

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

Michael G. Nettles, Circuit Court Judge

Appellate Case No. 2014-001935

Omni Insurance Company,

Appellant,

v.

Lionel Evans and Lionel
Evans, as the Personal
Representative of the Estate of
Antonio Dickey

Respondents.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA
IN THE COUNTY OF FLORENCE

Omni Insurance Company,
Plaintiff,

vs.

Lionel Evans, and Lionel Evans as Personal
Representative of the Estate of Antonio
Dickey,
Defendant.

IN THE COURT OF COMMON PLEAS

TWELFTH JUDICIAL CIRCUIT

CASE No.: 2014-CP-21-03136

ORDER

FILED
2014 AUG 11 AM 11:12
CRIMINAL JUSTICE
CLERK OF COURT
FLORENCE COUNTY, SC

THIS MATTER is before the Court on Defendant Lionel Evans' Motion for Summary Judgment. Also before the Court is Evans' Motion to Reconsider this Court's prior Order of July 24, 2013, in which this Court dismissed Defendant Evans' counterclaims. Present at the call of the case was attorney M. Todd Loftis on behalf of the Plaintiff, and attorney Eric M. Poulin for Defendant Evans. For the following reasons, Defendant's Motion for Summary Judgment is GRANTED and Defendant's Motion to Reconsider is DENIED. Because these rulings dispose of all issues, this Order ends the case.

BACKGROUND

Defendant Lionel Evans alleges that he was seriously injured on February 9, 2009, during an automobile accident in which Evans was riding as a passenger a 2003 Chevrolet Trailblazer, license # CSN 192, and VIN 1GNDS135X32159091. A man named Antonio Dickey was driving the vehicle at the time of the accident. Dickey died from the accident. The vehicle was owned by Roderick Thompson and insured under Omni Insurance Policy No. 3389124. The

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Omni Evans
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

vehicle was stolen on February 2, 2009 from Redrick Thompson. At the time of the February 2009 accident, decedent Antonio Dickey was operating the stolen Thompson vehicle.

Due to injuries sustained in this accident, Evans filed suit against Dickey in the Florence County Court of Common Pleas in an action styled as Lionel Evans v. Estate of Antonio Dickey, 2011-CP-21-3414.¹ Citing the alleged theft of the vehicle, Omni determined that Dickey was not a permissive driver, and therefore refused to defend or indemnify Dickey under the liability coverage of the Policy. Evans thereafter served copies of the pleadings upon Omni as an Uninsured Motorist carrier pursuant to S.C. Code Ann. § 38-77-150. Omni appeared to defend the underlying action and separately filed this declaratory judgment action seeking a declaration that Evans is not entitled to Uninsured Motorist coverage under the Omni policy. Defendant Evans answered and filed counterclaims for bad faith and fraudulent misrepresentation. By Order dated July 24, 2013, this Court dismissed Defendant's counterclaims. Defendant now asks the Court to reconsider the July 24, 2013 Order, and to grant summary judgment in his favor as to Plaintiff's request for declaratory relief.

LEGAL STANDARD

"The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a fact finder." Singleton v. Sherer, 377 S.C. 185, 198, 659 S.E.2d 196, 203 (Ct. App. 2008), *quoting* Dawkins v. Fields, 354 S.C. 58, 69, 580 S.E.2d 433, 438 (2003). South Carolina Rule of Civil Procedure 56(e) states:

When a motion for summary judgment is made and supported ... an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits ... must set forth specific facts showing that there is a

¹ The case was stricken from the trial roster pursuant to Rule 40(j) and has since been restored under case number 2014-CP-21-1063.

genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

S.C. R. Civ. P. 56(E). Moreover, when it is clear that there is no genuine issue of material fact, summary judgment is appropriate and the moving party is entitled to judgment as a matter of law. Legette v. Piggly Wiggly, Inc., 368 S.C. 576, 579, 629 S.E.2d 375, 376 (Ct. App. 2006), quoting Cafe Associates, Ltd. v. Gerngross, 305 S.C. 6, 9, 406 S.E.2d 162, 164 (1991).

ANALYSIS

Defendant Evans argues that he is entitled to Uninsured Motorist coverage under the Omni policy as a matter of law and that, accordingly, summary judgment is appropriate. I agree.

I. Existing Law

South Carolina Code § 38-77-150 creates the requirement that all insurance contracts include uninsured motorist coverage. S.C. Code Ann. § 38-77-150. The law serves the public policy interest of protecting insured motorists against loss caused by the wrongful conduct of an uninsured motorist. Ferguson v. State Farm Mut. Auto. Ins. Co., 261 S.C. 96, 100, 198 S.E.2d 522, 524 (1973). In the instant case, Evans' recovery is dependent upon the analysis of what constitutes an uninsured vehicle after an insurer denies liability, and whether Evans may be qualified as a "guest" within the meaning of S.C. Code Ann. § 38-77-30.

A. Denial of liability converts an insured vehicle into an uninsured vehicle

Our Supreme Court has addressed similar questions in the past. The first in this line of cases was Unisun Ins. Co. v. Schmidt, 339 S.C. 362, 529 S.E.2d 280 (2000). In Unisun, the liability carrier successfully denied coverage for an injured passenger because the driver was a non-permissive driver of the vehicle. Id. at 365, 529 S.E.2d 280, 281. However, the Court held that the insurer's denial of liability converted the otherwise insured vehicle into an uninsured motor vehicle. Id. at 367, 529 S.E.2d 280, 282.

The Court based its holding on the statutory definition of "uninsured motor vehicle" as when "there is nominally that insurance, but the insurer writing the same successfully denies coverage thereunder..." *Id.*, quoting S.C. Code. Ann. § 38-77-30(13)(b) amended as § 38-77-30(14)(b). The Unisun Court continued to echo the statutes' historic public policy concern in its opinion, "[t]he purpose of the uninsured motorist law is 'to provide benefits and protection against the peril of injury or death by an uninsured motorist to an insured motorist, his family, and the permissive users of his vehicle.'" Unisun, 339 S.C. at 368, 529 S.E.2d 280, 283, quoting Ferguson v. State Farm Mut. Auto. Ins. Co., 261 S.C. 96, 100, 198 S.E.2d 522, 524 (1973).

Therefore, based on Dickey's non-permissive use, Omni's denial of liability converted Thompson's otherwise insured vehicle into an uninsured motor vehicle pursuant to S.C. Code Ann. § 38-77-30(14)(b).

While Unisun squarely addressed the issue of what constitutes an uninsured motor vehicle, its holding was fairly narrow as to the applicability of uninsured motorist coverage for guests. In Unisun, all parties conceded that the injured passenger had the named insured's permission to ride in the vehicle. Unisun, 339 S.C. at 364, 529 S.E.2d 280, 281. However, Unisun's narrow application was expanded in the subsequent case of Auto Owners Ins. Co. v. Rollison, 378 S.C. 600, 663 S.E.2d 484 (2008)

B. "Guest" status is determined from the passenger's perspective

In Rollison, a teenager drove a car off his grandfather's car dealership without permission. *Id.* at 603, 663 S.E.2d 484, 485. The teenager picked up a friend, and was later involved in a single-car accident. *Id.* The passenger sought recovery for injuries through the vehicle's general liability policies, but was denied because the insurance carrier determined the injured passenger was neither a permissive user, nor a permissive guest in the vehicle at the time

of the accident. Rollison, 378 S.C. at 609, 663 S.E.2d 484, 488. As a result, the Rollison Court revisited Unisun's narrow holding regarding the statutory qualifications of a "guest." Id.

Unisun had briefly discussed the definition of "guest," under the South Carolina Uninsured Motorist Statute. Unisun, 339 S.C. at 366, 529 S.E.2d 280, 282 (2000). "'Insured' means the named insured and ... a guest in the motor vehicle to which the policy applies or the personal representative of any of the above." S.C. Code Ann. § 38-77-30(7). Unisun reaffirms the notion that "[t]he uninsured motorist statute 'is remedial in nature, enacted for the benefit of injured persons, and is to be liberally construed so that the purpose intended may be accomplished.'" Unisun, 339 S.C. at 339 S.C. 362, 366, 529 S.E.2d 280, 282 *quoting* Gunnels v. American Liberty Ins. Co., 251 S.C. 242, 247, 161 S.E.2d 822, 824 (1968). Therefore, the Court determined that the statutory language "to which the policy applies," is for identification, not exclusion. Unisun, 339 S.C. at 367, 529 S.E.2d 280, 282. As such, the statute is focused more on the vehicle identified in the policy, and less on the status of the "guest" within the vehicle.

The Rollison court went further and stated, "A review of the plain language of the statute reveals that 'guest' is listed independently as a person who constitutes an 'insured.' As we interpret the statute, a person ... need only have the status of a "guest" to qualify as an 'insured.'" Rollison, 378 S.C. at 610, 663 S.E.2d 484, 489. Since the legislature did not include language of consent in the statute, the Court did not require the named insured's consent as a prerequisite for "guest" status. Id. Therefore,

[A] passenger can only rely on the driver's representations regarding his status as a permissive user. Thus, a determination of whether a passenger qualifies as a "guest" under the statute must be viewed from the passenger's perspective.

We believe that to define "guest" otherwise would lead to an absurd result which would require a passenger to specifically inquire whether the driver either owned the vehicle or had permission from the named insured to drive the vehicle.

Clearly, such an interpretation would be contrary to the intention of the Legislature as well as the remedial purpose and inclusive nature of the uninsured motorist statute.

Rollison, 278 S.C. at 611-12, 663 S.E.2d 484, 489-90.

I find the analysis and statutory interpretations of Rollison controlling in the present case. Therefore, we must examine the facts that exist in the present case and apply them to the law as it exists in determining whether there is a genuine issue of material fact that necessitates further proceedings.

II. Omni's Argument

During the hearing, Defendant Evans' deposition transcript was marked and made a part of the record. Omni did not file any affidavits, memoranda, or other exhibits. Therefore, the deposition testimony comprises the bulk of the evidence that is on the record and before the Court for purposes of this issue. In opposing Defendant Evans' Motion for Summary Judgment, Omni makes two arguments: 1) that the facts of this case are distinguishable from those in Rollison, rendering Rollison non-controlling and 2) that even if Rollison controls, Evans' should not be afforded UM coverage because he either knew or should have known that he was riding in a stolen car.

A. There is no practical or legal difference between the factual scenario presented in the Rollison case, and that at issue in the present case.

Omni argues that Rollison is distinguishable from the present case in that the present case involves a stolen vehicle whereas the Rollison case merely involves a driver who does not have permission to operate the vehicle. Omni argues that, in a situation with a stolen vehicle, the UM coverage should cut off and should not follow the vehicle.

I find this argument unpersuasive. Indeed, it appears to be a distinction without a difference. A driver who takes and operates a vehicle without the owner's permission is

necessarily stealing the vehicle. That the Rollison case involved family members is of little consequence. The only difference between Rollison and the present case is that the vehicle owner in Rollison chose not to report his vehicle or press charges against the non-permissive user who, by all definitions, was still a thief.

Even assuming there is a difference between a non-permissive use case and a theft case, the holdings in Rollison and Schmidt are based heavily upon public policy considerations. This state has a strong public policy reason for ensuring that some type of insurance coverage exists for injured passengers. The Rollison Court noted that

[O]ne who is a "guest" at the invitation of the driver has, by implication, the consent of the named insured. Presumptively then a guest has the consent of the named insured unless he or she has knowledge to the contrary. Logically, because the named insured would rarely be present in a situation as in the facts of this case, a passenger can only rely on the driver's representations regarding his status as a permissive user. Thus, a determination of whether a passenger qualifies as a "guest" under the statute must be viewed from the passenger's perspective.

Rollison, 378 S.C. at 612.

Viewing both the Rollison case and the present case from the passenger's perspective, Omni's distinction disappears. Indeed, the entire problem noted by the Rollison Court is that the passenger is not in the best position to know of the status of the driver. Therefore, a passenger loses protection if he or she knew that the driver did not have permission to drive the vehicle in the first place, regardless of the driver's substatus as either a mere "non-permissive user" or a full blown thief. For these reasons, I decline to draw a distinction between facts of the Rollison case and those presently at issue, and find that the legal analysis in Rollison is binding in the present matter.

- B. There is no evidence to suggest that Evans knew or should have known the vehicle was stolen.

Therefore, since Omni relies on its pleadings and bare accusations regarding Evans' credibility, there is no genuine issue of material fact. Even viewing the evidence in the light most favorable to Omni, I find that Summary Judgment is appropriate.

III. Evans' Motion to Reconsider, Alter, and/or Amend

Also at issue is Defendant Evans' Motion to Reconsider this Court's prior Order of July 24, 2013, in which this Court dismissed Defendant Evans' counterclaims. Evan's argued that the prior order appeared to be based on the mistaken belief that Evans was attempting to bring a third party bad faith claim, when he was actually asserting causes of action for first party bad faith.

I find that the analysis underlying my prior order is correct and decline to reconsider, alter, and/or amend my findings.

Therefore, based upon the foregoing,

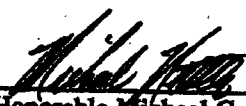
IT IS ORDERED that Defendant Evans' Motion for Summary Judgment be Granted, and that this action be dismissed without prejudice;

IT IS FURTHER ORDERED that Evans is entitled to uninsured motorist coverage in the underlying action;

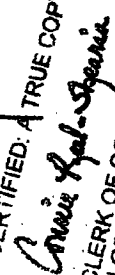
IT IS FURTHER ORDERED that Defendant Evans' Motion to Reconsider, Alter, and/or Amend is Denied.

IT IS SO ORDERED.

Dated this 8 day of August, 2014


The Honorable Michael G. Nettles
Presiding Judge, 12th Judicial Circuit

FILED
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CLERK OF COURT
FLORENCE COUNTY, S.C.

CERTIFIED: A TRUE COPY

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

STATE OF SOUTH CAROLINA) IN THE TWELFTH JUDICIAL CIRCUIT
COUNTY OF FLORENCE) IN THE COURT OF COMMON PLEAS
) 2012-CP-21-3136
OMNI INSURANCE COMPANY,)
)
PLAINTIFF,)
)
VERSUS)
)
LIONEL EVANS, et al.,)
)
DEFENDANTS.) DATE: JUNE 18, 2014
FLORENCE, SOUTH CAROLINA

SUMMARY JUDGMENT MOTION and MOTION TO RECONSIDER

THE HONORABLE MICHAEL G. NETTLES

MICHAEL TODD LOFTIS, ESQUIRE
ATTORNEY FOR THE PLAINTIFF

PROVIDED FOR: MICHAEL TODD LOFTIS, ESQUIRE

1 THE COURT: This is Omni Insurance Company versus Lionel
2 Evans, 2012-CP-21-3136. I'll be glad to hear from the moving
3 party.

4 MR. POULAN: Good morning, Your Honor.

5 THE COURT: Good morning.

6 MR. POULAN: My name is Eric Poulan and I represent one
7 of the Defendants in this matter, Lionel Evans. We are here
8 on two of my motions today. The first one is our motion for
9 summary judgment.

10 And to give Your Honor a little background on this case,
11 my client, Mr. Evans, was riding in a vehicle as a passenger
12 and the driver of the vehicle lost control of the vehicle,
13 wrecked the vehicle, my passenger was severely injured in the
14 wreck. Omni Insurance Company insured the vehicle in which
15 everybody was riding. It later came to light and Omni has
16 alleged that the driver of the vehicle actually stole the
17 vehicle from the real owner of the vehicle and so Omni has
18 said that the driver is not a permissive user, and therefore,
19 they refused to indemnify and defend him and they are
20 disclaiming all liability coverage, which is fine.

21 So, we filed the underlying action against the driver.
22 We served on the insurance company through the Department of
23 Insurance as an uninsured motorist carrier pursuant to the
24 statute and all the case law that has developed in that sense
25 that if there is no liability coverage, it's an uninsured

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1 claim and as a passenger in the vehicle, Lionel Evans, my
2 client, is entitled to the uninsured motorist coverage.

3 That underlying action has sort of been staid and in the
4 meantime Omni has filed this action, which is a declaratory
5 judgment action and they are asking the Court for a
6 declaration that there is no coverage under the policy and,
7 Your Honor, we are moving for summary judgment here today
8 that there has to be coverage under the policy and our motion
9 is really based on the most recent of the line of cases on
10 this topic, which is the Auto Owners Insurance versus
11 Rollison case. I'm sure everyone is fairly familiar with
12 that, but I have an extra copy if I may approach.

13 THE COURT: Yes. (Mr. Poulin hands document to Judge
14 Nettles)

15 MR. POULIN: And, Your Honor, we think this case is
16 fairly instructive. It's almost exactly on point to the
17 present case. In the Auto Owner's case, what happened is,
18 you had a grandfather who owned a used carlot and his son,
19 apparently, would come at night and sneak cars off the lot
20 and drive them around and pick up his friends, pick up girls
21 and drive them around, and one evening he came and he snuck a
22 car off his grandfather's lot, got his friend in the car,
23 they were riding along, got in a terrible wreck, the friend
24 got injured. The same situation as here. Auto Owner's came
25 in, said we are not defending him, we are not indemnifying

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1 him. He never had his grandfather's permission to use to
2 car. Basically, it was stolen. And so, Rollison, the
3 passenger in that case, made a UM claim. The Supreme Court
4 looked at the issue and, of course, there was a case before
5 that that sort of looked at the issue, as well. The Supreme
6 Court has looked at a couple of cases on this issue, but in
7 this Rollison case, the Court first looked at the statute and
8 said, you know, there are a number of different definitions
9 of insured and one definition of insured is a guest in a
10 motor vehicle to which the policy applies or the personal
11 representative of any of the other passengers and so the
12 Court said a guest in the vehicle is an insured and the Court
13 also said that if the liability carrier claims, disclaims
14 coverage, then it becomes an uninsured claim because all the
15 statute says is, a guest in the motor vehicle to which the
16 policy applies.

17 So, that was pretty much settled before and the Court
18 pretty much reiterated it and said the guest is an insured,
19 coverage applies, UM, because it's an uninsured vehicle.

20 What the Court went on to say in the Rollison case is
21 that a guest who is in the car at the invitation of the
22 driver, by implication, has consent of the named insurer to
23 be in the car and they say, and I'm quoting here,
24 presumptively then, a guest has the consent of the named
25 insured unless he or she has knowledge to the contrary.

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1 Logically, because the named insured would rarely be present
2 in a situation as in the facts of this case, a passenger can
3 only rely on a driver's representations regarding his status
4 as a permissive user. Thus, a determination of whether a
5 passenger qualifies as a guest under the statute must be
6 viewed from the passenger's perspective. So, that's what the
7 case law says. That's where we are, here.

8 Omni argues, and of course the vehicle in this case was
9 stolen, or at least they have alleged that, and Omni argues,
10 I think, that if my client, Mr. Evans, knew the vehicle was
11 stolen, that he would not be a guest in that case because he
12 had knowledge that the driver was not a permissive user.
13 They may be right in that allegation. The problem in this
14 case is that there is no evidence. There is no genuine issue
15 of material fact as to Mr. Evans knowing that the vehicle was
16 stolen.

17 Mr. Evans has given his deposition, actually twice.
18 Once in the underlying case and once in this case and if I
19 may, Your Honor, just mark his deposition in this case as a
20 Court's exhibit. (Marked and handed to Judge Nettles)

21 And what Mr. Evans has testified to twice under oath and
22 specifically in this case is that the driver of this vehicle,
23 Frederick Thompson, I think his name was, they weren't real
24 close friends. They had met each other, they hadn't talked
25 to each other in a while, probably six months leading up to

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1 this incident. The driver calls my guy up, Mr. Evans, and
2 says, hey, lets go out to the club. Mr. Evans says all
3 right, sounds fine, we get to catch up and everything, and so
4 the driver comes over to my client's house, picks him up in
5 this SUV and they go to the club and I think there's some
6 discussion that he might have even said it was his uncle's
7 and he was allowed to borrow it or something like that, but
8 my client has been very clear throughout both cases that he
9 had no idea that this vehicle was stolen. Turns out the
10 vehicle, when it was stolen, was actually stolen about a week
11 before the accident. It was stolen from a different club
12 which my client says he has never visited. It was stolen
13 during a time when my client was at work at Hardee's and then
14 we fast forward a week and that's when the driver of the
15 stolen vehicle comes and picks my client up.

16 So, that's the evidence that's on the record. There's
17 really no other evidence. There's no testimony from anyone
18 that says my client knew the vehicle was stolen. There's no,
19 you know, there's no, I don't know what other kind of
20 evidence could be out there, maybe my client posted on
21 Facebook, you know, joyriding in a stolen vehicle or
22 something. There's none of that. So, the only evidence is
23 that he didn't know that the vehicle was stolen.

24 The other thing that I would point out, Your Honor, is
25 that we filed this motion back in February. Omni really

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1 hasn't, once we alleged that there is no issue of fact, the
 2 burden kind of shifts to them to show, hey, here are the
 3 facts that are in dispute. Omni hasn't produced any
 4 affidavits. To my knowledge, they haven't filed a responsive
 5 memorandum to our motion or anything, yet, and so, I think
 6 where we sit on this issue today is that case law says that
 7 Mr. Evans didn't know the car was stolen. He gets UM
 8 coverage and I think all the evidence in the case says that
 9 he didn't know the car was stolen and so we'd ask for summary
 10 judgment.

11 THE COURT: All right. Yes, sir. If you are having
 12 some difficulties, I don't mind if you have a seat or if
 13 you're more comfortable standing.

14 MR. LOFTIS: I'll stand. I may walk around, Your Honor.

15 THE COURT: Whatever is most comfortable.

16 MR. LOFTIS: Your Honor, I'm Michael Todd Loftis, here
 17 on behalf of Omni. First of all, with regards to the motion
 18 for summary judgment, Defendant's attorney has pointed out
 19 the Rollison case. The Rollison case is easily
 20 distinguishable from this current case, Your Honor, in that
 21 Rollison was a non-permissive use case. It was a grandson
 22 who was operating a vehicle that was owned by his grandfather
 23 without his permission. A friend of his was in the car with
 24 him, you know, that friend was riding with the grandson of
 25 whoever owned the vehicle.

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1 In this case, it's easily distinguishable in that, this
2 car was stolen on February 2nd. The insured for Omni
3 reported it to the police department. There are police
4 reports showing that it was reported stolen. This was not
5 reported after the accident. On February 2nd, it was
6 reported stolen. The accident happened on February 9th.
7 Omni's argument is two-fold. The first is that Mr. Evans knew
8 or should have known the vehicle was stolen, but the second
9 part of our argument is that the, at the time of the
10 accident, because it was stolen, the vehicle was uninsured.
11 The coverage did not continue to go with the stolen vehicle.
12 In the Rollison case, the car was not stolen, it was just a
13 non-permissive use. The grandfather never said the grandson
14 stole the vehicle. In this case, it's very clear, it is a
15 stolen vehicle.

16 THE COURT: Is there a case that draws the distinction
17 between a stolen vehicle and non-permissive use?

18 MR. LOFTIS: Not any in South Carolina, Your Honor.
19 I've looked for it and this may be, you know, a case of first
20 impression in our state and Justice Pleicones, in his dissent
21 in the case, kind of alludes towards, you know, he disagrees
22 with the decision of Rollison, but I think, Your Honor, that
23 because the vehicle was stolen, that the insurance does not
24 continue to follow the vehicle. Mr. Evans should not be able
25 to gain access to an insurance policy that he was not a party

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1 to and he was in a stolen vehicle and now he wants to recover
2 under a policy that should have ended once the vehicle was
3 stolen.

4 With regards to Mr. Evans' testimony, it is true Mr.
5 Evans stated under oath that he didn't know it, but I would
6 think that summary judgment is improper in this case, Your
7 Honor, because the finder of fact should be able to determine
8 it by listening to Mr. Evans' testimony. He is the only one
9 who has any reason to potentially be untruthful ---

10 THE COURT: Is there anything in his deposition that
11 would seem to indicate that he did know?

12 MR. LOFTIS: No, Your Honor.

13 THE COURT: Do you have an affidavit that says that he
14 did know?

15 MR. LOFTIS: No, Your Honor, just ---

16 THE COURT: Just the implication that you say that he
17 should have known?

18 MR. LOFTIS: Yes, Your Honor, and I think that's a
19 question for the finder of fact at a hearing in this matter.
20 The driver of the vehicle was killed in the accident. We
21 intended to take the other passenger's deposition, but he's
22 in the Department of Corrections in Columbia and he refused
23 to answer any questions.

24 We have the insured, Mr. Frederick Thompson's testimony
25 that he didn't know any of the gentlemen in the vehicle,

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1 either the driver, Mr. Evans, or the other passenger and that
2 he reported the vehicle stolen when it was stolen on February
3 2nd.

4 THE COURT: Is there anything -- you know, the case law
5 is clear that you need to look at it from the perspective of
6 the guest. Is there anything that you can point to in this
7 deposition, which is really the only evidence that we have
8 for the purposes of this hearing, that would seem to indicate
9 that he should have known that the car was stolen?

10 MR. LOFTIS: Mr. Evans stated that he didn't know. The
11 other argument that we assert, Your Honor, is that no one was
12 able to give him permission to be in the vehicle, because Mr.
13 Dickey, the driver of the stolen vehicle, how could he give
14 permission for a guest to be in a vehicle that was stolen?
15 So, I would argue the guest---

16 THE COURT: I think what the law said doesn't have
17 anything to do with that. It has to do with, that the guest
18 is presumed -- presumably, the guest has the consent of the
19 named insured unless he has knowledge to the contrary, so
20 when you get in an automobile, unless you know that the
21 vehicle is stolen, then the presumption is that the driver
22 has the consent of the owner to drive it.

23 MR. LOFTIS: Yes, Your Honor, and it would be our
24 argument in this case is that that argument can be defeated
25 because the named insured reported the vehicle stolen and so

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1 I think that should break any claim that the presumption ---

2 THE COURT: Did Omni send the premiums back?

3 MR. LOFTIS: No they didn't send the premiums back
4 because the vehicle was a total loss and so they paid him for
5 the vehicle after the accident.

6 THE COURT: Once they filed the police report and said
7 it was stolen, did Omni do anything about -- I assume it was
8 covered during the time that the accident took place and Omni
9 didn't send them their money back, did they? And cancel the
10 policy, did they?

11 MR. LOFTIS: I'm not sure, Your Honor, whether or not
12 the policy was cancelled. With regards to any claims by the
13 named insured for the property damage, I think that when the
14 vehicle was reported stolen, it's our position that any
15 liability of it ended, because of the fact that the vehicle
16 was stolen.

17 THE COURT: But you don't have any South Carolina law
18 that would seem to indicate that a stolen vehicle, you cannot
19 have uninsured if the vehicle is stolen. You don't have any
20 case law that says that?

21 MR. LOFTIS: No, Your Honor. I don't think that there
22 is any case law in South Carolina that says that. I think the
23 Rollison case is close, it is still distinguishable because
24 that's a non-permissive use case.

25 THE COURT: But looking at it, one thing that Rollison

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1 says is that you look at it from the passenger's standpoint
2 and from that standpoint, either a non-permissive user or
3 someone who steals it, there's not really a whole lot of
4 difference from the passenger's standpoint. Is it? And just
5 as easily in this case, it could have been his grandfather's
6 car and he went and took the keys off the key ring and drove
7 it without his permission. It really makes no difference.
8 Of course, according to Rollison, you've got to look at it
9 from the passenger's standpoint. What do you think about
10 that?

11 MR. LOFTIS: Well, and that's why I think our second
12 argument in that the vehicle was stolen and any liability
13 that UM coverage should have ended at that point comes into
14 play, that I still would argue that at a hearing that the
15 finder of fact could listen to Mr. Evans' testimony and make
16 a determination of whether or not he knew or should have
17 known that the car was stolen and that summary judgment would
18 be improper in this case.

19 THE COURT: What do you think about the fact that they
20 submitted this affidavit and if you have some indication to
21 the contrary that he did know or should have known, that you
22 have an obligation to produce that evidence in the form of an
23 affidavit or deposition? And once again, I haven't read the
24 entire deposition, but once again, I know that you were there
25 and you participated in it and had an opportunity to read it.

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1 Could you point to anything in his deposition that would seem
2 to indicate that he knew or should have known?

3 MR. LOFTIS: No, Your Honor, other than I would assert
4 that Mr. Evans, of course, is not going to say he knows
5 because he is looking to receive money in this case and that
6 I think that the finder of fact could make the determination
7 that Mr. Evans is being untruthful in his testimony which is
8 an attempt to gain access to UM coverage we don't feel he's
9 entitled to.

10 MR. POULIN: Your Honor, I apologize, I don't have the
11 case right on the tip of my tongue, but I can certainly get
12 it to you. I know there is at least one case out there,
13 because it was used against me, and probably more cases that
14 say in a motion for summary judgment, a party cannot use the
15 argument that a jury may simply choose not to believe a
16 witness to create a genuine fact. The case says that is not
17 enough. There has to be other evidence. In other words,
18 someone raises a motion for summary judgment, you can't just
19 say, well, the jury might not believe his story. There's a
20 case that says that and I can certainly get it to you. I
21 just don't have it right on the tip of my tongue.

22 THE COURT: Okay. What do you think about the fact that
23 this is a stolen car and does that make a difference?

24 MR. POULIN: I don't think it does, Your Honor, and I
25 think the reason for that is, and I know you've only had a

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1 brief moment to skim the Rollison case, but they talk a lot
2 in the case about interpreting the statute, what did the
3 legislature intend with the statute and sort of parlay that
4 with public policy and I think in the Rollison case what they
5 do is, when they go through it, they say, what does the
6 legislature intend in our insurance code, generally,
7 requiring people to have liability insurance, requiring
8 uninsured coverage to be on every policy, requiring a
9 meaningful offer of uninsured coverage and I think the reason
10 they said you've got to look at it from the passenger's
11 perspective is because the passenger, how would they know?
12 The passenger has no way of knowing and I think Your Honor
13 made the point with Mr. Loftis earlier, is from Mr. Evan's
14 perspective, it doesn't matter whether or not this car was
15 stolen or whether Mr. Dickey had taken the keys from his
16 grandfather's thing and rode away, Mr. Evans has no way of
17 knowing that and unless they can show that he did know that,
18 looking at it from his perspective, public policy says this
19 poor guy just got in the car with somebody who he thought had
20 the right to drive the car, didn't now that there was no
21 right to drive the car, got severely injured and now you know
22 he needs to be compensated so public policy would dictate
23 that.

24 The other point I would make is, I'm not sure from a
25 technical, legal, standpoint there is really any difference

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1 between a stolen car and a non-permissive use other than the
2 fact, I guess, in these other cases the grandfather didn't
3 report the car stolen to the cops, but a stolen car really is
4 just a non-permissive driver, so, you know, I guess there's a
5 distinction there. It might be a distinction without a
6 difference, but if we look at, from the passenger's
7 perspective and through the public policy lense that the
8 Supreme Court seems to be using, I don't think there's much
9 of a distinction.

10 THE COURT: Anything further?

11 MR. LOFTIS: Your Honor, I just would say it's our
12 position there is a very clear difference between a non-
13 permissive use and a stolen vehicle. It's a difference
14 between a grandson driving one of his grandfather's vehicle
15 that his friend may know was the grandfather's vehicle versus
16 a friend driving another friends car and he has no idea who
17 the vehicle is owned by. He may have made the assumption it
18 was owned by someone Mr. Dickey knew, but in fact, the
19 vehicle was stolen. That's a fact that is not uncontroverted
20 in this case. This was a stolen vehicle, stolen at least a
21 week ahead of time and it's our argument the policy should
22 not continue to cover a stolen vehicle and there is a
23 distinction between non-permissive use and stolen and I think
24 tat in the Rollison case, the Court erred because it was a
25 grandson driving his grandfather's car with a friend who, I'm

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1 assuming, knew the grandfather, knew who owned the vehicle.
2 In this case, Mr. Evans didn't know who owned the vehicle and
3 the fact is, the vehicle was stolen was not, the named
4 insured did not give anybody permission to drive the vehicle
5 because ---

6 THE COURT: What do you think about the general concept
7 of the law that everybody knows, who has an automobile,
8 anybody who is 15 years old or older, knows that you've got
9 to have insurance on an automobile, that everybody operates
10 with that understanding, and that's just public policy that
11 if you are going to put a vehicle on the road, that it is
12 going to be insured and you can't drive an automobile without
13 insurance or not supposed to and you have a right to rely on
14 that? However, if someone participates in the stealing of a
15 car, I think that would obviate the coverage, but in this
16 case, we have an innocent bystander. We have his deposition
17 here and you tell me you were there when it took place and
18 you've read the deposition. Is there anything in that
19 deposition that you can point to that would seem to indicate
20 that he participated in the stealing of it or that he knew it
21 was stolen? So, what do you think about that, the fact that
22 the general public policy is, that there should be coverage,
23 insurance available to people on the road and that that's
24 what the whole concept of uninsured coverage is about?

25 MR. LOFTIS: I believe the public policy of uninsured

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1 coverage is clear. It's mandatory in South Carolina. You
2 know, Mr. Evans has his own uninsured coverage on the vehicle
3 he owned and I think that that's the vehicle that he should
4 be using to be compensated for this accident, not the
5 uninsured motorist coverage of a gentleman who knew no one
6 involved in the accident, his vehicle was stolen, and I think
7 there is a competing public policy in that if your car is
8 stolen why should someone else benefit for the coverage you
9 paid for to cover that vehicle. The uninsured motorist
10 coverage that you paid for, why should someone after the car
11 is stolen benefit from the coverage that you paid for? They
12 didn't pay for it, they are not an insured under the policy
13 and how is it that they are able to benefit from that
14 coverage and, Your Honor, I'm sure knows as much as Mr.
15 Poulin and I know, that there is a public policy that
16 supports that everyone should drive their vehicles with
17 insurance, but I'm sure this courtroom has been filled with
18 people in the past who have driven without insurance and
19 that's just a fact that happens and in this case, it's our
20 position this vehicle is being driven without insurance
21 because it was stolen a week before the accident.

22 THE COURT: All right. I am going to ask Mr. Poulin to
23 draft an order saying there has been no evidence presented
24 that the passenger knew that the vehicle was stolen or that
25 he participated in the stealing of the vehicle. The Rollison

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1 case mandates that you look at it from the passenger's
2 perspective and from my reading of the case, it probably
3 makes no difference whether it's stolen or non-permissive
4 use. There's been no affidavits or depositions or any
5 evidence to establish that the passenger knew or should have
6 known that it was stolen. I find there is no material issue
7 of fact. It may be that the Appellate Courts finds purely as
8 a matter of law that once a car is stolen it obviates the
9 uninsured coverage but I think defense counsel has been clear
10 that he has been unable to locate a case that seems to
11 indicate that and it might be that I'm wrong, but I think
12 it's clearly a question of law as to whether or not that is
13 the case and so I am going to rule that it makes no
14 difference whether it is stolen or non-permissive use and you
15 are protected on the record and if the Appellate Courts say
16 that a stolen car obviates coverage, then I will see y'all
17 back at some point in time, I imagine. And I'll ask that you
18 prepare the order to that effect. Anything further from
19 anybody?

20 MR. POULAN: There is one other motion, Your Honor, and
21 I will keep it fairly brief, because it is a motion to
22 reconsider one of your prior rulings. When Omni filed this DJ
23 action, Mr. Evans had already given his deposition in the
24 first, the underlying tort action, saying he didn't know the
25 car was stolen. We had already sort of, we had already

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1 actually mediated that case and had discussions with Omni
2 about, hey, there's a Rollison case, we think it applies and
3 everything. So, when they filed this DJ we counterclaimed
4 for bad faith and moved either to dismiss or for summary
5 judgment on that. Previously, and Your Honor granted their
6 motion and threw the case out.

7 The only reason I filed the motion to reconsider is, I
8 just wanted to be clear about what our argument was on it.
9 Your Honor ruled, I think correctly, that South Carolina does
10 not recognize a third party cause of action for bad faith. I
11 mean, you sort of get there with a liability sense if you
12 have an excess judgment and you get an assignment and you
13 bring a Tiger River claim, but as a pure third party, if you
14 and I get in a wreck and I don't like the way your insurance
15 company is treating me, I can't sue your insurance company
16 for bad faith and I think that's correct and that's how Your
17 Honor ruled in throwing out our counterclaim, but I wanted to
18 be clear that we were making the argument, at least, that Mr.
19 Evans, as a guest in the vehicle, was an insured under that
20 fourth prong. In the Rollison case, it says, you know, the
21 guest is an insured and as a insured we were really bringing
22 our bad faith claim as a first party claim and, you know, I
23 think there are a number of public policy reasons for that.
24 If you think about it, just by way of example, if I'm riding
25 with you and there's no stolen, take all that other stuff out

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1 of there, your car, you are supposed to be driving it, you've
2 got insurance, I'm riding with you, I'm supposed to be there,
3 you've invited me, we get in a terrible wreck, it's not your
4 fault, it's someone driving without a license and we get in a
5 wreck. There's no question I'm entitled to recover under
6 uninsured motorist under your vehicle. Your carrier says,
7 nah, not going to pay it, so I file suit against the
8 uninsured driver. I serve your carrier through the DMV or
9 Department of Insurance like I'm supposed to do. They appear
10 or don't appear and I get a verdict, I get an actual judgment
11 against the uninsured driver and then I go back to your
12 insurer and say, you've got to pay me the UM. Well, they
13 still say nah, we're not going to pay it, I have no recourse
14 at that point. I've done everything I'm supposed to do under
15 the statute. I'm a guest in the vehicle, I'm an insured in
16 the vehicle, I followed all the rules and if your insurance
17 company says, no, I'm not going to pay you, if I can't sue
18 them under a first party bad faith claim, I have no recourse.
19 So that's our argument for it. Whether or not there is
20 privity of contract, I don't think that actual pure technical
21 privity of contract is required in a bad faith case. For that
22 reason I think the elements of bad faith, I think were first
23 laid out in the comparable Steak House case and one of the
24 elements of a bad faith case is that there does have to be a
25 mutually binding contract of insurance, but I don't know that

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1 there has to be actual privity of insurance. The contract,
2 there has to be a contract of insurance and it has to be
3 mutually binding which I think it is regardless of whether or
4 not my insurance policy because if I'm a guest in your
5 vehicle, your insurance company owes me certain obligations
6 and I owe them certain obligations. I have to cooperate
7 under the policy, give a statement and things of that nature.

8 And so, that was our argument, like I said, I think Your
9 Honor has already ruled on it, but I just wanted it to be
10 clear that we were making a first party bad faith claim and
11 not a verbal.

12 THE COURT: All right. Mr. Loftis, I'll be glad to hear
13 you opine on this legal issue.

14 MR. LOFTIS: Your Honor, very briefly. I think Your
15 Honor is correct in granting our summary judgment motion as
16 to the counterclaim for bad faith. I think Mr. Poulin, he
17 stated specifically, what one of the elements is a mutually
18 binding contract for insurance to pursue bad faith and in
19 this case, Mr. Evans is not bound by the insurance contract.
20 He's not a party to the contract, he's not a named insured,
21 he just happened to be the guest of, once again, a stolen
22 vehicle, and I don't think the court has ever recognized,
23 first of all, not only an independent guest having a first
24 party bad faith action, but now a guest of a stolen vehicle
25 having a first party bad faith action against the insurer for

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1 a refusal to pay benefits, I think it's a very clear that he
2 has no claim for bad faith against Omni in this action, Your
3 Honor.

4 THE COURT: So, you think I was right.

5 MR. LOFTIS: Yes, Your Honor.

6 THE COURT: Well, good. Well, I think that is purely a
7 question of law and I think it's a novel question and you are
8 protected on the record in that record, but I think I'm going
9 to -- not only does Mr. Loftis think I'm right, I think I'm
10 right on that one, but you are protected on the record.
11 Anything further?

12 MR. LOFTIS: Thank you.

13 MR. POULAN: Nothing further. And I'll be happy to
14 incorporate that into the same order. I think that's the
15 easiest way to do it.

16 THE COURT: I think that would be the best way to do it.

17 MR. LOFTIS: Your Honor, just for clarification on the
18 summary judgment. That's summary judgment as to the whole
19 case, not just to the knew or should have known aspect of our
20 declaratory judgment action?

21 THE COURT: Say that again.

22 MR. LOFTIS: Our argument was, first, he knew or should
23 have known, which I think Your Honor has ruled in favor of
24 the Plaintiff's motion for summary judgment and our other
25 argument was, the vehicle, because of the stolen, the policy

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1 no longer applied. Is that part going to continue to a
2 hearing now or is it overall for the motion for summary
3 judgment because I don't know if that was contained in the
4 motion, necessarily.

5 THE COURT: What do you have to say about that Mr.
6 Poulin?

7 MR. POULIN: I believe it was contained in our motion
8 fairly clearly. I think what we said is, in our argument in
9 our motion, we said that the Rollison case was controlling,
10 which I think sort of says that and we said basically in our
11 motion we said under existing law there is no way that there
12 could not be coverage unless they could prove that he knew or
13 should have known and they haven't been able to prove he knew
14 or should have known. That's what the motion said. Again,
15 they didn't really reply to our motion and if they had done a
16 response, we may have done a reply to it in that regard, but
17 I think it was all covered in the motion and I think Your
18 Honor was probably right and as I was writing down your
19 notes, based on the Rollison case, the lower court is
20 probably bound to do what you said and probably grant summary
21 judgment on the whole thing. The Court of Appeals may look
22 at it and say well, we are going to carve out a new exception
23 and they may buy that argument, but that's probably not
24 something that can be done at the lower court issue based
25 upon the existing law that's controlling.

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1 THE COURT: Well, I think my ruling addresses both
2 issues and to the extent that it might not have been actually
3 articulated in the motion, I'm going to rule on it. Let's do
4 it that way.

5 MR. Thank you, Your Honor.

6 THE COURT: But I think it was articulated in the
7 motion.

8 MR. LOFTIS: Thank you, Judge.

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STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

CERTIFICATE

BE IT KNOWN THAT I, THE UNDERSIGNED JO RICE, OFFICIAL COURT REPORTER FOR THE TWELFTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING TRANSCRIPT REPRESENTS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE HEARING, RELATIVE TO APPEAL, BEFORE THE COURT OF COMMON PLEAS FOR FLORENCE COUNTY, SOUTH CAROLINA, SO GIVEN ON JUNE 18, 2014, TO THE BEST OF MY SKILL AND ABILITY;

THAT I AM NOT RELATED TO NOR AN EMPLOYEE OF ANY OF THE PARTIES HERETO, NOR A RELATIVE OR EMPLOYEE OF ANY ATTORNEY OR COUNSEL EMPLOYED BY THE PARTIES HERETO, NOR INTERESTED IN THE OUTCOME OF THIS ACTION.

IN WITNESS WHEREOF I HAVE HERE UNTO SET MY HAND AND SEAL THIS 5TH DAY OF NOVEMBER, 2014.



JO RICE
OFFICIAL COURT REPORTER

FILED

IN THE STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE 2014 FEB 27 PM 2:49R THE 12TH JUDICIAL CIRCUIT

Omni Insurance Company,

CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

CASE NO.: 2012-CP-21-3136

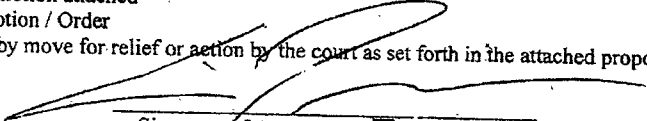
Plaintiffs,

v.

Lionel Evans and Lionel Evans, as the
Personal Representative of the Estate of
Antonio Dickey,

Defendant(s).

**MOTION AND ORDER
INFORMATION FORM AND COVER
SHEET**

Plaintiff's Attorney: M. Todd Loftis Bar Number: Address: PO Box 945 Blythwood, SC 29016 Phone: Fax: E-Mail: mtl@leadbitterlaw.com	Defendant's Attorney: Eric M. Poulin, Roy T. Willey, IV, Renee M. Anderson Bar Number: 100209, 101010, 100534 Address: 2557 Ashley Phosphate Road North Charleston, SC 29418 Phone: (843) 614-8888 E-Mail: eric@akimlawfirm.com
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS III and III) ☐ PROPOSED ORDER / CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information Nature of Motion: Motion for Summary Judgment Estimated Time Needed: 15 min. Court Reporter Need: ☒ YES / ☐ NO	
SECTION II: Motion / Order Type ☒ Written motion attached ☐ Form Motion / Order I hereby move for relief or action by the court as set forth in the attached proposed order.  Signature of Attorney for ☐ Plaintiff / ☒ Defendants February 24, 2014 Date Submitted	
SECTION III: Motion Fee ☒ PAID - AMOUNT: [prompt: Amount Paid] ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposal order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____	

CERTIFIED: A TRUE COPY
Connie Reel Shearin
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____		JUDGE _____ CODE: _____ DATE: _____
CLERK'S SECTION Collected by: <u>dp</u> Date Filed: _____ ☐ MOTION FEE COLLECTED: <u>25</u> ☐ CONTESTED - AMOUNT DUE: _____		

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

Omni Insurance Company,

Plaintiffs,

v.

Lionel Evans and Lionel Evans, as the
Personal Representative of the Estate of
Antonio Dickey,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE 12TH JUDICIAL CIRCUIT
CASE NO: 2012-CP-21-3136

**DEFENDANT LIONEL EVANS'
NOTICE OF MOTION AND MOTION
FOR SUMMARY JUDGMENT**

2014 FEB 27 PM 2:49
CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

FILED

TO: THE HONORABLE COURT AND ALL COUNSEL OF RECORD

PLEASE TAKE NOTICE that Defendant Evans, by and through undersigned counsel and pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, will move before the Presiding Judge of the Court of Common Pleas, within ten (10) days of the date of this Motion, or as soon as counsel may be heard, for an Order granting summary judgment as to Plaintiff's claims.

COMES NOW the Defendant, Lionel Evans, who moves for an Order of Summary Judgment as to Plaintiff's claims. In support of this Motion, Defendant will show that no justiciable controversy exists between the Plaintiff and Defendant. Plaintiff has not brought forth any facts supporting the allegation that Defendant Evans knew or should have known that the vehicle in which he was a passenger at the time of his injuries was allegedly stolen; and therefore Defendant is entitled to the Uninsured Motorist Coverage.

FACTS

On or around February 2, 2009, a vehicle owned by one Roderick Thompson, a 2003 Chevrolet Trailblazer, license # CSN 192, VIN 1GNDS135X32159091 (herein "Vehicle") was allegedly stolen outside the club Bad-to-the-Bone. A week later, on or around February 9, 2009, Defendant Evans was invited by Defendant Dickey to be a passenger/guest in the Vehicle. The Vehicle was covered under Omni Insurance Policy No. 3389124 issued to insured Redrick Thompson (herein "Thompson's Omni Policy"). The Vehicle was involved in an accident resulting in injuries to Defendant Evans and the death of Defendant Dickey.

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Connie Reel-Shearin
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

Omni alleges that Dickey was not a permissive user, because he stole the Vehicle, and has disclaimed any duty to defend or indemnify Dickey. Therefore, Dickey is an uninsured driver. Accordingly, Defendant Evans made an Uninsured ("UM") claim with Omni, which Omni refused to pay. Omni filed this action seeking a declaration that it has no duty to pay Evans' UM claim.

LEGAL STANDARD

Summary judgment should be granted when there is no genuine issue as to any material fact. Rule 56(c) S.C.R.C.P. The purpose of summary judgment is to expedite disposition of cases that do not require the services of a fact finder. *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001).

ARGUMENT

"Insured" means the named insured and, while resident of the same household, the spouse of any named insured and relatives of either, while in a motor vehicle or otherwise, and any person who uses with the consent, expressed or implied, of the named insured the motor vehicle to which the policy applies and a guest in the motor vehicle to which the policy applies or the personal representative of any of the above. S.C. Code Ann. § 38-77-30 (7) (2002). One who is a "guest" at the invitation of the driver has, by implication, the consent of the named insured. *Auto Owners Ins. v. Rollison*, 378 S.C. 600, 663 S.E.2d 484, 489 (2008). A person in the fourth category of "insured", or "guest", need only have the status of a "guest" to qualify as an "insured". *Id.* at 489. Logically, a passenger can only rely on the driver's representations regarding his status as a permissive user. *Id.* Thus, a determination of whether a passenger qualifies as a "guest" under the statute must be viewed from the passenger's perspective. *Id.* *Id.* at 489-490.

The facts of the *Rollison* are almost identical to the facts in the present action. There, a passenger was invited by a driver to ride in a vehicle. Following an accident, it was alleged that the driver was not a permissive user and, thus, the carrier for the policy that was on the vehicle refused to indemnify the driver or pay out on any liability claim. However, the *Rollison* court ruled that the passenger was still entitled to UM coverage from that insurer, because she believed herself to be a permissive guest in the vehicle.

Omni argues that the result changes if the passenger knows the vehicle to be stolen. However, even if Omni is correct in this legal assumption, Omni has not brought forth

any evidence to support their contention that Defendant Evans knew that Dickey allegedly stole the vehicle from Thompson the week prior to the accident. To the contrary, Evans has testified, under oath, that he did not know the Vehicle was stolen but, rather, was informed by Dickey that the vehicle belonged to Dickey's family and that Dickey had permission to be driving the vehicle. Therefore, there is no factual dispute to Defendant Evans being a "guest" in the Vehicle on the night of the accident and he is entitled to the UM coverage of Thompson's Omni Policy.

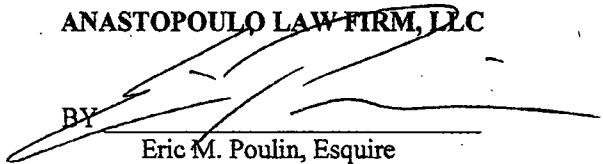
Since there is no genuine issue as to any material fact with regards to Defendant Evans being a "guest" in the Vehicle, Summary judgment should be granted.

PRAYER

For the reasons set forth above the Plaintiff respectfully requests the Court grant summary judgment on the above issues, and attorneys fees and costs as the Court deems just and proper.

Respectfully submitted,

ANASTOPOULO LAW FIRM, LLC

BY 

Eric M. Poulin, Esquire
Roy T. Willey, IV, Esquire
Renee M. Anderson, Esquire
Anastopoulos Law Firm, LLC
2557 Ashley Phosphate Road
North Charleston, SC 29418
(843) 614-8888

ATTORNEYS FOR THE DEFENDANT

Charleston, South Carolina
February 24, 2014

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS
FOR THE 12TH JUDICIAL CIRCUIT
CASE NO: 2012-CP-21-3136

OMNI INSURANCE COMPANY,

Plaintiff(s),

v.

LIONEL EVANS, and LIONEL EVANS,
as Personal Representative of the ESTATE
OF ANTONIO DICKEY,

Defendant(s).

CERTIFICATE OF MAILING

I certify that I have served a copy of the following document(s) on the individuals below named by hand delivery or by depositing a copy in a first class postage pre-paid envelope in the United States mail at North Charleston, South Carolina and addressed as follows:

Jonathan P. Edwards, Esq.
516 S. Coit Street
Florence, SC 29501

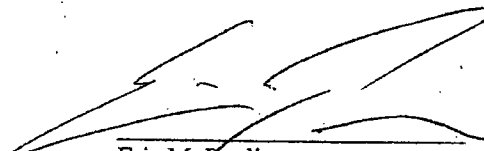
Michael Loftis
Douglas E. Leadbitter, LLC
Post Office Box 945
Blythwood, SC 29016

FILED
2014 FEB 27 PM 2:49
CONNIE REEL-SHEARIN
CCOP & GS
FLORENCE COUNTY, SC

Documents Served

Lionel Evans' Notice of Motion and Motion for Summary Judgment

This 24 day of Feb, 2014


Eric M. Poulin

CERTIFIED: A TRUE COPY
Connie Reel-Shearin
CLERK OF COURT CP & GS
FLORENCE COUNTY, S.C.

State of South Carolina
In Common Pleas Court
County of Florence

Omni Insurance Company,
Plaintiff,

V.

2012-CP-21-3136

Lionel Evans and Lionel Evans, as the Personal
Representative of the Estate of Antonio Dickey,
Defendant.

Deposition of: Lionel Evans

Location: 150 West Evans Street

Florence, South Carolina

Date: Thursday, December 19, 2013

Time: 10:31 a.m. - 11:07 a.m.

Court Reporter: Roger R. Williamson

The deposition is taken pursuant to notice and/or
agreement, in the above-entitled cause pending in
the above-named court and pursuant to the South
Carolina rules of civil procedure.

1 A P P E A R A N C E S

2 For the Plaintiff:
3 Douglas E. Leadbitter, L.L.C.
4 5 Lake Carolina Way
5 Columbia, SC 29229
6 By: Michael Todd Loftis, Esq.

7 For the Defendant:
8 Maritime Law Group, L.L.C.
9 2557 Ashley Phosphate Road
10 North Charleston, SC 29418
11 By: Renee M. Anderson, Esq.

12 I N D E X

13 page
14 Examination by Mr. Loftis 3

16 E X H I B I T S

17 Pg/ln	Ex.	Description
18 26/11	1	I.D. Photo
19 26/11	2	I.D. Photo

20
21
22 ** uh-huh = affirmative
23 huh-uh = negative
24
25

1 S T I P U L A T I O N S

2 It is stipulated between counsel that this
3 deposition is being taken pursuant to the South
4 Carolina rules of civil procedure and that all
5 objections except as to the form of the question
6 are reserved until the time of trial.

7 It is also stipulated between counsel for
8 the respective parties and the deponent that the
9 deponent will waive the right to read and sign
10 this transcript.

11 Thereupon,

12 Lionel Evans,
13 having been first duly sworn by the court
14 reporter, testified as follows:

15 E X A M I N A T I O N

16 BY MR. LOFTIS:

17 Q Mr. Evans, my name is Todd Loftis. I'm
18 here to take your deposition. Have you had your
19 deposition taken before?

20 A Yes.

21 Q Okay. So you understand the -- the
22 ground rules? Just make all of your answers
23 verbal. He can't take down uh-huh's, huh-uh's,
24 and that kind of thing. And if any time I try to
25 say, is that a yes, or is that a no, I'm -- I'm

1 not trying to be rude. I'm just trying to make
2 his job a little bit easier.

3 A Yeah.

4 Q First of all, are you on any
5 medications today that would affect your ability
6 to understand and answer my questions truthfully?

7 A No, sir.

8 Q Okay. All right. And we're here for
9 today is a declaratory judgment action. I know
10 that you've been deposed in the -- the pending
11 tort action. But this is a whole different
12 lawsuit. So we won't be talking about your
13 injuries or anything like that. Just, basically,
14 the -- the facts of the case. Describe your
15 relationship with Mr. Antonio Dickey.

16 A Actually he just was a friend. I went
17 to school with him a long time ago. I just --
18 yeah, from childhood.

19 Q So y'all had been friends a long time
20 before he passed?

21 A Yeah. Before he passed, yeah, we had
22 been friends from -- from childhood, coming up.
23 Raised like in school together.

24 Q Okay. All right. Do you know if
25 Mr. Dickey owned a vehicle?

1 A No, he didn't.

2 Q He did not?

3 A I didn't know.

4 Q Okay. Okay. Do you know if he ever
5 owned a vehicle of his own?

6 A Yes, during going to school together.

7 Q Okay. But at the time of the accident,
8 you don't know if he owned a vehicle?

9 A No, not during. I was just getting
10 back up with him. Got in contact with him
11 recently.

12 Q Okay. All right. And, you know, as we
13 all know, unfortunately Mister -- Mr. Dickey has
14 passed. So I don't have the ability to -- to, you
15 know, talk with him. Can you describe his
16 appearance for me? Did he -- I guess right before
17 the accident did he have any facial hair, how tall
18 was he?

19 A Actually he didn't have -- have no
20 facial hair. He probably was about five-eight.

21 Q Okay. So he's -- he was a little bit
22 shorter than you?

23 A Yeah, around about the same size.

24 Q Okay.

25 A The same -- the same height.

1 Q Okay. All right. And can you describe
2 your relationship with Mr. Mario Lowery?

3 A Nothing. He was just with Antonio at
4 the time when Antonio called me. But we had no
5 relationship or nothing.

6 Q Okay.

7 A I didn't really know him like that.

8 Q Okay. Y'all weren't friends? Y'all
9 were just kind of --

10 A Yeah.

11 Q -- acquaintances?

12 A We just was together the -- that night
13 when they came and picked me up.

14 Q Okay. All right. And do you know --
15 and I had the pleasure of meeting Mr. Lowery a few
16 weeks ago. At the time of the accident, do you
17 know if he had any -- a beard or fa--- facial hair
18 or anything?

19 A No, not that I know of.

20 Q Okay. All right. All right. Do you
21 know a gentleman by the name of Redrick Thompson?

22 A No.

23 Q All right. Do you recall where you
24 were on February 2nd, 2009?

25 A February 2nd?

1 Q Yes, sir. That would have been roughly
2 about a week before the accident.

3 A February 2nd, probably working because
4 I was working at Hardees at the time.

5 Q Okay. You ever heard of a club called
6 Bad to the Bone Club located on Skinner Road in
7 Gable, South Carolina?

8 A I heard about it after the accident.

9 Q Okay. After the accident?

10 A Yeah.

11 Q Have you -- have you ever been to that
12 club, Bad --

13 A No.

14 Q -- to the Bone?

15 A Never been there.

16 Q Okay. Okay. The date of the accident
17 that I have is February 8th, 2009. Is that -- to
18 your knowledge, is that the correct date?

19 A Correct.

20 Q And when was the last time you saw
21 Mr. Dickey before the date of the accident? Did
22 you see him any time that week?

23 A No, not that week. It was the first
24 time seeing that night since I met him. I didn't
25 even know how he got my phone number. But that

1 was the first seeing him. He called, came and
2 picked me up. We went to the club.

3 Q Okay. So that -- and you said that's
4 the first time you had seen Mr. Dickey in how
5 long?

6 A About half a year, almost a year.

7 Q And do you recall what type of vehicle
8 he was driving on February 8th, 2009?

9 A It was a truck. A Tahoe if I'm not
10 mistaken.

11 Q And do you know what color it was?

12 A It's a dark color, green or black.

13 Q Okay. All right. And let's see, I see
14 you've got a little goatee, did you have a goatee
15 back then or is that kind of new?

16 A Actually, no, it was cut. But after I
17 had got a -- the metal plate in my chin, I started
18 letting it grow and not cutting it.

19 Q Okay. And that was as a result of the
20 accident?

21 A Of the accident.

22 Q Okay. All right. On the night of the
23 accident -- and I understand it's -- it's a while
24 ago, but tell me how you first talked to
25 Mr. Dickey on that night. I mean did he -- you

1 said -- I think you said earlier he called you,
2 but I don't -- you just tell me kind of what
3 happened, you know, not --

4 A Well, that --

5 Q -- up until he picked you up.

6 A I was just at home in the bed and he
7 called me. And I didn't notice the number. When
8 I answered it it was him. He asked me did I want
9 to ride to the club with him, that he was about to
10 go to a club in Florence. And I told him, yeah, I
11 wanted to ride with him. So he came through my
12 house to pick me up, and we rode to Club Rain.
13 Club Rain was in Florence. We rode to Club Rain.

14 Q And where were you residing at that
15 time?

16 A Where was I at at the time?

17 Q Yes, sir.

18 A I was at home when he came and picked
19 me up.

20 Q Yeah, I mean -- and I'm sorry. What
21 was the address of your home at that time?

22 A Oh, 1243 Piney Grove Road. That's
23 Timmons ville, South Carolina, 29161.

24 Q All right. And is that still your
25 residence?

1 A No, I relocated now.

2 Q Okay. All right. What's -- what's
3 your current residence?

4 A It's Lynchburg. It's -- well I'm in
5 Lynchburg, but it's 1002 Mills Road.

6 Q Mills Road?

7 A Yes. That's in Lynchburg,
8 South Carolina, 29080.

9 Q 29080?

10 A Correct.

11 Q All right. All right. So he came and
12 picked you -- he came and picked you up from your
13 home?

14 A Yeah, my home in Timmonsville.

15 Q Okay. And was he driving the -- the
16 Tahoe or the dark green or black vehicle at
17 that --

18 A Yeah.

19 Q -- time?

20 A Correct.

21 Q And was Mr. Lowery already in the
22 vehicle with him?

23 A Yes, he was already with him.

24 Q All right. And this was the same
25 vehicle y'all were traveling in at the time of the

1 accident?

2 A Yes.

3 Q And who was driving at the time of the
4 accident?

5 A Tonio.

6 Q That Mr. Antonio --

7 A Dickey.

8 Q -- Dickey? And on the night of the
9 accident, did anyone else drive the vehicle before
10 the accident?

11 A No, just Antonio.

12 Q Okay. All right. Did you ever see
13 that vehicle before the night that Mr. Antonio --
14 before he picked you up to go to the club?

15 A No.

16 Q When was the first time that you were
17 aware that the vehicle did not belong to
18 Mr. Dickey?

19 A When I was in the -- after the -- after
20 the accident in the hospital. Okay. At the
21 hospital.

22 Q All right. When he picked you up, you
23 didn't ask him whose vehicle it was or anything?

24 A No.

25 Q Okay. So he never told you anything

1 **about the vehicle?**

2 A Well, I mean, he came and got me. He
3 was like this is his vehicle. I mean I didn't
4 even ask him. He was like, ask me if I wanted to
5 ride. Well I did, like whose vehicle, he was like
6 his.

7 Q Okay. And -- all right. So after the
8 accident is the first time that you -- you knew
9 that the vehicle was stolen?

10 A After the accident -- say that again.

11 Q I'm sorry. That's a terrible question.
12 Yeah, and at any time I ask you a bad question
13 just --

14 A Uh-huh.

15 Q -- do exactly what you said. Just say,
16 please rephrase it, or ask me to ask it again. So
17 when did you first find out the vehicle was
18 actually stolen at the time that y'all were
19 involved in the accident?

20 A After I came from the hospital.

21 Q And who told you it was stolen?

22 A Well I see the newspaper. They showed
23 me the newspaper and everything, what happened.
24 My mother and -- my mother and them was telling me
25 about it.

1 Q Okay. All right. And what's your
2 mother's name?

3 A Marilyn Henry.

4 Q Marilyn Henry?

5 A Yes.

6 Q Okay. All right. All right. And do
7 you have any knowledge as to who was involved in
8 the theft of the vehicle?

9 A No.

10 Q Had you ever heard that Mr. Dickey had
11 been involved in thefts of vehicles in the past
12 before the accident?

13 A No, not with no -- not with stealing no
14 vehicle.

15 Q Okay. How about Mister -- Mr. Lowery?

16 A No.

17 Q Okay. Approximately what time did they
18 come and pick you up from your home that night?

19 A Around about 10 -- 10:00.

20 Q All right. And that would be p.m.?

21 A P.M.

22 Q Okay. All right. All right. Tell me
23 kind of -- I know y'all went to Club Rain. Kind
24 of tell me what happened in between Mr. Dickey
25 picking you up, and y'all arriving at the club.

1 A Well he came and picked me up. We left
2 from my house, and we went to Club Rain. And
3 basically it. We left my house and went straight
4 to the club and went inside the club.

5 Q And how far is it from -- from your
6 house in Timmonsville to where Club Rain is
7 located?

8 A About 30 -- about 25, 30 minutes.
9 Twenty-five minutes.

10 Q Okay. And why were y'all going to
11 Club Rain?

12 A I think just a little -- have a good
13 time. I mean I hadn't seen him and we met. We
14 just had got back up that night.

15 Q Uh-huh.

16 A So I decided to go ride with him.

17 Q Okay. Y'all were just going to hang
18 out and, you know, do what people --

19 A Yeah.

20 Q -- do what young people do?

21 A Yeah.

22 Q And you -- had you ever been there
23 before to Club Rain?

24 A Yes, I have been there before.

25 Q Okay. What kind of -- is it a dance

1 club? Is it a restaurant? What kind of --

2 A It was like both mixed.

3 Q Okay. All right. And did you observe
4 Mr. Dickey consume any alcoholic beverages that
5 night?

6 A Yeah, he did drink a beer.

7 Q Did he drink one beer, more than one?

8 A Well, actually, I just seen him drink
9 one beer.

10 Q Okay. All right. And did you consume
11 any alcohol that night at the club?

12 A I drank a beer myself.

13 Q Okay. How about Mr. Lowery, did he
14 drink any alcohol?

15 A He was, basically, with -- he wasn't
16 with me and Dickey that night in the club. He had
17 got -- got lost, went somewhere else with
18 another -- I think it was his cousin or family
19 member somewhere -- somebody.

20 Q Okay. And so Mr. Lowery just went with
21 you to the club, and then just kind of went off
22 with somebody else?

23 A Yes.

24 Q All right. Did you hang out with
25 Mr. Dickey the whole time y'all were at the club?

1 A Yes, the whole time.

2 Q All right. And these are questions
3 that I just have to ask. Did you see Mr. Dickey
4 consume any -- any drugs?

5 A No.

6 Q Okay. Did you consume any drugs that
7 night?

8 A No.

9 Q Okay. All right. And on -- when y'all
10 left the club did you feel that Mr. Dickey was
11 intoxicated in any way?

12 A No, he wasn't.

13 Q And did y'all meet any -- meet up with
14 anybody else at the club?

15 A Yeah, this girl -- girlfriend.

16 Q Your girlfriend or Mr. Dickey's
17 girlfriend?

18 A No, his girlfriend.

19 Q Okay. And do you know her name?

20 A I'm not sure of her name.

21 Q Had you ever met her before?

22 A No.

23 Q Okay. And when y'all left the club,
24 who was in the vehicle when y'all left the club?

25 A The same, me, Dickey -- Antonio Dickey

1 and Mario Lowery.

2 Q Okay. And where did y'all go after
3 leaving the club?

4 A We went to Bishopville to the girl's
5 house.

6 Q And do you know where that house is
7 located?

8 A It was in Bishopville in apartments.

9 Q Do you know the name of the apartments?

10 A I'm not sure.

11 Q Or what street they're located on in
12 Bishopville?

13 A Huh-uh. I don't know too much about
14 it.

15 Q All right. And why did y'all go to
16 her -- her apartment in Bishopville?

17 A She had wanted to meet him at -- at her
18 apartment after the club. We were supposed to
19 meet up there together.

20 Q Was it just her or were there other
21 girls there?

22 A Yeah, she had -- she had two other
23 girls with her.

24 Q Okay. And did you know either one of
25 them?

1 A No, besides talking to them at the
2 club.

3 Q Okay. But you -- do you recall their
4 names?

5 A No, I couldn't. Not their names.

6 Q All right. How long were y'all at the
7 girl's apartment?

8 A Well we sit there -- well we was
9 waiting on them. But he left them as I remember.
10 From -- after the accident, my memory got messed
11 up, so I don't remember seeing the -- seeing the
12 girls. But I think he went inside, but I was just
13 sitting -- we were just sitting in the truck. But
14 I don't remember seeing the girls.

15 Q Okay. And do you recall -- and I -- I
16 apologize for having to back up a little bit. Do
17 you recall approximately what time y'all left the
18 club?

19 A Around probably about -- about twelve,
20 one, somewhere like that. Probably about twelve
21 something.

22 Q So y'all were at the club just a couple
23 of hours?

24 A Yes.

25 Q All right. So you're at the club, and

1 then you go to Mr. Dickey's girlfriend's house in
2 Bishopville or apartment.

3 A Uh-huh.

4 Q And you wait around and you don't think
5 they ever showed up?

6 A I mean I think they showed up, but I
7 mean I never seen the girls.

8 Q Okay.

9 A They all was on the inside.

10 Q Okay. So --

11 A They showed up. Antonio just went in.
12 We stayed in the truck.

13 Q And by, we, you be--- you mean yourself
14 and Mr. Lowery?

15 A And Lowery.

16 Q Okay. And how long did y'all stay
17 around their apartment?

18 A About -- about an hour.

19 Q All right. And then tell me what
20 happened at that point.

21 A We left from there and we ended up in
22 front of Super 10. I think he had stopped to use
23 the -- use the bathroom. And that -- the next
24 thing you know, the police pull up behind us, and
25 he threw the blue lights so he just sped off. I

1 asked him what he was doing. I tell him to let me
2 out, but he wouldn't even stop.

3 Q And that was Super 10 in Bishopville?

4 A Super 10 in Bishopville.

5 Q Was the Super 10 open?

6 A It was like that morning. It wasn't
7 even open yet.

8 Q Okay. So when you say he stopped to
9 use the bathroom --

10 A Yeah.

11 Q -- he just --

12 A He used --

13 Q -- went outside or --

14 A Out the side.

15 Q Okay. All right. Okay. And so he
16 used the restroom and got back in the vehicle?

17 A Got back in the vehicle, and the police
18 rolled up behind him.

19 Q And what was he doing when they rolled
20 up behind him? Were y'all stopped or was -- was
21 he --

22 A He -- no, when -- he sit there for a
23 minute, and the police throw on the blue lights.
24 And he just sped -- just sped off after he seen
25 the lights.

1 Q Was he doing anything for them to pull
2 him over at the time? Was he speeding or riding
3 with his lights off or anything like that?

4 A No, he was parked. He was like parked
5 in front of Super 10 at the time.

6 Q Okay. All right. So he sped off.

7 A After he seen the blue lights. The
8 police throw on the blue lights.

9 Q All right. And what were your thoughts
10 when -- when that happened?

11 A I figured he didn't have lights or
12 anything. And I tell him to let me out, and he
13 wouldn't never stop.

14 Q At any point, did you think that he was
15 trying to run from the police because the car was
16 stolen?

17 A No, that never came to my mind. I just
18 was thinking he didn't have his license or
19 anything.

20 Q All right. And where were y'all
21 heading? When y'all at the stopped at -- at the
22 Super 10, where were y'all -- where were y'all --

23 A We was on the way to take me home, drop
24 me back off.

25 Q And do you recall about what time all

1 of this started, the police coming up behind you?

2 A I can't remember what time. I just
3 know it was like morning. That morning, early
4 morning, something around that time, early that
5 morning.

6 Q Okay. Was it still dark outside or was
7 it light, starting to get a little bit light?

8 A It was like dark.

9 Q Okay. Okay. And do you know what
10 time -- I mean what road the Super 10 is located
11 on in Bishopville?

12 A I don't know -- actually know the name
13 of the road.

14 Q Is it like on one of the main roads in
15 Bishopville?

16 A Yeah, like you turn off the main road
17 downtown.

18 Q Okay.

19 A You turn off the main road, like a side
20 cut.

21 Q And Bishopville is not that big, so
22 there's probably only one Super 10, right?

23 A Yes.

24 Q All right. Where were you sitting in
25 the vehicle?

1 A I was in the back seat.

2 Q All right. And were you sitting behind
3 the driver's seat or behind the passenger seat?

4 A I was sitting behind the passenger
5 seat.

6 Q And were you wearing your seat belt?

7 A No.

8 Q So Mr. Dickey was driving, and where
9 was Mr. Lowery sitting?

10 A Passenger.

11 Q Okay. Sorry, I'm trying to write all
12 of this down. All right. So the police hit the
13 blue lights, he takes off, and then kind of tell
14 me what you remember up until the -- you know, the
15 accident.

16 A I remember he sped off. He hit --
17 turned corners coming back up downtown threw the
18 light. Never stopped at a light. And, actually,
19 he went down -- lost the -- I looked back and he
20 done lost the police, and I started to tell him to
21 stop. He wouldn't never stop. Doing everything
22 on the dash. And I remember going around a curve
23 and the truck just slide. The only thing I
24 remember after that I was just flying out the
25 windshield. I can't remember nothing else.

1 Q Do you recall how the weather was that
2 night?

3 A It was pretty warm.

4 Q Was it raining or anything?

5 A No.

6 Q All right. Do you have any knowledge
7 as to how fast Mr. Dickey was traveling when y'all
8 wrecked?

9 A He was doing about -- he was doing
10 everything on the dash, about a 100, 110.

11 Q Okay. And it was only one vehicle
12 involved in the accident; is that correct?

13 A Correct.

14 Q All right. And you say you flew out
15 the windshield?

16 A Yes.

17 Q Did Mister -- and -- and I -- I -- I
18 don't like visiting these -- these type of
19 questions because I know Mr. Dickey was your
20 friend, and he's -- he's passed as a result of the
21 accident. But from the time the blue lights went
22 off and the cops were behind you until the
23 accident, did Mr. Dickey say anything to you when
24 you were tell--- telling him to stop, and you
25 wanted to out of the vehicle?

1 A Yeah, I was telling him to stop, and he
2 was like no, no man, no man, the police is behind
3 me. He wouldn't ever stop so...

4 Q And was Mr. Lowery saying anything to
5 you?

6 A Well he was -- actually he was telling
7 him the same thing too. Telling him that he
8 needed to pull over, he needed to pull over.

9 Q Okay. All right. And I believe you
10 stated earlier the first time that you knew the
11 vehicle was actually stolen was when your mother
12 told you?

13 A Yes, when I was coming out the
14 hospital. It was like a month later.

15 Q And Mist--- Mr. Evans, what's your full
16 name?

17 A Lionel Cortez Evans.

18 Q Is that C-O-R --

19 A C-O-R-T-E-Z.

20 Q And what's your date of birth?

21 A August 1st, '87.

22 Q All right. And do you have a
23 South Carolina driver's license?

24 A Yes.

25 Q Do you have it with you?

1 A Yes.

2 Q Do you mind if we make a copy of it?

3 MR. LOFTIS: Do y'all have a color
4 copier? I can just make it just --

5 MS. ANDERSON: I do.

6 MR. LOFTIS: All right. We'll go off
7 the record for a minute, and get a copy of it and
8 just make it part of the record.

9 (Whereupon, a break was taken
10 from the proceedings.)

11 (Plaintiff's Exhibit Number 1 and 2
12 marked for identification.)

13 BY MR. LOFTIS:

14 Q And Mr. Evans, what we did is we made
15 copies of your license. And if you can just
16 identify those, we'll mark one of them Exhibit 1
17 and one of them Exhibit 2. Looks like one of them
18 is with the top open for the copy and one is with
19 the top closed. Is that a copy of your license?

20 A Correct.

21 Q Okay. And -- and what is -- can you
22 read for me your driver's license number?

23 A It's 100062978.

24 Q All right. And has your license ever
25 been suspended or revoked for any reason?

1 A No.

2 Q Okay. All right. And that reflects
3 your -- your present address on your license?

4 A Correct.

5 Q Okay. All right. And are you married
6 or single?

7 A Single.

8 Q And this case is currently pending in
9 Florence County. Do you have any relatives that
10 live in Florence County?

11 A Cousins.

12 Q All right. What are -- what are -- and
13 the reason I ask the question is if -- if by some
14 chance this case ever goes to a jury trial just so
15 we know, you know, hey -- you know, if there's --
16 there's a bunch of Evans on the case -- on the
17 thing, I will say, well, maybe they might be
18 related. But what are some last names of your
19 cousins that live in Florence County?

20 A Williams.

21 Q Williams. Any others?

22 A That's about it.

23 Q Okay. And are you a member of any kind
24 of civic organization, a club or anything like
25 that?

1 A No.

2 Q All right. What's the highest level of
3 education you -- you obtained?

4 A High school diploma.

5 Q All right. And where did you go to
6 high school?

7 A Lee Central in Bishopville.

8 Q And what year did you finish there?

9 A 2005.

10 Q Is that the school that you can kind of
11 see off of I-20?

12 A Yes.

13 Q Okay. All right. And do you attend
14 any kind of church in Florence County?

15 A No.

16 Q Okay. Ever served in the military or
17 anything?

18 A No.

19 Q Okay. Have you ever been arrested for
20 any reason?

21 A Nothing but a traffic tic--- traffic
22 ticket.

23 Q Okay. All right. Did you ever see the
24 vehicle after the accident?

25 A Yes, pictures.

1 Q Pictures of it?

2 A Yes.

3 Q It was pretty -- pretty messed up,
4 wasn't it?

5 A It was totally bad, messed up bad.

6 Q And -- and it's your understanding that
7 Mister -- Mr. Dickey passed away in the -- in the
8 accident?

9 A Yes, I -- they told me that after I --
10 they didn't want to tell me, but they told me in
11 the hospital, my girlfriend did. And she wasn't
12 supposed to tell me but she told me.

13 Q Yeah. And did you have a vehicle at
14 the time of the accident?

15 A No.

16 Q Okay. Who did you live with at the
17 time of the accident?

18 A Mother.

19 Q Did she have a vehicle?

20 A Yes.

21 Q And did anyone else live with you and
22 your mom at that time that would have had a
23 vehicle?

24 A My stepfather.

25 Q Okay. And what's your stepfather's

1 name?

2 A Curtis Henry.

3 Q Curtis Henry?

4 A Yes.

5 Q Okay. And you had a license at the
6 time of the accident; is that correct?

7 A Correct.

8 Q All right. And you said the first time
9 you talked to Mr. Dickey in six months or a year
10 was on the day of the accident?

11 A The day of the -- no, that night. The
12 accident happened like that morning. He called me
13 that night.

14 Q Okay. So the night before the
15 accident?

16 A Yeah.

17 Q Okay. And -- okay. All right. And do
18 you have any knowledge as to any -- any criminal
19 past of Mr. Dickey at all?

20 A No.

21 Q Okay. How about Mr. Lowery?

22 A No.

23 Q When's the last time you spoke or had
24 any contact with Mr. Lowery?

25 A In the minute. Haven't seen him since,

1 in the minute.

2 Q Okay. Have you seen him or talked to
3 him since the accident though?

4 A Yeah, actually, when I got out of the
5 hospital, I seen him in Lynchburg at the store,
6 and we didn't spoke or nothing.

7 Q Okay. But y'all weren't friends before
8 the accident so y'all weren't --

9 A No.

10 Q Would -- would you consider your
11 friend -- yourself friends now?

12 A No, still the same way.

13 Q Okay. And -- and you have no knowledge
14 as to anyone by the name of Redrick Thompson?

15 A No.

16 Q Okay. At any time when Mr. Dickey was
17 driving the vehicle, did he say this was someone
18 else's ve--- vehicle like his uncle's or anything
19 like that?

20 A No, not that I know of.

21 Q Okay. You just knew he was driving the
22 vehicle?

23 A Yes.

24 Q Okay.

25 MR. LOFTIS: All right. I think that's

1 all my questions. I really appreciate you -- you
2 being here.

3 THE DEPONENT: All right.

4 (Witness excused.)

5 (Whereupon, at 11:07 a.m.,
6 the taking of the foregoing
7 deposition was concluded.)
8
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25

1 CERTIFICATE OF REPORTER

2 State of South Carolina

3 County of Florence

4

5 I, Roger R. Williamson, Court Reporter and
6 notary public for the State of South Carolina, do
7 hereby certify that the deponent in the foregoing
8 deposition was, by me, first duly sworn to testify
9 to the truth, the whole truth and nothing but the
10 truth; that said deposition transcript was taken
11 via stenomask with backup; that the foregoing
12 transcript contains a true record of the
13 deposition of said deponent.

14 I further certify that I am neither attorney
15 nor counsel for, nor related to or employed by any
16 of the parties connected to the action, nor am I
17 financially interested in the action.

18 Witness my hand at Florence, South Carolina,
19 this the 8th day of January, 2014.

20

21

22

Roger R. Williamson
MY COMMISSION EXPIRES:
March 1, 2022

23

24

25

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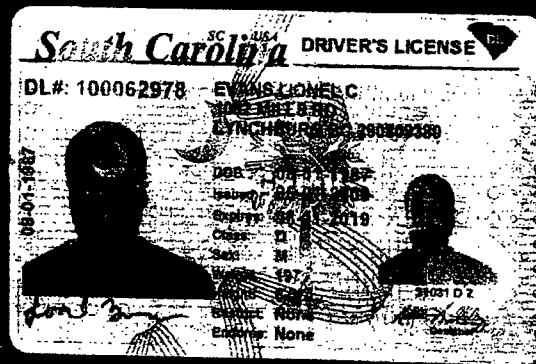
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PLAINTIFF'S
EXHIBIT



PLAINTIFF'S
EXHIBIT

2

AFFIDAVIT OF VEHICLE THEFT

NOTE: All thefts must be reported to the police.

Policy # 3389124 Date of Theft: 2-2-09Broker / Agent: Cottingham Insurance

POLICYHOLDER / OWNER INFORMATION

Name of Insured / Owner: Redrick Thompson Date of Birth: 6-26-74Address: 213 Walnut Street Manning SC 29102Phone Number: 8034359060 803477240683 How long living at present residence? 2 monthsPrevious Address: 1504 Park Place Apt 3R Brooklyn, NY 11213Employer Name: Brooklyn College Occupation / Position: College AssistantAddress: 2900 Campus Road Bedford Ave Length of Service: 3 yrsSocial Security Number: 131581238 Brooklyn, NY Marital Status: SingleSpouse's Name: None Date of Birth: _____

Address: _____

Employer: _____ Occupation: _____

Address: _____

Phone Number: Home: _____ Business: _____

Insured / Owner's Driver License Number: 007293117 / State SC

Prior Insurer: _____ Policy Number: _____

VEHICLE DESCRIPTION

Year <u>2003</u>	Make <u>Chev</u>	Model <u>trail blazer</u>	License Plate Number <u>CSN 192</u>	Mileage <u>92000</u>
Vehicle I.D. Number <u>1GND5135X32159091</u>		Color <u>green</u>	# of Doors <u>4 Drs</u>	Cylinders _____

Does Vehicle have original Engine? YES Transmission? YES

☒ POWER BRAKES	☐ LEATHER SEATS	☒ POWER DOOR LOCKS	☒ CRUISE CONTROL
☐ 4 WHEEL DISC BRAKES	☒ AUTOMATIC TRANSMISSION	☐ VINYL ROOF	☐ LEVEL CONTROL
☐ CUSTOMIZING (Interior/Exterior)	☒ REAR DEFOGGER	☐ POWER ANTENNA	☐ WHEEL OPTIONS
☐ BUCKET SEATS	☒ POWER STEERING	☒ TILT WHEEL	☒ RADIO AM/FM STEREO, ETC.
☐ 3rd SEAT WAGON	☒ POWER WINDOWS	☐ TELESCOPIC WHEEL	☒ AIR CONDITIONER
☐ ROOF OPTIONS	☐ STEREO/TAPE PLAYER OR CB	☐ SPECIAL PACKAGE	☒ ANTI THEFT DEVICE
DESCRIBE _____	BRAND _____	DESCRIBE _____	BRAND _____
☐ OTHER _____		☐ OTHER _____	
☐ OTHER _____		☐ OTHER _____	

Please attach receipts for any major repairs, new tires or upgraded stereo equipment

AFFDVTT (6/07)

PAGE 1 OF 4

PLAINTIFF'S
EXHIBIT

FormName THEFT1

3

SALES DATA

Purchase Date: 1-8-09 ☐ NEW ☒ USED Purchase Price: \$ 11,946
Paid By: ☐ CASH ☐ CHECK ☒ FINANCED ☐ LIEN HOLDER PAID IN FULL
Seller's Name: Stokes-Craven Ford Phone Number: 803-433-5400
Address: 2601 Paxville Hwy Manning SC 29102
Tax Paid: 300 Trade In? Y \$ ~~2000~~ 2000
Lien holder's Name: Ford Motor Credit Phone Number: _____
Address: PO Box 105704 Atlanta, GA 30348
Account Number: 44612888 Down Payment: \$ 3500 Last Payment: \$24.25 ^{1st payment} Month & Yr. 2/24/09
Has vehicle been repossessed? no Are payments up to date? yes Lien holder notified of FIRE? _____
Other outstanding loans? none Do you have original Bill of Sale? yes
Ownership Documents? yes Was this vehicle due for repossession? no

SERVICE

Name of Service Station: vehicle just purchased Phone Number: _____
Address: _____
Date of Last Service: _____ Inspection Date: _____ Inspection Station Number: _____
List any major work performed since purchase other than tune-up: _____

PRIOR DAMAGE

Has vehicle been involved in any accidents or theft since purchase? yes Date of Loss: 2-2-09
Location: 5804 Skinner Rd. Gable, SC 29051 Type of loss: theft
Damages/Area: totaled Amount: \$ _____
Insurance Company: Omni
Repair Shop Name: _____
Address: _____

THEFT INFORMATION

Who had custody of vehicle at time of THEFT? Redrick Thompson Purpose of Use: _____
Exact location of THEFT: 5804 Skinner Rd. Gable, SC 29051
Date and time vehicle last seen before THEFT: 2-2-09 1:00am
Date and time vehicle discovered missing: 2-2-09 2:49am
How many sets of keys? 2 Who has extra keys? insured
Do you hide a key? no Where? _____
Was the vehicle locked? no Alarm in use: no

THEFT INFORMATION

In your own words, briefly describe your movements and location of your vehicle 12 hours prior to last observing your vehicle and what you did when you discovered it missing: Sunday morning ~~was~~ went to church

Came home that evening went grocery shopping after
that I went to sleep and woke up later that night
and went to this Social Club to pick up my cousin
and his girlfriend when I parked my truck across the street
from club and got out and walked to side to see if I saw my family
Then this young man jumped in my ride and pulled off I ran all over that
place till I saw Sumter City Police. paid for ride
 How did you get home after the vehicle was stolen?

Have you or any member of your family ever had a stolen vehicle? no

If Yes, Date: _____ Location: _____ Insurance Co. _____

Do you have any other THEFT insurance on stolen vehicle? no

Do you have a Homeowners or Tenants Policy? no

Is the vehicle that is reported stolen, legally registered and titled? yes State? SC

If the identity of the person or persons responsible for the theft of this vehicle is established, are you willing to prosecute?

☒ Yes ☐ No Explain if No: _____

Has this vehicle been recovered? yes By Whom? Lee County Bishopville

Recovery reported to Carrier? no Date: _____ Time: _____

To Whom? Insured read about incident involving vehicle in the Item paper

POLICE INFORMATION

Who notified police? Redrick Thompson Precinct: _____

Address: _____ Case / Alarm Number: 09011909

Officer: Sgt. M. Lee Badge # Unit # 0421

Date and time THEFT reported? 2-2-09 2:49 am

THEFT reported to carrier? _____ Date: _____ Time: _____

Were there any personal or business items in view? no

Were there any personal items in trunk? coat, music

Were police advised of personal or business items? no

SUBSTITUTE TRANSPORTATION

Name: no Telephone Number: (____) _____

Address: _____ Account Number: _____

Vehicle Year: _____ Make: _____ License Plate Number: _____

Other Transportation: _____ Date/Time Rented: _____

IF VEHICLE IS A VAN COMPLETE

Was Company notified of customization? _____ Was customization endorsement issued? _____

Omni Insurance Company

2009-53471 Chastity Stocumb

SUBROGATION

If vehicle parked in garage or parking lot, identification of place of THEFT Involved in a Police Chase

Address in Lee County (Bishopville SC)

Insurance Company: _____

Ticket Number: _____ Lease: _____

Who was given possession of keys? nobody Was thief apprehended? _____ Charged? _____

Name: _____ Address: _____

Action Pending _____

Date: 2-10-09 Time: 5:45 am RECOVERY Is vehicle driveable? no

Place: _____

Person who recovered vehicle? Lee County Police

Arrests made? not yet Name: Driver Antonio M. Dickey, Lionel Evans and

Address: mario Lowery

Charges: _____

Damages due to THEFT? Describe:

Vehicle wrecked and totalled

Estimated Amount \$10,000 Did you personally inspect vehicle after notification of recovery? ☐ Yes ☒ No

Insured Action upon Notification of Recovery not yet notified by Whom Lee County

Where is vehicle located at the present time: Police have not yet notified Redrick Thompson

Address: of location of vehicle Telephone # () _____

I have read the above affidavit of THEFT which was made for the purpose of filing a claim with the above listed company for the theft of my 2003

Describe Vehicle Chevrolet trailblazer Vehicle Serial # 1GNDS135X32159091

I swear that the attached pages are true and correct to the best of my knowledge.

Signature: Redrick Thompson Date: 2/11/

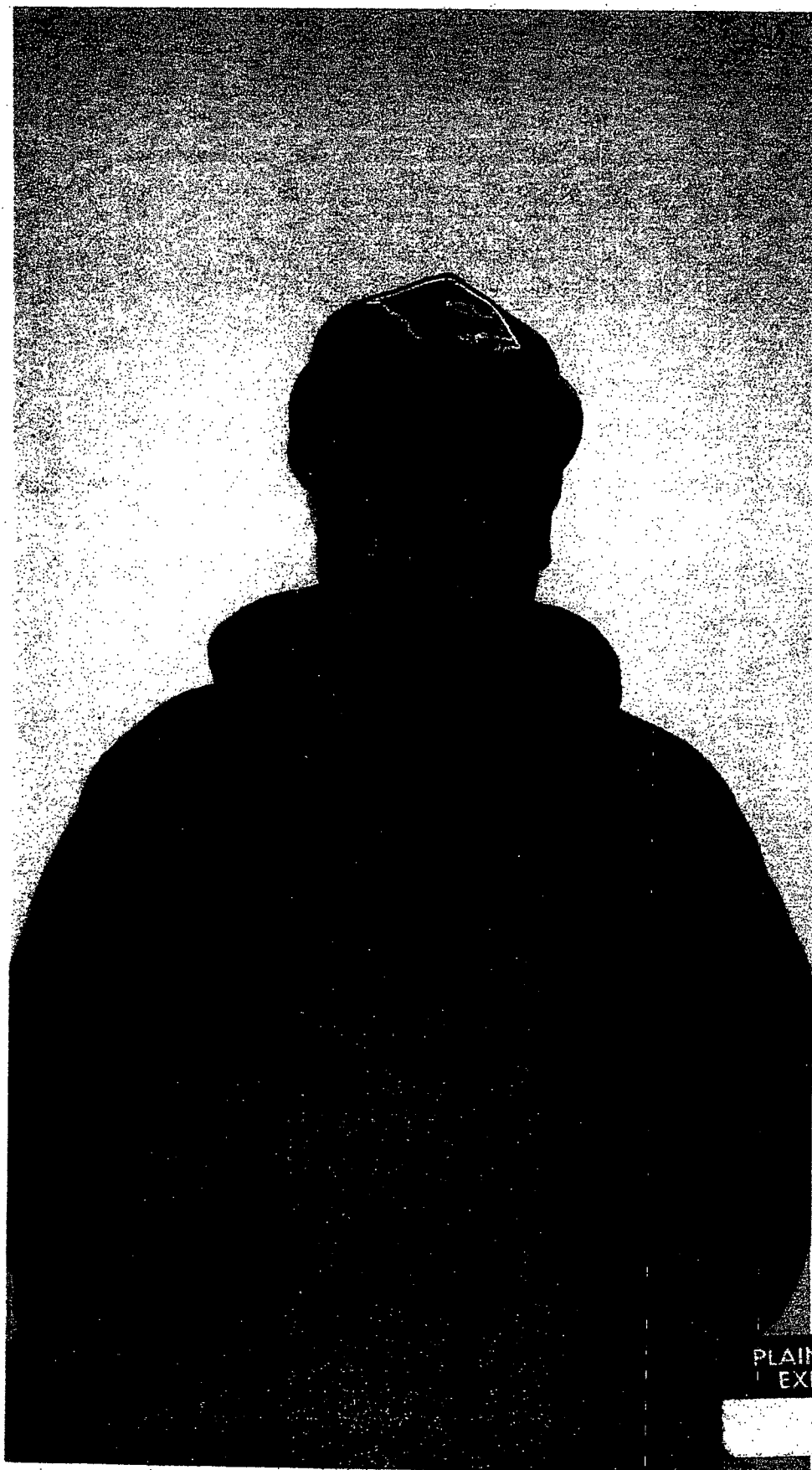
Address: 213 walnut St. manning S.C. 29102

SUBSCRIBED AND SWORN TO BEFORE ME

THIS 11th DAY OF Feb IN THE YEAR OF 2009

Angela J. Woodman My commission expires: 11/1/2009
NOTARY PUBLIC
(SEAL)

It is a crime to knowingly provide false, incomplete or misleading information to an insurance company for the purpose of defrauding the company. Penalties may include imprisonment, fines or a denial of insurance benefits.



STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

Omni Insurance Company

2012 NOV 27 PM 3:58

CIVIL ACTION COVERSHEET

Plaintiff(s)

2012-CP - 21-

3134e

vs.

FLORENCE COUNTY, SC

Lionel Evans and Lionel Evans, as the)
 Personal Representative of the Estate of)
 Antonio Dickey

Defendant(s))

(Please Print)

Submitted By: Michael Todd Loftis

Address:

Douglas E. Leadbitter, LLC

P. O. Box 945

Blythewood, SC 29016

SC Bar #: 68545

Telephone #: 803. 728. 3272

Fax #: 803. 746. 0900

Other:

E-mail: mtl@leadbitterlaw.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- Contracts**
☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☒ Other (199)

- Torts - Professional Malpractice**
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
 Previous Notice of Intent Case #
 20 -CP-
☐ Notice/ File Med Mal (230)
☐ Other (299)

- Torts - Personal Injury**
☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Other (399)

- Real Property**
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499)

- Inmate Petitions**
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599)

- Judgments/Settlements**
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights Application (760)
☐ Other (799)

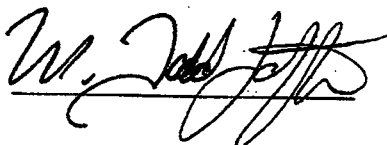
- Administrative Law/Relief**
☐ Reinstate Driver's License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899)

- Appeals**
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Commission (990)
☐ Employment Security Comm (991)
☐ Other (999)

- Special/Complex /Other**
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☒ Other (699)
☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Motion to Quash Subpoena in an Out-of-County Action (660)
☐ Sexual Predator (510)

Declaratory
 Judgment

Submitting Party Signature:



Date: November 26, 2012

SCCA 1234 (01/2011)

Omni v. Evans

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Clarendon, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lee, Lexington, Pickens (Family Court Only), Richland, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

IN THE COURT OF COMMON PLEAS
Civil Action No. 2012-CP-21-

Omni Insurance Company,
Plaintiff,

vs.

Lionel Evans and Lionel Evans, as the
Personal Representative of the Estate of
Antonio Dickey,

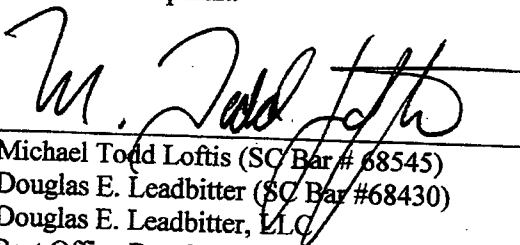
Defendant.

SUMMONS

FILED
2012 NOV 27 PM 3:59
CLERK OF COURT
FLORENCE COUNTY, S.C.
CERTIFIED TRUE COPY
Clerk of Court
CLERK COURT C.P. & C.J.
FLORENCE COUNTY, S.C.

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, of which a copy is served upon you, and to serve a copy of your Answer to the Complaint on the Attorney for Plaintiff, Douglas E. Leadbitter, Douglas E. Leadbitter, LLC, Post Office Box 945, Blythewood, South Carolina 29216 within 30 days after the service, exclusive of the date of service; and if you fail to answer the Complaint within the time above, judgment by default will be rendered against you for the relief demanded in the Complaint.


Michael Todd Loftis (SC Bar # 68545)
Douglas E. Leadbitter (SC Bar #68430)
Douglas E. Leadbitter, LLC

Post Office Box 945
Blythewood, South Carolina 29016
803.728.3272 Telephone
803.746.0900 Facsimile
mtl@leadbitterlaw.com
del@leadbitterlaw.com

ATTORNEYS FOR OMNI INSURANCE
COMPANY

November 26, 2012

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

) IN THE COURT OF COMMON PLEAS
)
) Civil Action No. 2012-CP-21-

Omni Insurance Company,

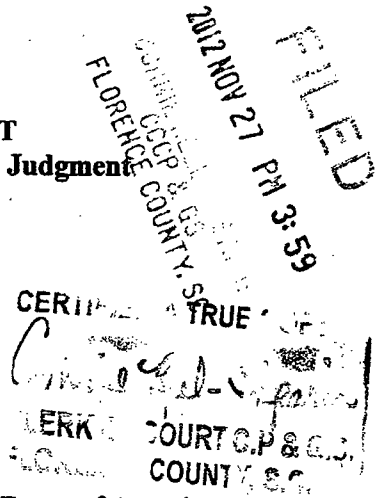
Plaintiff,

vs.

Lionel Evans and Lionel Evans, as the
Personal Representative of the Estate of
Antonio Dickey,

Defendant.

COMPLAINT
(Non-Jury Declaratory Judgment
Action)



The Plaintiff, complaining of the Defendants Lionel Evans and the Estate of Antonio Dickey, alleges as follows:

General Allegations

1. The Plaintiff is licensed by the State of South Carolina pursuant to Title 38 of the South Carolina Code of Laws to engage in insurance transactions in this State.
2. Upon information and belief Defendant Lionel Evans is a citizen and resident of Florence County, South Carolina, the Estate of Antonio Dickey decedent Antonio Dickey was a resident of Lee County, South Carolina and the underlying accident which gave rise to Civil Action No. 2011-CP-21-3414 occurred in Lee County.
3. Policy No. 3389124 purchased by Redrick Thompson from Plaintiff, had liability coverage of \$25,000/\$50,000/\$25,000 and uninsured motorist coverage of \$25,000/\$50,000/\$25,000 on a 2003 Chevrolet Trailblazer with Vehicle Identification Number (VIN) 1GNDS135X32159091.

4. The Declarations Page for the policy issued to Redrick Thompson, Policy No. 3389124, is hereby incorporated by reference and attached hereto as "Exhibit A".
5. Upon information and belief, the 2003 Chevrolet Trailblazer was stolen from the possession of Redrick Thompson on February 2, 2009.
6. Upon information and belief, Defendant Evans was a passenger in the stolen 2003 Chevrolet Trailblazer being driven by Antonio Dickey on February 9, 2009 when a single car automobile accident occurred.
7. Defendant Evans was allegedly injured as a result of an automobile accident on February 9, 2009 while decedent Antonio Dickey was driving Redrick Thompson's stolen vehicle.
8. Upon information and belief, Antonio Dickey knew that he was operating a stolen vehicle at the time of the February 9, 2009 accident because he stole the vehicle from Redrick Thompson on February 2, 2009.
9. Upon information and belief, Defendant Evans knew or should have known that he was a passenger in a stolen vehicle at the time of the February 9, 2009 accident.
10. Upon information and belief, the Personal Representative of the Estate of Antonio Dickey is Lionel Evans.
11. Upon information and belief Lionel Evans is litigating the underlying tort action (Lionel Evans v. the Estate of Antonio Dickey, Civil Action # 2011-CP-21-3414) against himself as Personal Representative of the Estate of Antonio Dickey.
12. Upon information and belief, the February 9, 2009 car accident gave rise to Defendant Evans' underlying claim for Uninsured Motorist insurance coverage under the policy of insurance issued to Redrick Thompson, Policy No. 3389124.

13. A suit for a declaratory judgment is neither legal nor equitable, but is determined by the nature of the underlying issue. Hardy v. Aiken, 369 S.C. 160, 631 S.e.2d 539 (2006).

14. When the purpose of the underlying dispute is to determine whether there is coverage under an insurance policy, the action is one at law. Auto-Owners Ins. Co. v. Hamin, 368 S.C. 536, 629 S.E.2d 683 (Ct. App. 2006).

15. Upon information and belief, pursuant to the South Carolina Uniform Declaratory Judgments Act, S.C. Code Ann. Section 15-53-10 *et seq.* (1995), there is a justiciable controversy between the parties that requires a declaratory judgment from this Court.

16. Upon information and belief, pursuant to the South Carolina Uniform Declaratory Judgments Act, S.C. Code Ann. Section 15-53-10 *et seq.* (1995), this Court has subject matter jurisdiction over the matters raised in this Complaint and personal jurisdiction over the Parties to this action

FOR A FIRST CAUSE OF ACTION

17. Plaintiff re-alleges and incorporates all prior paragraphs as if fully repeated verbatim herein.

18. Upon information and belief, Defendant Evans as a third party claimant under the policy of insurance issued to Redrick Thompson, Policy No. 3389124, has asserted that he is entitled to the Uninsured Motorist coverage from the policy of insurance issued to Redrick Thompson, Policy No. 3389124.

19. Plaintiff is informed and believes that Plaintiff is entitled to a Declaratory Judgment that Defendant Evans is not an insured and cannot collect Uninsured Motorist coverage under Policy No. 3389124 because he knew or should have known that he was a passenger in a stolen vehicle at the time of the February 9, 2009 accident.

20. Therefore, Defendant Evans is not entitled to Uninsured Motorist insurance coverage under the policy of insurance issued to Redrick Thompson, Policy No. 3389124 because he knew or should have known that the 2003 Chevrolet Trailblazer with Vehicle Identification Number (VIN) 1GNDS135X32159091 in which he was riding was a stolen vehicle at the time of the February 9, 2009 accident.

FOR A SECOND CAUSE OF ACTION

21. Plaintiff re-alleges and incorporates all prior paragraphs as if fully repeated verbatim herein.

22. Upon information and belief, Defendant Evans as a third party claimant under the policy of insurance issued to Redrick Thompson, Policy No. 3389124, has asserted that he is entitled to the Uninsured Motorist coverage from the policy of insurance issued to Redrick Thompson, Policy No. 3389124.

23. Plaintiff is informed and believes that Plaintiff is entitled to a Declaratory Judgment that Defendant Evans is not an insured and cannot collect Uninsured Motorist coverage under Policy No. 3389124 because he was a passenger in a stolen vehicle at the time of the February 9, 2009 accident.

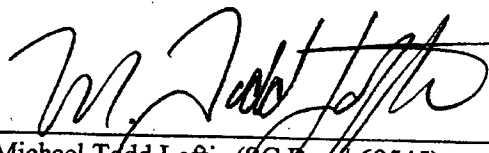
24. Therefore, Defendant Evans is not entitled to Uninsured Motorist insurance coverage under the policy of insurance issued to Redrick Thompson, Policy No. 3389124 because the 2003 Chevrolet Trailblazer with Vehicle Identification Number (VIN) 1GNDS135X32159091 was a stolen vehicle at the time of the February 9, 2009 accident.

FOR A THIRD CAUSE OF ACTION

25. Plaintiff re-alleges and incorporates all prior paragraphs as if fully repeated verbatim herein.

26. Plaintiff is informed and believes that it is improper for Defendant Lionel Evans to serve as both Plaintiff and Defendant in the underlying tort action, (Lionel Evans v. the Estate of Antonio Dickey (Civil Action # 2011-CP-21-3414), and that this Court order that Defendant Evans should be removed as Personal Representative of the Estate of Antonio Dickey and a new Personal Representative appointed for the Estate of Antonio Dickey.

WHEREFORE, having fully set forth the Complaint of the Plaintiff, the Plaintiff prays for the Court to inquire into the matters raised herein find that Defendant Evans is not an insured under the policy and that because he had or should have had knowledge that he was a passenger in a stolen vehicle at the time of the February 9, 2009 accident and that Lionel Evans should be removed as Personal Representative of the Estate of Antonio Dickey. Accordingly, Plaintiff seeks a Declaratory Judgment Order holding that Defendant is not entitled to Uninsured Motorist coverage under the policy of insurance issued to Redrick Thompson, Policy No. 3389124, an Order removing Lionel Evans as Personal Representative of the Estate of Antonio Dickey, and for other such relief as the Court may deem just and proper.



Michael Todd Loftis (SC Bar # 68545)
Douglas E. Leadbitter (SC Bar #68430)
Douglas E. Leadbitter, LLC
Post Office Box 945
Blythewood, South Carolina 29016
803.728.3272 Telephone
803.746.0900 Facsimile
mtl@leadbitterlaw.com
del@leadbitterlaw.com

November 26, 2012

ATTORNEYS FOR OMNI INSURANCE
COMPANY

EXHIBIT "A"



OMNI INDEMNITY COMPANY
2018 POWERS FERRY ROAD
SUITE 400
ATLANTA, GA 30339

DECLARATIONS

NAMED INSURED AND ADDRESS

REDRICK THOMPSON
213 WALNUT STREET
MANNING, SC 29102

PRODUCER

COTTINGHAM INSURANCE AGENCY (1000025818)
10 WEST RIGBY ST
MANNING, SC 29102
803-435-2368

PRIVATE PASSENGER AUTO

POLICY NUMBER: 3389124
DECPAGE ID: 1

POLICY PERIOD:

January 9, 2009 11:58 AM to January 9, 2010
12:01 A.M.

VEHICLE

Vehicle: 1
Make: 2003 CHEV
Model: trailsblazer
VIN#: 1GND5135X32159091
Use: Pleasure
BI/MED/PhysDam Symbol: 300/500/2
Territory: 64
Tier: Q

DRIVER

REDRICK THOMPSON
Birthdate: 06/26/1974
Marital Status: Single
License: SC 007293117
Class: SM34

DISCOUNTS / SURCHARGES

COVERAGE (Premiums for 12 months)

Premium is based on your selection of the following:

	LIMIT	PREMIUM Veh 1
Bodily Injury Liability	<u>25,000 per person</u> <u>50,000 per occurrence</u>	\$589.92
Property Damage Liability	<u>25,000 per occurrence</u>	\$313.68
Uninsured Motorist Bodily Injury	<u>25,000 per person</u> <u>50,000 per occurrence</u>	\$50.96
Underinsured Motorist Bodily Injury	<u>25,000 per person</u> <u>50,000 per occurrence</u>	\$47.80
Uninsured Motorist Property Damage	<u>25,000 per occurrence</u>	\$29.70
Uninsured Motorist Property Damage Deductible	<u>\$200 Deductible</u>	
Underinsured Motorist Property Damage Collision	<u>25,000 per occurrence</u> <u>Veh 1: \$500 Deductible</u>	\$3.16 \$476.21
Comprehensive	<u>Veh 1: \$500 Deductible</u>	\$123.48
Rental Reimbursement/Loss of Use	<u>Veh 1: \$20 per day; 30 day maximum</u>	\$45.36
Towing and Labor	<u>Veh 1: \$75 per disablement / \$450 maximum</u>	\$11.40
Total Policy Premium:		\$1,691.67

ACCIDENTS/VIOLATION POINTS

Name	Date	Description	Points
------	------	-------------	--------

FORMS AND ENDORSEMENTS

- 0839 (11/08) - South Carolina Personal Auto Policy
- 0839-2 (11/08) - Rental Reimbursement Coverage
- 0839-3 (11/08) - Towing and Labor Costs Coverage
- 0839-12 (11/08) - Best Plan Disclosure
- A-100.1 (05/08) - Adverse Underwriting Decision Notice

ADDITIONAL INTEREST				
Veh	Type	Name	Address	Loan Number
				 Authorized Signature

OMNI SC DEC (11/08)

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS
FOR THE 12TH JUDICIAL CIRCUIT
CASE NO: 2012-CP-21-3136

OMNI INSURANCE COMPANY,

Plaintiff(s),

v.

LIONEL EVANS, and LIONEL EVANS,
as Personal Representative of the ESTATE
OF ANTONIO DICKEY,

Defendant(s).

**ANSWER AND COUNTERCLAIM OF
DEFENDANT LIONEL EVANS
(Jury Trial Demanded)**

COMES NOW Defendant Lionel Evans, by and through his undersigned attorneys of record, The Anastopoulo Law Firm, who submits the following Answer and Counterclaim to Plaintiff's Complaint.

**FOR A FIRST DEFENSE
(Qualified General Denial)**

1. Defendant denies each and every allegation of the Complaint not hereinafter specifically admitted and demands strict proof thereof.
2. This Defendant lacks sufficient information from which to form a belief as to the truth or falsity of the allegations contained in paragraph 1 of the Complaint, therefore denies the same and demands strict proof thereof.
3. This Defendant admits the allegations contained in paragraph 2 of the Complaint.
4. This Defendant lacks sufficient information from which to form a belief as to the truth or falsity of the allegations contained in paragraph 3 of the Complaint, therefore denies the same and demands strict proof thereof.
5. This Defendant lacks sufficient information from which to form a belief as to the truth or falsity of the allegations contained in paragraph 4 of the Complaint, therefore denies the

- same and demands strict proof thereof.
6. This Defendant lacks sufficient information from which to form a belief as to the truth or falsity of the allegations contained in paragraph 5 of the Complaint, therefore denies the same and demands strict proof thereof.
 7. This Defendant admits paragraph 6 only as much as he was a passenger in a vehicle driven by Antonio Dickey and was involved in an automobile accident, but denies the remainder of paragraph 6 and demands strict proof thereof, including specifically, proof that the vehicle was stolen.
 8. This Defendant admits paragraph 7 only as much as he was injured in the automobile accident, but denies the remainder of paragraph 7 and demands strict proof thereof, including specifically, proof that the vehicle was stolen.
 9. This Defendant lacks sufficient information from which to form a belief as to the truth or falsity of the allegations contained in paragraph 8 of the Complaint, therefore denies the same and demands strict proof thereof.
 10. This Defendant denies the allegations contained in paragraph 9 of the Complaint and demands strict proof thereof.
 11. This Defendant admits the allegations contained in paragraph 10 of the Complaint.
 12. This Defendant denies the allegations contained in paragraph 11 of the Complaint, as stated, and demands strict proof thereof.
 13. Paragraph 12 of the Complaint states a legal conclusion to which no response is required. However, out of an abundance of caution, this Defendant admits that he has made a claim against Plaintiff for Uninsured Motorist coverage but denies the remaining allegations and demands strict proof thereof.

14. Paragraph 13 of the Complaint states a legal conclusion to which no response is required.

However, out of an abundance of caution, this Defendant denies the same and demands strict proof thereof.

15. Paragraph 14 of the Complaint states a legal conclusion to which no response is required.

However, out of an abundance of caution, this Defendant denies the same and demands strict proof thereof.

16. Paragraph 15 of the Complaint states a legal conclusion to which no response is required.

However, out of an abundance of caution, this Defendant denies the same and demands strict proof thereof.

17. Paragraph 16 of the Complaint states a legal conclusion to which no response is required.

However, out of an abundance of caution, this Defendant denies the same and demands strict proof thereof.

ANSWERING PLAINTIFF'S FIRST CAUSE OF ACTION

18. Answering paragraph 17 of the Complaint, this Defendant re-states and re-alleges each of the previous paragraphs as if specifically set forth herein verbatim.

19. This Defendant admits that he has made a claim for Uninsured Motorist coverage but denies the remaining allegations contained in paragraph 18 of the Complaint, and demands strict proof thereof.

20. This Defendant denies the allegations contained in paragraph 19 of the Complaint and demands strict proof thereof.

21. This Defendant denies the allegations contained in paragraph 20 of the Complaint and demands strict proof thereof.

ANSWERING PLAINTIFF'S SECOND CAUSE OF ACTION

22. Answering paragraph 21 of the Complaint, this Defendant re-states and re-alleges each of the previous paragraphs as if specifically set forth herein verbatim.
23. This Defendant admits that he has made a claim for Uninsured Motorist coverage but denies the remaining allegations contained in paragraph 22 of the Complaint, and demands strict proof thereof.
24. This Defendant denies the allegations contained in paragraph 23 of the Complaint and demands strict proof thereof.
25. This Defendant denies the allegations contained in paragraph 24 of the Complaint and demands strict proof thereof.

ANSWERING PLAINTIFF'S THIRD CAUSE OF ACTION

26. Answering paragraph 25 of the Complaint, this Defendant re-states and re-alleges each of the previous paragraphs as if specifically set forth herein verbatim.
27. This Defendant denies the allegations contained in paragraph 26 of the Complaint and demands strict proof thereof.
28. This Defendant denies Plaintiff's prayer for relief, seeks dismissal of this action and would plead unto the Court the following affirmative defenses.

FOR A SECOND DEFENSE
(Failure to State a Claim)

29. This Defendant restates and re-alleges each of his previous responses as if fully set forth herein verbatim.
30. That Plaintiff's Complaint fails to state a claim upon which relief can be granted, and should therefore be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A THIRD DEFENSE
(Jury Trial Requested)

31. This Defendant restates and re-alleges each of his previous responses as if fully set forth herein verbatim.
32. This Defendant requests a trial by jury on all issues of fact presented by Plaintiff's Claims or any counter or cross-claims thereto.

FOR A FOURTH DEFENSE
(Failure to Join an Indispensable Party)

33. This Defendant restates and re-alleges each of his previous responses as if fully set forth herein verbatim.
34. That Plaintiff's complaint fails to join an indispensable party necessary for adjudication as required by Rule 19, Roderick Thompson, and should therefore be dismissed pursuant to Rule 12(b)(7) of the South Carolina Rules of Civil Procedure.

FOR A FIFTH DEFENSE
(Unclean Hands)

35. This Defendant restates and re-alleges each of his previous responses as if fully set forth herein verbatim.
36. That Plaintiff's claims are barred by the equitable doctrine of unclean hands and should therefore be dismissed.

FOR A SIXTH DEFENSE
(Waiver/Estoppel/Laches)

37. This Defendant restates and re-alleges each of his previous responses as if fully set forth herein verbatim.
38. That Plaintiff's claims are barred by the equitable doctrines of waiver, estoppel, and/or laches and should therefore be dismissed.

FOR A SEVENTH DEFENSE
(Reservation of Rights/Non-Waiver)

39. This Defendant restates and re-alleges each of his previous responses as if fully set forth herein verbatim.

40. This Defendant specifically reserves any additional defenses, including affirmative defenses, as may be available or revealed to him during the course of his investigation and/or discovery in the case, and as are consistent with the South Carolina Rules of Civil Procedure.

FURTHER ANSWERING PLAINTIFF'S COMPLAINT AND AS A FIRST
COUNTERCLAIM THERETO
(Declaratory Judgment)

41. Defendant restates and re-alleges every allegation set forth above as if stated herein verbatim.

42. Defendant Evans was an invited passenger in a vehicle driven by Defendant Dickey.

43. The vehicle was insured by a policy of insurance with the Plaintiff, and that such policy included Liability and Uninsured Motorist coverage.

44. Plaintiff alleges that the insured vehicle was stolen and that Defendant Dickey was not an authorized user. Such an allegation renders Defendant Dickey an Uninsured Motorist.

45. Plaintiff has set forth no evidence to suggest that Defendant Evans knew the insured vehicle to be stolen, if in fact it was.

46. That Defendant Evans' underlying injuries and resulting damages arose out of Defendant Dickey's negligent operation of the insured vehicle.

47. That Plaintiff therefore must defend and indemnify Defendant Dickey, if Defendant Dickey was an authorized user, and must pay unto Defendant Evans that amount to which Defendant Dickey is legally liable.

48. That, if Plaintiff can prove that Defendant Dickey was not an authorized user, Plaintiff is therefore required to compensate Defendant Evans under its Uninsured Motorist coverage pursuant to the holdings of Auto Owners Ins. Co. v. Rollison, 378 S.C. 600, 663 S.E.2d 484 (2008), and other law.

49. That Defendant Evans is therefore entitled to a declaration of this Honorable Court, declaring that:

- a. Lionel Evans was a guest in the insured vehicle, and therefore an insured under the Omni policy;
- b. That Antonio Dickey was a permissive user of the insured vehicle and therefore covered under the Omni liability policy or, in the alternative; that Antonio Dickey was not an authorized user of the insured vehicle and was therefore an Uninsured Motorist.
- c. That, based upon the proof submitted by Omni as to subparagraph b above, Omni is either liable to Defendant Evans as a result of its duty to indemnify Antonio Dickey; or, Omni is liable to Defendant Evans under the Uninsured Motorist coverage of the Omni policy.

**FURTHER ANSWERING PLAINTIFF'S COMPLAINT AND AS A SECOND
COUNTERCLAIM THERETO**
(Bad Faith)

50. Defendant restates and re-alleges every allegation set forth above as if stated herein verbatim.

51. That Defendant Evans was a "guest" in the insured vehicle as set forth in S.C. Code Ann § 38-77-30(7).

52. That Defendant Evans was therefore an insured under Plaintiff's policy and had a

mutually binding contract of insurance with the Plaintiff.

53. That Defendant Evans performed all conditions of the policy as required by the policy including reporting of losses.
54. That Defendant Evans performed all conditions of South Carolina statutory law in making a UM claim against Plaintiff's policy including notification and service as required by 38-77-150(b).
55. That Defendant Evans possessed the reasonable expectation and belief that Plaintiff's policy and exclusions would comply with state law and that Plaintiff would at all times follow state law while adjusting claims made against the policy.
56. That Plaintiff alleged and therefore admitted Antonio Dickey to be an Uninsured Motorist.
57. That Defendant Evans accordingly made a claim for UM benefits which he was entitled to collect pursuant to state law, including specifically S.C. Code Ann. § 38-77-30(7) as recognized by Auto Owners Ins. Co. v. Rollison, 378 S.C. 600, 663 S.E.2d 484 (2008).
58. That Plaintiff wrongfully denied the claim citing reasons clearly not supported by the statutes and insurance laws of this state.
59. That this denial of coverage was made in bad faith, as set forth more fully below.
60. That Plaintiff persisted in misrepresenting available coverage and initiated litigation against Defendant Evans, in an effort to harass Defendant Evans and dissuade him from making claims under the policy, all under the guise of seeking to avoid policy coverage which was due and payable as a matter of law.
61. That this vexatious litigation was brought against Defendant Evans in bad faith as set forth more fully below.

62. That Plaintiff has a duty to deal in good faith and fair dealing with its insureds, namely Defendant Evans.
63. That Plaintiff has breached the implied covenants of good faith and fair dealing under the policy by wrongfully denying claims and initiating litigation to enforce invalid policy exclusions and/or denials.
64. That Plaintiff has acted in bad faith and/or was negligent, grossly negligent, careless, reckless and wanton in any one or more of the following particulars, among others:
- a. In refusing to take any steps whatsoever to investigate Defendant Evans' UM claim;
 - b. In unreasonably failing to make any offer whatsoever on funds due under the UM policy;
 - c. In failing to communicate any reasonable justification for failing to pay benefits due even after attorneys for Defendant Evans alerted Plaintiff of its duty to pay under the policy;
 - d. In failing to attempt in good faith to affect a fair, prompt and equitable resolution to the claim;
 - e. In failing to act responsibly in light of the totality of the circumstances presented by Defendant's claims;
 - f. In failing to act as a reasonable and prudent insurance carrier would act in regards to Defendant's claims and those of other class members;
 - g. In violating S.C. Code § 38-77-150;
 - h. In failing to acknowledge with reasonable promptness pertinent communications with respect to Defendant's claims arising under its policy;
 - i. In failing to adopt and implement reasonable standards for the prompt investigation and settlement of Defendant's claims;
 - j. In not attempting in good faith to effect prompt, fair, and equitable settlement of Defendant's claim;
 - k. In compelling Defendant to institute multiple legal actions to recover the UM funds reasonably due under its policy;

- l. In suing Defendant Evans and compelling him to appear in court and defend against vexatious litigation, all in an attempt to harass and deter Defendant Evans from making claims against the policy;
- m. In failing to make any reasonable offer whatsoever based upon the possibility or probability that the policyholder or claimant would be required to incur attorneys' fees to recover the amount reasonably due or payable;
- n. In unreasonably delaying settlement of Defendant Evans' claim;
- o. In any other such acts that constitute a violation of the laws or common laws of the State of South Carolina or the United States of America;
- p. In any other such manner as Defendant may discover through discovery.

65. That Plaintiff's breach of good faith and fair dealing was the direct and proximate cause of Defendant Evans' damage, including mental anguish, anxiety, stress, incurring expenses, attorney fees and punitive damages.

66. That as a direct and proximate result of Plaintiff's breach of good faith and fair dealing, Defendant Evans has been and continues to be injured in the following ways, among others:

- a. In suffering an unreasonable delay in receiving compensation to which he is legally entitled;
- b. In suffering the mental anguish, anxiety, and stress of being sued and forced to answer and defend this and other actions brought to attempt to enforce void policy exclusions and denials which violate state law;
- c. In incurring the costs and expense of defending in this action and having to initiate these counterclaims to recover funds to which he is legally entitled;
- d. In other such ways as would cause Defendant Evans additional and unnecessary pain, suffering, and aggravation.

67. That the above damages to Defendant Evans would not have occurred but for Plaintiff's breach of good faith and fair dealing.
68. That the above damages to Defendant Evans occurred as a natural and probable consequence of Plaintiff's breach of good faith and fair dealing.
69. That upon information and belief, Defendant Evans is entitled to judgment against Plaintiff for actual, compensatory and exemplary or punitive damages for his personal injuries and damages set forth herein in an amount that is fair, just and reasonable under the circumstances, plus whatever costs, interest, both pre and post judgment, and attorney fees that they may be entitled to be determined by a jury.

**FURTHER ANSWERING THE COMPLAINT AND BY WAY OF A THIRD
COUNTER CLAIM THERETO
(Fraudulent Misrepresentation)**

70. Defendant restates and re-alleges each of his previous responses as if fully set forth herein verbatim.
71. That an action in tort can be maintained by a third-party beneficiary against an insurer in South Carolina where the insurer misrepresents any element of coverage. Gaskins v. Southern Farm Bureau Ins. Co., 354 S.C. 416, 581 S.E.2d 169 (2003).
72. That Plaintiff denied coverage to Defendant Evans claiming he was not an insured under the policy and/or that the policy excluded coverage for his accident.
73. That this representation was false in that Defendant Evans was a guest in the insured vehicle, was therefore an insured under the policy, and was entitled to Uninsured Motorist coverage as a matter of state law.
74. That Plaintiff knew or should have known that Plaintiff's denial of Evans' claims was violative of South Carolina Law, or showed a reckless disregard for investigating the

same.

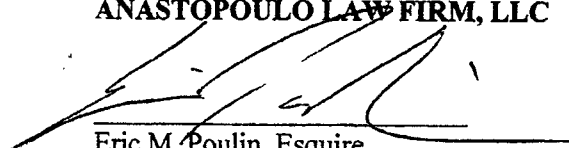
75. That Plaintiff continued to deny coverage to Defendant Evans for the above referenced accident even after being informed, on multiple occasions, that Plaintiff's denial was violative of South Carolina Law.
76. That Plaintiff intended Defendant Evans rely on the misrepresentation that he was not covered so he would not pursue a claim against the Plaintiff.
77. That Plaintiff continued to make this material misrepresentation to Defendant Evans with the intention that Defendant Evans would rely on the same.
78. That Defendant Evans initially relied upon these misrepresentations, to his detriment and had a right to rely on the same.
79. That Defendant Evans was damaged as a result of his reliance on Plaintiff's misrepresentation including that Defendant Evans suffered material and prejudicial delay in bringing or making his claims against the Plaintiff.
80. That Plaintiff made these fraudulent misrepresentations in a reckless manner and with conscious disregard for the rights of Defendant Evans.
81. That because of the Plaintiff's reckless behavior and the proximate harm resulting to Defendant Evans, Defendant Evans should be awarded punitive damages in an amount to be determined by the trier of fact, in order to punish and penalize the Plaintiff and to deter the Plaintiff and others from similar behavior.
82. That upon information and belief, Defendant Evans is entitled to judgment against the Plaintiff for actual, compensatory and exemplary or punitive damages for his injuries set forth herein in an amount that is fair, just and reasonable under the circumstances, plus whatever costs, interest and attorney fees that he may be entitled, to be determined by a

jury.

WHEREFORE, having fully answered the Plaintiff's Complaint, and asserted his Counterclaims herein, Defendant Lionel Evans prays that declaratory judgment be granted in his favor, that Plaintiff's claims be dismissed, and that judgment be entered in Defendant Evans' favor on his Counterclaims against Omni Insurance Company for actual damages, punitive or exemplary damages, consequential damages, reasonable attorneys' fees and costs and interest to which he may be entitled, and/or for such other relief as the Court may grant.

Respectfully Submitted,

ANASTOPOULO LAW FIRM, LLC



Eric M. Poulin, Esquire
S.C. Bar No.: 100209
Anastopoulos Law Firm, LLC
2557 Ashley Phosphate Road
North Charleston, SC 29418
(843) 614-8888

Attorney for Defendant Evans

Dated this 21 day of January, 2013
At North Charleston, South Carolina

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS
FOR THE 12TH JUDICIAL CIRCUIT
CASE NO: 2012-CP-21-3136

OMNI INSURANCE COMPANY,

Plaintiff(s),

v.

LIONEL EVANS, and LIONEL EVANS,
as Personal Representative of the ESTATE
OF ANTONIO DICKEY,

Defendant(s).

CERTIFICATE OF MAILING

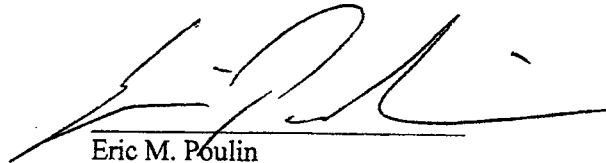
I certify that I have served a copy of the following document(s) on the individuals below named by hand delivery or by depositing a copy in a first class postage pre-paid envelope in the United States mail at North Charleston, South Carolina and addressed as follows:

Michael Todd Loftis
Douglas E. Leadbitter, LLC
Post Office Box 945
Blythwood, SC 29016

Documents Served

Answer and Counterclaims of Defendant Lionel Evans

This 21 day of Jan, 2013



Eric M. Poulin

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

Omni Insurance Company,

Plaintiff,

vs.

Lionel Evans and Lionel Evans, as the
Personal Representative of the Estate
of Antonio Dickey,

Defendant.

) IN THE COURT OF COMMON PLEAS
)
)

Civil Action No. 2012-CP-21-3136

**ANSWER TO THE COUNTERCLAIM
OF LIONEL EVANS BY OMNI
INSURANCE COMPANY**

CERTIFIED: A TRUE COPY

Omni Ins. Co.
CLERK OF COURT C.P. & C.S.
FLORENCE COUNTY, SC

COMM. FILED
COP & CS
FLORENCE COUNTY, SC

2013 MAR -3 AM 11:30

2013 MAR 3

Defendant Omni Insurance Company by and through its undersigned attorneys,
hereby answers Defendant Lionel Evans Counterclaim as follows:

Without waiving the defenses contained in the previously filed Motion and
subject to the outcome of said Motion, the Plaintiff, by and through its undersigned
attorney, hereby answers as follows:

FOR A FIRST DEFENSE AND AS A PREVIOUSLY FILED MOTION

1. The Defendant Evans' Counterclaim fails to state facts sufficient to
constitute causes of action against this Defendant and therefore, the Plaintiff's claims
should be dismissed pursuant to Rule 12 (b)(6) of the South Carolina Rules of Civil
Procedure.

FOR A SECOND DEFENSE

2. Without waiving the First Defense provided above, this Defendant
responds that each and every allegation contained in the Defendant Evans'

Counterclaim not hereinafter specifically admitted are denied, and strict proof is demanded thereof.

3. The allegations contained in Paragraphs One (1) through Thirty (30) of Defendant Evans' Counterclaim do not require a response from the Plaintiff, and therefore the Plaintiff neither admits nor denies same. To the extent that Paragraphs One (1) through Thirty (30) of Defendant Evans' Counterclaim can be construed as alleging liability, negligence, breach of contract, waiver, unclean hands, Bad Faith, Fraudulent Misrepresentation and/or fault on the part of the Plaintiff, same are denied.

4. In response to the Paragraph Thirty-one (31) of Defendant Evans' Counterclaim, the Plaintiff realleges and incorporates by reference the allegations contained in its Complaint of all of the Defenses outlined above as if fully set forth herein.

5. The Plaintiff denies the allegations contained in Paragraph Thirty-two (32) of Defendant Evans Counterclaim.

6. In response to the Paragraph Thirty-five (33) of Defendant Evans' Counterclaim, the Plaintiff realleges and incorporates by reference the allegations contained in its Complaint of all of the Defenses outlined above as if fully set forth herein.

7. The Plaintiff denies the allegations contained in Paragraph Thirty-four (34) of Defendant Evans Counterclaim, Plaintiff specifically objects to the Joinder of Roderick Thompson as an indispensable party because his status and rights as an insured of the Plaintiff are not an issue for adjudication in this matter.

8. In response to the Paragraph Thirty-five (35) of Defendant Evans' Counterclaim, the Plaintiff realleges and incorporates by reference the allegations contained in its Complaint of all of the Defenses outlined above as if fully set forth herein.

9. The Plaintiff denies the allegations contained in Paragraph Thirty-six (36) of Defendant Evans Counterclaim.

10. In response to the Paragraph Thirty-seven (37) of Defendant Evans' Counterclaim, the Plaintiff realleges and incorporates by reference the allegations contained in its Complaint of all of the Defenses outlined above as if fully set forth herein.

11. The Plaintiff denies the allegations contained in Paragraph Thirty-eight (38) of Defendant Evans Counterclaim.

12. In response to the Paragraph Thirty-nine (39) of Defendant Evans' Counterclaim, the Plaintiff realleges and incorporates by reference the allegations contained in its Complaint of all of the Defenses outlined above as if fully set forth herein.

13. As to the allegations contained in Paragraph Forty (40) of Defendant Evans' Counterclaim states legal conclusions to which no response is required. To the extent that Paragraph Forty (40) Defendant Evans' Counterclaim can be alleging liability, negligence, breach of contract, waiver, unclean hands, Bad Faith, Fraudulent Misrepresentation and/or fault on the part of the Plaintiff, same are denied.

14. In response to the Paragraph Forty-one (41) of Defendant Evans' Counterclaim, the Plaintiff realleges and incorporates by reference the allegations contained in its Complaint of all of the Defenses outlined above as if fully set forth herein.

15. The Plaintiff denies the allegations contained in Paragraphs Forty-two (42) and Forty-three (43) of Defendant Evans Counterclaim.

16. The Plaintiff admits the allegations contained in Paragraph Forty-four (44) of Defendant Evans' Counterclaim, but specifically denies that Antonio Dickey was an Uninsured Motorist under the Omni Insurance policy on the subject vehicle because there was no insurance policy covering the vehicle at the time of the accident because the vehicle was stolen.

17. As to the allegations contained in Paragraph Forty-five (45) of Defendant Evans' Counterclaim states legal conclusions to which no response is required. To the extent that Paragraph Forty-five (45) Defendant Evans' Counterclaim can be alleging liability, negligence, breach of contract, waiver, unclean hands, Bad Faith, Fraudulent Misrepresentation and/or fault on the part of the Plaintiff, same are denied. Plaintiff specifically states that it plans to conduct discovery in this action to gather evidence in support of the allegations contained in its Complaint.

18. The Plaintiff is without information sufficient to form a belief as to the allegations contained in Paragraph Forty-six (46) relating to Antonio Dickey's negligence, therefore said allegations are denied. Plaintiff specifically denies the vehicle was insured at the time Defendant Evans alleges to have suffered injuries.

19. As to the allegations contained in Paragraphs Forty-seven (47) and Forty-eight (48) of Defendant Evans' Counterclaim states legal conclusions to which no response is required. To the extent that Paragraphs Forty-seven (47) and Forty-eight (48) of Defendant Evans' Counterclaim can be alleging liability, negligence, breach of contract, waiver, unclean hands, Bad Faith, Fraudulent Misrepresentation and/or fault on the part of the Plaintiff, same are denied.

20. In response to Paragraph Forty-nine (49), including sub-paragraphs a. through c., which contain Defendant Evans' prayer for relief regarding the Declaratory Judgment action, the Plaintiff denies that Defendant Evans is entitled to any relief whatsoever in this action.

21. In response to the Paragraph Fifty (50) of Defendant Evans' Counterclaim, the Plaintiff realleges and incorporates by reference the allegations contained in its Complaint of all of the Defenses outlined above as if fully set forth herein.

22. Plaintiff denies the allegations contained in Paragraphs Fifty-one (51), Fifty-two (52), Fifty-three (53), Fifty-four (54), Fifty-five (55), Fifty-six (56), Fifty-seven (57), Fifty-eight (58), Fifty-nine (59), Sixty (60), Sixty-one (61), Sixty-two (62), Sixty-three (63), Sixty-four (64), including sub-paragraphs a. through p., Sixty-five (65), Sixty-six (66), including sub-paragraphs a. through d., Sixty-seven (67), Sixty-eight (68) and Sixty-nine (69) of Defendant Evans' Counterclaim.

23. In response to the Paragraph Seventy (70) of Defendant Evans' Counterclaim, the Plaintiff realleges and incorporates by reference the allegations

contained in its Complaint of all of the Defenses outlined above as if fully set forth herein.

24. Plaintiff denies the allegations contained in Paragraphs Seventy-one (71), Seventy-two (72), Seventy-three (73), Seventy-four (74), Seventy-five (75), Seventy-six (76), Seventy-seven (77), Seventy-eight (78), Seventy-nine (79), Eighty (80), Eighty-one (81) and Eighty-two (82) of Defendant Evans' Counterclaim.

25. As to the final unnumbered Paragraph consisting of the Defendant Evans' prayer for relief, this Plaintiff denies Defendant Evans is entitled to any judgment or relief whatsoever against the Plaintiff.

FOR A THIRD DEFENSE

26. No justiciable controversy exists between the Plaintiff and Defendant Evans related to Defendant Evans' Counterclaim against the Plaintiff, therefore all claims pled in Defendant Evans' Counterclaim should be stricken from the present action and dismissed with prejudice.

FOR A FOURTH DEFENSE

27. Defendant Evans' allegations regarding Bad Faith against the Plaintiff contained in Defendant Evans' Counterclaim are not ripe for adjudication because Defendant Evans has not obtained a judgment against Antonio Dickey has not obtained a judgment.

FOR A FIFTH DEFENSE

28. No contract or relationship existed between the Defendant Evans and Plaintiff Omni Insurance Company in this matter giving rise to a duty of good faith

performance of obligations based on or arising from a contract; because the duty of good faith performance does not extend to persons who are not a party to a contract and South Carolina is not a direct action state and it is improper for Defendant Evans to bring a direct action against Omni, and Omni Insurance Company cannot be liable for bad faith to Defendant Evans.

FOR A SIXTH DEFENSE

29. That the Plaintiff had and continues to have an objective reasonable basis for the denial of Defendant Evans' claims or for the denial of certain portions of Defendant Evans' claim; that the Plaintiff exercised that degree of care in the adjustment of this claim which the law imposed on it; that there was a reasonable basis for contesting the claim or a portion of such claim, and therefore, under South Carolina law, there is no bad faith; and that by reason of the foregoing the Plaintiff is not liable for bad faith refusal to pay the entire claim or certain portions of such claim asserted by Defendant Evans. Therefore, all causes of action alleged in Defendant Evans' Counterclaim against the Plaintiff should be dismissed.

FOR A SEVENTH DEFENSE

30. Any claim on behalf of the Defendant Evans for punitive damages is barred by the provisions of the United States and the South Carolina Constitutions.

31. That Defendant Evans' claim for punitive damages violates both the Fourteenth Amendment of the United States Constitution and Article 1, Section 3, of the South Carolina Constitution in that the jury's unfettered power to award punitive damages

in any amount it chooses is wholly devoid of a meaningful standard and is inconsistent with due process guarantees.

32. That Defendant Evans' claim for punitive damages violates the Fifth, Sixth and Fourteenth Amendments of the United States Constitution and Article 1, Section 3 of the South Carolina Constitution, for even if it could be argued that a standard governing the imposition of punitive damages exists, this standard is void for vagueness.

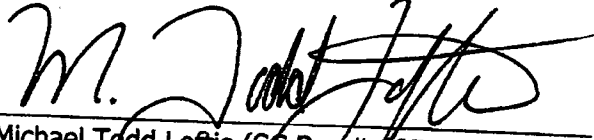
33. That Defendant Evans' claim for punitive damages violates the equal protection clause of the Fourteenth Amendment of the United States Constitution and Article 1, Section 3 of the South Carolina Constitution, in that the amount of punitive damages is based upon the wealth of the Defendant.

34. That Defendant Evans' claim for punitive damages violates the Federal doctrine of separation of powers and Article 1, Section 8 of the South Carolina Constitution for the reason that punitive damages are a creation of the judicial branch of government which invades the province of the legislative branch of government.

35. Defendant Evans' is not entitled to punitive damages because the Plaintiff did not act in reckless and willful disregard of Defendant Evans' rights under the policy because Defendant Evans has no rights under the policy.

WHEREFORE, having fully answered the Defendant Evans' Counterclaim, the Plaintiff demands that the Defendant Evans' Counterclaim be dismissed, with costs and all attorney's fees, and expenses incurred by and/or on behalf of the Plaintiff as a result of this litigation; and for such other relief as this Court deems just and proper.

DOUGLAS E. LEADBITTER, LLC



Michael Todd Loftis (SC Bar # 68545)
Douglas E. Leadbitter (SC Bar # 68430)
Post Office Box 945
Blythewood, South Carolina 29016
Telephone 803.728.3272
Facsimile 803.746.0900

Attorney for Plaintiff Omni Insurance Company

Columbia, South Carolina

March 6th, 2013

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

Omni Insurance Company,

Plaintiff,

vs.

Lionel Evans and Lionel Evans, as the
Personal Representative of the Estate
of Antonio Dickey,

Defendant.

) IN THE COURT OF COMMON PLEAS
)
) Civil Action No. 2012-CP-21-3136

CERTIFICATE OF SERVICE

I, Michael Todd Loftis, as attorney for the Plaintiff, Omni Insurance Company, do hereby certify that I have served the foregoing **ANSWER TO THE COUNTERCLAIM OF LIONEL EVANS BY OMNI INSURANCE COMPANY**, in the above-captioned case, by causing a copy of the same to be personally deposited in a United States Postal Service mail box, with the return address clearly visible, postage prepaid, addressed to the attorney(s) of record as indicated below:

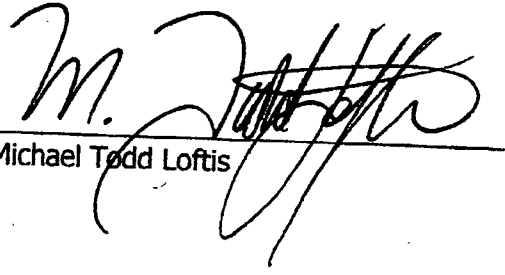
DEFENDANT LIONEL EVANS' ATTORNEY:

Eric M. Poulin, Esquire
ANASTOPOULO LAW FIRM, LLC
2557 Ashley Phosphate Road
North Charleston, South Carolina 29418

DEFENDANT LIONEL EVANS', AS PERSONAL REPRESENTATIVE OF THE ESTATE OF ANTONIO DICKEY, ATTORNEY:

Eric M. Poulin, Esquire
ANASTOPOULO LAW FIRM, LLC
2557 Ashley Phosphate Road
North Charleston, South Carolina 29418

March 6th, 2013


Michael Todd Loftis

FILED
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CONNIE NEEL-BRENNER
CLERK & GS
FLORIDA COUNTY, FL

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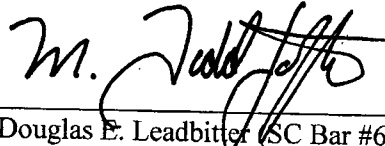
MAR 11 2015

Certificate of Counsel

SC Court of Appeals

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

March 11th, 2015



Douglas E. Leadbitter (SC Bar #68430)
Michael Todd Loftis (SC Bar # 68545)
Douglas E. Leadbitter, LLC
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Attorneys for Appellant Omni Insurance Group

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

Michael G. Nettles, Circuit Court Judge

Appellate Case No. 2014-001935

RECEIVED

MAR 11 2015

SC Court of Appeals

Omni Insurance Company,

Appellant,

v.

Lionel Evans and Lionel
Evans, as the Personal
Representative of the Estate of
Antonio Dickey

Respondents.

PROOF OF SERVICE

I certify that I have served the Record on Appeal on Respondents Lionel Evans and Lionel Evens, as the Personal Representative of the Estate of Antonio Dickey by depositing a copy of it in the United States Mail, postage prepaid, on December 10, 2014, addressed to the attorneys of record, Eric M. Poulin, Anastopoulo Law Firm, LLC, 2557 Ashley Phosphate Road, North Charleston, SC 29418; and Jonathan P. Edwards, Jonathon Edwards Law Office, LLC, Post Office Box 100547, Florence, SC 29052.

March 11th, 2015



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