeared for the plaintiffs and William H. Bowman, III Esquire, appeared for the defendant. In the present motion, plaintiffs seek a ruling from this court that the GEICO family member step-down exclusion is invalid as it contradicts S.C. Code Ann. §38-77-142. For the reasons set forth below, the motion is denied.

GEICO argues that the §38-77-142 argument is not properly presented to the court as a Rule 59, SCRPC motion to reconsider. GEICO claims the plaintiffs have heretofore focused their argument on the ground that the policy, when read with the exclusion, was ambiguous and should therefore be construed in favor of the insured.

2/1
SCANNED

The court requested proposed orders from both parties after the hearing. Plaintiffs submitted a proposed order to the court on May 25, 2011 which alluded to the step down provision being in violation of §38-77-142 and against public policy. There is no authority addressing whether raising an argument in a proposed order without previously presenting the argument to the court does or does not preserve the argument for reconsideration. This court need not address this issue, as it finds that the motion should be denied on the merits.

GEICO maintains the issue at hand was addressed in Hansen v United Services Automobile Assoc., 350 S C 62, 565 S E 2nd 114 (Ct App 2002) and that the inquiry ends there. However, §38-77-142 became effective on March 1, 1999, well after the May 31, 1998 accident in Hansen, and certainly after the Hansen policy was issued. As such Hansen does not apply to §38-77-142.

The pertinent part of §38-77-142(A)¹ reads as follows: "No policy or contract of bodily injury may be issued or delivered in this State to the owner of the vehicle unless the policy contains a provision insuring the named insured and any other person using or responsible for the use of the motor vehicle with the expressed or implied consent of the named insured against liability for death or injury sustained or loss or damage incurred **within the coverage of the policy**." (emphasis added). S C Code Ann §38-77-142(C) provides that 'any endorsement, provision, or rider which purports or seeks to limit or reduce the coverage afforded by the provisions required by this section is void.'

The controlling issue is our legislature's intent in including the words "within the coverage of the policy" in subsection (A) and the words "limit or reduce" in subsection

¹ Subsection (B) contains very similar language and the analysis would be the same.



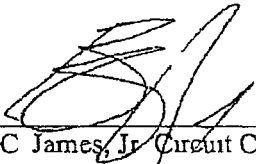
(C) It is the opinion of this court that had the legislature intended §38 77 142 to forbid step-down akin to the GEICO family member provision, which effectively reduce coverage in certain scenarios to the minimum coverage required by §38 77-140 the legislature could have clearly stated this

Does the word "coverage" in the statute mean monetary coverage or coverage provisions in general, or both? The same question must be asked of the words "limit" and "reduce" in (C). In my view, the legislature had wanted to enact the limitation urged by the plaintiffs instead of using the words "within the coverage of the policy", it would have used words such as "for no less than the policy limits shown on the declarations page"

Again §38 77-142 requires every policy issued to insure the named insured and permissive users against liability for death or injury sustained or loss or damage incurred within the coverage of the policy. I find that within the coverage of the policy does not mandate coverage up to the maximum amount of liability coverage under a policy when there is a family member claimant. As the coverage afforded does not fall below the minimum coverage required under §38-77 140, the step down does not run afoul of public policy as revealed in our automobile insurance statutes. (See Hansen, 350 S C at 72)

The plaintiffs' motion is therefore denied

AND IT IS SO ORDERED


George C. James, Jr. Circuit Court Judge
Third Judicial Circuit

Sumter South Carolina
June 30, 2011



STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Delores Williams, Personal
Representative of the Estate of
Edward Murry Deceased, and
Matthew Whitaker, Jr , as Personal
Representative of the Estate of Annie
Mae Murry, Deceased,

Plaintiff

-vs-

Government Employees Insurance
Company

Defendant

IN THE COURT OF COMMON PLEAS

CASE NUMBER 09-CP-40-_____

COMPLAINT
(NON-JURY)

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CLERK OF COURT
C C P & G S

FILED

The Plaintiffs complaining of the Defendant would respectfully show unto the Court

1 Delores Williams is a resident and citizen of the State of Florida and is the duly appointed and acting Personal Representative of the Estate of Edward Murry deceased, a former Richland County resident, who died on October 18, 2006, as the result of an automobile/train collision that occurred in Richland County on September 3, 2006

2 Matthew Whitaker, Jr is a resident of Richland County, South Carolina and is the duly appointed and acting Personal Representative of the Estate of Annie Mae Murry, deceased, who died on September 3, 2006, as a result of the same automobile/train collision of September 3 2006 which caused the death of Edward Murry

3 Government Employees Insurance Company (hereinafter 'GEICO') is a corporation organized under and existing by virtue of the laws of the State of Maryland and is an insurance company writing coverages, among others, liability coverage for protection of its insureds arising from motor vehicle accidents

4 That on September 3, 2006, Edward Murry and Annie Mae Murry were passengers in a motor vehicle owned by them and insured by GEICO under GEICO policy number 0685-44-55-04 with coverages, limits, terms and conditions as expressed in the policy which policy is incorporated herein by reference and made a part hereof

5 That the heirs and statutory beneficiaries of the two estates pursuant to §62-3-912 Code of Laws of South Carolina (1976) without making claims against either estate agreed that they would divide the liability coverage proceeds under policy number 0685-44-55-04 into five (5) equal shares since Mr. Murry had three (3) children and Mrs. Murry had two (2) children, neither of whom were the child of Mr. and Mrs. Murry together

6 That GEICO in order to avoid litigation and without requiring a determination as to whom was driving the vehicle in question which was insured under the GEICO policy agreed to pay the coverage limit under the policy in shares as agreed upon by the five (5) heirs and statutory beneficiaries of the two estates

7 That GEICO agreed to pay and tendered the sum of \$15,000.00 it being GEICO's position that this sum is the amount payable under the liability portion of its policy but it further agreed that the parties could reserve and litigate the contention of the two (2) estates that there was in fact \$100,000.00 of liability coverage owed under the policy

8 That Plaintiffs are informed and believe that pursuant to the terms of the policy construed in accordance with law of the State of South Carolina the sum of \$100,000.00 and not just \$15,000.00 is owed under the contract pursuant to the parties' agreement that GEICO would pay the liability limit owed under the policy through the two (2) estates to the five (5) heirs and statutory beneficiaries as enumerated above

9 That Plaintiffs are informed and duly believe that a justiciable controversy exists between the parties as to the construction of the insurance contract and pursuant to the uniform Declaratory Judgment Act, §§15-53 10, et seq S C Code Ann (1976), the Court should declare the rights and obligations of the parties

WHEREFORE the Plaintiffs pray that the Court inquire into the matters herein mentioned and issue its order granting judgment to the Plaintiffs in the sum of \$85 000 00 this being the difference between the \$15 000 00 paid by GEICO and the \$100,000 00 claimed by the Plaintiffs to be owed under the policy

RICHARDSON, PATRICK, WESTBOOK
& BRICKMAN, LLC
1017 Chuck Dawley Boulevard
Mt Pleasant, South Carolina 29464
(843) 727-6568
(843) 727-3103

BY Matthew D. Hamrick *Matthew D. Hamrick*
MATTHEW D HAMRICK
ATTORNEY FOR DELORES WILLIAMS,
PERSONAL REPRESENTATIVE OF THE
ESTATE OF EDWARD MURRY, DECEASED

AND

McDONALD, McKENZIE, RUBIN
MILLER AND LYBRAND, LLP
1704 Main Street, 2nd Floor
Post Office Box 58
Columbia, South Carolina 29202
(803) 252-0500
(803) 929-3530 fax

BY



ROBERT A. McKENZIE

ATTORNEY FOR MATTHEW WHITAKER JR
AS PERSONAL REPRESENTATIVE OF THE
ESTATE OF ANNIE MAE MURRY DECEASED

Columbia South Carolina

November 17, 2009

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Delores Williams, Personal
Representative of the Estate of Edward
Murry, Deceased, and Matthew Whitaker,
Jr , as Personal Representative of the
Estate of Annie Mae Murry, Deceased,

Plaintiffs,

vs

GEICO Employees Insurance Company,

Defendant

IN THE COURT OF COMMON PLEAS

DOCKET NUMBER 09-CP-40-8344

ANSWER OF DEFENDANT
(Jury Trial Waived)

The Defendant answering the Complaint herein would respectfully allege

FOR A FIRST DEFENSE

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

2 The Defendant admits upon information and belief the allegations of
Paragraphs 1 and 2 of the Complaint

3 Answering the allegations of Paragraph 3 of the Complaint, the Defendant
admits that it is a corporation domiciled in the State of Maryland and that it is authorized
to do business in the State of South Carolina

4 Answering the allegations of Paragraph 4 of the Complaint the Defendant
admits that it issued a policy of motor vehicle liability insurance coverage to Edward
Murry and Annie Mae Murry under policy number 0685-44-55-04 effective September
2 2006 until March 2 2007 and that upon information and belief, on September 3
2006 Annie Mae Murry and Edward Murry were occupants of a 1994 Jaguar VIN No

COPY

SAJKD604XXC871601 insured under the policy when the vehicle was struck by a train Defendant craves reference to the policy of insurance for an accurate description of its terms, conditions, obligations and insuring agreements

5 The Defendant admits upon information and belief the allegations of Paragraph 5 of the Complaint

6 Answering the allegations of Paragraph 6 of the Complaint the Defendant admits that pursuant to the policy terms conditions, and obligations it agreed to pay the liability insurance coverage limit of \$15 000 00 to be apportioned in shares as agreed upon by the five (5) heirs and statutory beneficiaries of the two estates

7 The Defendant admits the allegations of Paragraph 7

8 The Defendant denies the allegations of Paragraphs 8 and 9 of the Complaint

FOR A SECOND DEFENSE

9 The Defendant alleges that under the terms and conditions of the policy it does not provide liability coverage for bodily injury to any insured or any relative of an insured residing in his or her household in excess of the minimum limits of liability required by South Carolina law Because Edward Murry and Annie Mae Murry were named insureds and resident relatives under the policy only one is entitled to the minimum limits of coverage for the accident on September 3 2006 Accordingly the Defendant has paid the minimum limits of liability of \$15 000 00 as required by the policy and by statute and has no further contractual obligations under its policy The Defendant craves reference to Exclusion No 1 under Section I Liability Coverages for an accurate description of its terms conditions and obligations

FOR A THIRD DEFENSE

10 The Defendant alleges that the Plaintiff's Complaint fails to state facts sufficient to constitute a cause or causes of action against the Defendant which the Defendant alleges pursuant to Rule 12(b)(6) of the *South Carolina Rules of Civil Procedure*

WHEREFORE having fully answered, the Defendant demands that the Complaint be dismissed with prejudice

ROGERS TOWNSEND & THOMAS PC

By William H Bowman, III
William H Bowman, III
P O Box 100200 Columbia SC 29202
(803)771-7900, bbowman@rtt-law.com
Attorney for Defendant

Columbia South Carolina
December 15 2009

CERTIFICATE OF MAILING
I hereby certify that a copy of the foregoing pleading was mailed
to all counsel of record in this proceeding December 14 2009

Cathy Williams

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Delores Williams, Personal
Representative of the Estate of Edward
Murry, Deceased, and Matthew Whitaker,
Jr as Personal Representative of the
Estate of Annie Mae Murry, Deceased,

Plaintiffs,

vs

GEICO Employees Insurance Company,

Defendant

IN THE COURT OF COMMON PLEAS

DOCKET NUMBER 09-CP-40-8344

PRE-TRIAL BRIEF

Defendant submits this pre-trial brief pursuant to Rule 16(c), SCRCP

(1) CONCISE, NON-ARGUMENTATIVE STATEMENT OF THE FACTS OF THE CASE

Defendant GEICO issued a policy of motor vehicle liability insurance to Edward Murry and Annie Mae Murry under policy number 0685-44-55-04 effective September 2 2006 until March 2 2007 covering a 1999 Jaguar VIN No SAJKD604XXC871601 (the Policy)

On September 3, 2006 Annie Mae Murry and Edward Murry were the sole occupants of the 1999 Jaguar insured under the policy when it was struck by a train Both Annie Mae Murry and Edward Murry died from injuries resulting from the collision with the train It is unknown and disputed by the heirs and statutory beneficiaries of Annie Mae Murry and Edward Murry as to who was driving the Jaguar and who was riding as a passenger at the time of the collision with the train

Plaintiffs have agreed to divide into five equal shares any liability insurance proceeds payable from the Policy as a result of the accident on September 3, 2006. As a result, a share would be paid to each of the three (3) children of Edward Murry and each of the two (2) children of Annie Mae Murry. GEICO has already paid to the Plaintiffs the sum of Fifteen Thousand and 00/100ths Dollars (\$15,000.00), representing the amount of liability insurance proceeds that GEICO believes is due under the policy while Plaintiffs take the position that the sum of One Hundred Thousand and 00/100ths (\$100,000.00) is owed under the policy.

(2) OBJECTIVE STATEMENT OF THE FACTS IN CONTROVERSY

No facts are in controversy. The disputed issues are legal.

(3) LEGAL ISSUES INVOLVED

The only legal issue involved is whether Plaintiffs are entitled to \$15,000.00 or \$100,000.00 in liability insurance proceeds under the Policy. The liability insurance section of the Policy contains a family member exclusion. The family member exclusion is designed to reduce liability coverage to the statutory minimum limits where there is bodily injury to an insured or family member resulting from an accident caused by another insured under the Policy. Under Exclusions, the Policy provides:

We will not defend any suit for damage if one or more of the exclusions listed below applies. We do not provide liability coverage, under Exclusions 1, 2, 3, and 8, in excess of the minimum limits of liability required by South Carolina law. We do not provide any liability coverage for the remaining Exclusions.

1 Bodily injury to any insured or any relative of an insured residing in his household is not covered.

[Exhibit A at p. 4]

Under South Carolina law, an insurer may limit its liability provided that the limitation is not in contravention of any statute or public policy. *Hansen v. United Services Automobile Assoc.*, 350 S.C. 62, 565 S.E.2d 114 (Ct. App. 2002), *United Services Automobile Assoc. v. Markosky*, 340 S.C. 223, 530 S.E.2d 660 (Ct. App. 2000), *Universal Underwriters Ins. Co. v. Metropolitan Property and Life Ins. Co.*, 298 S.C. 404, 380 S.E.2d 858 (Ct. App. 1989). A policy provision that limits coverage to the statutory minimum is not contrary to public policy. *Id.*

While an insurer may provide additional coverage, only the minimum limit is mandatory. See *Markosky*. The Policy provides liability coverage in excess of the minimum limits. However, the family member exclusion limits liability coverage to the minimum limits where there is bodily injury to an insured or resident relative. Regardless of whether Annie Mae Murry or Edward Murry was driving, the accident resulted in bodily injury to an insured and the family member exclusion therefore applies.

In *Hansen*, the court upheld a family member exclusion that limited liability coverage to an insured or family member to the minimum limits required by law. Although the insured purchased liability coverage of 200K, the policy limited liability coverage to family members to the mandatory minimum. The court held that the family member exclusion was valid and enforceable.

At the time the Policy was issued, the South Carolina Motor Vehicle Financial Responsibility Act ("the Act") required that an automobile insurance policy provide minimum liability coverage of \$15,000.00. S.C. Code Ann. § 38-77-140 (2006). On June 14, 2006, the statute was amended to require minimum liability coverage of

\$25,000.00 for policies issued or renewed on or after January 1, 2007. Since the policy was issued on September 2, 2006, the \$15,000.00 minimum liability amount applies to this situation.

Because the family member exclusion provides for liability coverage at the statutory minimum limits, it does not violate public policy or the Act and is valid and enforceable. As a result, Plaintiffs are not entitled to any further liability coverage proceeds under the Policy as the \$15,000.00 statutory minimum limits have already been paid.

(4) LISTING OF EXHIBITS AND WITNESSES

a Exhibits

South Carolina Family Automobile Insurance Policy issued by GEICO to Edward Murry and Annie Mae Murry under policy number 0685-44-55-04 effective September 2, 2006 until March 2, 2007 covering a 1999 Jaguar VIN No. SAJKD604XXC871601

b Witnesses

None

(5) ANY UNUSUAL PROBLEMS RELATING TO EVIDENCE TO BE INTRODUCED

None anticipated at this time

(6) ANY UNUSUAL QUESTION OR MATTER WHICH SHOULD BE BROUGHT TO THE ATTENTION OF THE COURT

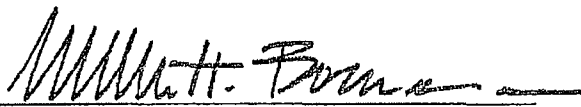
None anticipated at this time

(7) SETTLEMENT NEGOTIATIONS

None

All of which is respectfully submitted

ROGERS TOWNSEND & THOMAS PC

By 
William H Bowman, III
P O Box 100200, Columbia, SC 29202
(803) 771 7900, bbowman@rtt-law.com
Attorney for the **Defendant**

Columbia, South Carolina
May 10 2011

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

**Delores Williams, Personal
Representative of the Estate of Edward
Murry, Deceased, and Matthew Whitaker,
Jr , as Personal Representative of the
Estate of Annie Mae Murry, Deceased,**

Plaintiffs,

vs

GEICO Employees Insurance Company,

Defendant

IN THE COURT OF COMMON PLEAS

DOCKET NUMBER 09-CP-40-8344

STIPULATION OF FACTS

1 Defendant GEICO issued a policy of motor vehicle liability insurance to Edward Murry and Annie Mae Murry under policy number 0685-44-55-04 effective September 2, 2006 until March 2, 2007, covering, among other vehicles a 1999 Jaguar VIN No SAJKD604XXC871601 Attached as Exhibit A is a true and accurate copy of said policy

2 On September 3, 2006, Annie Mae Murry and Edward Murry were the sole occupants of the 1999 Jaguar insured under the policy when it was struck by a train

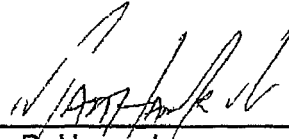
3 Annie Mae Murry and Edward Murry both died from injuries resulting from the collision with the train

4 It is unknown and disputed by the heirs and statutory beneficiaries of Annie Mae Murry and Edward Murry as to who was driving the Jaguar and who was riding as a passenger at the time of the collision with the train

5 The Plaintiffs have agreed or will hereafter agree to a disposition of any liability insurance proceeds payable from GEICO's policy as a result of the accident on

September 3, 2006 upon completion of this litigation Underinsurance proceeds on the other vehicles have been tendered and agreed upon

6 GEICO has already agreed to pay to the Plaintiffs the sum of Fifteen Thousand and no/100 Dollars (\$15,000 00) representing the amount of liability insurance proceeds that GEICO believes is due under the policy while Plaintiffs take the position that the sum of One Hundred Thousand and no/100 (\$100 000 00) of liability insurance proceeds is owed under the policy



Matthew D. Hamrick
Richardson, Patrick, Westbrook, & Brickman, LLC
1017 Chuck Dawley Boulevard
Mt Pleasant SC 29464
(843) 727-6568
Attorney for Plaintiff Delores Williams Personal
Representative of the Estate of Edward Murry
Deceased



Robert A. McKenzie
McDonald, McKenzie, Rubin, Miller & Lybrand, LLP
P O Box 58
Columbia SC 29202
(803) 252-0500
Attorney for Plaintiff Matthew Whitaker Jr, Personal
Representative of the Estate of Annie Mae Murry
Deceased



William H. Bowman, III
Rogers Townsend & Thomas, PC
P O Box 100200, Columbia, SC 29202
(803) 771-7900, bbowman@rtt-law.com
Attorney for Government Employees Insurance
Company

Columbia, South Carolina
Dated 5-12-2011

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Delores Williams, Personal Representative of
the Estate of Edward Murry, Deceased, and
Matthew Whitaker, Jr, as Personal
Representative of the Estate of Annie Mae
Murry, Deceased,

Plaintiffs,

vs

GEICO Employees Insurance Company,

Defendant

IN THE COURT OF COMMON PLEAS

DOCKET NUMBER 09-CP-40-8344

NOTICE OF MOTION AND MOTION
FOR RECONSIDERATION, NEW
TRIAL, AND/OR TO ALTER OR
AMEND JUDGMENT PURSUANT TO
RULE 59, SCRPC

FILED
2011 JUN -9 AM 11:54
CLERK OF COURT
C.C.P. & S.

Plaintiffs Delores Williams, Personal Representative of the Estate of Edward Murry and Matthew Whitaker, Jr, Personal Representative of the Estate of Annie Mae Murry by and through their respective undersigned attorneys hereby respectfully move for the Court's reconsideration of its Order Granting Judgment to Defendant (the "Order"), for a new trial and/or to alter or amend said Order pursuant to Rule 59 SCRPC. Plaintiffs received notice of the Order on May 31, 2011.

In addition to Plaintiffs' arguments made by their proposed order submitted as requested by the Court, which are incorporated here by reference, Plaintiffs would respectfully request that the Court consider the attached Orders of another Circuit Court, of which Plaintiffs' counsel became aware after the non-jury trial of this case. See Order of Hon. Carmen T. Mullen in *Benton v Progressive Cas. Ins. Co.*, 2006-CP-15-298 (June 17, 2008) attached hereto as Exhibit 1, and Order of Hon. Carmen T. Mullen in *South Carolina Farm Bureau Mut. Ins. Co. v. Poston*, 2009-CP-15-801 (Oct. 12, 2010), attached hereto as Exhibit 2.

Directly on point with regard to the type of purported exclusion at issue in the case at bar, in the *Benton* case an automobile liability insurer asserted that a "family member exclusion"

step-down provision lowered the available liability insurance limits from the amount stated in the policy to the South Carolina mandated minimum limits. The Circuit Court in *Benton* held that the purported step-down provision was in violation of S.C. Code Ann. § 38-77-142 and was therefore against public policy and void.

Similarly, in the *Poston* case an automobile liability insurer asserted that a “permissive driver limitation” step-down provision lowered the available liability insurance limits from the amount stated in the policy to the South Carolina mandated minimum limits. The Circuit Court in *Poston* held that the purported step-down provision was in violation of S.C. Code Ann. § 38-77-142 and was therefore against public policy and void.

GEICO’s purported family member exclusion is in violation of S.C. Code Ann. § 38-77-142 and is therefore void and against public policy. This statute states, in pertinent part:

SECTION 38-77-142 Policies or contracts of bodily injury or property damage liability insurance covering liability, required provisions

(A) No policy or contract of bodily injury or property damage liability insurance covering liability arising from the ownership, maintenance, or use of a motor vehicle may be issued or delivered in this State to the owner of the vehicle or may be issued or delivered by an insurer licensed in this State upon a motor vehicle that is principally garaged, docked, or used in this State unless the policy contains a provision insuring the named insured and any other person using or responsible for the use of the motor vehicle with the expressed or implied consent of the named insured against liability for death or injury sustained or loss or damage incurred within the coverage of the policy or contract as a result of negligence in the operation or use of the vehicle by the named insured or by any such person. Each policy or contract of liability insurance or endorsement to the policy or contract, insuring private passenger automobiles principally garaged, docked, or used in this State that has as the named insured an individual or husband and wife who are residents of the same household and that includes with respect to any liability insurance provided by the

policy contract, or endorsement for use of a nonowner automobile a provision requiring permission or consent of the owner of the automobile for the insurance to apply

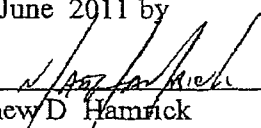
(B) No policy or contract of bodily injury or property damage liability insurance relating to the ownership, maintenance or use of a motor vehicle may be issued or delivered in this State to the owner of a vehicle or may be issued or delivered by an insurer licensed in this State upon a motor vehicle principally garaged or used in this State without an endorsement or provision insuring the named insured, and any other person using or responsible for the use of the motor vehicle with the expressed or implied consent of the named insured, against liability for death or injury sustained, or loss or damage incurred within the coverage of the policy or contract as a result of negligence in the operation or use of the motor vehicle by the named insured or by any other person

(C) Any endorsement, **provision** or rider attached to or included in any policy of insurance **which purports or seeks to limit or reduce the coverage afforded by the provisions required by this section is void** (emphasis added)

S C Code Ann § 38-77-142 GEICO's family member step-down provision purports or seeks to limit or reduce the coverage afforded by the provisions required by S C Code Ann § 38-77-142 (A) and (B), and therefore it is in violation of S C Code Ann § 38-77-142 (C) and is therefore void.

For the reasons discussed herein Plaintiffs respectfully request that the Court reconsider its Order granting judgment for GEICO, grant a new trial and/or alter or amend the Order to hold that GEICO's purported family member exclusion is void and to grant judgment in favor of the Plaintiffs in the amount of \$100,000

Respectfully submitted this 8th day of June 2011 by


Matthew D. Hamrick

RICHARDSON, PATRICK, WESTBOOK
& BRICKMAN, LLC
1017 Chuck Dawley Boulevard
Mt. Pleasant, South Carolina 29464
(843) 727-6568
(843) 881-6183 fax
ATTORNEY FOR DEBORAH WILLIAMS
PERSONAL REPRESENTATIVE OF THE
ESTATE OF EDWARD MURRY, DECEASED

-And-

Robert A. McKenzie
McDONALD, McKENZIE RUBIN,
MILLER AND LYBRAND, LLP
1704 Main Street, 2nd Floor
Post Office Box 58
Columbia, South Carolina 29202
(803) 252-0500
(803) 929-3530 fax

ATTORNEY FOR MATTHEW WHITAKER, JR.,
AS PERSONAL REPRESENTATIVE OF THE
ESTATE OF ANNIE MAE MURRY DECEASED

CERTIFICATE OF SERVICE

I hereby certify that I have this 8th day of June, 2011 served the foregoing Notice of Motion and Motion for Reconsideration, New Trial, and/or to Alter or Amend Judgment pursuant to Rule 59, SCRCP by placing a copy in the U S Mail first class and postage pre-paid, addressed as follows

William H Bowman, III Esquire
Rogers Townsend & Thomas, PC
P O Box 100200
220 Executive Center Drive
Columbia, SC 29202

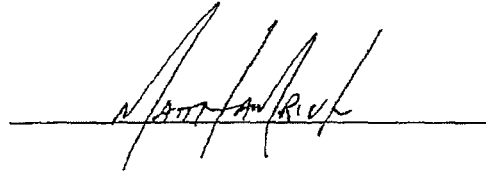


EXHIBIT 1

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF COLLETON

CASE NUMBER 2008 CP 15 298

KERI ANN BENTON as Personal
Representative of the Estate of
Ann Jeanette Barnneau Baxley deceased,

Plaintiff,

ORDER

vs

PROGRESSIVE CASUALTY INSURANCE
COMPANY and KERRY BAXLEY

Defendants

PAID
COLL. CTY. CLERK
2008 JUN 20 PM 12 17

INTRODUCTION

This declaratory judgment and reformation action involves separate issues relating to the availability of bodily injury liability ("BI") and uninsured motorist ("UIM") insurance coverage under an insurance policy (the "Policy") issued by Defendant Progressive Casualty Insurance Company ("Progressive") to Defendant Kerry Baxley ("Baxley") for wrongful death and survival claims (the "Claims") on behalf of the Estate of Jeanette Baxley ("Decedent") arising from a vehicular collision that occurred on September 17, 2005 near Asheville, North Carolina (the Collision) ¹

This matter came before the Court on March 12 2008 for a hearing on the parties' cross-Motions for Summary Judgment as to the BI coverage and Progressive's Motion for Summary Judgment as to the UIM coverage

For the reasons discussed below the Court now grants Plaintiff's Motion for Partial Summary Judgment as to the BI coverage and denies Progressive's Motion for Summary Judgment as to both the BI coverage and the UIM coverage

BI COVERAGE

¹ Via a separate wrongful death and survival action for the Claims Plaintiff obtained a judgment against the at-fault motorists for an amount in excess of the coverage at issue in this action

Plaintiff's motion seeks an Order reforming the Policy and/or declaring that the Policy provides \$100,000.00 in BI coverage to Baxley for the Claims. Progressive's motion seeks a declaration that it provides only \$30,000.00 in BI coverage for the Claims under the Policy. The parties agree that Progressive has previously paid \$30,000.00 to Plaintiff under the BI coverage.

When he purchased the Policy from Progressive's appointed producer, C.T. Lowmides & Company, Baxley elected to purchase optional BI coverage in excess of mandatory minimum limits. Specifically, Baxley chose to purchase BI coverage with limits of \$100,000 in response to a Progressive form application which stated: "This [BI] coverage provides protection up to the Limits of Liability purchased. For a modest increase in premium, you may purchase higher limits of Liability Coverage than the minimum amounts required by law." Baxley paid an additional premium for the increased BI coverage. On its declarations page, the Policy states that its BI coverage limits are \$100,000.

At the time of the Collision, Decedent was a passenger on Baxley's motorcycle; the vehicle insured under the Policy. However, because Decedent was Baxley's wife, Progressive took the position that a provision on page 9 of the 51-page Policy (the "Family Member Exclusion") limited BI coverage available for the claims to the statutory minimum limits. The Family Member Exclusion states:

Coverage under this Part I [BI coverage part of the Policy] including our duty to defend does not apply to:

- 11 **bodily injury to you or a relative.** However, this exclusion will not apply to damages within the minimum limits of liability coverage required by the South Carolina Motor Vehicle Financial Responsibility Act that arise out of the ownership, maintenance, or use of a covered vehicle[.]

[bold in original]

Because the Collision occurred in North Carolina, Progressive agrees that North Carolina law applied to determine the amount of BI coverage. In applying the Family Member Exclusion and since statutory minimum BI limits in North Carolina at the time were \$30,000.00, Progressive took the position that BI coverage for the Claims was limited to \$30,000.00 under the Policy.

I find the Family Member Exclusion violates public policy and is unenforceable. As noted above, Progressive agrees that North Carolina law applies to determine the amount of BI coverage in applying the Family Member Exclusion. However, North Carolina law deems such exclusions void as against public policy. *Carter v. Nationwide Mut. Fire Ins. Co.*, 123 N.C. App. 251, 255, 472 S.E.2d 389, 391 (1996).²

At the hearing, Progressive argued that South Carolina law should govern the validity of the Family Member Exclusion despite its position that North Carolina law should govern the amount of coverage dictated by that exclusion. The Court concludes that this would not change the result in any event. While South Carolina appellate courts have never addressed the validity of the Family Member Exclusion under South Carolina law,³ there are strong reasons to believe that the Family Member Exclusion is contrary to the public policy of the State of South Carolina and is therefore void. Specifically, S.C. Code Ann. § 38-77-142 (1976, as amended), states in pertinent part:

(A) No policy of bodily injury liability insurance covering liability arising from the use of a motor vehicle may be issued in this State unless the policy contains a provision insuring the named insured against liability for death sustained within

² This result obtains even in the absence of Progressive's position. In *Carter*, the court addressed the language in a policy issued in the State of Florida, as applicable to a wreck that occurred in North Carolina. The Policy here was also issued outside of North Carolina, but applies to a wreck that happened in North Carolina. The North Carolina Court of Appeals found significant the language of the *Carter* policy regarding out-of-state laws and their impact on coverage, noting the policy's use of the terms "we will adjust the policy to include the kinds of coverage" required by the foreign state meant that it was required to examine the kinds of coverage required in North Carolina. The Policy in the present action uses similar language in its out-of-state coverage clause ("this policy will provide the greater of a the required minimum amounts and types of coverage; or b the Limits of Liability under this Policy" [emphasis added]). Thus, the same analysis requires that the Court here apply North Carolina law on the invalidity of family member exclusions in BI policies.

³ The only reported South Carolina case to uphold application of such an exclusion was *Hansen v. USAA*, 350 S.C. 62, 565 S.E.2d 114 (Ct. App. 2002); however, a careful review of *Hansen* reveals that it dealt with the construction of a policy issued in Ohio rather than a South Carolina policy. Therefore, it does not stand for the proposition that a family member exclusion can validly be included in a policy issued in South Carolina. Even if one were to conclude that the *Hansen* Court applied South Carolina law because the collision occurred in this State, this would only further support the conclusion that this Court should apply North Carolina law here to invalidate the Family Member Exclusion.

the coverage of the policy as a result of negligence in the operation or use of the vehicle by the named insured

(C) Any endorsement provision, or rider included in any policy of insurance which purports or seeks to limit or reduce the coverage afforded by the provisions required by this section is void [emphasis added]

If the Court were to accept Progressive's argument it would have the effect of limiting or reducing coverage afforded to Baxley pursuant to this section. Because this section prohibits such a construction, the Family Member Exclusion is void as against public policy.⁴ *Accord State Farm Mut. Auto. Ins. Co. v. Marqua*, 741 F. Supp. 185, 187 (D. Alaska, 1989) (the household exclusion is inconsistent with the mandate of AS 28.22.010 that an owner's policy 'shall (2) insure the person named against loss from the liability imposed by law for damages arising out of the use of the [insured] vehicle').

For the above reasons, Progressive cannot rely upon the Family Member Exclusion to limit BI coverage under the Policy and Plaintiff's Motion for Partial Summary Judgment should be granted.⁵ The Policy provides \$100,000.00 in BI coverage for the Claims. Because Progressive has previously tendered \$30,000.00 of the BI coverage to Plaintiff, it is entitled to a credit against the \$100,000.00 in BI coverage for this payment.

UIM COVERAGE

Progressive's Motion for Summary Judgment seeks a declaration that it made a meaningful offer of UIM coverage which was then rejected by Baxley, so that it provides no UIM coverage for the Claims. Plaintiff opposes the motion on the grounds that there are genuine issues of material fact that preclude summary judgment.

⁴ Progressive argued at the hearing that *Hunter v. Southern Farm Bureau Cas. Ins. Co.*, 241 S.C. 446, 129 S.E.2d 59 (1962) requires a finding that the Family Member Exclusion is valid under South Carolina law. The Court finds that this case is inapposite. First, *Hunter* did not address the validity of a family member exclusion; rather, that issue was apparently conceded by the insured and the Supreme Court was simply interpreting language used in the exclusion. Second, *Hunter* preceded enactment of S.C. Code Ann. § 38-77-142 (1976, as amended); thus, it could not dictate a result contrary to a later enacted statute.

⁵ Because Plaintiff's motion is granted, Progressive's motion as to BI coverage must necessarily be denied.

Progressive offered optional UIM coverage to Baxley via its producer, C T Lowndes which employed a form furnished by Progressive (the "Offer Form") for this purpose. C T Lowndes' employee, Tina Rollins, filled in all of the blanks on the form except the insured's signature. Because the insurance agent completed the Offer Form in this case, Progressive concedes it cannot argue that the form satisfies the statutory presumption of S.C. Code Ann. § 38-77-350 (1976, as amended). See *Floyd v. Nationwide Mut. Ins. Co.*, 367 S.C. 253, 626 S.E.2d 6 (2005).

Progressive nevertheless contends that C T Lowndes' explanation of the Offer Form to Baxley satisfies its obligation to provide a meaningful offer under the standards set forth in *State Farm Mut. Auto. Ins. Co. v. Wannamaker*, 291 S.C. 518, 354 S.E.2d 555 (1987). However, the Court agrees with Plaintiff that, given the genuine issues of material fact with respect to the Offer Form and the transaction between C T Lowndes and Baxley (as reflected in Ms. Rollins and Baxley's deposition testimony), the Court should deny summary judgment on the issue.

Because there are genuine issues of material fact regarding Progressive's alleged offer of UIM coverage to Baxley – including issues of credibility that should not be decided at the summary judgment stage – the Court hereby denies Progressive's Motion for Summary Judgment as to UIM coverage.

ORDER

IT IS THEREFORE ORDERED that Plaintiff's Motion for Partial Summary Judgment is hereby granted and Progressive's Motion for Summary Judgment is hereby denied.


CARMEN T. MULLEN
CHIEF ADMINISTRATIVE JUDGE
FOURTEENTH JUDICIAL CIRCUIT

June 17, 2008
Beaufort, South Carolina

EXHIBIT 2

STATE OF SOUTH CAROLINA)
COUNTY OF COLLETON)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO 2009-CP-15-801

SOUTH CAROLINA FARM BUREAU)
MUTUAL INSURANCE COMPANY,)
Plaintiff,)

v

MARY KAY POSTON LUCAS POSTON)
JAMES HAROLD BRYAN, JR , MARILU)
COLLIER ELIZABETH WOODS AND)
BETTY MIXON)
Defendants)

ORDER

2010 OCT 21 PM 4 03

INTRODUCTION

This declaratory judgment and interpleader action involves issues relating to liability insurance coverage afforded to permissive drivers under an automobile insurance policy (the Policy") issued by the South Carolina Farm Bureau Mutual Insurance Company (Farm Bureau). The events giving rise to this action stem from an automobile accident between vehicles operated by James Harold Bryan and Lucas Poston on September 16, 2008 in Walterboro, South Carolina. On that day, Lucas Poston was driving a 2005 GMC Yukon XL ("Vehicle") owned by his daughter in-law, Mary Kay Poston, and insured by Farm Bureau.

This matter came before the Court on September 8, 2010 for a hearing on Defendant Elizabeth Woods's (" Woods') Motion for Summary Judgment as to the amount of insurance coverage afforded to the Poston vehicle under the Farm Bureau policy. After hearing argument from counsel regarding the issues presented in the motion, the Court now grants Woods's Motion for Summary Judgment.

STANDARD OF REVIEW

The standard for summary judgment is well established. Pursuant to Rule 56, SCRPC, summary judgment is appropriate and should be granted when there is "no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Snavely v. AMISUB of S.C., Inc., 379 S.C. 386, 392, 665 S.E.2d 222, 225 (Ct. App. 2008). The purpose is to expedite disposition

of cases which do not require the services of a fact finder ' George v. Fabri, 345 S C 440, 452, 548 S E 2d 868, 874 (2001)

LIABILITY COVERAGE FOR PERMISSIVE DRIVERS

Defendant Woods's Motion seeks an order declaring that the Policy provides \$100,000 in bodily injury liability coverage and that S C Code Ann § 38-77-142 prohibits Farm Bureau from reducing liability coverage for permissive drivers

When Mary Kay Poston purchased the Policy from Farm Bureau for the Vehicle she elected to purchase coverage in excess of the statutory minimum limits. The Policy provided liability coverage for bodily injury up to \$50,000 per person and \$100,000 per accident. Ms. Poston paid an increased premium for this excess liability coverage.

At the time of the collision, Defendant Woods, along with Defendants Collier and Mixon, were passengers in the vehicle owned by Mary Kay Poston. However, because Ms. Poston's father-in-law Lucas Poston, was a permissive driver at the time of the collision, Farm Bureau contends that a provision ("Permissive Driver Limitation") on pages eight and nine of the Policy limits its liability to the mandated minimum limits of \$50,000. The Permissive Driver Limitation states:

Our obligation to pay bodily injury liability losses is limited to the Per Person and Per Accident amount shown in your Declarations. The following conditions shall apply:

2. Subject to the first paragraph of item 1 above, the most we will pay for damages due to **bodily injury**:

a. for which any person described in subparagraph (1) or (2) below becomes legally liable to pay is shown on the Declarations page under "Policy Limits – Liability – Bodily Injury", and applies only to:

- (1) **you, your family member(s)** and others listed on **your** policy with **us**, and
- (2) **your employee**, but only while **your employee** is acting within the course and scope of employment with **you**, and

- b for which any **covered person** not described in subparagraph (1) or (2) above becomes legally liable to pay is the minimum limits of **bodily injury** required by the applicable state motor vehicle compulsory insurance, financial responsibility or similar law

(emphasis in original)

Defendant Woods contends S C Code Ann § 38-77 142 prohibits Farm Bureau from reducing coverage afforded to permissive drivers as attempted in the Policy In pertinent part § 38-77-142 provides

(a) No policy of bodily injury liability insurance covering liability arising from the ownership, maintenance, or use of a motor vehicle may be issued or delivered in this State to the owner of the vehicle unless the policy contains a provision insuring the named insured and any other person using or responsible for the use of the motor vehicle with the expressed or implied consent of the named insured against liability for death or injury sustained or loss or damage incurred within the coverage of the policy as a result of negligence in the operation or use of the vehicle by the named insured or by any such person Each policy or contract of liability insurance or endorsement to the policy or contract, insuring private passenger automobiles principally garaged, docked or used in this State, that has as the named insured an individual or husband and wife who are residents of the same household and that includes, with respect to any liability insurance provided by the policy contract, or endorsement for use of a nonowner automobile a provision requiring permission or consent of the owner of the automobile for the insurance to apply

(c) Any endorsement, provision, or rider attached to or included in any policy of insurance which purports or seeks to limit or reduce the coverage afforded by the provisions required by this section is void

The Court finds that the Permissive Driver Limitation contained in the Farm Bureau Policy violates S C Code Ann § 38 77 142, is against public policy, and is therefore unenforceable See Boyd v State Farm Mut Auto Ins Co 260 S C 316 319 195 S E 2d 706 707 (1973) (a policy provision which contravenes an applicable statute is to that extent invalid”) For these reasons, Farm Bureau cannot rely upon the Permissive Driver Limitation to limit coverage afforded to permissive drivers under the Policy, and Defendant Woods’ Motion should be granted Because the Permissive Driver Limitation is void, the Policy provides \$100,000 in bodily injury liability coverage

In opposition to Woods's Motion for Summary Judgment, Farm Bureau cites Universal Underwriters Ins Co v Metropolitan Prop & Life Ins Co, 298 S C 404, 380 S E 2d 858 (Ct App 1989) Universal Underwriters involved a declaratory judgment action filed to determine the amount of liability insurance coverage afforded to permissive drivers under the policy Richard Pulcino, an employee of Morris Motors was injured while a passenger in a vehicle being test-driven by a permissive driver The policy issued by Universal Underwriters provided \$500,000 in coverage but limited coverage to permissive drivers to the minimum limit required by law Pulcino contended the policy provided \$500,000 in coverage, while Universal Underwriters contended a clause in the policy limited coverage for permissive drivers to \$15,000, the minimum mandated by the South Carolina Motor Vehicle Responsibility Act¹ The trial court ruled that any potential liability for permissive drivers under the policy was limited to the statutory minimum of \$15,000

The court began its analysis by noting that under South Carolina law insurers have the right to limit their liability and to impose whatever conditions they desire upon an insured provided they are not in contravention of some statutory inhibition or public policy " Id at 409, 380 S E 2d at 861 (quoting Pa Nat Mut Ins Co v Parker, 282 S C 546, 550 S E 2d 458, 461 (Ct App 1984)) In affirming the trial court's ruling that the insurance policy afforded permissive drivers the minimum coverage required by law the Court of Appeals held the policy unambiguously limited coverage to permissive drivers Id The Universal Underwriters policy was not against South Carolina public policy nor prohibited by statute Id

Since the decision in Universal Underwriters, the South Carolina Legislature prohibited limiting coverage to permissive drivers by adopting S C Code Ann § 38-77-142 Eight years after the Court of Appeals decision in Universal Underwriters the Legislature in 1997 adopted § 38-77-142

¹ At that time the statutory minimum was \$15,000 per person and \$30,000 per accident Section 38-77-140 has since been amended to require \$25,000 per person and \$50,000 per accident

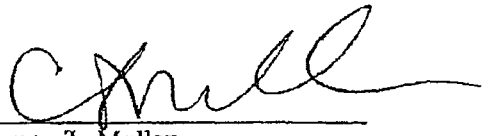
When read in conjunction with § 38-77-142(a), subsection (c) explicitly prohibits any limitation of coverage afforded to permissive drivers. Had the Legislature so chosen, they could have statutorily mandated any reduction in liability coverage for permissive users be established by a meaningful offer as represented in the underinsured motorist act². Therefore, the Court finds the Legislature's subsequent adoption of § 38-77-142 prohibits reducing coverage afforded to vehicles operated by permissive drivers.

The Court finds as a matter of law Defendant Woods is entitled to summary judgment.

ORDER

IT IS THEREFORE ORDERED that Defendant Elizabeth Woods Motion for Summary Judgment is granted.

October 12 2010
Bluffton, South Carolina


Carmen T. Mullen
Judge, 14th Judicial Circuit

² S.C. Code Ann. § 38-77-160

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Delores Williams, Personal
Representative of the Estate of Edward
Murry, Deceased, and Matthew Whitaker,
Jr , as Personal Representative of the
Estate of Annie Mae Murry, Deceased,

Plaintiffs,

vs

GEICO Employees Insurance Company,

Defendant

IN THE COURT OF COMMON PLEAS

DOCKET NUMBER 09-CP-40-8344

REPLY TO MOTION FOR
RECONSIDERATION, NEW TRIAL,
AND/OR TO ALTER AND AMEND
JUDGMENT

Defendant submits this Reply in response to Plaintiffs' Notice of Motion and Motion for Reconsideration, New Trial, and/or to Alter or Amend Judgment Pursuant to Rule 59, SCRCP. In support of their Motion, Plaintiffs attached two circuit court orders issued by Judge Carmen T. Mullen that have no precedential value in this case.¹ In fact, the orders issued by Judge Mullen ignore the controlling decision of *Hansen v United Services Automobile Assoc*, 350 S.C. 62, 565 S.E.2d 114 (Ct App 2002) and misinterpret S.C. Code Ann. § 38-77-142.

First, Exhibit 1 required the application of North Carolina law and therefore has

¹ Circuit courts are not bound by other circuit court orders. See 1995 S.C. AG Lexis 210, 211-212 *citing* Benson and Davis, A Guide to South Carolina Legal Research and Citation 17 (1991) ("only opinions appearing in the official advance sheets, the South Carolina Reports or the South Eastern Reporter should be cited as binding authority. Trial court orders may be useful for their reasoning, but do not have significant precedential value"). Oftentimes, circuit courts reach different conclusions as evidenced by Exhibit A, an Order for Declaratory Judgment in *Graham Smith, individually and as Personal Representative of the Estates of Darwin Latrell Smith and Darton Latron Smith, Deceased*, v. *GEICO Direct Insurance Company*, Case No. 01-CP-21-0781, filed on September 11, 2002. The circuit court Special Referee who issued Exhibit A, upholding and applying the identical Family Member Exclusion involved in this case, had a different analysis than Judge Mullen in Exhibits 1 and 2.

no impact or significance to this case. Judge Mullen concluded that the step down provision involved in Exhibit 1 was governed by North Carolina law and that North Carolina deems such exclusions void as against public policy. While she opined that such a provision was also contrary to the public policy of South Carolina, the South Carolina Court of Appeals, whose decisions have precedential value, reached a different conclusion in *Hansen v. United Services Automobile Assoc.*, 350 S.C. 62, 565 S.E.2d 114 (Ct. App. 2002). The court in *Hansen* expressly stated:

The majority of compulsory insurance jurisdictions have invalidated household exclusions clauses only to the extent of the statutorily described mandatory minimum liability coverage. In *United Services Automobile Ass'n v. Markosky*, South Carolina aligned itself with the majority view. "Reasonable exclusionary clauses which do not conflict with the legislative expression of the public policy of the State as revealed in the various motor vehicle insurance statutes are permitted. We therefore hold USAA owes no further coverage under the policy."

Hansen at 72, 565 S.E.2d at 118-119.

Contrary to Judge Mullen's conclusion in Exhibit 1 that *Hansen* does not stand for the proposition that a family member exclusion can validly be included in a policy issued in South Carolina, *Hansen* clearly states that such an exclusion is not against public policy as long as it provides the mandatory minimum liability coverage.

Exhibit 2 submitted by Plaintiffs references a statute, S.C. Code Ann. § 38-77-142, which Plaintiff claims, for the first time in this Motion, prohibits a step down provision or family member exclusion. As an initial matter, a party cannot use a Rule 59 motion to present an issue that the party could have raised prior to judgment but did not. *Gartside v. Gartside*, 383 S.C. 35, 677 S.E.2d 621 (Ct. App. 2009); *MailSource, LLC v.*

M A Bailey & Associates Inc 356 S C 370, 588 S E 2d 639 (Ct App 2003) *Anderson v Memorial Hosp, Inc v Hagen*, 313 S C 497 443 S E 2d 399 (Ct App 1994) Because Plaintiffs never argued that the Family Member Exclusion violated the statute prior to this Motion, it is not properly before the Court

However, even if Plaintiffs had raised this issue at trial Judge Mullen misinterpreted subsection (C) of the statute S C Code Ann 38-77-142(C) provides "Any endorsement, provision, or rider attached to or included in any policy of insurance which purports or seeks to limit or reduce the coverage afforded by the provisions required by this section is void " In looking at the coverage afforded by subsections (A) and (B) the statute requires that a policy of bodily injury or property damage liability insurance must cover liability arising from "ownership, maintenance, and use" of a motor vehicle and also addresses who is an insured including the named insured resident relatives of the same household, and permissive users of the vehicle Therefore, applying subsection to (C) to subsections (A) and (B), a policy of bodily injury or property damage liability insurance cannot limit or reduce liability arising out of ownership, maintenance or use of a vehicle and cannot limit or reduce who is an "insured" under the policy The statute does not address the **amount** of bodily injury or property damage liability coverage that must be provided to an insured Instead, S C Code Ann § 38-77-140 governs the amount of coverage required in a policy of motor vehicle liability insurance As long as a policy provision or exclusion does not limit or reduce coverage beyond the statutory minimums listed in § 38-77-140, the provision or exclusion does not violate the South Carolina Motor Vehicle Financial Responsibility Act or public policy See *United Services Automobile Assoc v Markosky*, 340 S C 223,

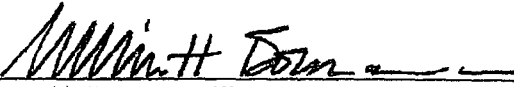
530 S E 2d 660 (Ct App 2000) Notably, S C Code Ann 38-77-142 was enacted in 1997 and was in existence when *Markosky* and *Hansen* were decided

Finally it is important to note that Exhibit 2 involves a provision which attempts to limit to the statutory minimum the indemnity coverage afforded to a **permissive driver** In contrast the Family Member Exclusion in this case limits damages that can be recovered by an insured Therefore, this case and Exhibit 2 are easily distinguishable because they attempt to limit two distinctly different things under the respective policies The provision in Exhibit 2 limits indemnity coverage on permissive users while the Family Member Exclusion limits the recovery of damages by named insureds or resident relatives

For the reasons outlined above, Plaintiffs' Motion should be denied

Respectfully submitted,

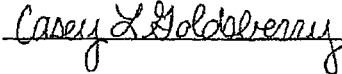
ROGERS TOWNSEND & THOMAS PC

By 
William H Bowman, III
P O Box 100200, Columbia SC 29202
(803)771-7900, bbowman@rtt-law.com
Attorney for Defendant

Columbia South Carolina
June 14, 2011

CERTIFICATE OF MAILING

I hereby certify that a copy of the foregoing pleading was mailed to all counsel of record in this proceeding June 14 2011



STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS
CALENDAR NO 01-CP-21-0781

COUNTY OF FLORENCE)

Graham Smith, Individually and as ~~Personal Representative~~
Personal Representative of the Estates
of Darwn Latrell Smith and Darton
Latron Smith, Deceased,

Plaintiff,

vs

GEICO Direct Insurance Company,

Defendant

**ORDER FOR DECLARATORY
JUDGEMENT**

FILED
2002 SEP 11 A 8 58
CLERK OF COURT
FLORENCE COUNTY, SC

Plaintiff Graham Smith instituted this Declaratory Judgement action to determine the extent of liability insurance coverage available under an automobile liability policy issued by GEICO Direct Insurance Company. I conclude the policy provides the minimum limits required by the South Carolina Motor Vehicle Financial Responsibility Act, S C Code Ann § 56 9-10, et seq (Supp 2001)

FACTS

The facts out of which this Declaratory Judgement arise are either stipulated or agreed to by the parties. Graham Smith and Ella Felder Smith were husband and wife. Darwn Latrell Smith and Darton Latron Smith were their minor children, residing with them. The Smiths owned two vehicles, a Ford and an Oldsmobile. Both vehicles were insured under an automobile liability insurance policy issued by GEICO Direct Insurance Company. On October 1 1999, Mrs Smith was driving the insured Ford with the two children as passengers. She was involved in an



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CERTIFIED A TRUE COPY

Constance R. Bell

CLERK OF COURT, C P & G S
FLORENCE COUNTY, S C

accident when she made a left turn in front of a tractor-trailer. As a result of the accident all three occupants of the Smith vehicle were killed. Mr. Smith, individually and as Personal Representative of the estates of his sons, has filed claims against the estate of Mrs. Smith.

The GEICO insurance policy, on its declaration page, shows the limits of liability insurance coverage as being \$50,000.00 per person, \$100,000.00 per accident. The policy contains the following as a part of the exclusions:

We do not provide liability coverage, under Exclusions 1, 2, 3 and 8, in excess of the minimum limits of liability required by South Carolina law.

1. *Bodily injury* to any *insured* or any *relative* of an *insured* residing in his household is not covered.

It is undisputed that the minor children were both insured and relatives of the insured as defined in the policy. If effective, this exclusion operates to reduce the coverage for damages resulting from bodily injuries of these minors to the South Carolina minimum limits: \$15,000.00 per person, \$30,000.00 per accident.

The Plaintiff contends this exclusion is unenforceable because it is ambiguous and because it is in contravention of South Carolina public policy.

I

Mr. Smith argues that the GEICO policy is ambiguous. He argues that the title page is captioned "South Carolina Family Automobile Insurance Policy" and yet this exclusion in the policy attempts to limit coverage available to family members. He argues that one who acquires a policy designated as a "family policy" may only glance over the policy and not notice a provision which reduces coverage for family members.

Contracts of insurance, like other contracts, should be interpreted according to the general

rules of construction and the language employed is to be understood in its plain and ordinary sense Gambrell v Travelers Insurance Company, 280 S C 69, 210 S E 2d 814 (1983)

Whether a contract is ambiguous is to be determined from the entire contract and not from isolated portions of the contract. Farr v Duke Power Company 265 S C 356, 362 218 S E 2d 431 433 (1975) "In construing a insurance contract, all of its provisions should be considered and one may not, by pointing out a single sentence or clause, create an ambiguity. A contract is ambiguous only when it may fairly and reasonably understood in more ways than one. Universal Underwriters Insurance Company v Metropolitan Property and Life Insurance Company, 298 S C 404, 407 380 S E 2d 858, 860 (Ct App 1989) (citations omitted). A party to a contract has an obligation to read the contract and is bound by its terms. The fact that one may read the title page of the insurance policy and not read an exclusion of the contract does not make the provision ambiguous. The exclusion limits coverage available for bodily injury to an insured or a relative of an insured residing in the household. The coverage is limited to the minimum statutory limits. There is no ambiguity, patent or otherwise, in this provision limiting coverage.

II

----- Mr. Smith argues that the provision limiting coverage to the minimum statutory limits is in -----
contravention of South Carolina public policy. He argues that this provision of the policy attempts to limit the rights of a child to sue a parent and parental immunity was found to be against South Carolina public policy in Elam v Elam, 275 S C 132 268 S E 2d 109 (1980).

Our courts have repeatedly held that "insurers have the right to limit their liability and impose whatever conditions they desire upon an insured, provided they are not in contravention of

some statutory inhibition or public policy Universal Underwriters supra, 409 Pennsylvania National Mutual Insurance Company v Parker 282 S C 546, 550-51 320 S E 2d 458, 461 (Ct App 1984)

Automobile insurance policies issued in this state must provide minimum bodily injury liability limits of \$15,000 00 per person, \$30,000 00 per accident S C Code Ann § 38-77-140 (2002) While these are the minimum limits required by statute, the Motor Vehicle Financial Responsibility Act provides that additional coverages may be provided

‘ Additional coverage permitted Any policy which grants the coverage required for a motor vehicle liability policy may also grant any lawful coverage in excess of or in addition to the coverage specified for a motor vehicle liability policy and the excess or additional coverage shall not be subject to the provisions of this chapter With respect to a policy which grants this excess or additional coverage, the term ‘motor vehicle liability policy shall apply only to that part of the coverage which is required by this article S C Code Ann § 56-9-20 (5)(d)(Supp 2001)

An insurer may not have a provision in a policy which provides coverage for less than the statutory minimum limits In Jordan v Aetna Casualty Insurance Company, 264 S C 294 214 S E 2d 818 (1975) the court held an insurer could not exclude coverage for injuries sustained by a named insured while riding in an insured vehicle which was being operated by a permissive user The court noted that while parties are generally permitted to contract as they desire, statutory requirements for coverage will be written into policies

The court has however allowed parties to an insurance contract to place limits and restrictions on coverage which is provided in excess of the statutory limits In Universal Underwriters Insurance Company, supra, the court noted that there was no statutory prohibition nor public policy

preventing insurers from limiting coverage which was in excess of the minimum statutory limits

Contrary to Mr. Smith's argument, the provision in the GEICO policy is not one of parental immunity. The provision in the GEICO policy reduces the amount of coverage which may be paid for damages when the injured party is an insured or a relative of a insured living in the household. The provision is not operable because of who the insured driver is, whether it is the named insured or a permissive user, but instead is operable because of who the injured party is. If the minor children had been occupants in the automobile which was being operated by a permissive user, the available limits would still be limited to the statutory minimum. This provision is not written such that it serves to establish parental immunity.

III

The GEICO policy also provides underinsured motorist coverage in the amount of \$15,000.00 per person, \$30,000.00 per accident, on each of the two vehicles insured under the policy. It is conceded that the minor children were class I insureds and the coverage on the two insured vehicles is stackable. Thus, there is \$30,000.00 of underinsured motorist coverage available for each child.

CONCLUSION

The provision of the GEICO policy limiting damages available for bodily injury to an insured or a relative insured residing in the household is not ambiguous and is not in contravention of South Carolina public policy. For each child, there is available under the GEICO policy bodily injury liability insurance in the amount of \$15,000.00 and underinsured motorist coverage in the amount of \$30,000.00.

AND IT IS SO ORDERED

Florence, SC
September 4, 2002

Lawrence B Orr
LAWRENCE B ORR
SPECIAL REFEREE

2002 SEP 11 A 8:58
CLERK R. BELL
CLERK & GS
FLORENCE COUNTY SC

FILED

State of South Carolina

Court of Common Pleas

County of Richland

2009-CP-40-08344

Delores Williams Personal
Representative of the Estate
Of Edward Murry, deceased, and
Matthew Whitaker, Jr , as
Personal Representative of the
Estate of Annie Mae Murry
Deceased

-VS-

TRANSCRIPT OF RECORD

GEICO

May 12, 2011
Columbia, South Carolina

B E F O R E

The Honorable George C James, Jr , Judge

A P P E A R A N C E S

Robert A McKenzie, Esquire
Matt Hamrick, Esquire
Attorneys for the Plaintiffs

William H Bowman, III Esquire
Attorney for the Defendant

Daphne D Helms
Circuit Court Reporter

1 The Court This is Williams against GEICO?

2 Mr McKenzie Yes, Your Honor

3 Mr Bowman Yes, Your Honor Your Honor, if I may
4 approach, here is a stipulation of facts in this matter

5 The Court Okay

6 Mr Bowman Signed by all the parties

7 The Court All right

8 Mr Bowman Bob, have you got your insurance policy,
9 Exhibit A to that stipulation?

10 Mr McKenzie It was attached to it?

11 Mr Bowman It had a little blue tab, little blue
12 sticker

13 Mr Hamrick Oh it's right here

14 Mr Bowman Judge that's the copy of

15 The Court Okay

16 Mr McKenzie Your Honor, I have marked a copy of the
17 policy with a highlighter and I've given Mr Bowman a copy
18 of it And as I make my argument, it might be easier for the
19 Court to keep up with it as we're flipping the pages back and
20 forth because they're highlighted and I would like to suggest
21 that I hand that up to the Court---

22 The Court All right

23 Mr McKenzie ---for the Court's---

24 The Court Yes, sir

25 Mr McKenzie I don't know whether you want to mark it

1 as an exhibit or whether you want to---

2 The Court No This one is already an exhibit so---

3 Mr McKenzie Okay

4 The Court ---I'll just use this for reference Let me
5 -- let me look at this real quick Okay

6 Mr McKenzie May it please the Court?

7 The Court Yes sir

8 Mr McKenzie I m Bob McKenzie, and Matt Hamrick and I
9 represent the plaintiffs in this case The plaintiffs are
10 the personal representatives of two estates, Mr And Mrs
11 Murry It was their second marriage, and there is a set of
12 heirs for Mr Murry by his first marriage and a set of heirs
13 for Ms Murry by her first marriage, and that's the reason
14 that we have two lawyers here today

15 The Court Okay

16 Mr McKenzie But together the two estates have made
17 this claim---

18 The Court Same---

19 Mr McKenzie ---for declaratory judgment under this
20 particular policy The policy was issued by GEICO The
21 Court has a copy of it It insured five separate vehicles
22 that these people owned but the one in question is a 1999
23 Jaguar that they were riding in at the time that they were
24 struck by a Norfolk Southern train which ultimately resulted
25 in the death of both of these people

1 We take the -- the insurance company before we brought
2 this, took the position that even though the liability limit
3 on this 1999 Jaguar was for a hundred thousand dollars that
4 there is a provision on their policy that allows them to step
5 down the coverage to \$15,000 when an insured is making the
6 liability claim We take the position that a hundred
7 thousand dollars is owed under the policy and we feel that
8 construing the policy that it's at the very least ambiguous
9 and that the coverage should be a hundred thousand dollars

10 I want to point out to the Court as I begin the argument
11 that the term quote a person, quote is not defined in the
12 policy They defined a whole lot of things in this policy
13 but they don't define that term

14 **The Court** Is it surrounded in quotes in the policy or
15 you just quoted it?

16 **Mr McKenzie** I just did it because that is - it is
17 used a lot in different provisions of the policy If you'll
18 turn to page 14 of the policy under the item that indicates
19 declarations - it's on page 14 and it's item 12 - the policy
20 provides the following It says "This policy along with
21 the application and the declaration sheet" - and I'm
22 emphasizing the declaration sheet - "embodies all agreements
23 relating to this insurance The terms of this policy cannot
24 be changed orally "

25 So the policy itself, or what we're here to construe is

1 not only the policy language but the language of the
2 declaration sheet which is attached to the policy and no one
3 has raised any question about the application So I think
4 that the application is not particularly important

5 The Court Can I ask you a question?

6 Mr McKenzie Yes, sir

7 The Court Is this a U M claim or a U I M claim or
8 what?

9 Mr McKenzie This is a liability claim

10 The Court All right Because the named insured is
11 Edward Murry

12 Mr McKenzie Edward and Annie Murry

13 The Court And Annie Murry So they are making claims
14 under their liability -- somebody else was driving their car?

15 Mr McKenzie No The question is -- there has not
16 been a determination as to who was driving the car and who
17 was a passenger

18 The Court I see But it was one of them two?

19 Mr McKenzie Between those two

20 The Court So they were occupying that car

21 Mr McKenzie They were occupying that car So one of
22 them, whoever the passenger was has a claim over against the
23 driver if the driver did something that was improper

24 The Court So I was thinking they might have been a
25 passenger in their own car that was being driven by a friend,

1 but this is---

2 Mr McKenzie No

3 The Court ---but this is one or the other

4 Mr McKenzie That's right But they have agreed that
5 for purposes of this policy we are making the claim for
6 coverage together so that whenever the other part gets worked
7 out the coverage will be established, and I think Mr Bowman
8 agrees to that

9 Mr Bowman That's correct, Your Honor

10 The Court Okay

11 Mr Bowman We've agreed to pay that and, in fact if
12 they have the underinsured motorist coverage up to several
13 hundred thousand dollars I don't know

14 The Court There is no purported stepdown for U I M in
15 a case -- in a situation like this

16 Mr Bowman There is not

17 The Court All right Okay So it's a difference of
18 \$75,000 essentially

19 Mr McKenzie 85

20 Mr Bowman 85

21 Mr McKenzie 85

22 The Court Oh, because this was before the 25---

23 Mr McKenzie There was a 15 minimum limits

24 The Court This is before they moved the minimum limits
25 up?

1 **Mr McKenzie** Yes

2 **The Court** Okay

3 **Mr McKenzie** All right

4 **The Court** All right I'm with you now

5 **Mr McKenzie** All right The question here we feel is
6 coverage If you look at the declarations page which is the
7 first page after the affidavit of coverage, you'll see that
8 the declaration -- these are the policy declarations The
9 named insured is Edward and Annie Murry, and then important
10 messages Please review the reverse side of this page for
11 coverage and discount information

12 If you go to the next page, you will see that the
13 coverage is -- this would be part of the declaration sheet
14 The coverage is bodily injury liability, each person, each
15 occurrence The limits are 100/300, for vehicle three which
16 is the Jaguar So the liability coverage, as stated in the
17 declarations page is 100/300 for that vehicle

18 If you go to the policy itself on page 3 under
19 definitions Number 4, the insured means, quote, a person,
20 closed quote, described under the person's insured And, of
21 course, the named insured is---

22 **The Court** Those two people

23 **Mr McKenzie** Is Edward and Annie Mae Murry And on
24 page 3 under number 8, a relative means quote, a person,
25 closed quote and I'm putting the quotes in related to you

1 who resides in your household

2 Now, if you flip over to page 4, the losses we will pay
3 for you under Section 1 They will pay bodily injury
4 sustained by, quote, a person, closed quote arising out of
5 the ownership, maintenance or use of the owned auto or a
6 non-owned auto

7 Now, on page 4 at the top of the next column is the
8 language that GEICO is relying on to say that they only owe
9 \$15,000 for this loss They designate it an exclusion and
10 in pertinent part it says We do not provide liability
11 coverage under Exclusion 1 in excess of the minimum limits of
12 liability required by South Carolina law We do not provide
13 any liability coverage for the remaining exclusions And
14 item one under that is bodily injury to any insured or any
15 relative of an insured residing in his household is not
16 covered If it were an exclusion, it would be -- as they put
17 it here it would be contrary to public policy and the
18 statutory law of South Carolina to exclude it totally

19 **The Court** So they've only -- they're saying they've
20 only excluded it down to anything over 15

21 **Mr McKenzie** Well what they're saying is -- they say
22 we do not provide liability coverage in excess of the minimum
23 limits of liability required by South Carolina law They
24 don't say what that is They don't say what it is in the
25 declaration sheet They don't make any reference to it in

1 coverage And our position is that this is not an exclusion,
2 but it is a retraction of, quote, coverage closed quotes
3 Limits not an exclusion

4 The Court Doesn't -- doesn't the -- didn't the statute
5 permit it though?

6 Mr McKenzie No sir

7 The Court The statute -- I thought the statute
8 permitted a limitation on coverage in the judgment of the
9 parties when they contract as long as it didn't fall below
10 the minimum limits

11 Mr McKenzie They -- the statute only requires minimum
12 limits

13 The Court Well we usually see this in the U I M
14 aspect where the carrier wants to modify or limit U I M
15 coverage

16 Mr McKenzie Yeah Well, you choose -- you choose --
17 in U I M you get to choose what coverage you want, and they
18 have to offer it in differing amounts That is not the same
19 statute that covers liability coverage but liability -- you
20 can't have an automobile running on the State of South
21 Carolina on the highways unless it has minimum limits

22 The Court Right

23 Mr McKenzie And -- but you can buy additional
24 coverages In U I M , the people can contract for whatever
25 coverage they want Our position is here we contracted for a

1 hundred thousand dollars worth of liability coverage, and the
2 coverage that is in the declaration page is a hundred
3 thousand dollars They have tried to say this is an
4 exclusion, but it's not an exclusion It is -- it is an
5 ambiguous attempt to cut down the coverage that they've
6 already said was a hundred thousand dollars and---

7 The Court If it's permitted by statute then you would
8 agree that they'd be right

9 Mr McKenzie No sir

10 The Court You wouldn't agree then?

11 Mr McKenzie No sir

12 The Court If the stepdown is permitted by statute, you
13 would say that---

14 Mr McKenzie Oh, if it were -- if it were permitted
15 and if it was spelled out, that's one thing, but the way
16 that -- and there are ways that they could do it using
17 different language but they didn't do it that way

18 The Court How do you do it right? In other words, I
19 thought just about every---

20 Mr McKenzie They would have to say in the
21 declarations page that for each person it's 100/300 They
22 could put an asterisk and then they could say when you have a
23 relative riding, an insured relative in the car the amount
24 of coverage is 15 000/30,000

25 The Court Well, they would have to have an asterisk

1 for 1 through 12, wouldn't they?

2 **Mr McKenzie** No, sir

3 **The Court** Why? If it---

4 **Mr McKenzie** Because they've established what the
5 coverage might be -- what the coverage is They've
6 established the coverage to be 100/300, but in certain
7 circumstances if the claim is made by an insured or by a
8 relative of an insured it's 15/30

9 **The Court** Well how about number three? We don't
10 cover bodily injury caused intentionally by or at the
11 direction of the insured You have to have an asterisk for
12 that, too Right?

13 **Mr McKenzie** No, sir No sir

14 **The Court** Why not? Because---

15 **Mr McKenzie** Because they're excluding it totally

16 **The Court** All right But, no, one, two three, and
17 eight give you minimum limits at least So one, two, three
18 and eight need an asterisk? For example in Section 1---

19 **Mr McKenzie** They can't -- they can't cut coverage
20 below the minimum limits any way that they put it out there

21 **The Court** And this one doesn't It cuts it to the
22 minimum limits

23 **Mr McKenzie** What they're saying is that there is a
24 minimum limit thing, but what you've got here is they have
25 placed over -- when they sold the insurance, a limit of a

1 hundred thousand dollars -- 100/300 Well a hundred is
2 applicable here I'll quit saying 300 I'm just used to
3 doing that But if they did not have the financial
4 responsibility law they could say We sell you a hundred
5 thousand dollars worth of coverage but we're excluding it if
6 you've got a relative in it that's making the claim They
7 can't do that and they can't do it this other way either
8 But from the standpoint of the liability claim we take the
9 position -- and there are other reasons why I say that they
10 can't do this, that it's ambiguous

11 The Court Isn't there -- it seems to me there would be
12 some case law on this

13 Mr McKenzie I don't think anybody has taken a case up
14 in South Carolina

15 The Court What's the State Farm policy say? Same
16 thing?

17 Mr McKenzie State Farm does not say the same thing

18 The Court Okay Does State Farm seek to limit
19 coverage or Farm Bureau or Progressive or All the
20 policies say it not that that makes any difference

21 Mr McKenzie I think that, to be perfectly honest with
22 you, all of the insurance companies are changing the way they
23 do business and they're trying to limit every way that they
24 can the amount of their losses and the cost of doing
25 business

1 **The Court** Is there any way that any carrier could
2 legally limit coverage to 15 or now 25 if there is a resident
3 relative who's in the car making a bodily injury claim?

4 **Mr McKenzie** They can if they consistently start out
5 with it and don't produce an ambiguity and they say this is
6 what we're going to do all the way through

7 **The Court** Well have you ever seen a policy where
8 there is an asterisk or something comparable that says your
9 limits are 100/300, but, hey, look down here, there are some
10 limitations on that? Are there -- are there examples of that
11 being done correctly or you're just saying that is the way to
12 do it?

13 **Mr McKenzie** That is a way to do it and I don't
14 know -- I, quite frankly don't know the answer to your
15 question

16 **The Court** How about what you pointed out when it says
17 on the first -- I thought you mentioned something I
18 believe you said that I thought there was something that
19 you mentioned about the policy consists of the application,
20 the dec page and the policy itself

21 **Mr McKenzie** That's correct

22 **The Court** Where is that again?

23 **Mr McKenzie** That's page 14

24 **The Court** Then why wouldn't that control? Because
25 you've got a declarations policy -- I mean, excuse me

1 declarations page and you've got the policy Why doesn't
2 that particular paragraph control?

3 Mr McKenzie I think it does I don't think -- I
4 don't think it controls I think it says that the
5 declaration sheet is part of the policy, and the declaration
6 sheet states that the coverage -- in the dec sheet the first
7 thing you see when you open it up is the dec sheet and it
8 says that coverage is 100/300 under liability for each
9 person

10 The Court But paragraph 12 on page 14 says By
11 accepting this policy you agree that this policy, along with
12 the application and declaration sheet, embodies all the
13 agreements relating to this insurance So why can't I read
14 all of it at the same time and agree or, excuse me conclude
15 that the limitation on coverage is effective?

16 Mr McKenzie I think that you -- you're obligated to
17 read the whole policy and try to reconcile it I think under
18 the---

19 The Court One page that -- the dec page saying one
20 thing and the limitation or slash exclusion, whatever you
21 might call it, saying something creates an ambiguity?

22 Mr McKenzie That and some other things that I m
23 getting ready to point out to you

24 The Court Okay

25 Mr McKenzie Now, if you turn to page 5 when we go

1 down to persons insured and it says, "Who is covered?" And
2 it says "Section 1 applies to the following as insured with
3 regard to an owned auto " And on number one You and your
4 relatives

5 The Court And in this case "you" would be both Mr And
6 Mrs Murry

7 Mr McKenzie That is correct Okay

8 The Court So your relatives doesn't really matter on
9 that part

10 Mr McKenzie That is correct

11 The Court Okay

12 Mr McKenzie Although they fill both parties because
13 they are named insureds and they are relatives

14 The Court Okay

15 Mr McKenzie But then if you go to limits of liability
16 which is in the next column, it says the most we will pay for
17 damages resulting from any one occurrence is the bodily
18 injury of liability assigned to the owned auto or non-owned
19 auto involved in the occurrence And then under 1 it says,
20 "The limit of bodily injury liability stated in the
21 declarations as applicable to each person is the limit of our
22 liability for all damages including damages for care and loss
23 of services because of bodily injury sustained by one person
24 as a result of one occurrence '

25 So there they're saying the limits applicable are the

1 limits in the dec sheet, not the limits in the -- in the
2 exclusion which is really not an exclusion It's -- it's
3 really a coverage provision in this policy and not an
4 exclusion

5 **The Court** But can't that be read to say that the limit
6 is the most that they will pay? That doesn't mean what they
7 will pay It is just the most that they will pay

8 **Mr McKenzie** It says it's the limit of our liability
9 for damages It says it is the limit for all damages
10 sustained by one person

11 **The Court** Okay

12 **Mr McKenzie** So, I mean we're talking coverage
13 limits and the limits stated in the declarations page is
14 100/300, and they specifically tie it into the declaration
15 sheet the declarations page

16 **The Court** So it's a limit as a term of art in the
17 policy, not a limit on it as far as a ceiling is concerned

18 **Mr McKenzie** That's correct, because the only limits
19 in the declaration are the 100/300 as it applies to this
20 particular automobile

21 **The Court** Okay How about number two under there that
22 you've got highlighted?

23 **Mr McKenzie** Two would be -- it's really not
24 applicable I was a little overzealous in my highlighting
25 Judge

1 **The Court** Okay

2 **Mr McKenzie** And I got down to something that was
3 totally irrelevant

4 **The Court** Are you one of the people that highlights
5 everything on the page and then you have to go back and
6 underline it?

7 **Mr McKenzie** Sometimes I get confused with my
8 highlighting

9 **The Court** All right

10 **Mr McKenzie** But that's basically our position that
11 when you -- when you read the dec sheet and the policy
12 provisions concerning limits and coverage that there is an
13 ambiguity and under the South Carolina case law coverage is
14 broadly construed in favor of the insured And if this thing
15 is, in fact, an exclusion, it's -- it's viewed narrowly by
16 the courts in interpretation because this is a contract of
17 adhesion, and the courts construe them favorably to their
18 insureds

19 **The Court** If you -- if you take that tack and you take
20 the dec page as kind of being an independent animal and
21 you've got to live and die by it unless you have asterisks
22 and so forth, wouldn't you -- wouldn't it be filled up with
23 asterisks and footnotes and all these things that would
24 basically create a situation where the policy is printed
25 twice? For example, you're saying that on the highlight

1 portion of page 2 which is the declarations page where it
2 says bodily injury liability, each person/each occurrence,
3 by that 100/300 there should be a star there

4 **Mr McKenzie** If they're going to try to limit it
5 because that provision stating what the limits are refers
6 back to the dec sheet So if they're going -- if they're
7 going to -- if they're going to establish the limits in the
8 declaration then they should put the insured on notice that
9 somewhere in the policy we're going to fool you

10 **The Court** What section of the policy has what I guess
11 I would call the insuring agreement?

12 **Mr McKenzie** That would be---

13 **The Court** Would that be---

14 **Mr McKenzie** ---what I read to you Personally
15 insured by definitions And then you go over to---

16 **The Court** Page 4?

17 **Mr McKenzie** ---page 4 which says Losses we will pay
18 for you under Section 1 It says under Section 1 we will pay
19 damages which are insured -- which an insured becomes legally
20 obligated to pay because of one bodily injury sustained by a
21 person It doesn't say a relative It doesn't say that a
22 relative -- it doesn't define relative there They could
23 have bodily injury sustained by a person except a relative
24 and a named insured which can only recover -- who can only
25 recover \$15,000 They could have done it that way if they

1 wanted to

2 **The Court** Okay

3 **Mr McKenzie** I mean, if they want to write -- they can
4 write the policy any way they want to and can clear this up,
5 but they didn't do it They started out by saying a hundred
6 here, that we insure a person and the thing about it is
7 family members sue each other all the time and the fact that
8 somebody is in your family---

9 **The Court** Resident -- it's got to be a resident
10 relative Right?

11 **Mr McKenzie** That's correct Resident relative
12 Husband and wife

13 **The Court** It's typically a husband and wife or a
14 father or mother driving a child around

15 **Mr McKenzie** That's correct But, you know the fact
16 that the wife is driving the husband or the husband is
17 driving the wife doesn't lessen the injury sustained by the
18 person who is not driving or the liability of the person who
19 is at fault So if they buy a hundred thousand dollars worth
20 of coverage and expect to get it and somebody is hurt that
21 bad - in this case it's a death case - then they've bought a
22 whole lot less coverage than they would get if a perfect
23 stranger was there, but their liability is the same

24 **The Court** I had a wrongful death hearing this morning
25 where a young man -- 15-year-old young man was killed He

1 was a passenger in his own car One of his buddies was
2 driving his car and the carrier in that case -- there was a
3 hundred thousand dollars in coverage Liability There was
4 no argument They just accepted the 25 on the stepdown
5 because this was after the limits were raised, and then they
6 also had I think a half million dollars in U I M five
7 vehicles stacked So you're saying that depending on how
8 that policy read, it could have been challenged as well

9 Mr McKenzie I think so Yes, sir

10 The Court All right

11 Mr McKenzie It would depend on what the language is,
12 but certainly the language here as they've written this
13 policy it gives it one place and takes it away in another
14 and then it gives it back to you if you keep reading through
15 the policy All right So

16 The Court Okay Mr Bowman, if I'm driving my wife to
17 Charleston---

18 Mr Bowman Yes, sir

19 The Court ---and she's sleeping in the passenger seat
20 and I reach down and pick something up off the floorboard and
21 I run off the road and hit a tree and I've got a GEICO policy
22 and it reads like this -- if I've got a \$300,000 single-
23 limits policy, then all I've got is 25?

24 Mr Bowman You have 25, yes, sir

25 The Court All right Where is it -- are you saying

1 that the fact that it doesn't go below the minimum limits
2 allows you to do this?

3 Mr Bowman We are saying that Your Honor We do have
4 some authority to cite for you

5 The Court Okay

6 Mr Bowman The Hansen case -- I did a little pretrial
7 brief under the format set out in the rules The Hansen
8 case a Court of Appeals decision from 2002---

9 The Court Do you have an extra copy? Because this
10 says original on it

11 Mr Bowman An extra copy of the case?

12 The Court No, I'm talking about the pretrial brief

13 Mr Bowman I do not have an extra copy I've given
14 Mr McKenzie---

15 The Court Okay I just wanted to write on it, but
16 I'll---

17 Mr Bowman Yes, sir I've got it

18 The Court No he can go make a copy That's all
19 right I'll get him to make a copy Go ahead

20 Mr Bowman They address this situation The language
21 in the U S A A policy was not absolutely identical to the
22 language in the GEICO policy, but it stands for the
23 proposition that in South Carolina family exclusion
24 provisions are permissible In this particular case I think
25 there was -- it was almost identical There was 100,000

1 coverage, and the stepdown provision in the policy provided
2 that we do not provide liability coverage for you or any
3 member of the family or any family member to the extent that
4 the limits of liability for this coverage exceed the limits
5 of liability required by -- in this case it was issued in
6 Ohio, the Ohio Financial Responsibility Law

7 **The Court** Did they make in that case -- did the -- did
8 the party -- I don't know whether Mr McKenzie is saying that
9 they're making these arguments as the person who might be at
10 fault or the person who might have a claim I guess it
11 doesn't make a difference but---

12 **Mr Bowman** This was identical It was a husband-and-
13 wife---

14 **The Court** Okay

15 **Mr Bowman** ---wreck

16 **The Court** So one of the sides made a claim you can't
17 step it down The carrier---

18 **Mr Bowman** Yes

19 **The Court** ---succeeded in convincing a court that you
20 could?

21 **Mr Bowman** In convincing the Court of Appeals that you
22 could---

23 **The Court** Was there an argument raised about the
24 purported ambiguity between the dec page and the contents of
25 the policy or was it just on a public policy?

1 **Mr Bowman** It was on a public policy argument It
2 says that the -- that South Carolina is in the majority of
3 compulsory insurance jurisdictions -- have invalidated
4 We're in the majority of compulsory insurance jurisdictions
5 invalidating the household exclusion clauses only to the
6 extent of a statutorily-prescribed mandatory minimum limit
7 South Carolina aligns itself with the majority view
8 Reasonable exclusionary clauses which do not conflict with
9 the legislative expression of the public policy of this state
10 as revealed in the statute in the various insurance statutes
11 are permitted

12 **The Court** But you would agree that the policy can't
13 give and take and give and take It's got to be consistent

14 **Mr Bowman** I don't see any ambiguity -- Mr McKenzie
15 started his argument with a question of definitions of
16 insured and person Judge, at page 3 insured is defined as a
17 person described under person's insured That's number 4 on
18 page 3

19 **The Court** Right

20 **Mr Bowman** Definition 4 Definition 8 Relative
21 means a person related to you who resides in your household
22 And if you read the exclusion, we do not provide liability
23 coverage under Exclusion 1 in excess of the minimum limits of
24 liability required by South Carolina law under one bodily
25 injury to any insured or any relative of an insured residing

1 in his household I don't see anything that could be any
2 plainer than that

3 The Court What page is that on?

4 Mr Bowman Or any less ambiguous

5 The Court What page is that on again?

6 Mr Bowman That is on---

7 The Court Page?

8 Mr Bowman That is on page 4, Your Honor

9 The Court Four Okay

10 Mr Bowman Now, there's a -- it is headed Exclusion
11 It's a family member exclusion when Section 1 does not apply
12 or to what extent I don't think the fact that the word
13 person is not defined in the policy -- in fact, they don't
14 use person here They use bodily injury to an insured or
15 relative both of whom defined as persons in the policy Your
16 Honor So they're entitled under South Carolina law to have
17 this stepdown or family member exclusion and I think they've
18 made it as clear and inclusive as they could have by
19 referring to the defined terms of relative and insured

20 The Court Why couldn't they just put an asterisk or a
21 footnote on the dec page under the -- or next to the
22 designation of limits?

23 Mr Bowman I don't think they're required to I do
24 not think they're required to I don't think Hansen requires
25 it, and I think that the insured is required to read the

1 policy and to understand and know the policy

2 **The Court** Mr McKenzie says if you go to paragraph
3 14 12---

4 **Mr Bowman** Uh-huh

5 **The Court** You agree that this policy, along with the
6 application which is a moot point and the declaration sheet,
7 embodies all agreements He says if that is the case you
8 look at the dec sheet and it says 100/300 and then you go to
9 page 4 and it says you're knocked down to 25 000 He says
10 that that's inconsistent You can't give the coverage and
11 then take it away

12 **Mr Bowman** Well, he---

13 **The Court** And you're saying that well how else --
14 how else can I do it?

15 **Mr Bowman** How else can we do it? It's perfectly
16 consistent He said read the whole policy and try to
17 reconcile it, and I think it's easily reconcilable The
18 liability on the face of the policy is 100,000 In the
19 family exclusion, without any ambiguity it is -- it is
20 restricted to recovery which in this instance was 15,000 as
21 required by law

22 **The Court** And I keep saying 25 It is 15

23 **Mr Bowman** Fifteen

24 **The Court** I'm sorry

25 **Mr Bowman** And we've looked at a lot -- Mr McKenzie

1 has pointed out -- he's an insurance contract lawyer He's
2 pointed out many of these provisions in the GEICO policy
3 Not one of them is in conflict -- not one of them is in
4 conflict with the exclusion that GEICO has relied upon to
5 offer the \$15,000 and our court has given this its blessing
6 in the Hansen case

7 The Court Given its blessing as far as public policy
8 is concerned

9 Mr Bowman Public policy

10 The Court In other words you can do it Mr McKenzie
11 agrees you can do it He says you've just got to do it
12 right

13 Mr Bowman And I just don't -- I hate to say I agree
14 with a negative, but I don't see any other way -- there may
15 be more artful ways to do it In fact some of the cases
16 that I've read said that they're very turgid and inartfully
17 done but nevertheless we have to -- the courts have said we
18 have to read the policies as they should be reasonably read
19 and apply them as the language of the policy suggests

20 So there's no -- South Carolina allows it There's no
21 public policy as long as we're in compliance with the
22 statute He has not shown any ambiguity in the family member
23 exclusion That's what he's calling generally our stepdown
24 provision There's no ambiguity there That is a part of
25 that policy

1 When we go over the line of pages of the policy it says
2 the whole policy is inclusive We cannot leave this out and
3 assume that it's not there It is there and the insured had
4 the opportunity -- our courts have held the insureds are held
5 to knowledge of what's in the policy and it's clearly there
6 It's a restriction It is a restriction

7 **The Court** Okay

8 **Mr Bowman** The fact that relative means person or
9 persons not defined or---

10 **The Court** Okay I get the gist of -- to me a person
11 is a human being

12 **Mr Bowman** Right

13 **The Court** And he's just saying it's -- when you hunt
14 and peck through the policy, things just don't -- the dots
15 can't be connected in the way that would lead to the
16 limitation surviving

17 **Mr Bowman** My position is that a reasonable
18 exclusionary clause not conflicting with public policy as
19 revealed in the motor vehicle statutes are permitted, and
20 this -- even I can understand it, Your Honor, when I have
21 difficulty sometimes with these things We do not provide
22 liability coverage under Exclusion 1 in excess of the minimum
23 limits of liability required by South Carolina law and---

24 **The Court** Okay

25 **Mr Bowman** I don't know anything that could be

1 plainer I think it's a better case than Hansen but I think
2 that Hansen is a South Carolina case that lends support to
3 GEICO's position The coverage is stepdown in this
4 instance---

5 The Court All right

6 Mr Bowman That occurs when bodily injury occurs to an
7 insured or relative residing in his household, is not covered
8 in excess of the minimum limits required by law

9 The Court Now, Mr McKenzie, you're making these
10 arguments for Mr Whitaker Does Ms Williams make the same
11 arguments? In other words -- for the record purposes you're
12 Mr Hamrick?

13 Mr Hamrick Yes, Your Honor

14 The Court Y'all are making the exact same arguments
15 made by Mr McKenzie?

16 Mr Hamrick Yes, Your Honor We join in his argument

17 The Court All right

18 Mr Bowman And we're in agreement with that, Your
19 Honor We have -- with regard to U I M the U I M does not
20 have a stepdown provision There is U I M coverage in the
21 policy We're prepared to pay that and---

22 The Court I guess then these two guys will be arm
23 wrestling over who was driving

24 Mr Bowman They may be arm wrestling perhaps over who
25 was driving, but we can -- we can make the payments under the

1 GEICO policy and have them court approved and they can do
2 that at some other time

3 The Court You can do it as an interpleader I guess
4 if they---

5 Mr Bowman All I m saying is GEICO is not holding up
6 and I've got---

7 The Court Okay

8 Mr Bowman ---checks that are stale now but they're
9 not holding up---

10 Mr McKenzie If they pay the money, we will release
11 GEICO and we'll work out between ourselves

12 The Court Okay And I suppose, depending on how I
13 rule -- you say you've got 300 in U I M ? Three cars?

14 Mr Hamrick 250 of it---

15 Mr McKenzie 250

16 The Court Okay And if I were to rule in GEICO's
17 favor then I'm sure y'all could work out some type of thing
18 that would preserve an appeal right on that and still---

19 Mr Bowman Still have the 250

20 The Court ---have your -- have your dispute about who
21 was driving

22 Mr Bowman Yes sir

23 Mr McKenzie Yes, sir

24 The Court Okay All right Mr McKenzie, y'all are
25 the plaintiff Do you have -- I'll give y'all the last word

1 **Mr McKenzie** I would -- I would point out one thing to
2 the Court that Mr Hamrick pointed out to me as I went back
3 to my seat If you look on page 4 where it's got exclusions,
4 the language there says, "When Section 1 does not apply " and
5 then they say that it only applies partially So there s an
6 ambiguity between that and what they say in the next
7 paragraph as to what occurs So---

8 **The Court** Well I guess you at least like that they're
9 saying you've got some coverage which obviously the law
10 wouldn't permit them going below 15

11 **Mr McKenzie** Yeah they couldn't do it

12 **The Court** That's just called---

13 **Mr McKenzie** They couldn't exclude it

14 **The Court** It's an ambiguity within the ambiguity you
15 say

16 **Mr McKenzie** That is correct Yes, sir

17 **The Court** All right Anything else, Mr McKenzie?

18 **Mr McKenzie** Unless you have some questions -- wait a
19 minute

20 **The Court** No, sir I guess unfortunately or
21 fortunately, whichever you way look at it I used to make a
22 living reading these things, too

23 **Mr Hamrick** Mr Hamrick wanted to say something to me
24 so let me just

25 **The Court** All right

1 (Mr McKenzie and Mr Hamrick have an off-the-record
2 discussion)

3 Mr McKenzie No, sir We're through unless you want
4 to hear further from us

5 The Court No, sir, I don't have any -- I think I've
6 got a handle on it and I appreciate it

7 Mr McKenzie We would be happy to give the Court
8 either a brief or a proposed order

9 The Court Why don't both of you -- could you both send
10 me a proposed order? Of course, include in it who appeared
11 today and I guess a very brief recitation of the stipulation
12 of facts - that would be a cut-and-paste prospect - and then
13 what each side or what your points were And I think quite
14 frankly the proposed orders will be almost identical until
15 you get right down to what my interpretation of your
16 arguments are

17 So I'll leave it up to you to coordinate it, but why
18 don't you just both send them to me separately? If you
19 could, send the proposed order in Word format Don't send it
20 in Adobe because I won't be able to make any alterations to
21 it How long do you think you want?

22 Mr McKenzie Ten days?

23 The Court Does that suit you, Mr Bowman?

24 Mr Bowman Yes, sir Can we do it in ten business
25 days?

1 **The Court** Why don't we just go ahead and say May the
2 25th? That would give you about two weeks from today It
3 cuts out the two weekends That's your ten days Okay?

4 **Mr McKenzie** That would be great Thank you Thank
5 you, Your Honor

6 **Mr Bowman** Thank you

7 **The Court** Thank you Thank y'all very much

8 (Whereupon the proceedings were concluded There were
9 no exhibits introduced)

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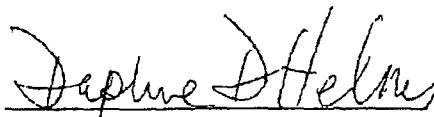
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25

I the undersigned Daphne D Helms 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 trial of the captioned case relative to appeal, in the circuit court for Richland County, South Carolina, on the 12th of May 2011

I do further certify that I am neither of kin counsel nor interest to any party hereto

May 17, 2011

A handwritten signature in cursive script that reads "Daphne D Helms". The signature is written in dark ink and is positioned above a horizontal line.

Daphne D Helms court reporter

COPY

STATE OF SOUTH CAROLINA)
)
COUNTY OF SUMTER) COURT OF COMMON PLEAS
) FOR THE THIRD JUDICIAL CIRCUIT

Delores Williams, as Personal)
Representative of the Estate)
of Edward Murray deceased,)
) HEARING
) 2009-CP-40-8344
and)
)
Matthew Whitaker Jr as)
Personal Representative of)
the Estate of Annie Mae)
Murray, deceased)
)
) PLAINTIFFS,
)
)
)
-VS-)
)
)
GEICO Employees Insurance)
Company,)
)
) DEFENDANT
)
)

BEFORE THE HONORABLE GEORGE C JAMES, JR , JUDGE

JUNE 21, 2011

SUMTER, SOUTH CAROLINA

A P P E A R A N C E S

Matthew D Hamrick, Esq
For Plaintiff Delores Williams

Robert A McKenzie Esq
For Plaintiff Matthew Whitaker, Jr

William H Bowman III, Esq
Rogers Townsend, Esq
For the Defendant

REMA K GANTT THOMAS
CIRCUIT COURT REPORTER

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E X H I B I T S

THERE WERE NO EXHIBITS INTRODUCED AT THIS HEARING

1 THE COURT We're here on Williams and
2 others against GEICO This is 09-CP-40-8344 it's a
3 Richland County case And I had issued an order
4 finding in favor of GEICO after a hearing in
5 Columbia back in May

6 And the plaintiffs have filed a
7 motion for reconsideration And I've read the
8 plaintiffs' memo, and, of course, I've read GEICO's
9 reply

10 Mr McKenzie, are you or Mr
11 Hamrick going to argue?

12 MR MCKENZIE Mr Hamrick is going to
13 argue if that's all right

14 THE COURT Yes, sir that's fine

15 And, Mr Hamrick, first of all how
16 about tell me about the argument made by GEICO that
17 this isn't a proper 59 motion

18 MR HAMRICK Yes, Your Honor Our
19 response to that is that we did include pages eight
20 -- I'm sorry seven and eight -- of our proposed
21 order to Your Honor, after our hearing in Columbia,
22 this argument about the statute that I'd like to
23 discuss, 38-77-142 that we discussed again in our
24 59 motion, Rule 59 motion And therefore, Your
25 Honor, I respond that we did raise it prior to our

1 motion to reconsider

2 THE COURT In your complaint -- I guess
3 it was your complaint, since you were the plaintiffs
4 -- did you also raise anything about public policy
5 argument or contravention of statute?

6 MR HAMRICK Your Honor, I'd have to look
7 back I believe we did allege that the exclusion or
8 purported exclusion was contrary to public policy
9 I know we did not raise the statutory 38-77-142
10 argument

11 We became aware of that statute later
12 -- in fact after our hearing And that s why we
13 included it in the proposed order And then after
14 we got Your Honor's order, we became aware of the
15 two Circuit Court orders that we attached to our
16 Rule 59 motion

17 THE COURT But you agree they aren't
18 binding on me, but you say they re persuasive
19 authority?

20 MR HAMRICK Exactly, Your Honor

21 THE COURT All right Okay so go ahead
22 and tell me about 142 and why it applies, because
23 I've got some questions about why it would even
24 apply

25 MR HAMRICK Okay Thank you, Your

1 Honor

2 THE COURT Despite what Judge Mullen
3 said

4 MR HAMRICK Okay, I understand Well
5 Your Honor -- and, of course, I do want to just note
6 to make sure the record is clear that we reiterate
7 we haven't abandoned any of our arguments about the
8 ambiguity of the contract and the policy for our
9 argument that the purpose of the policy is not
10 served in this case, which we argued in our proposed
11 order, as well

12 But as to this statutory section 38-
13 77-142 argument Your Honor, the argument is that
14 the plain language of the statute and I don't think
15 there's any dispute about what sections (a) and (b)
16 of the statute say

17 They seem to provide as the title of
18 the statute says that these liability insurance
19 contracts have to cover the owner or the person who
20 uses the vehicle But in subsection (c), Your
21 Honor, that is on point with regard to this family
22 member step-down that GEICO is asserting

23 And it just very clearly Your Honor
24 says that any endorsement, provision, or rider
25 attached to or included in any policy of insurance

1 which purports or seeks to limit or reduce the
2 coverage afforded by the provisions required by the
3 section is void

4 THE COURT And so when it gets right
5 down to it you say the words "limit or reduce" has
6 to apply to dollar amounts?

7 MR HAMRICK Well, yes Your Honor I
8 would say that

9 THE COURT And Mr Bowman says with just
10 as much sincerity that it only applies to the nature
11 of coverage afforded or required by (a) and (b) and
12 not to the amounts, because he said the amounts you
13 look back at going forward

14 MR HAMRICK Actually let me revise what
15 I said a moment ago when I responded "yes," that it
16 can only -- that our argument is that it only
17 applies to the amount

18 Actually I think that it could apply
19 to who is covered or the amount of coverage because
20 the terms "limit or reduce" could certainly fairly
21 mean limit the number of people who are covered or
22 the types of people who are covered

23 I don't think the word "reduce" can
24 fairly refer to who is covered I don't understand
25 the concept of reduce --

1 THE COURT Unless it was a throw-away
2 conjunction or reduce In other words, they were
3 saying the same thing twice

4 MR HAMRICK Could be

5 THE COURT Okay

6 MR HAMRICK I'm sorry, Your Honor, I
7 didn't mean to interrupt you

8 THE COURT Does subparagraph (a) have
9 anything to do with this case? Because I ve read
10 (a) in the past, and I think that the last sentence
11 of subparagraph (a) is not even a sentence

12 MR HAMRICK That s what I think, too,
13 Your Honor

14 THE COURT I would love to know what that
15 says, because it doesn't have an end

16 MR HAMRICK I don't understand it
17 either It doesn t have a verb, or it doesn't have
18 a --

19 THE COURT Okay

20 MR HAMRICK It's not a very well written
21 subsection of this statute But I think the first
22 sentence is a complete sentence, and it's clear

23 And I think that subsection (b) is
24 complete and clear And, of course, the part that
25 we ve put ellipses for and left out doesn't apply,

1 because it has to do with notice to the insurer and
2 so forth But --

3 THE COURT Well, (b) was enacted to get
4 around Shores versus Weaver, I think Is that
5 right?

6 MR HAMRICK It had to do with notice to
7 the insurer and --

8 THE COURT So what is the law now if I
9 get sued and I don't turn my papers over at all --
10 and this is beside the point for today Do I have
11 coverage if my carrier doesn't know anything about
12 anything? Do I still have minimum limits coverage?

13 MR BOWMAN Yes sir

14 MR HAMRICK I believe so Your Honor

15 THE COURT Okay so Shores versus Weaver
16 has now been codified?

17 MR HAMRICK I believe so

18 THE COURT Unless the carrier knows about
19 the suit, which is fair But I thought that the
20 statute said that if I haven't told them anything
21 about the accident, they don't know anything about
22 the claim, they don't know anything about the fact
23 the suit was filed, that Shores versus Weaver has
24 basically been statutorily overruled, even for
25 minimum limits

1 I was just curious about that,
2 because I read Cowan, and then I read this statute
3 But all that s beside the point So are you talking
4 about (a) or (b) when you re paraphrasing and you
5 boil it down to brass facts that no policy may be
6 issued to the owner of the vehicle unless the policy
7 contains a provision insuring the named insured or
8 any permissive operator or so forth against
9 liability or injury within the coverage of the
10 policy? That's arguably both of those

11 MR HAMRICK I believe it s both Your
12 Honor The only difference that I can -- really I
13 don't see any difference in the first sentence of
14 (a) and the first portion of -- first sentence of
15 (b) If there is a difference, I haven't found it

16 THE COURT It's not any meaningful
17 difference

18 MR HAMRICK So I don't really understand
19 why there's both (a) and (b), but (c) seems to apply
20 to both equally, because it talks about the coverage
21 afforded by the provision required by this section
22 And, of course, this section is 38-77-142

23 THE COURT And the supplements don't help
24 us out?

25 MR HAMRICK Not that I can find, Your

1 Honor I haven't found any case that addresses this
2 statute in the context of any type of a step-down
3 provision on the appellate level. Of course, we
4 found Judge Mullen's orders that address it on the
5 trial court level.

6 THE COURT Have either of her orders been
7 appealed?

8 MR. HAMRICK Not that I know of, Your
9 Honor, and I believe they have not.

10 THE COURT Now, one of them -- I don't
11 remember which of her orders -- I don't think it
12 applies at all to our case.

13 MR. HAMRICK I think that was -- I think
14 you're correct, Your Honor. The Poston order, which
15 was Exhibit B to our Rule 59 motion, applied to a
16 permissive user type of a step-down exclusion.

17 And the Benton order, which was
18 Exhibit A to our Rule 59 motion, applied to a family
19 member step-down provision, like the one in this
20 case.

21 THE COURT How about Mr. Bowman's
22 argument that Hanson carries the day?

23 MR. HAMRICK Your Honor, we also
24 addressed this in our proposed order for Your Honor
25 for today. But here's what I would say in response.

1 to the argument of Hanson controls One, the
2 language in the policy at issue in Hanson is not the
3 same as the language in this GEICO policy at issue
4 in our case

5 It's completely different Two the
6 family member exclusion in Hanson has this part that
7 says -- it talks about coverage required by the Ohio
8 Financial Responsibility Law And for that reason,
9 the court in Hanson pretty quickly just jumped to
10 the next part of the policy which is actually a
11 geographic step-down provision

12 And the specific issue in Hanson was
13 what the term "at least the minimum amounts " being
14 that geographic step-down provision, meant Now, I
15 certainly don't deny, Your Honor, that the Hanson
16 court seems to have wanted to uphold the family
17 member exclusion

18 THE COURT But the statute s not even
19 mentioned in the case?

20 MR HAMRICK Correct They just don't
21 address the statute And as to the family member
22 exclusion, Your Honor, the plaintiff's attorney in
23 Hanson seems to have just conceded that it should
24 apply

25 I mean, the language is for accidents

1 occurring in Ohio, Hanson concedes the policy limits
2 coverage available for family members is the minimum
3 limits required by Ohio law But then he just made
4 a different argument under this geographic step-down
5 provision that "at least" didn't mean the minimum
6 amounts

7 So whether or not the family
8 exclusion, the family member step-down, was valid in
9 general was not even at issue It was conceded in
10 Hanson It wasn't -- that wasn't an issue in the
11 case And certainly 38-77-142 was never argued or
12 ruled upon in Hanson

13 THE COURT I think it all boils down to
14 whether or not 142 has anything to do with dollar
15 amounts of whether or not it's just devoted to
16 permissive drivers and drivers other than the owner
17 or named insured I think that's what it boils down
18 to And I'm glad that subparagraph (a), the second
19 sentence doesn't have anything to do with it,
20 because I don't think any of us could sit here and
21 figure it out

22 Mr McKenzie have you got any idea
23 what that second sentence means? You don't need to
24 stand up, if you can't

25 MR MCKENZIE No, Your Honor It looks

1 to me, Your Honor, like everybody in the legislature
2 was ready to go home

3 THE COURT I was getting ready to say
4 somebody was taking a lunch break

5 Mr McKENZIE Yes

6 THE COURT I don't know if it would be in
7 the drafts that they had over there in the
8 legislature But the only way to find it I think
9 would be to try to find some language from another
10 state where they did not leave off the last part of
11 that sentence or perhaps within the middle of the
12 sentence

13 All right do you have anything else
14 to offer other than what you've got in your memo?

15 MR HAMRICK No, Your Honor That's our
16 argument

17 THE COURT Okay

18 MR HAMRICK Thank you

19 THE COURT What I'll do is hear from Mr
20 Bowman and then come back to you or Mr McKenzie

21 MR BOWMAN Thank you

22 THE COURT All right, Mr Bowman?

23 MR BOWMAN Just briefly, Your Honor We
24 would like to preserve, Your Honor, the position
25 that we've taken in our brief that this comes too

1 late, it was not pled 38-77-142 is not pled in the
2 complaint No reference was made to it in the
3 complaint

4 THE COURT Were any statutes pled in the
5 complaint?

6 MR BOWMAN No, sir

7 THE COURT What did the complaint say, in
8 violation of statute?

9 MR BOWMAN Public policy And other
10 than that, I did not see any other

11 THE COURT Public policy exclusively?

12 MR BOWMAN I do not have it

13 THE COURT All right

14 MR TOWNSEND May it please --

15 THE COURT Yes, sir

16 MR TOWNSEND -- just to clear this up?

17 MR BOWMAN Yes

18 MR TOWNSEND Mr Bowman and I think that
19 the plaintiffs have policy pursuant to the terms of
20 the policy pursued in accordance with the law of the
21 State of South Carolina for the sum of \$100,000 and
22 not just \$15,000 that is owed under the contract
23 pursuant to the parties' agreement that GEICO would
24 pay the liability limit owed under the policy
25 through the two estates, to the five heirs or

1 statutory beneficiaries and any other heirs

2 THE COURT Okay, all right

3 All right Mr Bowman how about --

4 MR BOWMAN We would preserve that
5 argument

6 THE COURT Okay, I'll be glad to hear
7 from you

8 MR BOWMAN Your Honor, we believe that
9 clearly the amount of coverage that's set out in 38-
10 77-140 is required the required coverage for all
11 automobiles that operate in the state 38-77-142
12 may be a part of the action of Shores v Weaver
13 where the insured -- I think some years ago -- to
14 the insurer, and they said that was not a breach of
15 policy provisions because that was intended to
16 insure the motoring public, not the insured

17 And I think this was probably more
18 than anything else a reaction to that where the
19 insured clearly talked about the insurer's actual
20 notice and so forth But this clearly, 38-77-142
21 is not controlling in this case

22 This is a statute which reiterates
23 the definition of "an insured" and who is an insured
24 under South Carolina law under a policy of insurance
25 issued in South Carolina It requires the named

1 insured and any other person using the vehicle with
2 the permission of the named insured (a) and (b) are
3 pretty much the same

4 Judge, there was one case -- and I
5 did not look it up before I came over today -- it's
6 a USF&G case where USF&G wrote a policy I thought
7 about it coming over here today when I was thinking
8 about this statute

9 It was a USF&G case where -- and I
10 think that was the insurer I can get that to the
11 Court But where they actually wrote a policy and
12 it excluded a named insured or a defined insured
13 from liability coverage

14 THE COURT That wasn't Glasscock was it?
15 That was a Sumter case

16 MR BOWMAN Possibly

17 THE COURT It was a property damage case
18 as I recall

19 MR BOWMAN It could be And the Supreme
20 Court said you can't exclude a defined insured 38-
21 77-142 merely sets out who are the defined insureds
22 that should be included in a South Carolina policy
23 for insurance It has nothing to do with the amount
24 of coverage that's required

25 THE COURT Well, how about the words

1 "limit or reduce"?

2 MR BOWMAN You can't reduce the
3 coverage You cannot limit or reduce the coverage
4 in any way I think it's a --

5 THE COURT But they're saying if you
6 can't limit or reduce the coverage, the coverage is
7 \$100,000 If you can't limit or reduce it, then
8 that is the coverage

9 MR BOWMAN This is what I'm talking
10 about Our position is this is not -- this statute
11 does not control the coverage, that 140 controls the
12 coverage This statute controls who has to be an
13 insured in South Carolina under an automobile policy
14 issued in South Carolina

15 It makes it quite clear in both (a)
16 and (b) who has to be insured under a policy of
17 insurance It does not deal with an amount if,
18 indeed, it deals with who has to be an insured

19 The statute does not address the
20 amount of bodily injury liability to be provided an
21 insured It governs the amount of coverage required
22 to indemnify an insured against liability to others

23 THE COURT Where are you reading from?

24 MR BOWMAN From some notes that I took
25 down and then interpreted them

1 THE COURT Okay

2 MR BOWMAN It does not -- it identifies
3 -- the purpose of this statute is to identify and
4 define those insureds who are required to be insured
5 under a South Carolina policy It has nothing to do
6 with the amount of coverage or any limitations at
7 all

8 THE COURT Okay

9 MR BOWMAN And Judge Mullen, I think
10 erred If Beckham versus Progressive as counsel
11 suggests is the controlling case and not South
12 Carolina Farm Bureau versus Poston, clearly Benton
13 will not support Judge Mullen's ruling

14 In Benton, Benton was based on a
15 holding called Cartner versus Nationwide Cartner
16 versus Nationwide had a policy issued in Florida,
17 and the accident occurred in North Carolina The
18 policy provided 10/20 coverage with an adjustment to
19 comply with the law of any state requiring higher
20 limits

21 The clause in question was the
22 liability section of the policy contained a
23 provision excluding coverage for bodily injury to
24 any insured or any member of an insured's family
25 residing in the insured's household

1 That s what the Ohio policy
2 contained a provision excluding coverage for bodily
3 injury to any insured or member of the insured's
4 family residing in the insured's household

5 North Carolina statute 279-21(b) (2)
6 provided autos operated in North Carolina must carry
7 25/50 Nowhere in the North Carolina statute is it
8 provided that an insurance company may exclude
9 coverage to an insured who is injured through the
10 negligence of a family member while riding in an
11 insured vehicle operated by the family member

12 THE COURT So the North Carolina courts
13 have said you don't do what GEICO is trying to do
14 here?

15 MR BOWMAN They said that you cannot
16 have in there a clause which contains a provision
17 excluding coverage

18 THE COURT All right Is the step-down
19 approved in North Carolina

20 MR BOWMAN It is --

21 THE COURT You all mentioned that I think
22 in your -- Mr Hamrick, is step-down approved in
23 North Carolina? I think that might have been one of
24 Judge Mullen's cases

25 MR HAMRICK Yes Your Honor, I believe

1 in Benton she said that it was not approved

2 THE COURT Okay

3 MR HAMRICK She says on page two
4 because the collision occurred in North Carolina,
5 Progressive agrees that North Carolina applied

6 THE COURT Wouldn't that take Benton out
7 of the picture for South Carolina's event We're
8 not interpreting this case under North Carolina law

9 MR HAMRICK No, of course not, Your
10 Honor But in Judge Mullen's order, she basically -
11 - she
12 said --

13 THE COURT It was invalid in North
14 Carolina, and she found it was invalid here because
15 of 142

16 MR HAMRICK Exactly, yes, Your Honor

17 THE COURT Okay

18 Why Mr Bowman -- I haven't gone
19 back and read mine I've got coverage through a
20 carrier I won't name not any of these carriers
21 And I've got pretty significant limits Do I need
22 to pull out my policy and find out whether or not
23 I've got one of these step-down provisions if I'm
24 riding somewhere and I am negligent and hurt my
25 daughter or son?

1 MR BOWMAN You do, Your Honor

2 THE COURT And then you tell me where I
3 can go buy -- you said I can shop around and
4 negotiate

5 MR BOWMAN That's what I do

6 THE COURT I think somebody argued -- you
7 argued that at the last part of the hearing

8 MR BOWMAN At the last hearing no sir
9 I didn't do that You asked Mr -- in the hearing,
10 you asked Mr McKenzie dead on, "Doesn't State Farm
11 have a similar provision in their policy?" And his
12 answer was "Oh Judge, all of them do now because
13 of the tight economic times "

14 THE COURT Well I guess my question is
15 why

16 MR BOWMAN So you need to shop

17 THE COURT What is the purpose of these
18 things?

19 MR BOWMAN I think the purpose is
20 presumably to prevent fraud or --

21 THE COURT Fraud is fraud whether it s
22 \$25,000 fraud or \$100,000 fraud

23 MR BOWMAN Well, it's to prevent --

24 THE COURT Is it because these people in
25 the families are the most frequent occupants of the

1 car?

2 MR BOWMAN Yes, that would be another
3 reason, I presume It's unambiguous, and in Hanson
4 it's clearly been approved You can --

5 THE COURT I see what you re saying But
6 where does it say in Hanson "We find or we hold that
7 the step-down provision is valid under South
8 Carolina law, specifically 142"? Where does it say
9 that

10 MR BOWMAN It doesn t mention 142 It
11 wasn't raised In other words Hanson argues if the
12 accident occurred out of state, the family member
13 exclusion goes out the window altogether and the
14 insured gets the face amount of the policy

15 THE COURT Why did the Court of Appeals
16 need to even talk about what South Carolina would
17 approve or not approve, since this was an Ohio
18 situation?

19 MR BOWMAN The Ohio policy provided, "We
20 don't provide liability coverage for any member of
21 your family, or you, or any family member to the
22 extent that the limits of liability of this coverage
23 exceeds the limits of liability required by the Ohio
24 Financial Responsibility Law "

25 THE COURT So the Ohio were traveling

1 here?

2 MR BOWMAN In South Carolina

3 THE COURT Why doesn't the Court of
4 Appeals reference 142? Wouldn't that be the logical
5 thing to do?

6 MR BOWMAN I don't think it's logical,
7 because I think there's absolutely no application

8 THE COURT South Carolina doesn't?

9 MR BOWMAN South Carolina -- no because
10 South Carolina law does not -- this applies to
11 indemnity -- it defines who's an insured, and
12 furthermore it deals with indemnifying the insured
13 against liability

14 The step-down provisions deal with an
15 entirely different issue, and that is the amount of
16 coverage recoverable by those defined persons under
17 that policy, two different animals altogether

18 142 deals with you've got to provide
19 basic coverage in South Carolina to these defined
20 persons to indemnify them Nothing in there about
21 the amount of coverage The amount of coverage is
22 under 140

23 The step-down provision would deal
24 with the amount recoverable under the policy as
25 opposed to indemnifying the insured And our court

1 in Hanson went on to say, Judge -- aligned itself
2 with the majority of the insurance jurisdictions,
3 which invalidate these exclusions to the extent --
4 only to the extent -- of the statutory proscribed
5 mandatory minimum that is the coverage

6 THE COURT If I'm traveling in Virginia
7 on my South Carolina policy and there's a dispute
8 between the two states as to amounts or types of
9 coverage that are limitable which state do you look
10 at?

11 MR. BOWMAN If you've got a South
12 Carolina policy issued in a South Carolina contract
13 on a South Carolina vehicle involved in an accident
14 in Virginia?

15 THE COURT Yes

16 MR. BOWMAN I believe South Carolina
17 would be controlling, I think

18 THE COURT If I'm traveling from Ohio to
19 South Carolina in my Ohio car and my Ohio policy,
20 and you have a debate about that, which state's law
21 controls?

22 MR. BOWMAN You can argue that's the
23 place where the control would control, but I don't
24 see
25 how --

1 THE COURT I know, and it may not matter
2 in this case But if you think Hanson is
3 controlling --

4 MR BOWMAN I do

5 THE COURT -- why is it controlling if
6 you ve got an Ohio policy that's flowed into South
7 Carolina because of the car? Why does South
8 Carolina statutory law make a lick of difference
9 except to the amount? In other words, why --

10 MR BOWMAN Hanson argued that if the
11 accident occurred out of state, the family member
12 exclusion "goes out the window entirely '

13 THE COURT Well, that's not what the
14 court said

15 MR BOWMAN No, it isn't And they
16 disagreed and I think they more or less agreed with
17 the Ohio statute

18 THE COURT Okay Well, I didn't see
19 where they said that 142 --

20 MR BOWMAN Oh, no, they didn't no sir

21 THE COURT -- doesn't have anything to do
22 with amounts

23 MR BOWMAN It wasn't brought up in
24 Hanson, because I don't think it's applicable I
25 don't think the lawyers briefing that case thought

1 it was -- or who tried that case thought it was
2 applicable

3 THE COURT And I don't even think they
4 mentioned 140, did they? They just said that it's
5 not invalid

6 MR BOWMAN Correct

7 THE COURT Okay And you ve got --

8 MR BOWMAN In other words they interpret
9 the Hanson policy as limiting the family coverage to
10 the minimum limits of South Carolina is fair and
11 reasonable and gives effect to all relevant policy
12 provisions

13 THE COURT You ve got Larry Orr's -- or
14 Special Referee Orr's order in a Florence County
15 case How does that apply?

16 MR BOWMAN I simply put it in there,
17 Judge I handled that case, and I simply put it in
18 there to show that circuit judges' orders have no
19 precedential value and that are non-controlling are
20 a matter of information only and that they can
21 differ from one circuit to another

22 THE COURT Okay

23 MR BOWMAN The holdings can differ --
24 the results can differ

25 THE COURT So I just simply have to

1 decide whether or not the words "limit or reduce"
2 the coverage afforded in the policy whether that
3 references dollar amounts and trumps 140 That s
4 what I have to do?

5 MR BOWMAN I think so, but I don't -- I
6 think if 142 is -- I m not sure we have to go beyond
7 the original order, because I don't think that --
8 it's my opinion, anyhow Nobody showed me anything
9 to persuade me that 142 --

10 THE COURT Has anything to do with this

11 MR BOWMAN -- has anything to do with
12 it So I don't think we ve got anything further --

13 THE COURT Okay

14 MR BOWMAN -- except just to raise a new
15 issue

16 THE COURT All right

17 All right, Mr Hamrick anything
18 else?

19 MR HAMRICK Your Honor, only to
20 reiterate that subsection (c) of 38-77-142, if it
21 only deals with who is covered, that would have been
22 easy to right, if it had just said "limit or reduce"
23 who is covered by the provisions required by the
24 section, or if it had said "limit or reduce" the
25 group of insureds afforded provision as required by

1 this section

2 It doesn't say any of that It
3 doesn't say anything about who is covered And,
4 again, I don't understand how the word "reduce " how
5 the term, phrase "reduce the coverage," could ever
6 make any sense in applying to who is covered

7 THE COURT What if it just said "limit"?

8 MR HAMRICK If it just said "limit the
9 coverage," I think it could apply to either limiting
10 the amount or limiting the group of covered people
11 But it says "limit or reduce the coverage " Reduce
12 the coverage could never make any sense with regard
13 to who is covered I mean, reduce the coverage can
14 only mean the amount

15 And, Your Honor, the only other thing
16 is I would like to respond to are, one, again And
17 I understand opposing counsel just feels he needs to
18 preserve the argument But we did raise this issue
19 in our proposed order I believe case law -- and I
20 apologize, I can't cite the case or cases -- but
21 raising something to the trial court includes
22 pleadings the arguments in open court, the
23 briefing, and the proposed orders

24 THE COURT Do you have a copy of your
25 proposed order? I may have deleted both proposed

1 orders

2 MR HAMRICK I do, Your Honor I've got
3 some notes on mine

4 THE COURT I've got it He found it I
5 deleted mine because --

6 MR HAMRICK Okay

7 THE COURT -- when I change things, I
8 have to delete the ones that are inconsistent with
9 it, or I'll get confused about who's from what side

10 MR HAMRICK I would be happy to send you
11 a clean copy Mine has some notes on it

12 THE COURT I've got it right here

13 MR HAMRICK Okay We did raise it in
14 the proposed order, Your Honor, and I believe that
15 is sufficient under South Carolina case law for
16 raising it at the trial court level

17 Your Honor, my final thing is the
18 issue of what the purpose of the family member
19 exclusion is, and this was in our proposed order
20 also, at the end, the last page of our proposed
21 order

22 And I appreciate that Mr Bowman
23 acknowledged that the purpose of these is to prevent
24 collusion fraud I agree with what I perceive your
25 response to have meant which is that could be an

1 affirmative defense no matter what the minimum
2 limits or the step-down or anything else

3 If there's collusion and fraud
4 that's an affirmative defense to any coverage And
5 in this case, it doesn't serve the purpose, this
6 family member exclusion, because both people are
7 dead There was no way for them to collude about
8 what happened in this accident

9 So it doesn't even serve the purpose
10 that it is stated to serve And, Your Honor your
11 questions about what happens if -- you know,
12 different scenarios -- the most common application
13 or coverage of an insurance policy that's provided
14 is the situation where you're riding with a member
15 of your family

16 We all every day, take our kids to
17 school We take -- we drive each other to work We
18 carpool with members of our family We go to
19 dinner We got to all these places, shopping and
20 everywhere else

21 And I think that the citizens of
22 South Carolina would be shocked to know that the
23 additional coverage over the minimum limits that
24 they pay premiums for to get good coverage that they
25 think is protecting them and protecting their

1 families who are most often the ones that are their
2 passengers -- I think they'd be shocked to know that
3 deeper down in the policy, if you dig and dig and
4 dig down in the exclusion section, that there is
5 language like in this GEICO policy that, for one, is
6 ambiguous --

7 THE COURT Well let's forget about the
8 ambiguity part

9 MR HAMRICK Okay

10 THE COURT I know you've argued that

11 MR HAMRICK I won't go on to belabor it
12 But, again, I think that it would be shocking to
13 most people to find that this type of purported
14 exclusion limits the amount down to the minimum
15 limits as opposed to higher limits that they paid
16 for and that are stated on the declaration page
17 Thank you, Your Honor

18 THE COURT All right --

19 MR BOWMAN Just very briefly, Your
20 Honor

21 THE COURT -- Mr Bowman, did you shop
22 around your policy to make sure it doesn't have a
23 family member exclusion?

24 MR BOWMAN No, sir, I didn't quite
25 frankly

1 THE COURT And if you were driving your
2 wife somewhere or your son somewhere, your daughter
3 somewhere, or a live-in relative and you fell asleep
4 at the wheel and hit a tree, and they had a broken
5 arm, you'd be stuck with it?

6 MR BOWMAN I ve got underinsured
7 motorist coverage through the ceiling

8 THE COURT Well, I'm talking about on the
9 liability side

10 MR BOWMAN On the liability side I'd be
11 reduced to -- but, Judge --

12 THE COURT Are those in here? I think
13 you all told me that, right?

14 MR BOWMAN Oh, yes

15 THE COURT Okay

16 MR BOWMAN Yes, there s a lot We ve
17 tried to pay that and get it forced through

18 THE COURT Okay

19 MR BOWMAN But I wanted to say
20 something The purposes in underwriting
21 consideration is never -- the purpose is never --

22 THE COURT You don t look for -- I
23 understand that Underwriting has nothing to do
24 with the legitimacy of the subject

25 MR BOWMAN Whether or not it s contra

1 our state statutory schemes or ambiguous had nothing
2 to do with it I don't have to prove the purpose
3 for it, or disprove it, would have any effect on the
4 validity and enforceability of it

5 THE COURT Okay, all right Anything --

6 MR BOWMAN I'm sorry --

7 THE COURT Yes, sir

8 MR BOWMAN In Suber, they use the word
9 "reduce " That's not a mathematical term That
10 doesn't have to be used

11 THE COURT Doesn't have to be but it
12 could be If you can reduce something from four to
13 three, it reduces it

14 MR BOWMAN You cannot reduce -- yes, if
15 you reduce -- the only -- if you have a policy that
16 only insures the named insured and the wife, you're
17 in contravention -- you have reduced the coverage
18 defined by 142, because not only do you have to --
19 you've got permissive users So you can certainly
20 reduce the coverage

21 THE COURT If it said "reduce the amount
22 of coverage afforded by" -- it should say "required
23 by"

24 -- the provisions it would make it clearer

25 MR BOWMAN Clearer You can certainly

1 reduce --

2 THE COURT I've got to just deal with
3 semantics, is what I've got to deal with That s
4 purely it

5 All right, anything else? I'm sorry
6 that you all had to come all the way from Columbia,
7 but I felt like I owed it to you all to let you make
8 your points on the record And I looked ahead and
9 did not see that I would be in Columbia anytime
10 soon But I found out subsequently that I
11 might be there the week of July the 11th

12 All right anything else Mr
13 Hamrick, Mr McKenzie?

14 MR HAMRICK Your Honor Mr McKenzie
15 raised a good point And I know you said you found
16 a clean copy of our proposed order, but will you be
17 putting that in the record, and will it be preserved
18 as part of our --

19 THE COURT Well, when you all send it to
20 me -- when you say put it in the record to me that
21 means giving it to the Richland County Clerk of
22 Court I did not --

23 MR HAMRICK Okay

24 THE COURT -- since I'm not there and
25 they won't let me take files with me So perhaps

1 what you should do is file that proposed order just
2 to round out what you say would be complete on the
3 record

4 Of course, Mr Bowman would take an
5 opposite position, that you're stuck with what you
6 got in your pleadings and your original motion and
7 your oral arguments to me And what I'm going to do
8 is whatever I decide on the propriety of this ground
9 for a 59 motion I am going to rule on the merits of
10 it, too, so that the record would be complete

11 MR HAMRICK Okay

12 THE COURT All right

13 MR HAMRICK We'll file it Thank you
14 Your Honor, for having us

15 MR BOWMAN Thank you

16 THE COURT Okay, thank you all for
17 coming

18 MR HAMRICK Good to see you

19 THE COURT Good to see you all

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Delores Williams, Personal Representative of
the Estate of Edward Murry, Deceased, and
Matthew Whitaker, Jr , as Personal
Representative of the Estate of Annie Mae
Murry, Deceased,

Plaintiffs,

vs

GEICO Employees Insurance Company,

Defendant

IN THE COURT OF COMMON PLEAS

DOCKET NUMBER 09-CP-40-8344

PROPOSED ORDER

This is a non-jury declaratory judgment action to determine the amount of liability coverage due under an automobile insurance policy. A hearing was held before me on May 12, 2011. Present at the hearing were Matthew D. Hamrick, Esq., attorney for Delores Williams, Personal Representative of the Estate of Edward Murry, Robert A. McKenzie, Esq., attorney for Matthew Whitaker, Jr., Personal Representative of the Estate of Annie Mae Murry, and William H. Bowman, III, Esq., attorney for GEICO Employees Insurance Company.

At the hearing, the Plaintiffs and Defendants jointly submitted a Stipulation of Facts, as follows:

1. Defendant GEICO issued a policy of motor vehicle liability insurance to Edward Murry and Annie Mae Murry under policy number 0685-44-55-04 effective September 2, 2006 until March 2, 2007, covering, among other vehicles, a 1999 Jaguar, VIN No SAJKD604XXC871601.¹

¹ Attached as Exhibit A to the Stipulation of Facts is a true and accurate copy of said policy.

2 On September 3, 2006, Annie Mae Murry and Edward Murry were the sole occupants of the 1999 Jaguar insured under the policy when it was struck by a train

3 Annie Mae Murry and Edward Murry both died from injuries resulting from the collision with the train

4 It is unknown and disputed by the heirs and statutory beneficiaries of Annie Mae Murry and Edward Murry as to who was driving the Jaguar and who was riding as a passenger at the time of the collision with the train

5 The Plaintiffs have agreed or will hereafter agree to a disposition of any liability insurance proceeds payable from GEICO's policy as a result of the accident on September 3, 2006, upon completion of this litigation. Underinsurance proceeds on the other vehicles have been tendered and agreed upon

6 GEICO has already agreed to pay to the Plaintiffs the sum of Fifteen Thousand and no/100 Dollars (\$15,000 00), representing the amount of liability insurance proceeds that GEICO believes is due under the policy while Plaintiffs take the position that the sum of One Hundred thousand and no/100 (\$100 000 00) is owed under the policy

Based on the stipulation of these facts, there are no material factual issues in dispute. The only matter to be decided is whether the limits of liability coverage under the subject insurance policy are Fifteen Thousand and no/100 Dollars (\$15,000 00) or One Hundred Thousand and no/100 (\$100,000 00). The resolution of this question depends on the interpretation of the terms of the insurance policy. Insurance policies are to be construed subject to general rules of contract construction. *Fritz-Pontiac-Cadillac-Buick v Goforth*, 312 S C 315, 318, 440 S E 2d 367, 369 (1994). This Court must interpret the language in the subject insurance policy using its plain,

ordinary and popular meaning *Id*. However, ambiguous or conflicting terms in an insurance policy are to be construed liberally in favor of coverage for the insured and strictly against the insurer *Diamond State Ins Co v Homestead Indus Inc* 318 S C 231, 236, 456 S E 2d 912, 915 (1995) The insuring provisions in an insurance policy must be liberally construed in favor of coverage *Torrington Co v Aetna Cas and Sur Co* 264 S C 636, 646, 216 S E 2d 547, 551 (1975) But exclusions in an insurance policy are to be interpreted narrowly and for the benefit of the insured *Id*. See also *McPherson v Michigan Mut Ins Co* 310 S C 316 426 S E 2d 770 (1993) South Carolina courts uniformly give the insured the benefit of any doubt in the construction of the terms used in an insurance policy” *Hann v Carolina Casualty Insurance Co*, 252 S C 518, 167 S E 2d 420 (1975) With the foregoing principles of insurance policy interpretation in mind I now turn to the GEICO policy at issue in this case

The subject insurance policy’s first page begins with the “policy declarations”² The first page of the declarations sheet, under the heading ‘IMPORTANT MESSAGES,’ (emphasis in original) states ‘Please review the reverse side of this page for coverage and discount information On the following page the covered Jaguar automobile is listed among the other automobiles insured by the policy, and the coverage limit for “BODILY INJURY LIABILITY EACH PERSON/EACH OCCURRENCE” (emphasis in original) is specifically stated as “\$100,000/\$300,000 ”

The policy contains an explanation of the coverage limits under the heading LIMITS OF LIABILITY (emphasis in original) This section of the policy states, in pertinent part, as follows

² Although there is no dispute that the declarations are part of the policy it should be noted that the policy at paragraph 12 of the General Conditions specifically acknowledges in pertinent part that the “policy along with the application and declarations sheet, embodies all agreements relating to this insurance (emphasis added)

The limit of bodily injury liability stated in the declarations as applicable to “each person” is the limit of our liability for all damages, including damages for care and loss of services, because of *bodily injury* sustained by one person as a result of one occurrence (emphasis in original)

Under the first insuring provision in the policy, set forth in Section I and under the heading Liability Coverages--Your Protection Against Claims From Others--Bodily Injury Liability--Property Damage Liability” there is the subheading ‘LOSSES WE WILL PAY FOR YOU UNDER SECTION I’ (emphasis in original) Under this subheading the policy states as follows

Under Section I we will pay damages which an *insured* becomes legally obligated to pay because of

- 1 *bodily injury*, sustained by a person, and
- 2 damage to or destruction of property,

arising out of the ownership, maintenance or use of the *owned auto* or a *non-owned auto* (emphasis in original)

It is undisputed that the driver of the Jaguar at the time of the accident was an ‘insured and the passenger was a “person who sustained “bodily injury” arising out of the use of the Jaguar, an “owned auto ” Therefore, under the insuring provision in Section I, which as noted above is the liability coverage portion of the policy, the terms of the policy unambiguously provide the limits ‘stated in the declarations,” which as noted above are \$100,000 per person GEICO is bound by the unambiguous terms of the insuring provision in Section I as set forth above See *Drafts v Shull Sausage Co* 276 S C 52, 275 S E 2d 577 (1981) (stating parties are bound by unambiguous terms of an insurance contract)

Despite the fact that the above-quoted insuring provision of the policy, which must be liberally construed to provide coverage, unequivocally states that the declarations sheet's limits of \$100,000 apply to the insured's liability for the bodily injury of the person injured in the accident, GEICO takes the position that a purported family member step-down exclusion reduces ("steps down") the available liability limits to the minimum limits required in South Carolina at the time of the accident, \$15,000. GEICO's argument is based on the following provision of the policy, which states in pertinent part:

EXCLUSIONS

When Section I Does Not Apply

We will not defend any suit for damages if one or more of the exclusions listed below applies. We do not provide liability coverage, under Exclusions 1, 2, 3, and 8, in excess of the minimum limits of liability required by South Carolina law. We do not provide any liability coverages for the remaining Exclusions.

1 *Bodily injury to any insured or any relative of an insured residing in his household is not covered (emphasis in original)*

This purported family member exclusion is ambiguous on its face and, when read together with the insuring provisions discussed above, renders the policy as a whole ambiguous. First, this exclusionary provision states that it describes situations in which "Section I Does Not Apply." But GEICO admits that Section I, which contains the liability insuring provisions, applies to the accident at issue. Indeed, contrary to the heading's statement that the exclusion describes a situation in which liability coverage "does not apply," the purported family member exclusion then immediately states South Carolina's minimum liability limits are provided to cover bodily injury to any insured or relative of an insured. The heading that says the listed

exclusions set forth situations in which Section I does not apply is consistent with the legal definition of an exclusion. An 'exclusion,' in the context of insurance law, is as follows:

In insurance policy, 'exclusion' is provision which eliminates coverage where were it not for exclusion, coverage would have existed. Provision in policy specifying the situations, occurrences or persons not covered by the policy.

Black's Law Dictionary (6th Ed.) at p. 563 (internal citations omitted). In other words, exclusions specify situations in which there is no coverage for particular occurrences or persons. But GEICO does not argue that there is no coverage for bodily injury to any insured or relative of an insured. GEICO admits that the policy provides coverage for bodily injury to an insured or relative of an insured, but argues that the so-called family member exclusion is an "exclusion" as to any amount above South Carolina's minimum liability limits.

The purported family member exclusion is further internally ambiguous because, after it states South Carolina's minimum liability limits are provided to cover bodily injury to any insured or relative of an insured, in the very next paragraph it reverts back to the principle of the "When Section I Does Not Apply" heading by stating that "*Bodily injury* to any *insured* or any *relative* of an *insured* residing in his household is not covered" (emphasis in original).

The purported family member exclusion, when read together with the insuring provisions discussed above, also renders the policy as a whole ambiguous. As noted above, the insuring provision of the liability coverage portion of the policy, which must be liberally construed to provide coverage, unequivocally states that the declarations sheet's limits of \$100,000 apply to the insured's liability for the bodily injury of the person injured in the accident. Although the purported family member exclusion is internally inconsistent and ambiguous, GEICO

nonetheless argues that, pursuant to this purported exclusion the liability limits are \$15,000. These conflicting provisions make the policy as a whole ambiguous and, therefore, it must be construed against the drafter of the policy, GEICO, and in favor of coverage for the insured.

GEICO argues that the South Carolina Court of Appeals case *Hansen v. United Services Automobile Association*, 350 S.C. 62, 565 S.E.2d 114 (Ct. App. 2002) supports the application of the purported family member exclusion. *Hansen* does contain dicta discussing family member provisions with apparent approval in general. However, because the family member exclusion in the policy at issue in *Hansen* applied only to situations in which the state of Ohio's financial responsibility laws would apply and the accident in question occurred in South Carolina, the policy provision actually at issue in *Hansen* was a geographic step-down provision. Further, the specific issue decided in *Hansen* was the meaning of the phrase "at least" in the geographic step-down provision. See *Hansen* at 115-116. Therefore, the *Hansen* decision is inapposite.

Additionally, GEICO's purported family member exclusion is in violation of S.C. Code Ann. § 38-77-142 and is therefore void and against public policy. See *Boyd v. State Farm Mut. Auto. Ins. Co.*, 260 S.C. 316, 319, 195 S.E.2d 706, 707 (1973) ("a policy provision which contravenes an applicable statute is to that extent invalid"). This statute states, in pertinent part:

SECTION 38-77-142 Policies or contracts of bodily injury or property damage liability insurance covering liability required provisions

(A) No policy or contract of bodily injury or property damage liability insurance covering liability arising from the ownership, maintenance, or use of a motor vehicle may be issued or delivered in this State to the owner of the vehicle or may be issued or delivered by an insurer licensed in this State upon a motor vehicle that is principally garaged, docked, or used in this State unless the policy contains a provision insuring the named insured and any other person using or responsible for the use of the motor vehicle.

with the expressed or implied consent of the named insured against liability for death or injury sustained or loss or damage incurred within the coverage of the policy or contract as a result of negligence in the operation or use of the vehicle by the named insured or by any such person. Each policy or contract of liability insurance or endorsement to the policy or contract, insuring private passenger automobiles principally garaged, docked, or used in this State that has as the named insured an individual or husband and wife who are residents of the same household and that includes, with respect to any liability insurance provided by the policy, contract, or endorsement for use of a nonowner automobile a provision requiring permission or consent of the owner of the automobile for the insurance to apply

(B) No policy or contract of bodily injury or property damage liability insurance relating to the ownership, maintenance or use of a motor vehicle may be issued or delivered in this State to the owner of a vehicle or may be issued or delivered by an insurer licensed in this State upon a motor vehicle principally garaged or used in this State without an endorsement or provision insuring the named insured, and any other person using or responsible for the use of the motor vehicle with the expressed or implied consent of the named insured, against liability for death or injury sustained, or loss or damage incurred within the coverage of the policy or contract as a result of negligence in the operation or use of the motor vehicle by the named insured or by any other person

(C) **Any endorsement, provision, or rider attached to or included in any policy of insurance which purports or seeks to limit or reduce the coverage afforded by the provisions required by this section is void (emphasis added)**

GEICO's family member step-down provision purports or seeks to limit or reduce the coverage afforded by the provisions required by the above-quoted section of the South Carolina Insurance Code, and therefore it is void

Finally, reducing the liability coverage limits as GEICO urges would not serve the purpose of a family member exclusion, which is to prevent collusion between family members. In *Lewis v. West American Ins. Co.*, 927 S.W.2d 829 (Ky. 1996) the Supreme Court of Kentucky discussed family member exclusions at length and ultimately invalidated them completely. As in *Lewis* because Mrs. Murry died at the scene of the accident and Mr. Murry ultimately died from the injuries he sustained in the accident, the party seeking compensation under the insurance policy "is dead. No family member remains with whom [the insured driver] could collude concerning the details of the collision." *Lewis* at 834.

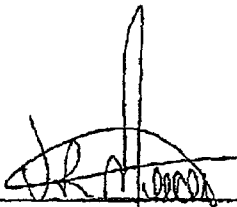
Based on the foregoing I hereby find and conclude that a total of \$100,000 in liability coverage is owed by GEICO, and therefore I hereby ORDER that judgment shall be entered in favor of the Plaintiffs in the amount of \$100,000.

IT IS SO ORDERED this _____ day of _____, 2011

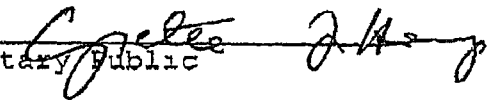
George C. James, Jr., Circuit Judge

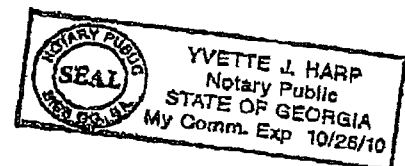
A F F I D A V I T

I, V R Mercer, Claims Coverage Underwriter of Government Employees Insurance Company, a corporation organized and existing under the laws of the state of Maryland, do hereby certify that the attached Policy Declaration sheet was recreated based on records retained in our computer data files. The amendments, endorsements, and policy contract are standard forms with information particular to this policy. Attached is a specimen copy of the policy contract number 0685-44-55-04 issued to EDWARD AND ANNIE MURRY for Renewal effective 09-02-06, processed on 07-12-06 and in effect on 09-03-06.


V R Mercer
Claims Coverage Underwriter

Subscribed and sworn before me this 14th day of December, 2009


Notary Public



POLICY NUMBER: 0685-44-55-04

GOVERNMENT EMPLOYEES INSURANCE COMPANY
ONE GEICO PLAZA, WASHINGTON D C 20047-0001

FAMILY AUTOMOBILE RENEWAL POLICY DECLARATIONS This is a description of your coverage. Please keep for your records.

Item 1 Named Insured and Address

EDWARD AND ANNIE MURRY
2805 CHATSWORTH RD
COLUMBIA SC 29223-1803

Date Processed 07-12-06
POLICY PERIOD FROM 09-02-06 TO 03-02-07 2 01 am Local time at the address of the named insured

THE INSURED VEHICLES(S) WILL BE REGULARLY GARAGED IN THE TOWN AND STATE SHOWN IN ITEM 1 EXCEPT AS NOTED IN THE VEHICLE SEGMENT

CONTRACT TYPE A70SC

CONTRACT AMMENDMENTS ALL VEHICLES - A200
UNIT ENDORSEMENTS A180SC (VEH 1 5) A347 (VEH 1,2,3,4,5) UE316 (VEH 1,5) UE315 (VEH 4)

IMPORTANT MESSAGES

Please review the reverse side of this page for coverage and discount information.

The GEICO Property Agency can arrange for your homeowner's, renter's and condominium owner's insurance needs. Just call toll free at 1-888-306-9500. Refinancing? Let us provide the new Homeowner's Policy you need.

Congratulations! You have qualified for a Military Discount on your policy. The reduction is reflected in your policy premium.

Congratulations! Your policy has been issued with our Prime Time Contract that contains a lifetime renewal guarantee provision. Please review your policy contract for specific exceptions to this guarantee.

As your vehicle ages, the Multi-Risk Coverage you carry becomes nearly impossible to replace. Renew your policy today and enjoy continuous coverage against costly mechanical breakdowns.

Please review the enclosed South Carolina Information and Option Form. This form provides important information about your coverages.

Confirmation of coverage has been sent to your lienholder and/or additional insured.

INSURED COPY

PAGE 1 TURN OVER

THIS IS A RECREATED DOCUMENT

Date Processed 07-12-06	Policy Number 0685-44-55-04
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VEHICLE	RATED LOCATION
1 01 FORD 1FMZU67E71UC51507	COLUMBIA SC 29223
2 95 BUICK 1G4GD2213S4723997	COLUMBIA SC 29223
3 99 JAGUAR SAJKD604XXC871601	COLUMBIA SC 29223

COVERAGES	LIMITS OR DEDUCTIBLES	PREMIUMS		
Coverage applies where premium or 0.00 is shown for the vehicle		Vehicle 1	Vehicle 2	Vehicle 3
BODILY INJURY LIABILITY EACH PERSON/EACH OCCURRENCE	\$100,000/\$300,000	241.50	139.10	117.10
PROPERTY DAMAGE LIABILITY	\$50,000	121.20	69.80	58.80
MEDICAL PAYMENTS	\$1,000	18.40	10.60	8.90
UNINSURED MOTORISTS BODILY INJURY EACH PERSON/EACH OCCURRENCE	\$50,000/\$100,000	33.00	45.70	45.70
PROPERTY DAMAGE	\$25,000	0.50	0.50	0.50
UNDERINSURED MOTORIST BODILY INJURY EACH PERSON/EACH OCCURRENCE	\$50,000/\$100,000	36.50	54.20	54.20
PROPERTY DAMAGE	\$25,000	0.50	0.50	0.50
COMPREHENSIVE	\$100 DED			161.70
COLLISION	\$200 DED			167.70
MULTI-RISK INCLUDES COMPREHENSIVE	\$250 DED	112.90		
COLLISION	\$500 DED	173.20		
MECHANICAL BREAKDOWN	\$250 DED	48.40		

SIX MONTH PREMIUM PER VEHICLE	\$ 786.10	\$ 320.40	\$ 615.10
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If you elect to pay your premium in installments you may be subject to an additional fee for each installment. The fee amount will be shown on your billing statements and is subject to change.

Premiums for these vehicles are based on the following Discounts and/or Surcharges

DISCOUNTS MULTI-CAR (VEH 1,2,3,4,5) SEAT BELT (VEH 1,2,3,4,5),
PASSIVE RESTRAINT/AIR BAG (VEH 1,2,3,4,5) ANTI-LOCK BRAKES (VEH 1,3,5)
ANTI-THEFT DEVICE (VEH 1,3,5) MILITARY (VEH 1,2,3,4,5)

SURCHARGES ACCIDENT AND/OR CONVICTION AND/OR INEXPERIENCED OPERATOR (VEH 1)

Lienholder Vehicle 1
FIRST CITIZENS BANK

Lienholder Vehicle

Lienholder Vehicle

INSURED COPY

PAGE 2

THIS IS A RECREATED DOCUMENT

Date Processed 07-12-06	Policy Number 0685-44-53-04
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VEHICLE	RATED LOCATION
4 94 DODGE 2B6HB21Y5RK143412	COLUMBIA SC 29223
5 04 BUICK 5GADS13S142229524	COLUMBIA SC 29223

COVERAGES	LIMITS OR DEDUCTIBLES	PREMIUMS		
Coverage applies where premium or 0.00 is shown for the vehicle		Vehicle 4	Vehicle 5	Vehicle
BODILY INJURY LIABILITY EACH PERSON/EACH OCCURRENCE	\$100,000/\$300,000	146 40	153 70	
PROPERTY DAMAGE LIABILITY	\$50 000	73 50	80 60	
MEDICAL PAYMENTS	\$1 000	11 10	10 60	
UNINSURED MOTORISTS BODILY INJURY EACH PERSON/EACH OCCURRENCE	\$50,000/\$100,000	45 70	45 70	
PROPERTY DAMAGE	\$25,000	0 50	0 50	
UNDERINSURED MOTORIST BODILY INJURY EACH PERSON/EACH OCCURRENCE	\$50,000/\$100,000	54 20	54 20	
PROPERTY DAMAGE	\$25 000	0 50	0 50	
MULTI-RISK INCLUDES COMPREHENSIVE	\$100 DED		131 50	
COLLISION	\$200 DED		200 30	
MECHANICAL BREAKDOWN	\$250 DED		32 10	

SIX MONTH PREMIUM PER VEHICLE	\$ 331 90	\$ 709 90
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If you elect to pay your premium in installments you may be subject to an additional fee for each installment. The fee amount will be shown on your billing statements and is subject to change

Premiums for these vehicles are based on the following Discounts and/or Surcharges

DISCOUNTS MULTI-CAR (VEH 1,2,3,4,5), SEAT BELT (VEH 1,2,3,4,5),
PASSIVE RESTRAINT/AIR BAG (VEH 1 2 3,4,5), ANTI-LOCK BRAKES (VEH 1 3 5)
ANTI THEFT DEVICE (VEH 1,3,5), MILITARY (VEH 1,2,3,4,5)

SURCHARGES ACCIDENT AND/OR CONVICTION AND/OR INEXPERIENCED OPERATOR (VEH 1)

Lienholder Vehicle	Lienholder Vehicle 5 FIRST CITIZENS BANK	Lienholder Vehicle
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INSURED COPY

PAGE 3

THIS IS A RECREATED DOCUMENT

GEICO

ONE GEICO PLAZA
Washington, D C. 20076-0001
Telephone 1-800-841-3000

**South Carolina
Family
Automobile
Insurance
Policy**

• Government Employees Insurance Company

SPECIMEN

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Whenever, "he," "his," "him," "himself" appears in this policy, you may read "she," "her," "hers" or "herself."

AGREEMENT

We, the Company named in the declarations attached to this policy, make this agreement with you, the policyholder. Relying on the information you have furnished and the declarations attached to this policy and if you pay your premium when due, we will do the following:

SECTION I

Liability Coverages

Your Protection Against Claims From Others

Bodily Injury Liability

Property Damage Liability

DEFINITIONS

The words italicized in Section I of this policy are defined below:

1. **"Auto business"** means the business of selling, repairing, servicing, storing, transporting or parking of autos.

2. **"Bodily injury"** means bodily injury to a person, including resulting sickness, disease or death.

3. **"Farm auto"** means:

- (a) a private passenger or station wagon type auto, or
- (b) a motor vehicle with a pick-up body; or
- (c) a delivery sedan or panel truck

which is principally garaged on a farm or ranch and which is not used for business, professional or commercial purposes other than:

- (a) farming or ranching, or
- (b) driving to and from work.

4. **"Insured"** means a person or organization described under PERSONS INSURED.

5. **"Non-owned auto"** means an automobile or trailer not owned by or furnished for the regular use of either you or a relative, other than a temporary substitute auto. An auto rented or leased for more than 30 days will be considered as furnished for regular use.

6. **"Owned auto"** means:

- (a) a vehicle described in this policy for which a premium charge is shown for these coverages;
- (b) a trailer owned by you;
- (c) a private passenger, farm or utility auto, ownership of which you acquire during the policy period or for which you enter into a lease during

the policy period for a term of six months or more, if:

- (i) it replaces an *owned auto* as defined in (a) above; or
- (ii) we insure all *private passenger, farm and utility autos* owned or leased by you on the date of the acquisition, and you ask us to add it to the policy no more than 30 days later.

(d) a *temporary substitute auto*

7. **"Private passenger auto"** means the following types of motor vehicles owned by or leased under a long term contract by an individual or individuals:

- (a) a motor vehicle of the private passenger type or station wagon type; or
- (b) a *utility auto*; or
- (c) a motor home

which is not used in the occupation, profession or business of the insured other than farming or ranching.

A motor vehicle is not considered owned by or leased under a long-term contract by an individual or individuals if the motor vehicle is owned by a partnership or corporation, unless the motor vehicle is owned by a farm family co-partnership or a farm family corporation and is garaged principally on a farm or ranch.

8. **"Relative"** means a person related to you who resides in your household.

9. **"Temporary substitute auto"** means an automobile or trailer, not owned by you, temporarily used with the permission of the owner. This vehicle must be used as a substitute for the *owned auto* or trailer when withdrawn from normal use because of its breakdown, repair, servicing, loss or destruction.

10. **"Trailer"** means a trailer designed to be towed by a *private passenger auto* if not being used for business or commercial purposes with a vehicle other than a *private passenger, farm or utility auto*.

11. **"Utility auto"** means:

- (a) a motor vehicle with a pick-up body; or
- (b) a van, delivery sedan or panel truck.

which is not used for business, professional or commercial purposes other than

- (i) farming or ranching, or
- (ii) driving to and from work.

12 "**War**" means armed conflict between nations, whether or not declared, civil war, insurrection rebellion or revolution

13 "**You**" means the policyholder named in the declarations and his or her spouse if a resident of the same household.

LOSSES WE WILL PAY FOR YOU UNDER SECTION I

Under Section I, we will pay damages which an *insured* becomes legally obligated to pay because of.

- 1 **bodily injury**, sustained by a person and
- 2 damage to or destruction of property,

arising out of the ownership, maintenance or use of the *owned auto* or a *non-owned auto*

We will defend any suit for damages payable under the terms of this policy. We may investigate and settle any claim or suit. Our duty to settle or defend ends when our limit of liability for this coverage has been exhausted.

ADDITIONAL PAYMENTS WE WILL MAKE UNDER THE LIABILITY COVERAGES

1. All investigative and legal costs incurred by us
2. All court costs charged to an *insured* in a covered law suit.
3. All interest accruing after entry of judgment on that amount of a judgment which represents our limit of liability until we have paid offered or deposited in court that part of the judgment not exceeding the limit of our liability
4. Premiums for appeal bonds in a suit we appeal, or premiums for bonds to release attachments, but the face amount of these bonds may not exceed the applicable limit of our liability
5. Premiums for bail bonds paid by an *insured* due to traffic law violations arising out of the use of an *insured* auto, not to exceed \$250 per bail bond
6. Costs incurred by any *insured* for first aid to others at the time of an accident involving an *insured* auto
7. Loss of earnings up to \$50 a day, but not other income, if we request an *insured* to attend hearings and trials

8. All reasonable costs incurred by an *insured* at our request.

EXCLUSIONS When Section I Does Not Apply

We will not defend any suit for damage if one or more of the exclusions listed below applies. We do not provide liability coverage, under Exclusions 1, 2, 3 and 8, in excess of the minimum limits of liability required by South Carolina law. We do not provide any liability coverage for the remaining Exclusions.

- 1 **Bodily injury** to any *insured* or any relative of an *insured* residing in his household is not covered.
- 2 Section I does not apply to any vehicle used to carry passengers or goods for hire. However, a vehicle used in an ordinary car pool on a ride sharing or cost sharing basis is covered.
- 3 **Bodily injury** or property damage caused intentionally by or at the direction of an *insured* is not covered.
- 4 We do not cover **bodily injury** or property damage that is insured under a nuclear liability policy.
- 5 **Bodily injury** or property damage arising from the operation of farm machinery is not covered.
- 6 **Bodily injury** to an employee of an *insured* arising out of and in the course of employment by an *insured* is not covered.

However **bodily injury** of a domestic employee of the *insured* is covered unless benefits are payable or are required to be provided under a workers or workmen's compensation law.

7. We do not cover **bodily injury** to a fellow employee of an *insured* if the fellow employee's **bodily injury** arises from the use of an auto while in the course of employment and if workers' compensation or other similar coverage is available. We will defend *you* if suit is brought by a fellow employee against *you* alleging use, ownership or maintenance of an auto by *you*.

8. We do not cover an *owned auto* while used by a person (other than *you* or a relative) when he is employed or otherwise engaged in the *auto business*.

9. A *non-owned auto* while maintained or used by any person is not covered while such person is employed or otherwise engaged in (1) any *auto business* if the accident arises out of that business, (2) any other business or occupation of any *insured* if the accident arises out of that business or occupation, except a *private passenger auto* used by *you* or your chauffeur or domestic servant while engaged in such other business.

10 We do not cover damage to

- (a) property owned, operated or transported by an *insured*, or
- (b) property rented to or in charge of an *insured* other than a residence or private garage.

11 We do not cover an auto acquired by *you* during the policy term, if *you* have purchased other liability insurance for it.

12 We do not cover

- (a) the United States of America or any of its agencies
- (b) any person including *you*, if protection is afforded under the provisions of the Federal Tort Claims Act.

PERSONS INSURED

Who Is Covered

Section I applies to the following as *insureds* with regard to an *owned auto*

- 1 *you* and *your relatives*;
- 2 any other person driving the auto with *your* permission and within the actual scope of *your* permission,
- 3 any other person or organization for his or its liability because of acts or omissions of an *insured* under 1 or 2 above

Section I applies to the following with regard to a *non-owned auto*

- 1 (a) *you*
- (b) *your relatives* when driving a *private passenger auto*, *farm auto* or *utility auto* or towing a *trailer*

Such operation by *you* or *your relatives* must be with the permission, or reasonably believed to be with the permission, of the owner and within the scope of that permission

- 2 any other person or organization, not owning or hiring the auto, regarding his or its liability because of acts or omissions of an *insured* under 1 above

The limits of liability stated in the declarations are our maximum obligations regardless of the number of *insureds* involved in the occurrence.

FINANCIAL RESPONSIBILITY LAWS

When this policy is certified as proof of financial responsibility for the future under the provisions of a motor vehicle financial responsibility law, this liability insurance will comply with the provisions of that law. The *insured* agrees to reimburse us for payments made by us

which we would not have had to make except for this agreement.

OUT OF STATE INSURANCE

When the policy applies to the operation of a motor vehicle outside of *your* state, we agree to increase *your* coverages to the extent required of out-of-state motorists by local law. This additional coverage will be reduced to the extent that *you* are protected by another insurance policy. No person can be paid more than once for any item of loss.

LIMITS OF LIABILITY

Regardless of the number of autos or trailers to which this policy applies; and regardless of the number of *owned autos* or *non-owned autos* involved in the occurrence, the most we will pay for damages resulting from any one occurrence is the bodily injury limit of liability, or property damage limit of liability, as appropriate, assigned to the *owned auto* or *non-owned auto* involved in the occurrence.

1 The limit of bodily injury liability stated in the declarations as applicable to "each person" is the limit of our liability for all damages, including damages for care and loss of services because of *bodily injury* sustained by one person as the result of one occurrence.

2 The limit of such liability stated in the declarations as applicable to "each occurrence" is, subject to the above provision respecting each person, the total limit of our liability for all such damages, including damages for care and loss of services, because of *bodily injury* sustained by two or more persons as the result of any one occurrence.

3 The limit of property damage liability stated in the declarations as applicable to "each occurrence" is the total limit of our liability for all damages because of injury to or destruction of the property of one or more persons or organizations including the loss of use of the property as the result of any one occurrence.

OTHER INSURANCE

If the *insured* has other insurance against a loss covered by Section I of this policy, we will not owe more than our pro-rata share of the total coverage available.

Any insurance we provide for losses arising out of the ownership, maintenance or use of a vehicle *you* do not own shall be excess over any other valid and collectible insurance.

CONDITIONS

The following conditions apply to Section I

1 NOTICE

As soon as possible after an occurrence written notice must be given us or our authorized agent stating

- (a) the identity of the *insured*
- (b) the time, place and details of the occurrence,
- (c) the names and addresses of the injured and of any witnesses, and
- (d) the names of the owners and the description and location of any damaged property

If a claim or suit is brought against an *insured*, he must promptly send us each demand, notice, summons or other process received

2 TWO OR MORE AUTOS

If this policy covers two or more autos, the limit of coverage applies separately to each. An auto and an attached trailer are considered to be one auto

3 ASSISTANCE AND COOPERATION OF THE INSURED

The *insured* will cooperate and assist us, if requested.

- (a) in the investigation of the occurrence
- (b) in making settlements,
- (c) in the conduct of suits,
- (d) in enforcing any right of contribution or indemnity against any legally responsible person or organization because of *bodily injury* or property damage;
- (e) at trials and hearings,
- (f) in securing and giving evidence; and
- (g) by obtaining the attendance of witnesses

Only at his own cost will the *insured* make a payment, assume any obligation or incur any cost other than for first aid to others

4. ACTION AGAINST US

No suit will be against us

- (a) unless the *insured* has fully complied with all the policy's terms and conditions, and
- (b) until the amount of the *insured's* obligation to pay has been finally determined, either
 - (i) by a final judgment against the *insured* after actual trial, or
 - (ii) by written agreement of the *insured*, the claimant and us

A person or organization or the legal representative of either, who secures a judgment or written agreement, may then sue to recover up to the policy limits

No person or organization, including the *insured* has a right under this policy to make us a defendant in an action to determine the *insured's* liability

Bankruptcy or insolvency of the *insured* or his estate will not relieve us of our obligations

5 SUBROGATION

When payment is made under this policy, we will be subrogated to all the *insured's* rights of recovery against others. The *insured* will help us to enforce these rights. The *insured* will do nothing after loss to prejudice these rights

This means we will have the right to sue for or otherwise recover the loss from anyone else who may be held responsible.

SECTION II**Auto Medical Payments**

Protection For You And Your Passengers For Medical Expenses

DEFINITIONS

The definitions of terms shown under Section I apply to this Coverage. In addition, under this Coverage, *occupying* means in or upon or entering into or alighting from

PAYMENTS WE WILL MAKE

Under this Coverage, we will pay all reasonable expenses actually incurred by an *insured* within one year from the date of accident for necessary medical, surgical, x-ray, dental services, prosthetic devices, ambulance, hospital, professional nursing and funeral services. The one year limit does not apply to funeral services

This Coverage applies to

1 you and each *relative* who sustains *bodily injury* caused by accident.

- (a) while *occupying* the *owned auto*, or
- (b) while *occupying* a *non-owned auto* if you or your *relative* reasonably believe you have the owner's permission to use the auto and the use is within the scope of that permission, or
- (c) when struck as a pedestrian by an auto or trailer

2 any other person who sustains *bodily injury* caused by accident while *occupying* the *owned auto* while being used by you a resident of your household, or other persons with your permission

EXCLUSIONS

When Section II Does Not Apply

- 1 There is no coverage for *bodily injury* sustained by any occupant of an *owned auto* used to carry passengers or goods for hire. However, a vehicle used in an ordinary car pool on a ride sharing or cost sharing basis is covered.
- 2 There is no coverage for an *insured* while *occupying* a vehicle located for use as a residence or premises.
- 3 You and your relatives are not covered for *bodily injury* sustained while *occupying* or when struck by
 - (a) a farm-type tractor or other equipment designed for use principally off public roads, while not upon public roads, or
 - (b) a vehicle operated on rails or crawler-treads
- 4 There is no coverage for persons employed in the *auto business*, if the accident arises out of that business and if benefits are required to be provided under a workers compensation law
- 5 There is no coverage for *bodily injury* sustained due to *war*
- 6 The United States of America or any of its agencies are not covered as an *insured*, a third party beneficiary, or otherwise.

LIMIT OF LIABILITY

The limit of liability for medical payments stated in the declarations as applying to "each person" is the limit we will pay for all costs incurred by or on behalf of each person who sustains *bodily injury* in one accident. This applies regardless of the number of persons insured or the number of autos or trailers to which this policy applies.

OTHER INSURANCE

If the *insured* has other medical payments insurance against a loss covered by Section II of this policy, we will not owe more than our pro rata share of the total coverage available.

Any insurance we provide to a person who sustains *bodily injury* while *occupying* a vehicle you do not own shall be excess over any other valid and collectible insurance.

CONDITIONS

The following conditions apply to this Coverage.

1 NOTICE

As soon as possible after an accident, written notice must be given us or our authorized agent stating:

- (a) the identity of the *insured*,
- (b) the time, place and details of the accident, and
- (c) the names and addresses of the injured, and of any witnesses

2 TWO OR MORE AUTOS

If this policy covers two or more autos the limit of coverage applies separately to each. An auto and an attached trailer are considered to be one auto.

3 ACTION AGAINST US

Suit will not be against us unless the *insured* has fully complied with all the policy terms.

4. MEDICAL REPORTS - PROOF AND PAYMENT OF CLAIMS

As soon as possible, the injured person or his representative will furnish us with written proof of claim, under oath if required. After each request from us, he will give us written authority to obtain medical reports and copies of records.

The injured person will submit to an examination by doctors chosen by us and at our expense as we may reasonably require.

We may pay either the injured person, the doctor or other persons or organizations rendering medical services. These payments are made without regard to fault or legal liability of the *insured*.

5 SUBROGATION

When payment is made under this policy, we will be subrogated to all the *insured's* rights of recovery against others. The *insured* will help us to enforce these rights. The *insured* will do nothing after loss to prejudice these rights.

This means we will have the right to sue for or otherwise recover the loss from anyone else who may be held responsible.

SECTION III

Physical Damage Coverages

Your Protection For Loss Or Damage To Your Car

DEFINITIONS

The definitions of the terms "*auto business*", "*farm auto*", "*private passenger auto*", "*relative*", "*temporary substitute auto*", "*utility auto*", "*you*" and "*war*" under Section I apply to Section III also. Under this Section, the following special definitions apply.

1. "*Actual cash value*" is the replacement cost of the auto or property less *depreciation* or *betterment*.

2. "*Betterment*" is improvement of the auto or property to a value greater than its pre-loss condition.

3. "*Collision*" means loss caused by upset of the covered auto or its collision with another object, including an attached vehicle.

4. **"Depreciation"** means a decrease or loss in value to the auto or property because of use, disuse, physical wear and tear, age, outdatedness or other causes

5. **"Insured"** means

(a) regarding the *owned auto*

- (i) you and your relatives;
- (ii) a person or organization maintaining, using or having custody of the auto with your permission, if his use is within the scope of that permission.

(b) regarding a *non-owned auto*, you and your relatives, using the auto, if the actual operation or use is with the permission or reasonably believed to be with the permission of the owner and within the scope of that permission

6. **"Loss"** means direct and accidental loss of or damage to

- (a) the auto, including its equipment, or
- (b) other insured property

7. **"Non-owned auto"** means a *private passenger auto*, *farm auto* or *utility auto* or *trailer* not owned by or furnished for the regular use of either you or your relatives, except a *temporary substitute auto*. You or your relative must be using the auto or trailer within the scope of permission given by its owner. An auto rented or leased for more than 30 days will be considered as furnished for regular use.

8. **"Owned auto"** means

- (a) any vehicle described in this policy for which a specific premium charge indicates there is coverage,
- (b) a *private passenger*, *farm* or *utility auto* or a *trailer*, ownership of which is acquired by you during the policy period or for which you enter into a lease during the policy period for a term of six months or more, if
 - (i) it replaces an *owned auto* as described in (a) above, or
 - (ii) we insure all *private passenger*, *farm*, *utility autos* and *trailers* owned or leased by you on the date of such acquisition and you request us to add it to the policy within 30 days afterward,

(c) a *temporary substitute auto*

9. **"Trailer"** means a trailer designed for use with a *private passenger auto* and not used as a home office store, display or passenger trailer

LOSSES WE WILL PAY FOR YOU Comprehensive (Excluding Collision)

1. We will pay for each *loss*, less the applicable deductible, caused other than by *collision*, to the *owned* or *non-owned auto*—this includes breakage of glass and loss caused by

- | | |
|-------------------------------------|-------------------------|
| (a) missiles, | (j) windstorm |
| (b) falling objects, | (k) hail, |
| (c) fire, | (l) water, |
| (d) lightning; | (m) flood, |
| (e) theft, | (n) malicious mischief; |
| (f) larceny, | (o) vandalism, |
| (g) explosion, | (p) riot, or |
| (h) earthquake, | (q) civil commotion. |
| (i) colliding with a bird or animal | |

No deductible will apply to *loss* caused by fire, lightning, smoke, smudge or damage sustained while the vehicle is being transported on any conveyance.

At the option of the *insured*, breakage of glass caused by *collision* may be paid under the Collision coverage, if included in the policy. No deductible will apply to *loss* to the safety glass of an *owned* or *non-owned auto*.

2. We will pay, up to \$200 per occurrence, less any deductible shown in the declarations, for *loss* to personal effects due to

- | | |
|-------------------------------------|----------------------|
| (a) fire, | (e) falling objects, |
| (b) lightning, | (f) earthquake; or |
| (c) flood, | (g) explosion |
| (d) theft of the entire automobile, | |

The property must be owned by you or a *relative*, and must be in or upon an *owned auto*.

No deductible will apply due to *loss* by fire or lightning.

3. *Losses* arising out of a single occurrence shall be subject to no more than one deductible.

Collision

1. We will pay for *collision loss* to the *owned* or *non-owned auto* for the amount of each *loss* less the applicable deductible. No deductible will apply to *loss* to the safety glass of an *owned* or *non-owned auto*.

2. We will pay up to \$200 per occurrence less the applicable deductible, for *loss* to personal effects due to a *collision*. The property must be owned by you or a *relative*, and must be in or upon an *owned auto*.

3. *Losses* arising out of a single occurrence shall be subject to no more than one deductible.

ADDITIONAL PAYMENTS WE WILL MAKE UNDER THE PHYSICAL DAMAGE COVERAGES

1 We will reimburse the *insured* for transportation expenses incurred during the period beginning 48 hours after a theft of the entire auto covered by Comprehensive coverage under this policy has been reported to us and the police. Reimbursement ends when the auto is returned to use or we pay for the *loss*.

Reimbursement will not exceed \$15 per day nor \$450 per *loss*.

2. We will pay general average and salvage charges for which the *insured* becomes legally liable when the auto is being transported.

3. We will pay for *loss* to any of the following equipment (including *loss* to accessories and antennas)

- (a) car phone,
- (b) citizen's band radio
- (c) two-way mobile radio
- (d) scanning monitor receiver; or
- (e) device designed for the recording and/or reproduction of sound

We will pay only if the equipment at the time of *loss*

- (a) is permanently installed in or upon an *owned* auto; and
- (b) that auto is insured under the appropriate coverage

EXCLUSIONS

When The Physical Damage Coverages Do Not Apply

1 An auto used to carry passengers or goods for hire is not covered. However, a vehicle used in an ordinary car pool on a ride sharing or cost sharing basis is covered

2. *Loss* due to war is not covered.

3 We do not cover *loss* to a *non-owned* auto when used by the *insured* in the *auto business*

4. There is no coverage for *loss* caused by and limited to wear and tear, freezing, mechanical or electrical breakdown or failure, unless that damage results from a covered theft.

5 Tires when they alone are damaged by *collision*, are not covered.

6 *Loss* due to radioactivity is not covered

7 *Loss* to any tape, wire, record disc or other medium for use with a device designed for the recording and/or reproduction of sound is not covered

8 We do not cover *loss* to any radar or laser detector

9 We do not cover *trailers* when used for business or commercial purposes with vehicles other than *private passenger, farm or utility autos*

LIMIT OF LIABILITY

The limit of our liability for *loss*

1 is the *actual cash value* of the property at the time of the *loss*;

2 will not exceed the cost to repair or replace the property, or any of its parts with other of like kind and quality and will not include compensation for any diminution in the property's value that is claimed to result from the *loss*;

3 to personal effects arising out of one occurrence is \$200

4. to a *trailer* not owned by you is \$500

5 for custom options is limited to the *actual cash value* of equipment, furnishings or finishings (including paint) installed in or upon the vehicle only by the auto factory or an authorized auto dealer and included in the purchase price of the vehicle.

Actual cash value of property will be determined at the time of the *loss* and will include an adjustment for *depreciation/betterment* and for the physical condition of the property

OTHER INSURANCE

If the *insured* has other insurance against a *loss* covered by Section III, we will not owe more than our pro-rata share of the total coverage available.

Any insurance we provide for a vehicle you do not own shall be excess over any other valid and collectible insurance.

CONDITIONS

The following conditions apply only to the Physical Damage Coverages

1. NOTICE

As soon as possible after a *loss*, written notice must be given us or our authorized agent stating:

- (a) the identity of the *insured*,
- (b) a description of the auto or *trailer*;
- (c) the time, place and details of the *loss*, and
- (d) the names and addresses of any witnesses

In case of theft, the *insured* must promptly notify the police.

2. TWO OR MORE AUTOS

If this policy covers two or more autos or trailers the limit of coverage and any deductibles apply separately to each.

3 ASSISTANCE AND COOPERATION OF THE INSURED

The *insured* will cooperate and assist us, if requested

- (a) in the investigation of the *loss*
- (b) in making settlements,
- (c) in the conduct of suits,
- (d) in enforcing any right of subrogation against any legally responsible person or organization
- (e) at trials and hearings,
- (f) in securing and giving evidence, and
- (g) by obtaining the attendance of witnesses

4 ACTION AGAINST US

Suit will not be against us unless the policy terms have been complied with and until 30 days after proof of loss is filed and the amount of *loss* is determined.

5 INSURED'S DUTIES IN EVENT OF LOSS

In the event of *loss* the *insured* will.

- (a) Protect the auto whether or not the *loss* is covered by this policy. Further *loss* due to the *insured's* failure to protect the auto will not be covered. Reasonable expenses incurred for this protection will be paid by us
- (b) File with us, within 91 days after *loss*, his sworn proof of *loss* including all information we may reasonably require
- (c) At our request, the *insured* will exhibit the damaged property

6 APPRAISAL

If we and the *insured* do not agree on the amount of *loss*, either may within 60 days after proof of *loss* is filed, demand an appraisal of the *loss*. In that event, we and the *insured* will each select a competent appraiser. The appraisers will select a competent and disinterested umpire. The appraisers will state separately the *actual cash value* and the amount of the *loss*. If they fail to agree, they will submit the dispute to the umpire. An award in writing of any two will determine the amount of *loss*. We and the *insured* will each pay his chosen appraiser and will bear equally the other expenses of the appraisal and umpire.

We will not waive our rights by any of our acts relating to appraisal.

7 PAYMENT OF LOSS

We may at our option

- (a) pay for the *loss*, or
- (b) repair or replace the damaged or stolen property

At any time before the *loss* is paid or the property replaced, we may return any stolen property to you or to the address shown in the declarations at our expense with payment for covered damage. We may take all or part of the property at the agreed or appraised value, but there will be no abandonment to us. We may settle claims for *loss* either with the *insured* or the owner of the property.

8 NO BENEFIT TO BAILEE

This insurance does not apply directly or indirectly to the benefit of a carrier or other bailee for hire liable for the *loss* of the auto.

9 SUBROGATION

When payment is made under this policy, we will be subrogated to all the *insured's* rights of recovery against others. The *insured* will help us to enforce these rights. The *insured* will do nothing after *loss* to prejudice these rights.

This means we will have the right to sue for or otherwise recover the *loss* from anyone else who may be held responsible.

SECTION IV

Uninsured Motorists Coverage

Protection For You, Your Relatives And Your Passengers For Injuries And Property Damage Caused By Uninsured Motorists

DEFINITIONS

The definitions of terms for Section I apply to Section IV except for the following special definitions.

1 "Insured" means

- (a) you and your relatives who reside in your household
- (b) any person using an *insured motor vehicle* with your permission
- (c) any person occupying an *insured motor vehicle* with your permission,
- (d) any person who is entitled to recover damages under a wrongful death statute of any state because of the death of an *insured* under (a), (b) or (c) above

If there is more than one *insured*, our limits of liability will not be increased

2 "*Insured motor vehicle*" is a *motor vehicle* described in the policy and to which the liability coverage of the policy applies.

3 "*Motor vehicle*" is a self-propelled vehicle designed for use on a highway and includes *trailers* and semi-trailers designed for use with these vehicles. The term *motor vehicle* does not include traction engines, road rollers, farm tractors, tractor cranes, power shovels, well drillers or any vehicle propelled by electric power from overhead wires but not operated on rails.

4 "*Property damage*" means damage or destruction of an *insured's* property

5 "*Uninsured motor vehicle*" is a *motor vehicle* of which.

- (a) there is no applicable bodily injury liability and property damage liability insurance with limits complying with the financial responsibility requirements of the State of South Carolina, or
- (b) the insurance carrier successfully denies coverage, or
- (c) the insurance carrier is declared insolvent, or is in delinquency proceedings, suspension or receivership, or is proven unable fully to respond to a judgment, and
- (d) there is no bond or deposit of cash or securities in lieu of bodily injury and property damage liability insurance
- (e) the owner of the *motor vehicle* has not qualified as a self-insurer in accordance with the applicable provisions of law

The term *uninsured motor vehicle* includes a *motor vehicle* which causes *bodily injury* or *property damage* to an *insured* and the owner or operator of which is unknown provided that:

- (a) the *insured* or someone in his behalf reports the accident to some appropriate police authority within a reasonable time after its occurrence,
- (b) the injury or damage was caused by physical contact with the unknown vehicle, or the accident was witnessed by someone other than the owner or operator of the insured vehicle and that witness submits a signed affidavit attesting to the truth of the facts of the accident,
- (c) the *insured* was not negligent in failing to determine the identity of the other vehicle and its driver at the time of the accident,
- (d) the *insured* or someone for him files with us within 30 days or as soon as practical thereafter a written statement that he has a cause of action for damages against an unidentified person, and

- (e) the *insured* or someone for him makes available, at our request, the *motor vehicle* occupied by the *insured* at the time of the accident.

The term *uninsured motor vehicle* does not include a *motor vehicle* owned by the United States of America or any governmental unit or agency

LOSSES WE PAY

Under this coverage we will pay damages for *bodily injury* and *property damage* caused by accident which the *insured* is legally entitled to recover from the owner or operator of an *uninsured motor vehicle* arising out of the ownership, maintenance or use of that *motor vehicle*.

EXCLUSIONS

- 1 This coverage does not apply to *bodily injury* or *property damage* to an *insured* if he or his legal representative has made a settlement or has been awarded a judgment without our prior written consent.
2. There is no coverage for *bodily injury* or *property damage* to an *insured* while *occupying* or through being struck by an *uninsured motor vehicle* owned by an *insured* or a relative.
- 3 This coverage will not benefit directly or indirectly any workmen's compensation insurer, self insurer, disability benefits insurer or property insurer
4. There is no coverage for *property damage* to the first \$200 of the amount of damage to the property of each *insured* as the result of any one accident.
5. There is no coverage for *property damage* if the *insured* has been compensated by insurance or otherwise.

LIMITS OF LIABILITY

Regardless of the number of *insured motor vehicles* *insureds*, claims made on *motor vehicles* involved in the accident, the most we will pay for damages resulting from any one accident is the limit on the *insured motor vehicle* involved in the accident.

1 The limit of bodily injury liability for Uninsured Motorists coverage stated in the declarations as applicable to "each person" is the limit of our liability for all damages, including those for care or loss of services due to *bodily injury* sustained by one person as the result of any one accident.

2 The limit of bodily injury liability stated in the declarations as applicable to "each accident" is subject to the above provision respecting each person, the total limit of our liability for all such damages because of *bodily injury* sustained by two or more persons as the result of any one accident.

3 The limit of property damage liability stated in the declarations as applicable to "each accident" is our total limit of liability for all damages to the property of one or more *insureds* as the result of any one accident.

4 Any amount payable under this insurance shall be reduced by all sums.

- (a) paid or payable under any Uninsured Motorists coverage applicable on the vehicle involved in the accident;
- (b) paid or payable by or for anyone who is legally responsible, including all sums paid under the policy's liability insurance

5. If separate policies with us are in effect for you or any person in *your* household, they may not be combined to increase the limit of our liability for a loss

6 Any amount paid under this insurance will reduce any amount an *insured* may be paid under the policy's liability insurance

OTHER INSURANCE

When an *insured* occupies a *motor vehicle* not described in this policy, this insurance is excess over any other similar insurance available to the *insured* for *bodily injury* and the insurance which applies to the occupied auto is primary

If none of an *insured's* *motor vehicles* is involved in the accident, coverage is available to the extent of coverage on any one *insured* *motor vehicle*. Coverage on any other vehicles shall not be added to that coverage

Except as provided above, if the *insured* has other similar bodily injury insurance available to him and applicable to the accident, the damages for *bodily injury* will be deemed not to exceed the higher of the applicable limits of liability of this insurance and the other insurance. If the *insured* has other insurance against a loss covered by Uninsured Motorists provisions of this policy, we will not be liable for more than our pro-rata share of the total coverage available.

With respect to *property damage*, this insurance shall be excess over other valid and collectible insurance applicable to the damaged property

We will not be liable for a greater proportion of any loss under this coverage than its limit of liability bears to the sum of the applicable limits of liability and this and all such other insurance.

TRUST AGREEMENT

When we make a payment under this coverage

1 We will be entitled to repayment of that amount out of any settlement or judgment the *insured* recovers from

any person or organization legally responsible for the *bodily injury*

2. The *insured* will hold in trust for our benefit all rights of recovery which he may have against any person or organization responsible for these damages. He will do whatever is necessary to secure all rights of recovery and will do nothing after the loss to prejudice these rights

3 At our written request, the *insured*, in his own name, will take, through a designated representative, appropriate actions necessary to recover payment for damages from the legally responsible person or organization. The *insured* will pay us out of the recovery for our expenses, costs and attorneys' fees

4. The *insured* will execute and furnish us with any needed documents to secure his and our rights and obligations

CONDITIONS

1 PROOF OF CLAIM

As soon as possible, the *insured* or other person making claim must give us written proof of claim, under oath if required. This will include details of the nature and extent of *bodily injury*, treatment, and other facts which may affect the amount payable. Proof of claim must be made on forms furnished by us unless we have not furnished these forms within 15 days after receiving notice of claim.

The injured person will submit to examination by doctors chosen by us as often as we may reasonably require. In the event of the *insured's* incapacity or death, his legal representative must, at our request, authorize us to obtain medical reports and copies of records

The *insured* or other person making a claim for damage to property shall file a proof of loss in sworn statement form with us within 60 days after the loss occurs (unless we extend the time in writing). This statement must show the interest of the *insured* and all others in the property, any liens or other claims on the property, the actual cash value at time of loss, and description and amounts of all other insurance on the property. If we ask, the *insured* must show us the damaged property

2. ASSISTANCE AND COOPERATION OF THE *INSURED*

After we receive notice of a claim, we may require the *insured* to take any action necessary to preserve his recovery rights against any allegedly legally responsible person or organization.

3 NOTICE OF LEGAL ACTION

If the *insured* or his legal representative files suit before we make a settlement under this coverage, he must immediately provide us with a copy of the pleadings served in the manner provided by law

4 PAYMENT OF LOSS

Any amount due is payable to the *insured* or his authorized representative

5 ACTION AGAINST US

Suit will not lie against us unless the *insured* or his legal representative has fully complied with all of the policy terms

SECTION V**General Conditions****These Conditions Apply To All Coverages In This Policy****1 TERRITORY**

This policy applies only to accidents, occurrences or losses during the policy period within the United States of America, its territories or possessions or Canada or when the auto is being transported between ports thereof.

2 PREMIUM

When you dispose of, acquire ownership of, or replace a *private passenger, farm or utility auto*, any necessary premium adjustment will be made as of the date of the change and in accordance with our manuals

3 CHANGES

The terms and provisions of this policy cannot be waived or changed, except by an endorsement issued to form a part of this policy

We may revise this policy during its term to provide more coverage without an increase in premium. If we do so, *your* policy will automatically include the broader coverage when effective in *your* state.

The premium for each auto is based on the information we have in *your* file. You agree

- (a) that we may adjust *your* policy premiums during the policy term if any of this information on which the premiums are based is incorrect, incomplete or changed
- (b) that you will cooperate with us in determining if this information is correct and complete
- (c) that you will notify us of any changes in this information

Any calculation or recalculation of *your* premium or changes in *your* coverage will be based on the rules, rates and forms on file, if required, for our use in *your* state

4 ASSIGNMENT

Your rights and duties under this policy may not be assigned without our written consent.

If you die, this policy will cover

- (a) *your* surviving spouse,
- (b) the executor or administrator of *your* estate, but only while operating an *owned auto* and while acting within the scope of his duties,
- (c) any person having proper temporary custody of and operating the *owned auto*, as an *insured* until the appointment and qualification of the executor or administrator of *your* estate and
- (d) under the Medical Payments coverage, a person who was a *relative* at the time of *your* death

5 POLICY PERIOD

Unless otherwise cancelled, this policy will expire as shown in the declarations. But, it may be continued by our offer to renew and *your* acceptance by payment of the required renewal premium prior to the expiration date. Each period will begin and expire at 12:01 A.M. local time at *your* address stated in the declarations

6 CANCELLATION BY THE INSURED

You may cancel this policy by providing notice to us stating when after the notice, cancellation will be effective.

If this policy is cancelled, you may be entitled to a premium refund. The premium refund, if any, will be computed according to our manuals

7 CANCELLATION BY US

We may cancel this policy by mailing to you, at the address shown in this policy, written notice stating when the cancellation will be effective. We will mail this notice at least 15 days prior to the effective date of that cancellation

The mailing or delivery of this notice will be sufficient proof of notice. The policy will cease to be in effect as of the date and hour stated in the notice.

If this policy is canceled, you may be entitled to a premium refund. The premium refund, if any, will be computed according to our manuals. Payment or tender of unearned premium is not a condition of cancellation.

8 CANCELLATION BY US IS LIMITED

After this policy has been in effect for 90 days or if the policy is a renewal policy we will not cancel except for any of the following reasons

- (a) *You* do not pay the initial premium on other than a renewal policy or any additional premium for this policy or fail to pay any premium installment when due to us
- (b) *You* or any other operator who either resides in *your* household or customarily operates a motor vehicle insured under this policy has had his driver's license suspended or revoked during the policy period or, if it is a renewal policy during its policy period or the 90 days preceding the last anniversary of the effective date
- (c) *You* become a non-resident of South Carolina and register *your* South Carolina motor vehicle in another state.

We may increase *your* deductible to \$250 under Section III - Physical Damage Coverages

9 RENEWAL

We guarantee to renew this policy for *private passenger, farm or utility autos* as long as the following conditions are met:

- (a) *You* (or *your* spouse) are at least 50 years old and *you* (or *your* spouse) are a principal operator of an auto insured under this policy. There are no principal or occasional operators under the age of 25
- (b) *You* and all operators of autos insured under this policy must be physically and mentally able to safely operate an auto. We may require an operator to provide certification of this from a doctor acceptable to us
- (c) The autos insured are principally located in a state which has approved the use of this condition, and that state continues to approve the use of this condition.
- (d) The representations provided in *your* application for this policy were true.

If the above requirements are not met, the guaranteed renewal condition does not apply. We reserve the right to terminate this guaranty in any state in which conditions require that we discontinue writing new and renewal policies for all our *insureds*. Should we choose not to renew *your* policy, we will mail to *you*, at the address shown in this policy, written notice of our refusal to renew at least 15 days prior to the expiration date. The mailing or delivery of this by us will be sufficient proof of notice.

This policy will expire without notice if any of the following conditions exist:

- (a) *You* do not pay any premium as we require to renew this policy
- (b) *You* have informed us or our agent that *you* wish the policy to be cancelled or not renewed

- (c) *You* do not accept our offer to renew or *you* refuse to provide us with renewal classification and rating information as we may require

We may increase *your* deductible to \$250 under Section III - Physical Damage Coverages

10 OTHER INSURANCE

If other insurance is obtained on *your* insured auto, any similar insurance afforded under this policy for that auto will terminate on the effective date of the other insurance.

If *you* relinquish possession of a leased vehicle or if *you* sell or relinquish ownership of an *owned auto*, any coverage provided by this policy for that vehicle will terminate on the day *you* do so.

11 DIVIDEND PROVISION

You are entitled to share in a distribution of the surplus of the Company as determined by its Board of Directors from time to time.

12. DECLARATIONS

By accepting this policy, *you* agree that:

- (a) the statements in *your* application and in the declarations are *your* agreements and representations,
- (b) this policy is issued in reliance upon the truth of these representations and
- (c) this policy along with the application and declaration sheet, embodies all agreements relating to this insurance. The terms of this policy cannot be changed orally.

13. FRAUD AND MISREPRESENTATION

Coverage is not provided to any person who knowingly conceals or misrepresents any material fact or circumstance relating to this insurance:

- (a) at the time of application, or
- (b) at any time during the policy period, or
- (c) in connection with the presentation or settlement of a claim

14 EXAMINATION UNDER OATH

The *insured* or any other person seeking coverage under this policy must submit to examination under oath by any person named by us when and as often as we may require.

15 TERMS OF POLICY CONFORMED TO STATUTES

Any terms of this policy in conflict with the laws of South Carolina are amended to conform to those statutes.

SECTION VI - AMENDMENTS AND ENDORSEMENTS

1 SPECIAL ENDORSEMENT
UNITED STATES GOVERNMENT EMPLOYEES

A. Under the Property Damage coverage of Section I we provide coverage to United States Government employees, civilian or military, using

- 1 Motor vehicles owned or leased by the United States Government or any of its agencies, or
- 2 Rented motor vehicles used for United States Government business,

when such use is with the permission of the United States Government. Subject to the limits described in paragraph B. below, we will pay sums *you* are legally obligated to pay for damage to these vehicles

B The following limits apply to this coverage

- 1 A \$100 deductible applies to each occurrence.
- 2 For vehicles described in A.1 above, our liability shall not exceed the lesser of the following:

- a. the *actual cash value* of the property at the time of the occurrence, or
- b. the cost to repair or replace the property, or any of its parts with other of like kind and quality, or
- c. two months basic pay of the *insured*, or
- d. the limit of Property Damage liability coverage stated in the declarations

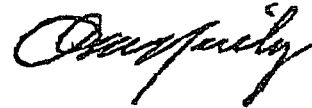
3. For vehicles described in A.2 above our liability shall not exceed the lesser of the following

- a. the *actual cash value* of the property at the time of the occurrence, or
- b. the cost to repair or replace the property or any of its parts with other of like kind and quality, or
- c. the limit of Property Damage liability coverage stated in the declarations

This insurance is excess over other valid and collectible insurance



R. A. Phillips
Secretary



O M Nicely
President

GOVERNMENT EMPLOYEES INSURANCE COMPANY
HOME OFFICE - 5260 Western Avenue
Chevy Chase, Maryland 20815-3799

GEICO

**Automobile Policy
Amendment**

Policy Number

Glass Repair/Replacement

Your policy is amended as follows

SECTION III - Physical Damage Coverages

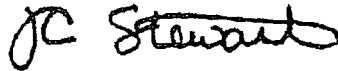
LIMIT OF LIABILITY

The following numbered paragraph is added.

- 6 for glass repair or replacement, not to exceed the prevailing competitive price. Although you have the right to choose any glass repair facility or location, the limit of liability for loss to window glass is the cost to
- (a) repair or
 - (b) replace
- such glass but will not exceed the prevailing

competitive price. This is the price we can secure from a competent and conveniently located glass repair facility. At your request we will identify a glass repair facility that will perform the repairs at the prevailing competitive price.

We affirm this amendment



J. C. Stewart
Secretary



O. M. Nicaly
President

A 200 (7 02)

SPECIMEN

GEICO

Policy Number

**Family Automobile Policy
Amendment****Multi-Risk Physical Damage
Coverage**We agree with **you** as follows**SECTION III
PHYSICAL DAMAGE COVERAGES**

Section III is amended to provide Multi Risk Physical Damage Coverages This includes

- 1 comprehensive,
- 2 collision and
- 3 mechanical breakdown protection

This amendment is subject to all policy conditions and definitions except as specifically modified below

The amount of applicable deductible shown in the policy declarations shall apply to each **loss** under the Multi-Risk Coverage No deductible shall apply to glass breakage**Mechanical Breakdown**We will pay for **loss** caused other than by **collision** or under the comprehensive coverage due to the mechanical breakdown of the **owned auto** **Losses** from mechanical breakdown shall not be accumulated to reach the deductible**Definitions**

For the purposes of this amendment, the following special definitions apply with respect to mechanical breakdown only

- 6 "Loss" means all risk of physical damage to the **owned auto** or its equipment
- 8 "Owned auto" means any vehicle described in this policy for which a specific premium charge indicates there is coverage Owned auto does not mean
 - a) a newly acquired vehicle, or
 - b) a replacement vehicle or
 - c) a **temporary substitute auto**

Exclusions

For the purposes of this amendment only with respect to mechanical breakdown exclusion 4 is deleted The following exclusions are added

- 10 Oxidation and rust damage are not covered
- 11 Damage caused intentionally by **you** or any other person using an **owned auto** with your permission is not covered.

- 12 **Loss** due to misuse alteration or lack of proper maintenance is not covered Proper maintenance is the recommended vehicle maintenance as outlined in the owner's manual provided by the manufacturer

- 13 Tire wear or other tire damage is not covered

- 14 Normal wear and tear is not covered

- 15 Routine maintenance services and parts are not covered. This includes but is not limited to

- a) engine tune up
- b) suspension alignment;
- c) wheel balancing,
- d) filters
- e) lubrication
- f) engine coolant
- g) fluids
- h) spark or glow plugs
- i) brake pads,
- j) brake linings and
- k) brake shoes

- 16 Any **loss** to the extent covered by warranty, recall or voluntary repair programs is not covered

- 17 Any **loss** to a **non-owned auto** or to a **temporary substitute auto** is not covered.

- 18 Any **loss** to a newly acquired or replacement auto is not covered

- 19 Any pre-existing **loss** or damage to any insured auto is not covered

- 20 Multi-Risk coverage will terminate either when the Odometer reading exceeds 100 000 miles or when the age of the vehicle is 7 years old whichever occurs earlier The 7 year stipulation will only apply to vehicles that are 1996 model year and later

Other InsuranceFor the purposes of this amendment only if **you** have other insurance against a **loss** covered by mechanical breakdown protection, this policy will apply as excess insurance over such other valid and collectible insurance**SPECIMEN**

Conditions

For the purposes of this amendment only the following conditions are added with respect to mechanical breakdown coverage

1 Notice

e) the location of the *owned auto*

For this coverage to be applicable repairs may not be undertaken prior to obtaining authorization from us

We affirm this amendment.



W. C. E. Robinson
Secretary

GOVERNMENT EMPLOYEES INSURANCE COMPANY
GEICO GENERAL INSURANCE COMPANY



O. M. Nicely
President

GEICO

Policy Number

Automobile Policy Amendment**PROTECTION AGAINST
UNDERINSURED MOTORIST
COVERAGE AMENDMENT
SOUTH CAROLINA**We agree with *you* as follows**DEFINITIONS**

The following definitions apply to this amendment

1 "Insured" means

- a) *you*
- b) *your relatives* who reside in *your* household
- c) any person using an *insured motor vehicle* with *your* permission,
- d) any person *occupying* an *insured motor vehicle* with *your* permission,
- e) any person who is entitled to recover damages under a wrongful death statute of any state because of the death of an *insured* under a) b) c) d) or e) above

If there is more than one *insured* our limits of liability will not be increased

- 2 "Insured motor vehicle" is a *motor vehicle* described in the policy and to which the liability coverage of the policy applies**
- 3 "*Motor vehicle*" is a self-propelled vehicle designed for use on a highway and includes trailers and semi-trailers designed for use with these vehicles**

The term *motor vehicle* does not include (a) traction engines, (b) road rollers, (c) farm tractors tractor cranes (e) power shovels (f) well drillers or (g) any vehicle propelled by electric power from overhead wires but not operated on rails

- 4 "*Property damage*" means damage or destruction of an *insured's* property**

- 5 "*Underinsured motor vehicle*" means a motor vehicle on which there is bodily injury liability insurance or a bond applicable at the time of the accident in an amount of at least the minimum required by law, but the amount of the insurance or bond**

- a) is less than the amount of the *insured's* damages or
- b) has been reduced by payments to persons other than an *insured* injured in the accident to an

amount which is less than the amount of the *insured's* damagesThis term does not include any *motor vehicle*

- a) which is an *uninsured motor vehicle* as defined in the Uninsured Motorists Coverage of this policy
- b) owned by any governmental unit or agency
- c) owned or operated by a self-insurer under any applicable motor vehicle law unless the applicable self insurance is less than the *insured's* damages
- d) owned by or furnished for *your* regular use or that of any *relative* and
- e) while located for use as a residence or premises

LOSSES WE PAYUnder this Coverage we will pay damages for *bodily injury* and *property damage* caused by an accident which the *insured* is legally entitled to recover from the owner or operator of an *underinsured motor vehicle* arising out of the ownership, maintenance or use of that *motor vehicle***POLICY PERIOD - TERRITORY**

This amendment applies only to accidents which occur on and after the effective date hereof during the policy period and within the United States of America or Canada

EXCLUSIONS

When This Coverage Does Not Apply

- 1 This coverage does not apply to *bodily injury* or *property damage* to an *insured* if he or his legal representative has been awarded a judgment without our prior written consent.**
- 2 This coverage does not apply to *bodily injury* or *property damage* to an *insured* while *occupying* or through being struck by an *uninsured motor vehicle* owned by an *insured* or a *relative***
- 3 This coverage will not benefit directly or indirectly any workmen's compensation insurer, self-insurer disability benefit insurer or other insurer**

SPECIMEN

- 4 There is no coverage for **property damage** if the **insured** has been compensated by insurance or otherwise
- 5 **Bodily injury or property damage** that results from nuclear exposure or explosion including resulting fire, radiation or contamination is not covered
- 6 **Bodily injury or property damage** that results from bio-chemical attack or exposure to bio-chemical agents is not covered

CONDITIONS

- 1 None of the Insuring Agreements, Exclusions Conditions or other provisions of the policy apply to this amendment except under Section V - General Conditions, 3 'Changes 4 Assignment' 6 'Cancellation By The Insured 7 "Cancellation By Us", 8 Cancellation By Us Is Limited and 9 'Renewal.'

2 PROOF OF CLAIM

As soon as possible the **insured** or other person making claim must give us written proof of claim under oath if required. This will include details of the nature and extent of **bodily injury** treatment and other facts which may affect the amount payable. Proof of claim must be made on forms furnished by us unless we have not furnished these forms within 15 days after receiving notice of claim.

The injured person will submit to examination by doctors chosen by us as often as we may reasonably require. In the event of the **insured's** incapacity or death, his legal representative must, at our request, authorize us to obtain medical reports and copies of records.

The **insured** or other person making a claim for damage to property shall file a proof of loss in sworn statement form with us within 60 days after the loss occurs (unless we extend the time in writing). This statement must show: (a) the interest of the **insured** (b) all others in the property, (c) any liens or other claims on the property, (d) the actual cash value at time of loss, and (e) description and amounts of all other insurance on the property. If we ask, the **insured** must show us the damaged property.

3 ASSISTANCE AND COOPERATION OF THE INSURED

After we receive notice of a claim, we may require the **insured** to take any action necessary to preserve his recovery rights against any allegedly legally responsible person or organization.

4 NOTICE OF LEGAL ACTION

If the **insured** or his legal representative files suit before we make a settlement under this coverage, he must immediately provide us with a copy of the pleadings.

We have the right to appear and defend in the name of the underinsured motorist in any action that may affect our liability. We have twenty (20) days after service of process on us to make this appearance. The evidence of service upon us shall not become part of the record.

5 LIMIT OF LIABILITY

The limit of liability as shown in the Declarations for this coverage is our maximum limit of liability for all damages resulting from any one accident. This is the most we will pay regardless of the number of

- 1 **Insureds**
- 2 Claims made
- 3 **Motor vehicles** or premiums shown in the Declarations or
- 4 **Motor vehicles** involved in the accident.

In addition to this limit, we will make an additional amount available to **you or your relative** if such person sustains **bodily injury or property damage** in an accident involving the **insured motor vehicle**. The additional amount is equal to the sum of that part of the limit on each additional **insured motor vehicle** shown in the Declarations that does not exceed the minimum limits specified by the South Carolina Motor Vehicle Financial Responsibility Act. This additional amount is the most we will pay over the stated limit of liability regardless of the number of

- 1 **Insureds**
- 2 Claims made or
- 3 **Motor vehicles** involved in the accident.

However, no one will be entitled to receive duplicate payments for the same elements of loss.

Any amounts otherwise payable for damages which the **insured** is legally entitled to recover from the owner or operator of an **underinsured motor vehicle** because of **bodily injury or property damage** caused by an accident shall be reduced by all sums

- 1 Paid because of the **bodily injury or property damage** by or on behalf of persons or organizations who may be legally responsible. This includes all sums paid under Section I of this policy.
- 2 Paid or payable because of the **bodily injury or**

property damage under any applicable Uninsured Motorist Coverage. This includes all sums paid under Section IV of this policy.

- 3 Paid or payable because of the **bodily injury** under any of the following or similar law
 - a. workers compensation law or
 - b. disability benefits law,
- 4 Paid or payable because of the **bodily injury** or **property damage** under any Underinsured Motorist Coverage applicable to a vehicle (other than the **insured motor vehicle**) which the **insured** was **occupying** at the time of the accident and
- 5 Paid because of the **property damage** under Section III of this policy or any similar coverage under any other policy

Any payment under this coverage will reduce any amount that person is entitled to recover for the same damages under Section I of this policy

6 OTHER INSURANCE

When an **insured occupies a motor vehicle** not described in this policy this insurance is excess over any other similar insurance available to the **insured** for **bodily injury**. The insurance which applies to the occupied auto is primary.

If none of an **insured's motor vehicles** is involved in the accident, coverage is available to the extent of coverage on any one **insured motor vehicle**. Coverage on any other vehicle shall not be added to that coverage.

Except as provided above, if the **insured** has other similar **bodily injury** insurance available to him and applicable to the accident, the damages for **bodily injury** will be deemed not to exceed the higher of the applicable limits of liability of this insurance and the other insurance. If the **insured** has other insurance against a loss covered by the Uninsured Motorists provisions of this policy, we will not be liable for more than our pro rata share of the total coverage available.

With respect to **property damage**, this insurance shall be excess over other valid and collectible insurance applicable to the damaged property.

We will not be liable for a greater proportion of any loss under this coverage than its limit of liability bears to the sum of the applicable limits of liability of this and all such other insurance.

7 PAYMENT OF LOSS BY US

Any amount due is payable to the **insured** or his authorized representative.

8 ACTION AGAINST US

Suit will not lie against us unless the **insured** or his legal representative has fully complied with all the terms of this amendment.

9 CONFORMITY WITH SOUTH CAROLINA STATUTES

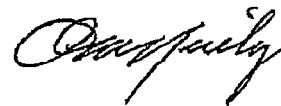
Any terms of this amendment in conflict with the laws of South Carolina are amended to conform with those laws.

THE COMPANY affirms this amendment.



W C E Robinson
Secretary

GOVERNMENT EMPLOYEES INSURANCE COMPANY
GEICO GENERAL INSURANCE COMPANY



O M Nicely
President

ENDORSEMENT
LOSS PAYABLE CLAUSE

The Policy Number and Effective Date need be completed only when this endorsement is issued subsequent to preparation of the policy

Policy Number

Effective Date

Any claim under the Physical Damage Coverages of the policy will be paid jointly to the insured and the Lienholder in the Declarations

The Lienholder must notify us if he becomes aware of any increased hazard or change of ownership of the auto or he will lose all of his rights under this policy

If the insured fails to file with us a Proof of Loss within 91 days after the loss, the Lienholder must do so within the following 60 days. The policy provisions on time of payment, appraisal and the right to sue us applies both to the Lienholder and the insured. We may settle a claim at our option by separate payment to the insured and the Lienholder.

Whenever we pay the Lienholder we shall be subrogated to the Lienholder's rights of recovery to the extent of the payment. If the policy is in effect as to the Lienholder but has been canceled as to the insured the Lienholder must assign the loan to us if we ask and we pay the full amount due.

We will mail notice to the Lienholder at least 10 days before we cancel his interest in the policy.

This endorsement forms a part of your policy. It is effective at 12 01 A.M. local time at your address on the effective date shown above.

RETAIN THIS COPY FOR YOUR RECORDS

Countersigned by Authorized Representative

SPECIMEN

AUTOMOBILE POLICY ENDORSEMENT
INSURANCE FOR "CUSTOMIZED" VEHICLE EQUIPMENT

The Policy Number and Effective Date need be completed only when this endorsement is issued subsequent to preparation of the policy.

Vehicle 94 DODGE

2B6HB21Y5RK143412

Policy Number 0685-44-55 04

Effective Date 06-15-04

We agree to provide insurance for loss to the items listed below

Loss means direct and accidental loss or damage to the items listed.

The most we will pay for a loss will not exceed the actual cash value of these listed items at the time of the loss

<u>ITEM</u>	<u>VALUE</u>
1. Captain Seats	\$1400
2. Bench Seat	\$450
3. Running Boards	\$375
4.	
5.	
6.	
7.	
8.	
9.	
10.	
11.	
12.	
13.	
14.	
15.	

• NOTICE •

The most we will pay for the painting of any vehicle including custom painted vehicles shall not exceed \$150.00 over the value of the manufacturer's standard paint finish.

The Deductible provisions, Conditions, Definitions, Limit of Liability, Other Insurance provisions and Exclusions applicable to the Physical Damage Section of the Policy apply to this endorsement.

This endorsement forms a part of your policy. It is effective at 12:01 A.M. local time at your address on the effective date shown above.

 Countersigned by Authorized Representative

☐ For Office Use Only



DB-215 (M 84)



THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

RECEIVED

FEB 9 2012

The Honorable George C. James, Jr., Circuit Court Judge

SC Court of Appeals

Case No 2009-CP-40-8344

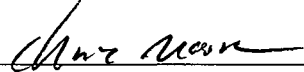
Delores Williams, Personal
Representative of the Estate of
Edward Murry, Deceased, and Appellants,
Matthew Whitaker, Jr., as
Personal Representative of the
Estate of Annie Mae Murry,
Deceased,

v

GEICO Employees Insurance Company, Respondent

CERTIFICATE OF COUNSEL

The undersigned certifies that the Record on Appeal complies with Rule 210(g),
SCACR
January 26, 2012


Terry E. Richardson, Jr.
Christopher J. Moore
RICHARDSON, PATRICK, WESTBROOK &
BRICKMAN, LLC
1730 Jackson Street
Barnwell, South Carolina 29812
T 803 541 7850

-AND-

Robert A. McKenzie
MCDONALD, MCKENZIE, RUBIN, MILLER
AND LYBRAND, LLP
1704 Main Street, 2nd Floor
Columbia, South Carolina 29202
T 803 252 0500
ATTORNEYS FOR APPELLANTS

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
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The Honorable George C. James, Jr., Circuit Court Judge

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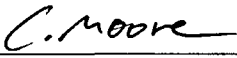
Respondent

PROOF OF SERVICE

I certify that I have served the Record on Appeal on William H. Bowman, III by depositing copies of each in the United States Mail, postage prepaid, on November 17, 2011, addressed to him at Post Office Box 100200, Columbia, South Carolina 29202

November 17, 2011

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NOV 18 2011
SC Court of Appeals



Terry E. Richardson, Jr.
Christopher J. Moore
RICHARDSON, PATRICK, WESTBROOK &
BRICKMAN, LLC
1730 Jackson Street
Barnwell, South Carolina 29812
T 803 541 7850
-AND-
Robert A. McKenzie
MCDONALD, MCKENZIE, RUBIN, MILLER
AND LYBRAND, LLP

1704 Main Street, 2nd Floor
Columbia, South Carolina 29202
T 803 252 0500

ATTORNEYS FOR APPELLANTS