

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

SC Court of Appeals

J. Mark Hayes, II, Circuit Court Judge

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Opinion No. 2014-UP-389 (S.C. Ct. App. filed November 12, 2014)

S.C. Supreme Court

James Luther Plemmons and Wanda Sue Clark Plemmons, ... Petitioners,

v.

State Farm Mutual Automobile Insurance Company, Plaza Insurance Company,
The Stover Company, Inc., and Howard E. Newton, III Defendants,

Of whom,

State Farm Mutual Automobile Insurance Company is Respondent.

APPENDIX

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Mark Hayes, II, Circuit Court Judge

Case No. 2012-CP-42-00346

James Luther Plemmons and Wanda Sue Clark Plemmons, ... Appellants,

v.

State Farm Mutual Automobile Insurance Company, Plaza Insurance Company,
The Stover Company, Inc., and Howard E. Newton, III..... Defendants,

Of whom,

State Farm Mutual Automobile Insurance Company is Respondent.

RECORD ON APPEAL

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RECORD ON APPEAL

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STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS

JAMES LUTHER PLEMMONS AND
WANDA SUE CLARK PLEMMONS,

Civil Action No. 2012-CP-42-00346

Plaintiffs,

vs.

STATE FARM MUTUAL
AUTOMOBILE INSURANCE
COMPANY, PLAZA INSURANCE
COMPANY, THE STOVER
COMPANY, INC., and HOWARD E.
NEWTON, III,

Defendants.

ORDER

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On May 17, 2013 this Court heard the motion for summary judgment of State Farm Mutual Automobile Insurance Company (State Farm) and the plaintiff's motion for summary judgment on the issue of coverage. For the following reasons, State Farm's motion for summary judgment is granted and the plaintiffs' motion for summary judgment is denied.

This lawsuit arises out of an accident on July 31, 2010 in which James Plemmons was injured while operating a tow truck. The facts surrounding the accident are not in dispute. In July 2010 Plemmons operated a tow truck service in addition to being a mechanic with his own garage in Spartanburg. On July 30, 2010 Plemmons was contacted by Kim Carson to come to her house and pick up her car because it would not operate. Plemmons then went to Carson's house and loaded Carson's car on Plemmons'

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tow truck. Once Plemmons loaded the Carson vehicle he then took it to his house rather than his garage because his garage was not open Friday evenings nor was it open on Saturdays.

Early the next morning Plemmons received a call to pick up another car. Plemmons received this call because he was on a rotating list of tow truck operators to pick up vehicles. Plemmons then drove his tow truck with the Carson car already on top to Highway 29 in Spartanburg County to pick up a car owned by a Ms. Mills. The Mills car had been pulled over because the driver of that car had been stopped by the police. At this time it was around four or five in the morning and there was very little traffic.

When Plemmons arrived to pick up Mills' car on Highway 29 the 2005 Dodge Neon owned by Kim Carson's father, John Carson, was inoperable and was secured on the flatbed in a stationary position. As Plemmons was in the process of securing the Mills car to the rear of his tow truck a car operated by Teresio Diaz approached from the other direction. Diaz's car left its lane of travel and hit the front of Plemmons' tow truck at a high rate of speed. The resulting impact knocked the tow truck backwards and it skidded over Plemmons' left leg.

The Carson vehicle atop Plemmons' tow truck did not hit Plemmons, it was not being used for transportation at the time of the accident and it did not contribute to the accident. There is no evidence that the Dodge Neon insured by State Farm touched Plemmons or otherwise caused his injuries, nor is there evidence that the at fault car operated by Diaz touched the Carson car on top of the tow truck bed.

The issue presented to this Court is whether the plaintiffs are entitled to underinsurance motorist (UIM) coverage under the State Farm policy insuring the Carson

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vehicle. The plaintiffs have recovered UIM coverage under a policy with Plaza Insurance Company which insured the tow truck. The plaintiffs have stacked UIM coverage for two vehicles insured under the Plaza policy as the plaintiffs were Class I insureds with respect to the Plaza policy insuring the tow truck and another vehicle.

Both the plaintiffs and State Farm have moved for summary judgment on the issue of whether the plaintiffs are entitled to UIM coverage under the State Farm policy insuring the Dodge Neon. State Farm has asserted a number of grounds in its motions for summary judgment. Because two of the grounds in State Farm's motions for summary judgment are dispositive it is unnecessary for this Court to address all of the grounds in State Farm's motions.

The first reason State Farm is entitled to summary judgment is that the vehicle it insured was completely outside the chain of causation for the plaintiff's injuries and outside of the chain of causation for the accident which resulted in the plaintiff's injuries. Here, as in Hite v. Hartford Accident and Indemnity Company, 344 S.E.2d 177 (S.C. App. 1986), "it is difficult to see where the use of the insured automobile was directly connected with or a cause of the ensuing accident." 344 S.E.2d at 177. Here, as in Hite, "the key to determining whether injuries remote to the operation of an automobile occurred during a 'use' of the vehicle is the existence of a causal connection between the injury and the use." 344 S.E.2d at 177. Hite is further on point because here, as in Hite, the injuries are the direct result of an intervening cause wholly disassociated from, independent of, and remote from the use of the insured automobile. 344 S.E.2d at 177

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Even if the plaintiffs were entitled to UIM coverage under the State Farm policy insuring the Dodge Neon, the plaintiffs as Class II insureds with regard to that policy would not be entitled to stack UIM coverage from the State Farm policy on UIM coverage under the Plaza policy insuring the tow truck. Stacking refers to an insured's recovery of damages under more than one insurance policy in succession until all damages are satisfied or until the total limits of all policies are exhausted. Nakatsu v. Encompass Indemnity Company, 700 S.E.2d 283, 286 (S.C. App. 2010); Nationwide Mutual Insurance Company v. Rhoden, 728 S.E.2d 477, 481 (S.C. 2012) The right to stack coverages is available only to a Class I insured. A Class I insured is a named insured, his spouse and relatives residing in his household. Richardson v. South Carolina Farm Bureau, 519 S.E.2d 120, 121 (S.C. App. 1999) One who is not a resident relative of the named insured's household is not a Class I insured entitled to stack UIM coverage. Auto Owners Insurance Company v. Horne, 586 S.E.2d 865, 874 (S.C. 2003) One who is not the named insured or the named insured's spouse or a resident relative and is not using the vehicle with the named insured's permission is a Class II insured and is not entitled to stack coverage. Ex Parte: United Services Automobile Association; In Re Smith v. Moore, 614 S.E.2d 652 (S.C. App. 2005)

Because James Plemmons was not a named insured under the State Farm policy, was not a spouse of the named insured under the State Farm policy nor was a resident relative of the named insured under the State Farm policy, Plemmons is a Class II insured with respect to that policy. The plaintiffs do not dispute Plemmons' classification as a Class II insured under the State Farm policy as a report filed by the plaintiffs in Federal Court concedes that in regard to the Carson vehicle insured with

State Farm "plaintiffs believe Mr. Plemmons was a Class II user of the vehicle." As such, Plemmons is not entitled to stack coverage from a policy under which he is a Class II insured on his UIM coverage with Plaza Insurance Company under which he was a Class I insured.

State Farm has also moved for summary judgment on the plaintiffs' claim of bad faith. State Farm's motion for summary judgment as to this cause of action is granted. State Farm's alleged failure to communicate with the plaintiff was not bad faith as no insurance coverage existed for the plaintiffs' claim against State Farm.

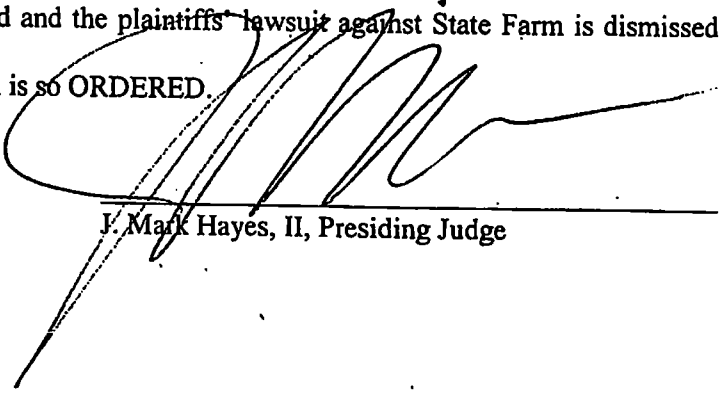
State Farm is also entitled to summary judgment on the plaintiffs' claim for attorney's fees under § 38-59-40. This statute requires as a basis for an award of attorney's fees a finding both that the claim is covered by the contract of insurance and that the insurer's refusal to pay the claim was without reasonable cause or in bad faith. Because this Court has ruled the plaintiffs' claim against State Farm is not covered, it necessarily follows that State Farm is entitled to summary judgment on the plaintiffs' claim for attorney's fees under § 38-59-40.

It is therefore ordered that State Farm is entitled to summary judgment on all of the plaintiffs' claims against State Farm, that the plaintiffs' motion for

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summary judgment is denied and the plaintiffs lawsuit against State Farm is dismissed with prejudice. All of which is so ORDERED.


J. Mark Hayes, II, Presiding Judge

Spartanburg, South Carolina
May 22, 2013

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M. HOPE BLACKLEY

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION**

James Luther Plemmons and Wanda)
Sue Clark Plemmons,)
)
Plaintiffs,)
)
-vs-)
)
State Farm Mutual Automobile)
Insurance Company, Plaza Insurance)
Company,)
)
Defendants.)
_____)

Civil Action No. 7:12-00495-MGL

Amended Opinion and Order

This matter comes before the Court on the supplemental motion of Plaintiffs James and Wanda Plemmons for leave to amend the complaint pursuant to Fed. R. Civ. P. 15(a)(2) and 28 U.S.C. 1447(e) to add a cause of action for negligent procurement and to join Howard Newton ("Newton") and The Stover Company, Inc. as defendants.¹ Defendant Plaza Insurance Company ("Defendant Plaza") filed a response in opposition to Plaintiffs' motions on May 25, 2012, to which Plaintiffs filed a reply on June 4, 2012. Defendant State Farm Mutual Insurance Company

¹The court notes that the following motions are also pending before the court: Plaintiffs' motion to bifurcate (ECF No. 28), Plaintiffs' motion to remand (*Id.*), Defendant State Farm Mutual Insurance Company's motion to sever (ECF No. 31), Plaintiffs' and Defendant State Farm Mutual Insurance Company's motion to amend /correct the scheduling order (ECF No. 39), and Plaintiffs' and Defendant Plaza Insurance Company's motion for an extension of time. (ECF No. 41.)

("Defendant State Farm") filed a response taking no position on Plaintiffs' motion to amend. (ECF No. 32.)

I. Factual and Procedural Background

This case arises out of an accident that occurred on July 31, 2010 involving Plaintiff James Luther Plemmons ("Mr. Plemmons") who was operating his 2000 GMC Wrecker ("Tow Truck"), and Teresio Garcia Diaz ("Mr. Diaz"), deceased, who was operating a 1999 Volkswagen. It is alleged that Mr. Diaz was driving while impaired and his vehicle crossed the median striking Mr. Plemmons' wrecker. At the time of the collision, Mr. Plemmons was standing along side of his Tow Truck and was in the process of loading a vehicle onto the Tow Truck. The impact of the collision caused the Tow Truck to roll backwards over Mr. Plemmons causing him severe personal injuries that exceeded Mr. Diaz's liability coverage. Defendant State Farm insured a vehicle belonging to John Carson that was on the tow truck at the time of the accident and which Mr. Plemmons contends he was towing at the time of the accident.

Plaintiffs, who are residents of South Carolina, filed this Declaratory Judgment and Bad Faith action in the Spartanburg Court of Common Pleas against Defendant Plaza, a Missouri Corporation, Defendant State Farm, an Illinois Corporation, and John Carson, a South Carolina resident, on January 25, 2012. Defendant Plaza timely removed the action on February 22, 2012 pursuant to 28 U.S.C. §§ 1441 and 1446, asserting this Court has federal diversity jurisdiction between the Plaintiffs and the properly joined Defendants State Farm and Plaza and the amount in controversy exceeds \$75,000.²

²Defendant Plaza asserted that Defendant Carson had been improperly joined. On March 14, 2012, Carson moved for judgment on the pleadings. The court granted Carson's unopposed motion on March 20, 2012.

On April 4, 2012, with the consent of the parties, Plaintiffs amended their original complaint. In their amended complaint, Plaintiffs seek relief from Defendant Plaza in the form of a declaratory judgment pursuant to S.C. Code Ann. § 15-23-20 that Defendant Plaza failed to make a meaningful offer of UIM coverage to Mr. Plemmons. Plaintiffs also seek judicial reformation of Mr. Plemmons' Plaza Insurance policy to increase the limits of UIM coverage from \$100,000 to \$300,000. In addition, Plaintiffs have asserted a bad faith cause of action against Defendant State Farm due to its refusal to provide Mr. Plemmons with UIM coverage from the policy of the car Mr. Plemmons of the car that was on the tow truck at the time of the accident and which Mr. Plemmons contends he was towing at the time of the accident. Plaintiff Wanda Sue Clark Plemmons has an interest in the coverage actions because she has asserted a loss of consortium claim against Mr. Diaz's Estate in the underlying tort action.

On May 14, 2012, Plaintiffs filed the instant motion to amend the complaint. The proposed amended complaint joins non-diverse defendants Newton and The Stover Company, Inc. and adds a negligent procurement cause of action against Newton and The Stover Company, Inc. Defendant Plaza principally opposes the motion to amend because Newton is a South Carolina resident and The Stover Company, Inc. is a South Carolina corporation whose additions would destroy diversity jurisdiction. Defendant Plaza further argues that Plaintiffs were aware of the roles played by Newton and The Stover Company, Inc. when Plaintiffs filed their previously amended complaint.

II. Discussion

Pursuant to Rule 15(a)(2) of the Federal Rules of Civil Procedure, Plaintiffs seek to amend their complaint. Plaintiff moves the Court to remand the case to State court pursuant to 28 U.S.C. § 1447(e), because Newton is a South Carolina resident and The Stover Company, Inc. is a South

Carolina corporation. The addition of Newton and The Stover Company, Inc. would divest this Court of its diversity jurisdiction thereby requiring remand to state court. *See* 28 U.S.C. § 1332 & 1447(e).

Since Plaintiffs filed their original complaint and amended complaint, Plaintiffs assert they acquired new evidence from the deposition of Ladson Stover to support a claim of negligent procurement against Newton and The Stover Company, Inc. Plaintiffs took Ladson Stover's deposition on May 7, 2012 and filed their supplemental motion to amend on May 14, 2012.

In analyzing Plaintiffs' motion to amend the pleadings, the court must first determine whether Plaintiffs' motion should be granted when it was filed after the deadline in the scheduling order for filing such motions. The scheduling order entered in this case required that all motions to join parties or amend pleadings be filed by May 8, 2012. (ECF No. 7.) Plaintiffs filed the instant motion on May 14, 2012 which was six days after the deadline. "[A]fter the deadlines provided by a scheduling order have passed, the good cause standard [of Rule 16] must be satisfied to justify leave to amend the pleadings." *Nourison Rug Corp. v. Parvizian*, 535 F.3d 295, 298 (4th Cir. 2008). Furthermore, the "good cause" standard has been properly construed to mean that "scheduling deadlines cannot be met despite a party's diligent efforts. . . . In other words, this court may 'modify the schedule on a showing of good cause if [the deadline] cannot be met despite the diligence of the party seeking the extension.'" *Dilmar Oil Co. v. Federated Mut. Ins. Co.*, 986 F. Supp. 959, 980 (D.S.C. 1997) (internal citations omitted). In this case, Plaintiffs' motion to amend should be granted despite the fact it was filed after the deadline in the scheduling order and Plaintiffs seek the amendment only six (6) days after the scheduling deadline. Plaintiffs seek the amendment based solely on information obtained through discovery. The six (6) days between the deadline and when the motion was filed is not an

unreasonable amount of time. Therefore, the Court concludes that Plaintiffs have shown sufficient good cause to allow an amendment of the pleadings after the deadline in the scheduling order.

Defendant Plaza argues that Plaintiffs' motion to amend should be denied because the proposed amendment is designed to defeat federal jurisdiction. Under 28 U.S.C. § 1447(e), the decision of whether to allow joinder of a defendant that would destroy diversity jurisdiction is left to the sound discretion of the district court and is not controlled by the Federal Rules of Civil Procedure. *Mayes v. Rapoport*, 198 F. 3d 457, 462. In exercising its discretion under § 1447(e), a district court may consider all relevant factors, including:

- (1) the extent to which the purpose of the amendment is to defeat federal jurisdiction;
- (2) whether the plaintiff has been dilatory in asking for amendment;
- (3) whether the plaintiff will be significantly injured if amendment is not allowed; and
- (4) any other factors bearing on the equities.

Id. at 462–63 (quoting *Gum v. Gen. Elec. Co.*, 5 F. Supp. 2d 412, 414 (S.D.W.Va. 1998)).

After reviewing the above factors, Plaintiffs' motion to amend should be granted. The court disagrees with Defendant Plaza's assertion that Plaintiffs seek the amendment solely to defeat federal jurisdiction. The evidence in the record does not suggest such an improper motive or fraudulent joinder. Plaintiffs seek the amendment based upon new information uncovered during discovery. Plaintiffs do not appear to be seeking to avoid this court's jurisdiction by requesting to add Newton and The Stover Company, Inc. to this action. If Newton and The Stover Company, Inc. contributed to Plaintiffs' injuries, then it would appear that Plaintiffs should be entitled to join Newton and The Stover Company, Inc. as defendants to this action. *See* Fed. R. Civ. P. 20 (a)(2). Accordingly, the Court finds that Plaintiffs' request to join Newton and The Stover Company, Inc. is not made for the specific purpose of avoiding federal jurisdiction. This new information is a legitimate reason for

Plaintiffs to now seek to amend their complaint and join Newton and The Stover Company, Inc. as defendants.

With regard to the second factor, Plaintiffs were not dilatory in seeking the amendment. Defendant Plaza points out that Plaintiffs were aware of the roles played by Newton and the Stover Company prior to any discovery in this case and elected not to name them as defendants. However, as previously discussed, Plaintiffs filed their motion to amend within a reasonable time after discovering evidence to support a claim of negligent procurement. Therefore, any untimeliness is not so egregious as to foreclose the possibility of the Court ultimately ruling in their favor. While the Court views with disfavor late amendments to the pleadings, especially those amendments that impact the Court's diversity jurisdiction, Plaintiffs' delay is but one factor to consider under § 1447(e).

As to the third factor, Plaintiffs would suffer significant injury if his motion to amend is not granted. If Newton and The Stover Company, Inc. did in fact contribute to Plaintiffs' injury as alleged, Plaintiffs are entitled to seek redress from them. Although Defendant Plaza argues that the Plaintiffs' motion to amend is futile because it would not affect the remedy afforded to them, the court disagrees. Damages under the two claims are different. In a claim for negligent procurement of insurance, a plaintiff may be entitled to both actual and punitive damages. *See Orangeburg Sausage Co. v. Cincinnati Ins. Co.*, 316 S.C. 331, 450 S.E.2d 66 (SC Ct. App. 1994). Plaintiffs would also suffer significant costs if required to bring a new action in state court. Thus, amendment of the claim would not be futile.

Finally, the Court considers all of the other factors bearing on the equities in this case. *Mayes*, 198 F.3d at 462. Here, the "danger of parallel lawsuits in federal and state court which may spawn inconsistent results and inefficient use of judicial resources, is considerable. *Id.* at 463 (internal

quotation marks omitted). If Plaintiffs were to proceed to sue Newton and The Stover Company, Inc. in state court for their role in Mr. Plemmons' purchase of the Plaza Insurance policy for which they are suing Defendant Plaza in this Court, this would be an inefficient use of judicial resources with the potential for inconsistent results. The Court must also consider Defendant Plaza's interest in retaining this federal forum, *Gum*, 5 F. Supp. 2d at 414, as well as any undue prejudice to it from the decision to allow the amendment and remand. *Cf. Davis v. Piper Aircraft Corp.*, 615 F.2d 606, 613 (4th Cir. 1980) (noting that undue prejudice to the nonmovant is a factor that should be considered when deciding whether to grant leave to amend under Rule 15); *Gum*, 5 F. Supp. 2d at 414 n.6 (same). It would have been foreseeable to Defendant Plaza from the outset of this action, based on the nature of Plaintiffs' lawsuit originally filed in state court and involving only state law claims that federal jurisdiction premised on diversity might be destroyed with the addition of other defendants. The Court does not believe Defendant Plaza will be unduly prejudiced by a remand to state court.

After reviewing the four factors, the court finds that Plaintiffs are seeking the amendment for a legitimate, proper reason and that the motion to amend should be granted. Because the Court is granting Plaintiffs' motion to amend and thereby remanding this case to state court, the court declines address the remaining pending motions.

IV. Conclusion

The Court has reviewed the motions, memoranda, and applicable law. In sum, in balancing the equities, the undersigned finds that it is proper to grant the motion to amend to add Newton and The Stover Company, Inc. as defendants. The motion to amend the complaint is **GRANTED**; and this case is **REMANDED** to the Spartanburg Court of Common Pleas pursuant to 28 U.S.C. § 1447(e). Given the Court's decision to remand this case to the state court, any remaining outstanding

motions are hereby declared to be **MOOT**.

IT IS SO ORDERED.

/s/ Mary G. Lewis
United States District Judge

Spartanburg, South Carolina
August 24, 2012

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

James Luther Plemmons and Wanda Sue Clark)
Plemmons)

Plaintiff(s))

vs.)

State Farm Mutual Automobile Insurance)
Company, John Carson, Plaza Insurance)
Company,)

Defendant(s))

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2012-CP - 42-

00346

(Please Print)

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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.

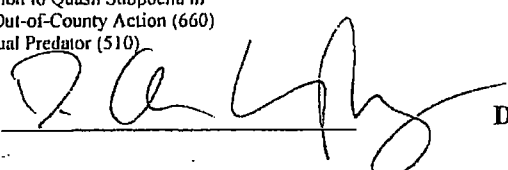
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**If Action is Judgment/Settlement do not complete*

- ☒ 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 ☐ Reinstatement 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)		

Submitting Party Signature: 

Date: January 25, 2012

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

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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.

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J. HOPKINS

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

James Luther Plemmons and Wanda Sue
Clark Plemmons,

Plaintiffs,

vs.

State Farm Mutual Automobile Insurance
Company, John Carson, Plaza Insurance
Company,

Defendants.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

C.A. No.: 2012-CP-42-_____

00346

SUMMONS

(Declaratory Judgments, Petition for
Reformation of Insurance Policy, Insurance
Bad Faith)

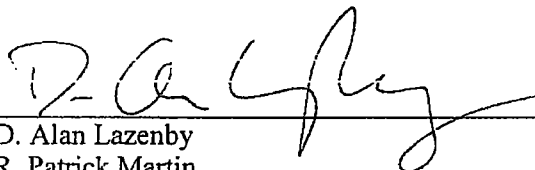
JURY TRIAL DEMANDED

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

January 25, 2012

By:



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ANDREW J. JOHNSTON LAW OFFICE
Andy Johnston, Esq.
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ATTORNEYS FOR PLAINTIFFS

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SPARTANBURG COUNTY
2012 JAN 25 PM 3:49
M. HOPE BLOCHLEY

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

James Luther Plemmons and Wanda Sue
Clark Plemmons,

Plaintiffs,

vs.

State Farm Mutual Automobile Insurance
Company, John Carson, Plaza Insurance
Company,

Defendants.

) IN THE COURT OF COMMON PLEAS
) SEVENTH JUDICIAL CIRCUIT
)

) C.A. No.: 2012-CP-42-00346
)

) **COMPLAINT**
)

) (Declaratory Judgments, Petition for
) Reformation of Insurance Policy, Insurance
) Bad Faith)
)

) JURY TRIAL DEMANDED
)

COMES NOW the Plaintiffs, James Luther Plemmons and Wanda Sue Clark Plemmons, "Plaintiffs" hereafter, who complaining of the Defendants, herein and hereby file their Complaint and would respectfully show unto this Honorable Court the following:

PARTIES, JURISDICTION AND VENUE

1. Plaintiffs are natural persons and residents of Spartanburg County, South Carolina.
2. The Defendant Plaza Insurance Company is an insurance company incorporated in Missouri, licensed to do business in South Carolina, and the underinsured motorist insurance carrier for Mr. Plemmons.
3. The Defendant State Farm Mutual Automobile Insurance Company, "State Farm" hereafter, is an insurance company incorporated in Illinois; licensed to do business in South Carolina; and underinsured motorist carrier for a 2005 Dodge Neon owned by John Carson and used by James Plemmons at the time of the incident in question.
4. The Defendant John Carson is a citizen of South Carolina, County of Union and

joined by virtue of his insurance policy with Defendant State Farm and his vehicle's involvement in an accident.

5. This action concerns rights of insureds under two separate insurance policies.
6. Most, if not all, of the actions involved herein occurred in Spartanburg County, South Carolina.
7. Accordingly, venue and subject matter jurisdiction are proper.

FACTUAL ALLEGATIONS

8. Plaintiffs incorporate herein the above allegations as if same were set forth verbatim.
9. On or about July 31, 2010, at approximately 5:00 a.m., Mr. Plemmons was standing alongside his 2000 GMC Wrecker truck (the Wrecker) which was legally parked on the paved median headed south on U.S. Highway 29 in Spartanburg County, South Carolina.
10. Mr. Plemmons was operating the lever on his truck in the process of loading a vehicle owned by Queen Mills onto the Wrecker.
11. Mr. Plemmons had already loaded a 2005 Dodge Neon belonging to the Defendant Carson and said car was atop the Wrecker for towing. Mr. Plemmons had picked up this vehicle at the specific request of the owner for the purpose of transporting the vehicle to Mr. Plemmons' shop so he could perform mechanical work on said vehicle. This vehicle was otherwise inoperable.
12. Tereso Garcia Diaz, now deceased, was driving his 1999 Volkswagen headed north on U.S. Highway 29, under the influence of alcohol and cocaine.
13. While driving under the influence of cocaine and alcohol, Diaz traveled

approximately thirty miles per hour over the posted speed limit.

14. Without notice or warning to Plaintiffs, Diaz crossed over the median, crashing into the front of the Wrecker.
15. The impact of Decedent's vehicle caused the Wrecker, which was legally parked and under the supervision of Greer Police Department, to roll backwards, running over Mr. Plemmons and instantly severing his leg above the knee causing extraordinary blood loss and injury.
16. The Dodge Neon owned by Carson, after Diaz struck the Wrecker, played a role in causing damages to Plemmons.
17. Mr. Plemmons has sustained significant injuries in excess of Diaz's liability coverage and in excess of Mr. Plemmons' own UIM policy as it now exists.
18. Mr. Plemmons' subsequent injuries have caused a loss of consortium for Mrs. Plemmons.
19. Mr. Plemmons was, at the time of the incident, a permissive "user" of the car owned by John Carson and has rights under the Defendant State Farm's policy with John Carson.
20. Mr. Plemmons had a UIM policy through Defendant Plaza Insurance Company.
21. When signing up for said policy, Mr. Plemmons talked to the Stover Company, an insurance agent acting with its authority on behalf of Plaza Insurance Company.
22. The Stover Company, or an agent thereof acting within its authority, prepared documents for Mr. Plemmons to sign.
23. Mr. Plemmons did not spare expense in regards to the policy which cost \$3,228.00 per year.

24. The Stover Company, Inc., or the agent thereof, brought the documents to Mr. Plemmons for his signature.
25. The Stover Company did not explain the nature of underinsured motorist coverage, and had pre-selected a coverage amount of \$100,000 without the consent or knowledge of Mr. Plemmons.
26. The form that the Stover Company's agent presented in fact had the \$200,000 coverage limit marked through.
27. Mr. Plemmons, relying upon the direction of the Stover Company representative signed the papers where the Stover Company's agent indicated he should sign.
28. At no time did Mr. Plemmons know what UIM coverage was, that he was declining additional UIM coverage, nor did Mr. Plemmons realize that he could triple his UIM coverage to \$300,000 for approximately \$23.00 more per period.

FOR A FIRST CAUSE OF ACTION AS TO PLAZA INSURANCE COMPANY

Action for Declaratory Judgment and Petition for Reformation of Policy

29. Plaintiffs incorporate the above statements as if same were set forth verbatim.
30. A controversy has arisen as to whether Plaza Insurance Company, made a meaningful offer of Under Insured Motorist (UIM) coverage to Mr. Plemmons.
31. A declaration of rights by this Honorable Court would resolve the matter.
32. Pursuant to *State Farm Mut. Auto. Ins. Co. v. Wannamaker* 291 S.C. 514, 354 S.E.2d 555 (1987), Plaza Insurance Company must:
 - a. Provide a brief explanation of the coverage,
 - b. Provide a list of available coverage limits and the premiums for those coverages,

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- c. Provide a space for the insured to mark whether he or she is accepting or rejecting the extra UIM coverage,
 - d. Provide a space for the insured to sign whether coverage has been offered, and
 - e. Provide contact information for the Department of Insurance so that the insured may ask questions that the agent could not.
33. Mr. Plemmons believes that Defendant Plaza has failed to make a meaningful offer by not providing the explanation of coverage, not providing a complete list of available coverages, and the additional premiums for those coverages.
34. Plaintiffs pray that this Honorable Court and a duly selected jury would enquire into the matters alleged and grant Plaintiffs relief from the Defendant Plaza Insurance Company in the form of a declaratory judgment pursuant to S.C. Code Ann. Section 15-53-20 et seq. that the Defendant Plaza Insurance Company failed to make a meaningful offer of UIM to Mr. Plemmons; and should the Court find that Plaza Insurance Company has failed to make a meaningful offer, for the insurance policy issued to be reformed to include the additional coverage up to the maximum of \$300,000.00 which is the liability limit for the policy.

FOR A SECOND CAUSE OF ACTION AS TO DEFENDANT PLAZA INSURANCE

COMPANY

Action for Declaratory Judgment and Petition for Reformation of Policy

35. Plaintiffs incorporate herein the above allegations as if same were set forth verbatim.
36. Mr. Plemmons is a Class 1 insured under a contract of insurance with Defendant Plaza Insurance Company.

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M. HOE BLICKLEY

37. Mr. Plemmons has two vehicles under the policy with Plaza Insurance Company.
38. Mr. Plemmons was involved in an accident where the amount of damages to Mr. Plemmons exceeds the at-fault driver's liability coverage.
39. Mr. Plemmons applied for UIM coverage through Plaza Insurance Company.
40. Mr. Plemmons' contract for insurance contains a clause that appears to limit his ability to stack UIM coverages on other vehicles covered by the policy, specifically the policy provides:
- Regardless of the number of covered "autos", "insureds", premiums paid, claims made or vehicles involved in the "accident", the most we will pay for all damages resulting from any one "accident" is the limit of Underinsured Motorists Coverage shown in the Schedule.
41. Plaza Insurance Company has refused to stack the coverage for a second vehicle insured by Plaza and owned by Mr. Plemmons.
42. A controversy has arisen as to the validity of a clause within the contract of insurance between Mr. Plemmons and Plaza Insurance Company.
43. Mr. Plemmons believes that this provision is in violation of South Carolina's law to the extent it seeks to prevent stacking of UIM claims.
44. This Court's declaration of rights under this contract of insurance and a declaration as to the validity of this provision or any other provision that seeks to limit stacking of UIM claims in this contract for insurance would resolve the controversy.
45. Mr. Plemmons prays that this Honorable Court and duly selected jury would enquire into the matters alleged and grant Mr. Plemmons relief from the Defendant Plaza Insurance Company in the form of a declaratory judgment that the above clause and any other contractual provisions in the contract of insurance

at issue limiting the stacking of UIM coverage are against public policy and therefore void. Should this Honorable Court so find, Mr. Plemmons also prays that this Honorable Court would reform the policy in question to allow stacking of the maximum amount of UIM coverage permitted under his liability policy.

**FOR A THIRD CAUSE OF ACTION AS TO DEFENDANTS CARSON AND
STATE FARM**

Action for Declaratory Judgment as to UIM Coverage

46. Plaintiffs incorporate herein the above allegations as if same were set forth verbatim.
47. Mr. Plemmons had loaded a 2005 Dodge Neon "Dodge Neon" hereafter, belonging to John Carson and insured through Defendant State Farm onto Plemmons' wrecker for towing and transportation prior to the accident.
48. Mr. Plemmons was a permissive user of the Dodge Neon by virtue of the towing services he was contracted to do and in fact performed.
49. Mr. Plemmons incurred damages while using the Dodge Neon.
50. State Farm has denied coverage or otherwise refused to cooperate with Plaintiffs.
51. A controversy has arisen between Plaintiffs and State Farm as to the rights of Plaintiff as a user of the Dodge Neon and coverage under State Farm's UIM policy.
52. A declaration of rights by this Honorable Court would resolve the matter.
53. Plaintiffs pray that this Honorable Court and a duly selected jury would enquire into the matters alleged and grant Plaintiffs a declaratory judgment that State Farm's insurance policy covers Plemmons use of the Dodge Neon and Plaintiffs

are entitled to recover under said UIM policy.

FOR A FOURTH CAUSE OF ACTION AS TO STATE FARM

Insurance Bad Faith

54. Plaintiffs incorporate herein the above allegations as if same were set forth verbatim.
55. John Carson and Defendant State Farm have a valid and mutually binding contract for insurance in which State Farm has agreed to insure Carson.
56. Carson's Dodge Neon was involved in a wreck.
57. Subsequent to that wreck, Carson or his agent expressly gave Mr. Plemmons permission to tow the Dodge Neon.
58. Mr. Plemmons was a permissive user of the Dodge Neon and protected by the UIM policy between Carson and State Farm.
59. While in the process of towing Carson's Dodge Neon, an accident occurred injuring Mr. Plemmons severely.
60. State Farm has refused coverage under the contract and it has failed to set forth any justification for its failure.
61. James Plemmons was in fact an insured and covered by the State Farm policy at the time of the accident.
62. State Farm's refusal of coverage is unreasonable and in bad faith.
63. State Farm further acted in bad faith by interposing a coverage defense in the underlying tort action in an effort to delay adjudication of this matter.
64. State Farm's refusal of coverage has caused the Mr. Plemmons damage.
65. Mr. Plemmons prays that this Honorable Court and a duly selected jury would

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enquire into the matters alleged and grant him relief from State Farm in the form of a judgment for the contractual limits under the Carson contract for insurance up to the limits of Plaintiffs' actual damages, together with punitive damages as may be determined by a jury for State Farm's bad faith breach of insurance contract.

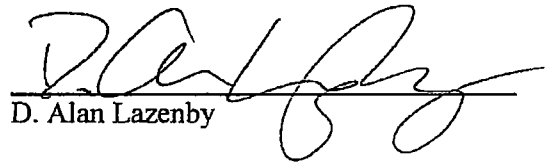
WHEREFORE, having pled their case, the Plaintiffs pray that this Honorable Court would enquire into the matters alleged and grant Plaintiffs relief from the Defendants as follows:

- a. As to the First Cause of Action- for a declaratory judgment that the Plaza Insurance Company, through its agent the Stover Company, Inc., failed to make a meaningful offer of UIM insurance to Plemmons; and should the Court find a lack of meaningful offer, for the Court to reform the Plaza Insurance Policy to include a UIM coverage of \$300,000.00, the maximum allowable under the policy;
- b. As to the Second Cause of Action- for a declaratory judgment that the above clause and any other contractual provisions in the contract of insurance at issue limiting the stacking of UIM coverage are against public policy and therefore void. Should this Honorable Court so find, Mr. Plemmons also prays that this Honorable Court would reform the policy in question to allow stacking of the maximum amount of UIM coverage permitted under his liability policy;
- c. As to the Third Cause of Action- for a declaratory judgment that State Farm's insurance policy covers Plemmons' use of the Dodge Neon and Plaintiffs are entitled to recover under said UIM policy;
- d. As to the Fourth Cause of Action- for a judgment against State Farm in the amount of contractual limits, plus punitive damages as may be determined by a jury;

- e. As to all causes of action- for such other and further relief as this Court deems just and proper; and
- f. As to all issues of fact- for a trial by jury.

January 25, 2012

By:


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ATTORNEYS FOR PLAINTIFFS

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SPARTANBURG COUNTY
2012 JAN 25 PM 3:49
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

James Luther Plemmons and Wanda Sue
Clark Plemmons,

C.A. No.: 2012-CP-42-00346

Plaintiffs,

vs.

SUMMONS TO AMENDED COMPLAINT

JURY TRIAL DEMANDED

State Farm Mutual Automobile Insurance
Company, Plaza Insurance Company, The
Stover Company, Inc., and Howard E.
Newton, III.

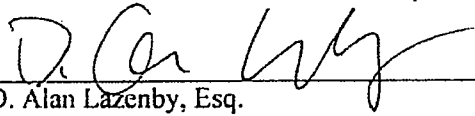
Defendants.

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Amended Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within fifteen (15) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the Amended Complaint.

October 11, 2012

By:


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R. Patrick Martin, Esq.

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ATTORNEYS FOR PLAINTIFFS

**ROA 000029
APP 000032**

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SPARTANBURG, SC
2012 OCT 12 PM 1:13
MARCO L. BLANKLEY

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

James Luther Plemmons and Wanda Sue
Clark Plemmons,

Plaintiffs,

vs.

State Farm Mutual Automobile Insurance
Company, Plaza Insurance Company, The
Stover Company, Inc., and Howard
E. Newton, III.

Defendants.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

C.A. No.: 2012-CP-42-00346

AMENDED COMPLAINT
(Declaratory Judgments, Petition for
Reformation of Insurance Policy, Insurance
Bad Faith, Negligent Procurement)

JURY TRIAL DEMANDED

COMES NOW Plaintiffs, James Luther Plemmons and Wanda Sue Clark Plemmons
("Plaintiffs") hereafter, who complaining of the Defendants, herein and hereby file their
Amended Complaint and would respectfully show unto this Honorable Court the following:

PARTIES, JURISDICTION AND VENUE

1. Plaintiffs are natural persons and residents of Spartanburg County, South Carolina.
2. Defendant Plaza Insurance Company ("Plaza") is an insurance company incorporated in Missouri, licensed to do business in South Carolina, and the underinsured motorist insurance carrier for Mr. Plemmons.
3. Defendant State Farm Mutual Automobile Insurance Company ("State Farm") is an insurance company incorporated in Illinois; licensed to do business in South Carolina; and underinsured motorist carrier for a 2005 Dodge Neon owned by John Carson and used by Mr. Plemmons at the time of the incident in question.
4. Defendant The Stover Company, Inc. ("Stover") is a corporation incorporated

under the laws of South Carolina and doing business in this state.

5. The Defendant Howard Newton ("Newton") is an individual and resident of this state.
6. This action concerns rights of insureds under two separate insurance policies and the negligent procurement of insurance within this state.
7. Most, if not all, of the actions involved herein occurred in Spartanburg County, South Carolina.
8. Accordingly, venue and subject matter jurisdiction are proper in this Court.

FACTUAL ALLEGATIONS

9. Plaintiffs incorporate herein the above allegations as if same were set forth verbatim.
10. On or about July 31, 2010, at approximately 5:00 a.m., Mr. Plemmons was standing alongside his 2000 GMC Wrecker truck, "the Wrecker," which was legally parked on the paved median headed south on U.S. Highway 29 in Spartanburg County, South Carolina.
11. Mr. Plemmons was operating the lever on his truck in the process of loading a vehicle owned by Queen Mills onto the Wrecker.
12. Mr. Plemmons had already loaded a 2005 Dodge Neon, "Neon," belonging to the Defendant Carson and said car was atop the Wrecker for towing.
13. Mr. Plemmons guided the Neon's movements and was in sole control of the vehicle while it was atop the Wrecker.
14. Mr. Plemmons had picked up the Neon at the specific request of the owner for the purpose of transporting the vehicle to Mr. Plemmons' shop so he could perform

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mechanical work on said vehicle.

15. Mr. Plemmons was not charging for the tow of the Neon because he was friends with Kim Carson, John Carson's daughter.
16. The Neon was otherwise inoperable.
17. Tereso Garcia Diaz, now deceased, was driving his 1999 Volkswagen headed north on U.S. Highway 29, under the influence of alcohol and cocaine.
18. While driving under the influence of cocaine and alcohol, Diaz traveled approximately thirty miles per hour over the posted speed limit.
19. Without notice or warning to Plaintiffs, Diaz crossed over the median, crashing into the front of the Wrecker.
20. The impact of Decedent's vehicle caused the Wrecker, which was legally parked and under the supervision of Greer Police Department, to roll backwards, running over Mr. Plemmons and instantly severing his leg above the knee causing extraordinary blood loss and injury.
21. The Neon owned by Carson, after Diaz struck the Wrecker, played a role in causing damages to Plemmons.
22. Mr. Plemmons has sustained significant injuries in excess of Diaz's liability coverage and in excess of Mr. Plemmons' own UIM policy as it now exists.
23. Mr. Plemmons' subsequent injuries have caused a loss of consortium for Mrs. Plemmons.
24. Mr. Plemmons was, at the time of the incident, a permissive "user" of the car owned by John Carson and has rights under the Defendant State Farm's policy with John Carson.

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M. J. E. ACKLEY

25. Mr. Plemmons was in sole control of the Neon, and guided the Neon's movements.
26. Mr. Plemmons had a UIM policy through Plaza.
27. When acquiring said policy, Mr. Plemmons talked to Newton an agent of Stover.
28. Stover was an insurance agency engaged in producing insurance within the State of South Carolina.
29. Stover, or an agent thereof acting within its authority, prepared documents for Mr. Plemmons to sign.
30. Mr. Plemmons did not spare expense in regards to the policy which cost \$4,130.00 per year.
31. Stover, through its agent Newton, brought the documents to Mr. Plemmons for his signature.
32. Newton did not explain the nature of underinsured motorist coverage, and had pre-selected a coverage amount of \$100,000 without the consent or knowledge of Mr. Plemmons.
33. Newton gave Mr. Plemmons only the signature pages of the documents and told him where to sign.
34. Newton's tactic was deceptive and deprived Mr. Plemmons of his ability to understand the documents and their effect.
35. The form that Stover's agent presented in fact had the \$200,000 coverage limit marked through, and the other additional premiums were illegible.
36. Mr. Plemmons, relying upon the direction of the Stover representative, signed the papers where Stover's agent indicated he should sign.

37. At no time did Mr. Plemmons receive an explanation of UIM, understand the implications of UIM, understand that he was declining additional UIM coverage, nor realize that he could triple his UIM coverage to \$300,000 for approximately \$61.00 more per year.

FOR A FIRST CAUSE OF ACTION AS TO PLAZA

Action for Declaratory Judgment and Petition for Reformation of Policy

38. Plaintiffs incorporate the above statements as if same were set forth verbatim.
39. A controversy has arisen as to whether Plaza Insurance Company, made a meaningful offer of Under Insured Motorist (UIM) coverage to Mr. Plemmons.
40. A declaration of rights by this Honorable Court would resolve the matter.
41. Pursuant to *State Farm Mut. Auto. Ins. Co. v. Wannamaker* 291 S.C. 518, 354 S.E.2d 555 (1987), Plaza Insurance Company must:
- a. Provide a brief explanation of the coverage,
 - b. Provide a list of available coverage limits and the premiums for those coverages,
 - c. Provide a space for the insured to mark whether he or she is accepting or rejecting the extra UIM coverage,
 - d. Provide a space for the insured to sign whether coverage has been offered, and
 - e. Provide contact information for the Department of Insurance so that the insured may ask questions that the agent could not.
42. Plaza has failed to make a meaningful offer by not providing the explanation of coverage, not providing a complete list of available coverages, and the additional premiums for those coverages.

43. Plaintiffs pray that this Honorable Court and a duly selected jury would enquire into the matters alleged and grant Plaintiffs relief from Plaza in the form of a declaratory judgment pursuant to S.C. Code Ann. Section 15-53-20 et seq. that Plaza failed to make a meaningful offer of UIM to Mr. Plemmons; and should the Court find that Plaza has failed to make a meaningful offer, for the insurance policy issued to be reformed to include the additional coverage up to the maximum of \$300,000.00 which is the liability limit for the policy.

FOR A SECOND CAUSE OF ACTION AS TO DEFENDANT STATE FARM

Action for Declaratory Judgment as to UIM Coverage

44. Plaintiffs incorporate herein the above allegations as if same were set forth verbatim.
45. On the date of the accident, Mr. Plemmons had loaded the Neon belonging to John Carson and insured through State Farm onto the Wrecker for towing and transportation prior to the accident.
46. Mr. Plemmons was a permissive user of the Neon by virtue of the towing services he was contracted to do and in fact performed.
47. Mr. Plemmons incurred damages while using the Neon.
48. State Farm has denied coverage or otherwise refused to cooperate with Plaintiffs.
49. A controversy has arisen between Plaintiffs and State Farm as to the rights of Plaintiff as a user of the Neon and coverage under State Farm's UIM policy.
50. A declaration of rights by this Honorable Court would resolve the matter.
51. Plaintiffs pray that this Honorable Court and a duly selected jury would enquire into the matters alleged and grant Plaintiffs a declaratory judgment that State

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Farm's insurance policy covers Mr. Plemmons use of the Neon and Plaintiffs are entitled to recover under said UIM policy.

FOR A THIRD CAUSE OF ACTION AS TO STATE FARM

Insurance Bad Faith

52. Plaintiffs incorporate herein the above allegations as if same were set forth verbatim.
53. John Carson and State Farm have a valid and mutually binding contract for insurance in which State Farm has agreed to insure Carson.
54. Carson's Neon was involved in a wreck.
55. Prior to that wreck, Carson or his agent expressly gave Mr. Plemmons permission to tow the Neon.
56. Mr. Plemmons was a permissive user of the Neon and protected by the UIM policy between Carson and State Farm.
57. While in the process of towing the Neon, an accident occurred that injured Mr. Plemmons severely.
58. State Farm has refused coverage under the contract without explanation and it has failed to communicate with Plaintiffs.
59. Mr. Plemmons was in fact an insured and covered by the State Farm policy at the time of the accident.
60. Mr. Plemmons was a "user" of the Neon at the time of the accident.
61. State Farm's refusal of coverage is unreasonable and in bad faith.
62. State Farm further acted in bad faith by interposing an inappropriate coverage defense in the underlying tort action in an effort to delay adjudication of this

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HON. JUDGE DAVID L. CULLEY

matter.

63. State Farm's refusal of coverage has caused the Mr. Plemmons damage.
64. Mr. Plemmons prays that this Honorable Court and a duly selected jury would enquire into the matters alleged and grant him relief from State Farm in the form of a judgment for the contractual limits under the Carson contract for insurance up to the limits of Plaintiffs' actual damages, together with punitive damages as may be determined by a jury for State Farm's bad faith breach of insurance contract.

FOR A FOURTH CAUSE OF ACTION AS TO NEWTON AND STOVER

Negligence/Negligent Procurement of Insurance

65. Plaintiffs incorporate the above statements as if same were set forth verbatim herein.
66. Stover and its agent Newton owed Plaintiff James Luther Plemmons a duty of due care, good faith, reasonable skill, care and diligence in advising James Luther Plemmons and procuring insurance on James Luther Plemmons' behalf.
67. Newton, by selecting options for James Luther Plemmons on the insurance forms, undertook a specific duty to advise James Luther Plemmons.
68. Stover, by and through its agent Newton, breached that duty to James Luther Plemmons by failing to inform him of the nature, availability and additional premiums of UIM and liability insurance coverage.
69. Newton, at all times relevant hereto, was an agent of Stover acting within his scope of employment and authority with Stover.
70. Stover and Newton's breach directly and proximately damaged the Plaintiffs.
71. Plaintiffs pray that this Honorable Court would inquire into the matters alleged

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JAMES LUTHER PLEMMONS
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JAMES LUTHER PLEMMONS

and grant them Relief from the Defendants Stover and Newton in the form of a judgment for such actual and punitive damages as may be determined by a jury.

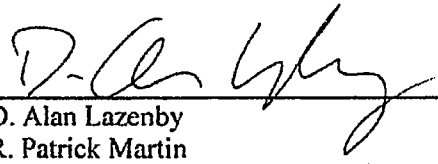
WHEREFORE, having pled their case, the Plaintiffs pray that this Honorable Court would enquire into the matters alleged and grant Plaintiffs relief from the Defendants as follows:

- a. As to the First Cause of Action- for a declaratory judgment that the Plaza, through its agent Stover, failed to make a meaningful offer of UIM insurance to Mr. Plemmons; and should the Court find a lack of meaningful offer, for the Court to reform the Plaza Insurance Policy to include a UIM coverage of \$300,000.00, the maximum allowable under the policy;
- b. As to the Second Cause of Action- for a declaratory judgment that State Farm's insurance policy covers Mr. Plemmons' use of the Neon and Plaintiffs are entitled to recover under said UIM policy;
- c. As to the Third Cause of Action- for a judgment against State Farm in the amount of contractual limits, plus punitive damages as may be determined by a jury;
- d. As to the Fourth Cause of Action- for a judgment against Stover and Newton for the Plaintiffs' actual damages resulting from Stover and Newton's gross negligence and grossly negligent procurement of insurance for James Luther Plemmons, together with such punitive damages as may be determined by a jury;
- e. As to all causes of action- for such other and further relief as this Court deems just and proper; and
- f. As to all issues of fact- for a trial by jury.

FILED
CLERK OF COURT
SPARBURO COUNTY
2012 OCT 11 PM 1:13
J. L. LABLEY

October 11, 2012

By:


D. Alan Lazenby
R. Patrick Martin

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ATTORNEYS FOR PLAINTIFFS

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2012 OCT 12 PM 1:13
H. LUTZ BLAUWLEY

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG) IN THE COURT OF COMMON PLEAS

JAMES LUTHER PLEMMONS AND) Civil Action No. 2012-CP-42-00346
WANDA SUE CLARK PLEMMONS,)
Plaintiffs,)

vs.)

STATE FARM MUTUAL)
AUTOMOBILE INSURANCE)
COMPANY, PLAZA INSURANCE)
COMPANY, THE STOVER)
COMPANY, INC., and HOWARD E.)
NEWTON, III,)
Defendants.)

ANSWER OF STATE FARM
MUTUAL AUTOMOBILE
INSURANCE COMPANY TO
SECOND AMENDED COMPLAINT

(Jury Trial Requested)

State Farm Mutual Automobile Insurance Company (State Farm)
answers the plaintiffs' second amended complaint as follows:

FOR A FIRST DEFENSE

1. Paragraph 1 is admitted upon information and belief.
2. Paragraph 2 is admitted upon information and belief.
3. Answering paragraph 3, State Farm admits it is an insurance company incorporated in Illinois, that it is licensed to do business in South Carolina and that it provided underinsurance motorist coverage on a 2005 Dodge Neon owned by John Carson but the remaining allegations in paragraph 3 are denied.
4. Paragraph 4 is admitted upon information and belief.
5. Paragraph 5 is admitted upon information and belief.

6. Answering paragraph 6, State Farm admits that this lawsuit concerns the plaintiffs' rights under two separate insurance policies with two different insurers but the remaining allegations in paragraph 6 are denied.

7. Answering paragraph 7, State Farm admits that certain of the actions involved in this lawsuit occurred in Spartanburg County, South Carolina but the remaining allegations in paragraph 7 are denied.

8. Answering paragraph 8, State Farm would show that venue and subject matter jurisdiction are matters of law to be determined by the Court and otherwise paragraph 8 is denied.

9. Answering paragraph 9, State Farm incorporates its answers to paragraphs 1 through 8 as fully and effectually as if set forth verbatim.

10. Answering paragraph 10, State Farm pursuant to SCRPC 10(c) adopts by reference the UIM carrier's answer to the complaint in Civil Action No. 2011-CP-42-3867 and otherwise paragraph 10 is denied.

11. Answering paragraph 11, State Farm pursuant to SCRPC 10(c) adopts by reference the answer of the UIM carrier to the complaint in Civil Action No. 2011-CP-42-3867 and otherwise paragraph 11 is denied.

12. Paragraph 12 is admitted.

13. Answering paragraph 13, State Farm denies that at the time of the accident the plaintiff James Plemmons guided the Dodge Neon's movements and denies the plaintiff James Plemmons was in control of the Dodge Neon while it was atop the wrecker at the time of the accident and otherwise paragraph 13 is denied.

14. Paragraph 14 is admitted.

15. State Farm is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 15 and, therefore, paragraph 15 is denied.

16. Answering paragraph 16, State Farm admits that at the time of the accident the Dodge Neon was inoperable but the remaining allegations in paragraph 16 are denied.

17. Answering paragraphs 17, 18, 19 and 20, State Farm pursuant to SCRCF 10(c) adopts by reference the answer of the UIM carrier to the complaint in Civil Action No. 2011-CP-42-3867 and otherwise these paragraphs are denied.

18. Paragraph 21 is denied.

19. State Farm is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 22 and, therefore, paragraph 22 is denied.

20. State Farm is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 23 and, therefore, paragraph 23 is denied.

21. Paragraph 24 is denied.

22. Answering paragraph 25, State Farm denies that at the time of the accident the plaintiff James Plemmons was in sole control of the Neon and denies the plaintiff James Plemmons guided the Neon's movements at the time of the accident and otherwise paragraph 25 is denied.

23. State Farm admits, upon information and belief, paragraph 26.

24. State Farm is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 27, 28, 29, 30, 31, 32, 33, 34, 35, 36 and 37 and, therefore, those paragraphs are denied.

25. Answering paragraph 38, State Farm incorporates its answers to paragraphs 1 through 37 as fully and effectually as if set forth verbatim.

26. State Farm is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 39 and, therefore, paragraph 39 is denied.

27. State Farm is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 40 and, therefore, paragraph 40 is denied.

28. Answering paragraph 41, State Farm refers to the case cited in that paragraph for the holding of that case and, to the extent the holding in that case differs from the allegations in paragraph 41, paragraph 41 is denied and otherwise paragraph 41 is denied.

29. State Farm is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 42 and 43 and, therefore, those paragraphs are denied.

30. Answering paragraph 44, State Farm incorporates its answers to paragraphs 1 through 43 as fully and effectually as if set forth verbatim.

31. Answering paragraph 45, State Farm admits that prior to the date of the accident James Plemmons loaded John Carson's 2005 Dodge Neon which was

insured with State Farm onto Plemmons' wrecker for towing but the remaining allegations in paragraph 45 are denied.

32. Paragraph 46 is denied.

33. Paragraph 47 is denied.

34. Answering paragraph 48, State Farm admits it has denied coverage for James Plemmons' claim but the remaining allegations in paragraph 48 are denied.

35. Answering paragraph 49, State Farm admits a controversy exists between the plaintiffs and State Farm but otherwise paragraph 49 is denied.

36. Paragraph 50 is admitted.

37. Paragraph 51 is denied.

38. Answering paragraph 52, State Farm incorporates its answers to paragraphs 1 through 51 as fully and effectually as if set forth verbatim.

39. Answering paragraph 53, State Farm admits it issued an insurance policy to John Carson insuring a vehicle owned by John Carson but otherwise paragraphs 53 is denied.

40. Paragraph 54 is denied.

41. Answering paragraph 55, State Farm admits upon information and belief that prior to the wreck John Carson's daughter gave James Plemmons permission to transport the Dodge Neon to Plemmons' repair shop but otherwise paragraph 55 is denied.

42. Paragraph 56 is denied.

43. Paragraph 57 is denied.

44. Answering paragraph 58, State Farm admits it has declined the plaintiffs' claim for coverage under the policy State Farm issued to John Carson but the remaining allegations in paragraph 58 are denied.

45. Paragraph 59 is denied.

46. Paragraph 60 is denied.

47. Paragraph 61 is denied.

48. Paragraph 62 is denied.

49. Paragraph 63 is denied.

50. Paragraph 64 is denied.

51. Answering paragraph 65, State Farm incorporates its answers to paragraphs 1 through 64 as fully and effectually as if set forth verbatim.

52. Answering paragraph 66, State Farm would show that any duties owed to the plaintiffs are matters of law to be determined by the Court and otherwise paragraph 66 is denied.

53. State Farm is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 67, 68, 69, 70 and 71 and, therefore, these paragraphs are denied.

54. Except as is specifically admitted, each and every allegation in the plaintiffs' second amended complaint and in the prayer of the second amended complaint is denied.

FOR A SECOND DEFENSE

55. The second amended complaint fails to set forth facts sufficient to constitute a cause of action.

Wherefore, having fully answered the second amended complaint, State Farm Mutual Automobile Insurance Company prays that the second amended complaint be dismissed, with costs, and for such other and further relief as this Court may deem just and proper.

NELSON MULLINS RILEY & SCARBOROUGH LLP

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Attorneys for State Farm Mutual Automobile Insurance Company

Charleston, South Carolina

October 15, 2012

CERTIFICATE OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough, L.L.P., counsel for State Farm Mutual Automobile Insurance Company, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by sending a copy of the same via U.S. Regular mail, postage paid, to the following counsel of record:

Pleadings: Answer of State Farm Mutual Automobile Insurance Company to Second Amended Complaint

Counsel Served:

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Counsel for Plaintiff

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Turner Padgett Graham & Laney, PA
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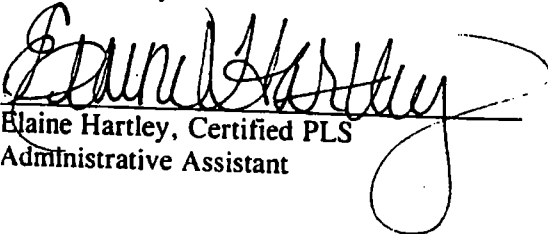
Counsel for Plaza Insurance Company

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Counsel for Plaintiff

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Greenville, SC 29602

*Counsel for The Stover Company, Inc. and
Howard E. Newton, III*


Blaine Hartley, Certified PLS
Administrative Assistant

October 15, 2012

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

James Luther Plemmons and Wanda Sue)
Clark Plemmons,)

Plaintiffs,)

vs.)

State Farm Mutual Automobile Insurance)
Company, John Carson, Plaza Insurance)
Company,)

Defendants.)

Case No.: 7:12-CV-00495-HMH

PLAINTIFFS' RULE 26(F) REPORT

The parties, having consulted pursuant to Rule 26(f), Fed. R. Civ. P., hereby report as follows (check one below):

- ☒ We agree that the schedule set forth in the Conference and Scheduling Order filed is appropriate for this case. **The parties' proposed discovery plan as required by Fed. R. Civ. P. Rule 26(f) and the information required by Local Civil Rule 26.03 are attached.**
- ☐ We agree that the schedule set forth in the Conference and Scheduling Order filed requires modification as set forth in the proposed Consent Amended Scheduling Order which will be e-mailed to chambers as required (use format of the Court's standard scheduling order). **The parties' proposed discovery plan as required by Fed. R. Civ. P. Rule 26(f) and the information required by Local Civil Rule 26.03 are attached.**
- ☐ We are unable, after consultation, to agree on a schedule for this case. We, therefore, request a scheduling conference with the Court. **The parties' proposed discovery plan as required by 26(f) Fed. R. Civ. P., with disagreements noted, is attached. The information required by Local Civil Rule 26.03 is also attached.**

SIGNATURE PAGE TO FOLLOW

**ROA 000048
APP 000051**

March 28, 2012

By: /s/ D. Alan Lazenby
D. Alan Lazenby (Fed. I.D. No. 7385)

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ATTORNEYS FOR PLAINTIFFS

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

James Luther Plemmons and Wanda Sue	)	Case No.: 7:12-CV-00495-HMH
Clark Plemmons,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	PLAINTIFFS' 26(F)(3) DISCLOSURES AND
State Farm Mutual Automobile Insurance	)	LOCAL RULE 26.03 RESPONSES
Company, John Carson, Plaza Insurance	)	
Company,	)	
	)	
Defendants.	)	
_____	)	

Plaintiffs James Luther Plemmons and Wanda Sue Clark Plemmons, ("Plaintiffs"), by counsel, file this report pursuant to Federal Rule of Civil Procedure 26(f), Local Rule 26.03.

F.R.C.P. 26(f)(3) DISCLOSURES

(1) Rule 26(f)(3)(a): What changes should be made in the timing form, or requirement for disclosures under Rule 26(a), including a statement of when initial disclosures were made or will be made?

Response: None

(2) Rule 26(f)(3)(b): The subjects on which discovery may be needed, when discovery should be completed, and whether discovery should be conducted in phases or be limited to or focused on particular issues.

Response:

Plaintiffs anticipate that discovery will be needed concerning the facts surrounding the accident, the facts surrounding Mr. Plemmons' purchase of insurance coverage from Plaza, and the facts and circumstances surrounding Mr. Plemmons' use of the vehicle owned by Mr. Carson.

Plaintiffs do not anticipate that discovery will need to be completed in phases or limited to certain issues.

(3) Rule 26(f)(3)(c): Any issues about disclosure or discovery of electronically stored information, including the form or forms in which it should be produced.

Response: None anticipated at this time.

(4) Rule 26(f)(3)(d): Any issues about claims of privilege or of protection as trial preparation materials, including - if the parties agree on a procedure to assert these claims after production - whether to ask the court to include their agreement in an order.

Response: Plaintiffs anticipate that State Farm and Plaza will claim a privilege as to its claim file. Plaintiffs are not in agreement with this claim of privilege.

(5) Rule 26(f)(3)(e): What changes should be made in the limitations on discovery imposed under these rules or by local rule, and what other limitations should be imposed?

Response: None.

(6) Rule 26(f)(3)(e): Any other orders that the court should issue under Rule 26(c) or under Rule 16(b) and (c).

Response: None of which Plaintiffs are currently aware.

DESCRIPTION OF THE CASE

26.03(A)(1) A short statement of the facts of the case.

Response: On July 31, 2010, at approximately 5:00 a.m., Mr. Plemmons was standing alongside his 2000 GMC Wrecker truck (the Wrecker) which was legally parked on the paved median headed south on U.S. Highway 29 in Spartanburg County, South Carolina. Mr. Plemmons was operating the lever on his truck in the process of loading a vehicle owned by Queen Mills onto the Wrecker. Mr. Plemmons had already loaded a 2005 Dodge Neon belonging to the Defendant Carson and said car was atop the Wrecker for towing. Mr. Plemmons had picked up this vehicle at the specific request of the owner for the purpose of transporting the vehicle to Mr. Plemmons' shop so he could perform

mechanical work on said vehicle. This vehicle was otherwise inoperable.

Tereso Garcia Diaz, now deceased, was driving his 1999 Volkswagen headed north on U.S. Highway 29, under the influence of alcohol and cocaine. While driving under the influence of cocaine and alcohol, Diaz traveled approximately thirty miles per hour over the posted speed limit. Without notice or warning to Plaintiffs, Diaz crossed over the median, crashing into the front of the Wrecker.

The impact of Decedent's vehicle caused the Wrecker, which was legally parked and under the supervision of Greer Police Department, to roll backwards, running over Mr. Plemmons and instantly severing his leg above the knee causing extraordinary blood loss and injury. The Dodge Neon owned by Carson, after Diaz struck the Wrecker, played a role in causing damages to Plemmons and was knocked off of the Wrecker in the collision.

Mr. Plemmons has sustained significant injuries in excess of Diaz's liability coverage and in excess of Mr. Plemmons' own UIM policy as it now exists. Mr. Plemmons' subsequent injuries have caused a loss of consortium for Mrs. Plemmons.

Plaintiffs contend that Mr. Plemmons was, at the time of the incident, a permissive "user" of the car owned by John Carson and has rights under the Defendant State Farm's policy with John Carson. Mr. Plemmons had a UIM policy through Defendant Plaza Insurance Company in the amount of \$100,000, which purported to be the "combined single limit" of coverage even though Mr. Plemmons insured two vehicles under the Plaza Policy. Plaintiffs contend that Plaza failed to make a meaningful offer of UIM coverage because it did not explain the nature of underinsured motorist coverage, and had pre-selected a coverage amount of \$100,000 without explaining such to Mr. Plemmons and did not explain that he could purchase up to \$300,000 of UIM coverage since that was his liability limit.

FACT WITNESSES

26.03(A)(2) The names of fact witnesses likely to be called by the party and a brief summary of their expected testimony.

Response: Investigation and discovery for all parties is ongoing, but as things stand, it is anticipated that the following people may or will be percipient witnesses:

<u>Fact Witness</u>	<u>Summary of Expected Testimony</u>
James Plemmons	Mr. Plemmons is expected to testify to the circumstances of procuring the insurance policy from Plaza and the day of the accident.
Wanda Sue Clark Plemmons	Mrs. Plemmons is expected to testify to the aftermath of the accident including Mr. Plemmon's pain, suffering, and the change the accident has had in their lives.
Marcus McGarr	Mr. McGarr was an attorney for State Farm in the underlying negligence action. Mr. McGarr is expected to testify as to the reasons for filing the pleadings he did and the lack of correspondence in response to Mr. Plemmons' request for coverage.
Josetta Greene	Ms. Greene is expected to testify as to the circumstances of State Farm's rejection of UIM coverage to Mr. Plemmons before a formal demand for coverage was made and in failing to respond to formal requests for coverage.
John Carson	Mr. Carson is expected to testify as to the ownership of the Dodge Neon.
Kim Carson	Ms. Carson is expected to testify to the circumstances of Mr. Plemmons towing the Dodge Neon and the permission she gave him to do so.
Queen Mills	Ms. Mills is expected to testify as to the circumstances of the day of the accident.
Howard Newton	Mr. Newton is expected to testify as to the circumstances of The Stover Company, Inc.'s procurement of insurance for Mr. Plemmons.
Representative The Stover Company, Inc.	This witness is expected to testify as to the circumstances of The Stover Company, Inc.'s procurement of insurance for Mr. Plemmons.
Representative State Farm Mutual Automobile Insurance Company	This witness is expected to testify as to the circumstances surrounding State Farm's rejection of UIM coverage to Mr. Plemmons.
Officer Amanda Barnes	This witness is expected to testify as to the circumstances surrounding the accident of July 31, 2010.
Officer Shaun Plount	This witness is expected to testify as to the circumstances surrounding the accident of July 31, 2010.

EXPERT WITNESSES

26.03(A)(3) The names and subject matter of expert witnesses (if not witnesses have been identified, the subject matter and field of expertise should be given as to experts likely to be offered).

Discovery is still ongoing and while Plaintiffs have not retained an expert witness at this time, they reserve the right to do so in the future.

SUMMARY OF CLAIMS AND/OR DEFENSES

26.03(A)(4) A summary of the claims or defenses with statutory and/or case citations supporting the same.

Summary of Plaintiff's claims and/or defenses:

Plaintiffs filed a Declaratory Judgment action against the Defendant State Farm to determine coverage under a policy in effect between John Carson and State Farm, of which Plaintiffs believe Mr. Plemmons to be a Class II user of the vehicle. At the time of the accident, Mr. Plemmons was towing Carson's vehicle.

Plaintiffs have asserted a cause of action for insurance bad faith against the Defendant State Farm. Upon information and belief, State Farm denied coverage to Mr. Plemmons on the grounds he was not "using" the Dodge Neon that State Farm insured. Plaintiffs believe this is bad faith because there is clear primary and secondary law to state that a towed vehicle is a used vehicle. Furthermore, State Farm interposed an improper defense to the underlying tort action and refused to communicate with Mr. Plemmons concerning his request for coverage.

Plaintiffs filed a Declaratory Judgment action to determine whether Mr. Plemmons can stack benefits of an insurance policy in effect between Plaza and Plaintiffs. Counsel for Plaza has indicated that Plaza will concede that Mr. Plemmons can stack coverage; however, the parties have not entered a stipulation in this regard.

Plaintiffs filed a Declaratory Judgment action to determine whether a meaningful offer of Under Insured Motorist Coverage (UIM) was made to Plaintiff James Plemmons. This is based on an improperly completed UIM offer form and Mr. Plemmons lack of understanding of the coverage.

In support of its claims against the defendants, Plaintiffs rely on the following relevant case and statutory authority:

<u>Cause of Action/Asserted Against</u>	<u>Statutory and/or Case Citations</u>
Declaratory Judgment against State Farm	<i>S.C. Code Ann. Section 15-53-10 et seq., State Farm Fire and Cas. Co. v. Pinson</i> , 984 F.2d 610 (4th Cir. 1993); 8 Couch on Ins. § 111:36; and 7 Am. Jur. 2d Automobile Insurance § 95.
Insurance Bad Faith against State Farm	<i>Nichols v. State Farm Mut. Auto. Ins. Co.</i> , 306 S.E.2d 616, 279 S.C. 336 (S.C. 1983); <i>Orangeburg Sausage Co. v. Cincinnati Ins. Co.</i> , 450 S.E.2d 66, 316 S.C. 331 (S.C.App. 1994); <i>Potylicki v. Allstate Insurance Co.</i> , 386 Fed.Appx. 435, 2010 WL 2640477 (C.A.4 (S.C.)); <i>State Farm Fire and Cas. Co. v. Pinson</i> , 984 F.2d 610 (4th Cir. 1993); 8 Couch on Ins. § 111:36; and 7 Am. Jur. 2d Automobile Insurance § 95.
Declaratory Judgment as to Plaza-Meaningful Offer	<i>S.C. Code Ann. Section 15-53-10 et seq.; Croft v. Old Republic Ins. Co.</i> , 365 S.C. 402, 618 S.E.2d 909 (2005); <i>State Farm Mut. Auto. Ins. Co. v. Wannamaker</i> 291 S.C. 518, 354 S.E.2d 555 (1987), <i>Bower v. National General Insurance Company</i> , 312 S.C. 112, 569 S.E.2d 313 (S.C. 2002), <i>Grinnell v. Wood</i> , 389 S.C. 350, 698 S.E.2d 796 (S.C. 2010)
Declaratory Judgment as to Plaza- Stacking	<i>S.C. Code Ann. Section 15-53-10 et seq.; Nakatsu v. Encompass Indemnity Company</i> , 390 S.C. 172, 700 S.E.2d 283 (S.C. 2010).

PROPOSED DATES

26.03(A)(5) Absent special instructions from the assigned judge, the parties shall propose dates for the following deadlines listed in Local Rule 16.02:

- (a) Exchange of Fed. R. Civ. P. 26(a)(2) expert disclosures; and
- (b) Completion of discovery.

Response: Plaintiffs will identity and complete their discovery in accordance with the scheduling order.

26.03(A)(6)

The parties shall inform the Court whether there are any special circumstances which would affect the time frames applied in preparing the scheduling order. *See generally* Local Civil Rule 16.02(C).

Response: Plaintiffs are not currently aware of any special circumstances.

26.03(A)(7)

The parties shall provide any additional information requested in the Pre-Scheduling Order (Local Civil Rule 16.01) or otherwise requested by the assigned judge.

Response: Plaintiffs are not aware of any additional information requested in the Pre-Scheduling Order or otherwise requested by the assigned Judge.

March 28, 2012

By: /s/ D. Alan Lazenby
D. Alan Lazenby (Fed. I.D. No. 7385)

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ATTORNEYS FOR PLAINTIFFS

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

James Luther Plemmons and Wanda Sue	)	Case No.: 7:12-CV-00495-HMH
Clark Plemmons,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	PLAINTIFFS' MEDIATION
	)	CERTIFICATION
State Farm Mutual Automobile Insurance	)	
Company, John Carson, Plaza Insurance	)	
Company,	)	
	)	
Defendants.	)	
_____	)	

Pursuant to the Court's Conference and Scheduling Order dated February 23, 2012, the undersigned counsel for the Plaintiffs certifies as follows:

1. I have discussed the availability of mediation with Plaintiffs;
2. I have discussed the advisability and timing of mediation with opposing counsel;
and
3. Plaintiffs agree to submit the case to mediation.

March 28, 2012

By: /s/ D. Alan Lazenby
D. Alan Lazenby (Fed. I.D. No. 7385)

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ATTORNEYS FOR PLAINTIFFS

ROA 000057
APP 000060

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

James Luther Plemmons and Wanda Sue Clark)
Plemmons)

☐ Plaintiff)

v.)

State Farm Mutual Automobile Insurance Company,)
Plaza Insurance Company, The Stover Company,)
Inc. And Howard E. Newton, III)

☒ Defendant.)

IN THE COURT OF COMMON PLEAS

CASE NO.

2012-CP-42-00346

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:

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Defendant's Attorney:

Charles R. Norris, Esquire, Bar No. 004238

Address:

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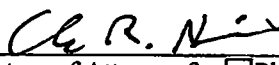
phone: 843-720-4303 fax: 843-720-4352

e-mail: Charles.norris@nelsonmullins.com other:

☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)

☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II 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: 20 Minutes Court Reporter Needed: ☒ 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 / ☒ Defendant	September 18, 2012 Date submitted
SECTION III: Motion Fee	
☒ PAID – AMOUNT: 25.00 ☐ EXEMPT:	
(check reason) ☐ 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) ☐ Proposed 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: _____	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	_____ JUDGE CODE: _____ Date: _____
CLERK'S VERIFICATION	
Collected by: _____ Date Filed: _____	
☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED – AMOUNT DUE: _____	

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG)

JAMES LUTHER PLEMMONS AND) Civil Action No. 2012-CP-42-00346
WANDA SUE CLARK PLEMMONS,)

Plaintiffs,)

vs.)

MOTION FOR SUMMARY
JUDGMENT

STATE FARM MUTUAL)
AUTOMOBILE INSURANCE)
COMPANY, PLAZA INSURANCE)
COMPANY, THE STOVER)
COMPANY, INC., and HOWARD E.)
NEWTON, III,)

Defendants.)

Pursuant to SCRCP 56 State Farm Mutual Automobile Insurance Company (State Farm) moves for summary judgment on the second cause of action in the plaintiffs' amended complaint for declaratory judgment, on the third cause of action in the amended complaint alleging bad faith and on the plaintiffs' claim for attorney's fees and PIP benefits.

The grounds for State Farm's motion for summary judgment on the second cause of action for declaratory relief is that the State Farm policy insuring a car owned by John Carson does not provide underinsurance motorist (UIM) coverage for the plaintiff's accident of July 31, 2010 because:

- (a) The plaintiff's accident was not caused by the ownership, operation, use or maintenance of an underinsured motor vehicle;
- (b) The vehicle under which the plaintiff claims UIM coverage - a 2005 Dodge Neon owned by Carson - was

not being used for transportation purposes at the time of the plaintiff's injury on July 31, 2010;

- (c) No causal connection exists between the vehicle insured by State Farm and the plaintiff's injury on July 31, 2010;
- (d) An act of independent significance broke the causal link between the Carson vehicle and the injury sustained by the plaintiff on July 31, 2010;
- (e) The vehicle owned by Carson and insured by State Farm was not an active accessory to the plaintiff's injury on July 31, 2010;
- (f) The plaintiff's injury on July 31, 2010 was not foreseeably identifiable with the normal use of the car owned by Carson and insured by State Farm.

State Farm is entitled to summary judgment on the plaintiffs' third cause of action alleging insurance bad faith because:

- (a) As a matter of law State Farm did not act unreasonably or in bad faith because it had a reasonable basis for denying the plaintiff's claim;
- (b) An element of a cause of action for bad faith refusal to pay benefits is a refusal by the insurer to pay benefits due under the contract of insurance and State Farm did not refuse to pay benefits which are due under the contract of insurance;

State Farm is entitled to summary judgment on the plaintiffs' claim for attorney's fees on the ground that there is no contractual or legal basis for an award of attorney's fees. State Farm is also entitled to summary judgment on the plaintiffs' claim for PIP benefits because the plaintiff does not fit the definition of insured for this coverage.

This motion for summary judgment is based upon allegations in the plaintiffs' amended complaint, a certified copy of the policy State Farm issued to John Carson, the deposition of the plaintiff and the exhibits to that deposition, the deposition

of Amanda Barnes and the exhibits to that deposition, the plaintiffs' responses to discovery, interrogatory answers and applicable cases and statutes.

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UNDISPUTED FACTS

In July 2010 James Plemmons operated a tow truck service in addition to being a mechanic with his own garage in Spartanburg. (Plemmons Depo., pp. 6, 7) On July 30, 2010 Plemmons was contacted by Kim Carson to come to her house and pick up her car because it would not operate. Plemmons then went to Carson's house and loaded Carson's car on Plemmons' tow truck. Once Plemmons loaded the Carson vehicle he then took it to his house rather than his garage because his garage was not open Friday evenings nor was it open on Saturdays. (Plemmons Depo., pp. 10-12)

Early the next morning Plemmons received a call to pick up another car. Plemmons received this call because he was on a rotating list of tow truck operators to pick up vehicles. Plemmons then drove his tow truck with the Carson car already on top to Highway 29 in Spartanburg County to pick up a car owned by a Ms. Mills. (Plemmons Depo., pp. 11-14) The Mills car had been pulled over because the driver of that car had been stopped by the police. At this time it was around 4 or 5 in the morning and there was very little traffic. (Plemmons Depo., pp. 14, 15)

When Plemmons arrived to pick Mills' car on Highway 29 the 2005 Dodge Neon insured with State Farm was on the flatbed and secured in a stationary position. (Plemmons Depo., p. 18) Other than being "atop the wrecker for towing" (Plaintiffs' Amended Complaint ¶ 10) "the Neon was otherwise inoperable." (Plaintiff's Amended Complaint ¶ 14) No one was driving the Dodge Neon at the time of the accident nor was it being used for transportation at the time of the accident. In fact, the Dodge Neon could not be used for transportation because it was inoperable. (Plemmons Depo., pp. 25, 26) The only "use" Plemmons was making of the Dodge

Neon at the time of the accident was transporting it back to his shop. (Plemmons Depo., p. 27) The Dodge Neon neither caused the accident nor contributed to it (Plemmons Depo., p. 32) and there is no one to blame for Plemmons' injury other than Tereso Diaz whose car hit Plemmons' tow truck. (Plemmons Depo., p. 30; p. 48)

Plemmons did not see the accident because at the time of the accident he was looking at the car owned by Ms. Mills which Plemmons was securing to his tow truck. (Plemmons Depo., p. 20) However, police officer Amanda Barnes did observe the accident as she was standing next to Plemmons when the car operated by Diaz struck Plemmons' tow truck. While Barnes was standing a foot and a half from Plemmons she observed out of the corner of her eye a vehicle southbound on Highway 29 traveling at a high rate of speed. The car traveling at the high rate of speed was operated by Diaz and hit the front of the tow truck. (Barnes Depo., pp. 9-18) The impact knocked the tow truck back and it skidded over Plemmons' left leg. (Barnes Depo., pp. 18, 19) The Carson vehicle atop the tow truck was not being used at the time of the accident (Barnes Depo., p. 20), it did not hit Plemmons (Barnes Depo., p. 20), it was not being used for transportation at the time of the accident and it did not contribute to the accident. (Barnes Depo., pp. 21, 22; p. 26) Instead, Diaz's car was the sole cause of the accident as every other vehicle was standing still out of the way and doing nothing. (Barnes Depo., p. 28) In fact, none of the diagrams of the collision scene even reference the Carson car secured on top of the tow truck. (Barnes Depo., pp. 39-43; Exhibits 2, 6)

SOUTH CAROLINA LAW

Under the State Farm policy and applicable statutes (§§ 38-77-140, 38-77-160) UIM coverage exists only if the bodily injury arises out of the operation, ownership, maintenance or use of a motor vehicle. A number of South Carolina cases have considered a variety of factual scenarios on the issue of whether an accident arose out of the operation, ownership, maintenance or use of a motor vehicle. These cases set forth guidelines and standards for determining when an accident arises out of or is caused by the operation, ownership, maintenance or use of a motor vehicle. The South Carolina cases finding insurance coverage for an accident arising out of the operation, use, ownership or maintenance of a motor vehicle and those cases finding no coverage where an accident did not arise out of or was caused by the operation, ownership, maintenance or use of a motor vehicle are set forth below:

Cases finding accidents arose out of operation, ownership, maintenance or use of a motor vehicle

1. Chapman v. Allstate Insurance Company, 211 S.E.2d 876 (S.C. 1975)
2. Wausau Underwriters Insurance Company v. Howser, 422 S.E.2d 106 (S.C. 1992)
3. Home Insurance Company v. Towe, 441 S.E.2d 825 (S.C. 1994)
4. South Carolina Farm Bureau Mutual Insurance Company v. Kennedy, 2012 WL 3029581 (S.C. 2012)

Cases finding accidents did not arise out of operation, ownership, maintenance or use of a motor vehicle

1. Hite v. Hartford Accident Indemnity Company, 344 S.E.2d 173 (S.C. App. 1986)
2. Canal Insurance Company v. Insurance Company of North America, 431 S.E.2d 577 (S.C. 1993)
3. Carraway v. Smith, 467 S.E.2d 120 (S.C. App. 1995)
4. State Farm Fire and Casualty Company v. Aytes, 503 S.E.2d 744 (S.C. 1998)

5. Doe v. South Carolina State Budget and Control Board, 523 S.E.2d 457 (S.C. 1999)
6. State Farm Mutual Automobile Insurance Company v. Bookert, 523 S.E.2d 181 (S.C. 1999)
7. South Carolina Property and Casualty Guaranty Association v. Yensen, 548 S.E.2d 880 (S.C. App. 2001)
8. Peagler v. USAA Insurance Company, 628 S.E.2d 475 (S.C. 2006)

SUMMARY OF CASES FINDING COVERAGE WHERE ACCIDENT WAS
CAUSED BY OR AROSE OUT OF OPERATION, OWNERSHIP, USE OR
MAINTENANCE OF A MOTOR VEHICLE

In Chapman v. Allstate Insurance Company, 211 S.E.2d 876 (S.C. 1975), the Supreme Court held Chapman's injury arose out of the use of an insured automobile when Chapman received her injuries in a fall from the automobile. Wausau Underwriters Insurance Company v. Howser, 422 S.E.2d 106 (S.C. 1992), held Howser's injury arose out of the ownership, maintenance or use of an uninsured vehicle when Howser was shot by the driver of an unknown car. Citing Chapman, the Supreme Court held there was a sufficient causal connection between the vehicle and Howser's injury and that Howser's injury arose out of use of the assailant's vehicle.

In Home Insurance Company v. Towe, 441 S.E.2d 825 (S.C. 1994), Alexander was riding in a vehicle driven by Towe and threw a bottle from the moving vehicle at a road sign. However, instead of striking the sign the bottle hit a vehicle driven by McClaskey in the opposite direction and seriously injured McClaskey. Citing Howser, the Supreme Court held that for purposes of uninsured motorist coverage an

injury arises out of the use of an automobile if there is a causal connection between the vehicle and the injury and if no act of independent significance breaks the causal link. In finding coverage, the Supreme Court stated the use of the automobile placed Alexander in the position to throw the bottle at the sign and the vehicle's speed contributed to the velocity of the bottle, thereby increasing the seriousness of McClaskey's injuries. As in Howser, the Supreme Court held the automobile was an active accessory that gave rise to the injuries and that the use of the automobile and the throwing of the bottle were "inextricably linked" as one continuing act. 441 S.E.2d at 827

The three cases which have found an injury arose out of the operation, use or ownership of a vehicle involved factual scenarios where an injury was sustained by falling out of the vehicle (Chapman), by a gun shot from the vehicle (Howser), and by a bottle thrown from the vehicle (Towe). In these cases the Court held the motor vehicle in question was an active accessory giving rise to the injuries. These cases do not apply to the present case because, as explained in more detail below, the Carson vehicle was not an active accessory to Plemmons' injury.

The fourth case to find UIM coverage, South Carolina Farm Bureau v. Kennedy, 2012 WL 3029581 (S.C. 2012), was a 3-2 decision of the South Carolina Supreme Court which involved an issue not present in this case; namely; whether the person seeking UIM coverage was "occupying" the vehicle under which UIM coverage was sought. The Supreme Court found Kennedy met the definition of a "covered person" because he was "upon" the covered auto by virtue of having his hand upon it at

one time. Kennedy is inapposite to the present case as there is no issue whether Plemmons was occupying or even "upon" Carson's car at the time of the accident.

SUMMARY OF CASES IN WHICH NO COVERAGE EXISTS

In Hite v. Hartford Accident Indemnity Company, 344 S.E.2d 173 (S.C. App. 1986), Hite left his insured automobile and walked 50 feet before being struck by an automobile being driven by Martin. Hite was not in, on or touching the vehicle he had been driving which was insured by Hartford. In finding no coverage, the Court of Appeals held that for an injury to be caused by the "use" of a vehicle the injury must be foreseeably identifiable with the normal use, maintenance and ownership of the vehicle and if the injury was directly caused by some independent or intervening cause wholly disassociated from, independent of or remote from the use of the automobile, the injury cannot be said to arise out of its "use." The Court held that Hite's leaving the insured automobile and walking 50 feet was an independent or intervening cause wholly disassociated from, independent of and remote from the use of the insured automobile. 344 S.E.2d at 176, 177

In Canal Insurance Company v. Insurance Company of North America, 431 S.E.2d 577 (S.C. 1993), the Court of Appeals reversed a finding of coverage by the circuit court. The issue was whether use of a crane constituted use of a motor vehicle to mandate coverage under § 38-77-140. The Court of Appeals held the truck crane was not being used for transportation at the time of the accident and it construed § 38-77-140 and defined "use of a motor vehicle" as limited to transportation uses.

The Court of Appeals again reversed a finding of coverage by the circuit court in Carraway v. Smith, 467 S.E.2d 120 (S.C. App. 1995). Carraway was stopped

at a red light behind Smith. Smith exited the car and spoke to third party for about five minutes and then pulled out a gun and started firing and one bullet hit Carraway. Concluding there was no coverage, the Court of Appeals held the party seeking coverage must establish a causal connection between the vehicle and the injury and there must exist no act of independent significance breaking the causal link. 467 S.E.2d at 121 The Court of Appeals distinguished the Howser case by stating that in Carraway "there was no ongoing use of a vehicle in this case to carry out the attack" and that "Carraways's injuries were caused by an independent act wholly separate from the use of the vehicle." 467 S.E.2d at 121, 122 Similarly, in the present case Plemmons' injury was caused by an independent act wholly separate from Plemmons' "use" of the Carson vehicle; namely, Diaz's driving his car at 90 miles an hour into Plemmons' tow truck. (Barnes Depo., pp. 16, 17) The plaintiff even admits the Dodge Neon owned by Carson did not cause the accident nor contributed to it. (Plemmons Depo., p. 32)

In State Farm Fire and Casualty Company v. Aytes, 503 S.E.2d 744 (S.C. 1998), Dawson owned a vehicle insured by State Farm. Aytes forcibly took Dawson's car key, forced Dawson into her car and then drove Dawson to an area of Aytes' property with the express intent of killing Dawson. While standing outside the car on the passenger side, Aytes fired a pistol toward Dawson and struck her in the foot. The Supreme Court held there was not a causal connection as the vehicle was not an active accessory nor was it being used for transportation at the time of the injury. Accordingly, Dawson's injuries did not result from the ownership, maintenance or use of her vehicle. Aytes is significant in that it explicitly cites Canal Insurance Company

that for a requirement of coverage "the vehicle was being used for transportation at the time of the assault." This is a common thread in Chapman, Howser and Towe that at the time of the injury the vehicle under which coverage was sought was being used for transportation. Conversely, in the present case it is undisputed the vehicle under which Plemmons seeks coverage - the Carson vehicle insured with State Farm - was not being used for transportation at the time of the accident. (Plemmons Depo., p. 26)

In Doe v. South Carolina State Budget and Control Board, 523 S.E.2d 457 (S.C. 1999), Doe was stopped by a police officer on suspicion of driving under the influence and was offered the option of being arrested or having sex with the police officer. In concluding no coverage existed, the Supreme Court cited the three part test announced in Aytes, the third element of which was that the vehicle be used for transportation at the time of the assault. In finding no coverage, the Court held the police cruiser was not being used for transportation at the time of the assault and it was not an active accessory.

State Farm Mutual Automobile Insurance Company v. Bookert, 523 S.E.2d 181 (S.C. 1999) reversed a decision of the South Carolina Court of Appeals which found coverage. Bookert was injured when two soldiers fired shots in a McDonalds parking lot. Again, the Court cited the three part test for coverage in Aytes that: (1) there exist a causal connection between the vehicle and the injury; (2) no act of independent significance breaks the causal link; (3) the vehicle is being used for transportation at the time of the assault. The Court held that the causal connection requirement means the vehicle must be an "active accessory" to the injury, something less than proximate cause but more than the mere site of the injury and the injury must

be foreseeably identifiable with the normal use of the vehicle. 523 S.E.2d at 182 Because Bookert's injuries were not foreseeably identifiable with the normal use of an automobile, no coverage was found and the decision of the Court of Appeals finding coverage was reversed.

The issue of whether an injury arose out of the operation, use or maintenance of an automobile was next considered in South Carolina Property and Casualty Guaranty Association v. Yensen, 548 S.E.2d 880 (S.C. App. 2001). Yensen was standing next to a car while it was being hooked up to a tow truck when another driver struck Yensen and others. The South Carolina Court of Appeals held there was no causal connection between the tow truck and Yensen's injury, nor was the tow truck an active accessory to the accident. 548 S.E.2d at 884 Similarly, Plemmons did not use the Carson car in any way to make that car an active accessory to the accident, nor is there a causal connection between the Carson vehicle and the injury Plemmons suffered. (Plemmons Depo., p. 32)

The factual scenario in Peagler v. USAA Insurance Company, 628 S.E.2d 475 (S.C. 2006), was that Kathy Thompson was fatally injured when her husband was unloading two shotguns from a pick-up truck she was occupying. Thompson's husband lifted the shotguns off the rear seat and placed the barrel of the guns pointing toward the floor, but as he picked up one of the shotguns and began to exit the vehicle it discharged, striking and killing Kathy Thompson. The question was whether her fatal injury arose out of the ownership, maintenance or use of the pick-up truck. In finding no coverage, the Supreme Court referenced the Aytes three part test, the third element of which was that the vehicle must be used for transportation purposes

at the time of the injury. The Supreme Court held that Peagler, as Personal Representation of the Estate of Kathy Thompson, did not demonstrate the truck was an active accessory to the injury as it was not actively used or involved in causing the injury but was merely the site of the injury. 628 S.E.2d at 481 The Supreme Court concluded that resolution of the causal connection factor made it unnecessary to analyze the remaining Aytes factors, one of which was whether the vehicle was being used for transportation purposes at the time of the injury.

These cases require that for insurance coverage to exist the vehicle under which coverage is sought must:

- Be an active accessory to the injury;
- Be used for transportation purposes at the time of the injury;
- The injury must be foreseeably identifiable with the normal use of the vehicle; and
- No act of independent significance breaks the causal link between the vehicle and the injury.

To prove entitlement to UIM coverage under Carson's policy the plaintiffs must therefore prove the Carson car was (1) an active accessory to Plemmons' injury, (2) that the Carson car was used for transportation purposes at the time of Plemmons' injury, (3) that Plemmons' injury was foreseeably identifiable with the normal use of the Carson vehicle and (4) that no act of independent significance broke the causal link between the Carson vehicle and Plemmons' injury. The plaintiffs must also prove Plemmons was "using" Carson's car at the time of the accident as that is necessary to qualify as an insured for UIM coverage under the Carson policy. Not only can the plaintiffs not prove all of these elements, they cannot prove any of them.

ARGUMENT

I. The plaintiff's accident was not caused by the ownership, use, operation or maintenance of an underinsured motor vehicle.

The certified copy of John Carson's policy attached as Exhibit A provides at page 19 under the section for UIM coverage that for this coverage to apply the bodily injury must be caused by an accident arising out of the operation or ownership of the underinsured motor vehicle.¹ The next page provides that for purposes of UIM coverage insured means you, your spouse and relatives or any other person while occupying or using your car. It is undisputed that at the time of the accident Plemmons was not occupying the Carson vehicle. The issue is whether at the time of the accident Plemmons was using the Carson vehicle.

At the time of the accident Plemmons was not driving the Carson vehicle because it was inoperable. (Plemmons Depo., p. 18; p. 26) Plemmons was also not occupying the Carson vehicle nor was he even performing repair work on that vehicle at the time of the accident.

The plaintiffs' contention that Plemmons was "using" the Carson vehicle at the time of the accident is based upon State Farm Fire and Casualty Company v. Pinson, 984 F.2d 610 (4th Circuit 1993). In Pinson, Donald Rider was towing a pontoon boat behind his pickup truck. Rider entered an intersection without stopping and his truck and boat were struck by a vehicle driven by Pinson. Rider's boat was insured by State Farm under a boatowner's policy and Pinson made a claim of coverage

¹ Sections 38-77-140 and 38-77-160 expand UIM coverage beyond operating a motor vehicle to using a motor vehicle. One who operates a motor vehicle obviously uses it, but one can use a motor vehicle without operating it. Hite v. Hartford Accident, 344 S.E.2d 173, 175 (S.C. App. 1986)

under the State Farm boat owners liability policy arguing that his injuries arose in part from the boat's "use." The 4th Circuit held that a towed boat is in "use." The 4th Circuit stated:

Arguably a towed boat presents a stronger case for coverage than a towed vehicle. Usually, a vehicle is towed only when its owner is unable to put it to its intended purpose. A boat, on the other hand, must be towed in order for a landlocked owner to derive any enjoyment from boat ownership. 984 F.2d at 612 (emphasis in original)

In concluding that the contract intended a towed boat to be in "use" the majority noted that "unless a boat is permanently moored, it must be frequently transported to and from water to be put to its intended purpose." 984 F.2d at 613 The 4th Circuit concluded that "we believe that South Carolina would continue to construe "use" broadly and find that a towed boat is in "use." 984 F.2d at 613 The court further noted that there is no question that the towing of the boat caused or contributed to Pinson's injuries and that "the causal connection is particularly strong" because Pinson actually struck the boat as well as Rider's truck during the accident. 984 F.2d at 614 Here, in contrast, Plemmons never came in contact with the Carson vehicle. (Plemmons Depo., pp. 25, 31)

It is logical to consider a boat that is not permanently moored to be in use while it is being transported to water as otherwise the boat cannot be used for its intended purpose. In contrast, an inoperable car being transported to a repair shop is not in "use." Additionally, unlike the facts in Pinson, there is no causal connection between Plemmons' towing of Carson's car and Plemmons' injuries. Plemmons has admitted there is no one to blame for his injury other than Diaz, that the Dodge Neon itself did not hit Plemmons and that the Dodge Neon did not cause the accident nor

contribute to the accident. (Plemmons Depo., pp. 30-32) Similarly, Amanda Barnes testified the towed vehicle was not being used at the time of the accident and that the towed vehicle did not contribute to the accident. (Barnes Depo., pp. 20-22; p. 26) Instead, Diaz's car was the sole cause of the accident and every other vehicle was simply standing still out of the way and doing nothing. (Barnes Depo., p. 28)

II. The vehicle under which the plaintiff claims UIM coverage – the 2005 Dodge Neon owned by John Carson – was not being used for transportation purposes at the time of the plaintiff's injury on July 31, 2010.

During the course of the accident the Carson car was sitting on top of Plemmons' tow truck in a stationary position. (Plemmons Depo., p. 18) No one was driving the Dodge Neon at the time of the accident. In fact, at the time of the accident the Dodge Neon could not be used for transportation because it was inoperable. (Plemmons Depo., p. 26; Barnes Depo., pp. 21, 22)²

The South Carolina Supreme Court has made it explicitly clear that one requirement for an injury to arise out of the ownership, maintenance or use of a motor vehicle is that the vehicle must be used for transportation purposes at the time of the injury. Peagler v. USAA Insurance Company, 628 S.E.2d 475, 478 (S.C. 2006) This factor alone is sufficient to grant summary judgment to State Farm.

² To qualify as an insured under § 38-77-30(7) Plemmons must have been "using" the Dodge Neon at the time of the accident. If Plemmons was not "using" Carson's car, then § 38-77-160, which provides for UIM coverage if an insured has a vehicle "involved in the accident," does not apply. Under Merck v. Nationwide, 455 S.E.2d 697 (S.C. 1995) the Carson vehicle was "involved" in the accident if Plemmons was using Carson's car at the time of the accident. (The court did not consider in Merck the issue of whether Merck was "using" his car at the time of the accident.) However, Plemmons would still need to meet the other requirements of UIM coverage set forth in this memorandum.

III. No causal connection exists between the vehicle insured by State Farm and the plaintiff's injury on July 31, 2010.

The party seeking insurance coverage must show a causal connection between the vehicle under which coverage is sought (here, the Carson vehicle) and the injury. Peagler v. USAA Insurance Company, 628 S.E.2d 475, 479 (S.C. 2006) In this context causal connection involves a different analysis than establishing proximate cause to prove a tort. Proximate cause in the context of establishing tort liability requires proof of causation in fact and legal cause, the latter of which involves foreseeability. Eadie v. Krause, 671 S.E.2d 389 (S.C. App. 2008) In contrast, proving a causal connection for the purpose of establishing insurance coverage requires proof that:

- (a) The vehicle was an active accessory to the injury;
- (b) The vehicle was something less than the proximate cause but more than the mere site of the injury;
- (c) The injury was foreseeably identifiable with the normal use of the vehicle.

Peagler v. USAA Insurance Company, 628 S.E.2d at 479. The absence of any one of these causal elements is fatal to Plemmons' claim for coverage.

In the three cases in which an accident has been found to have arisen out of the use of an automobile for purposes of establishing insurance coverage, the automobile was an active accessory giving rise to the injuries. For example, in Chapman, Chapman fell from a moving car. In Howser, Hower's injury arose out of the use of an assailant's vehicle when a shot was fired at Howser from that vehicle. In Towe, the use of the automobile placed Alexander in the position to throw the bottle at a sign and the vehicle's speed contributed to the velocity of the bottle, thereby

increasing the seriousness of McClaskey's injuries. Here, however, as in State Farm Fire and Casualty Company v. Aytes, the vehicle was not an active accessory to the injury. In fact, if a stationary, inoperable motor vehicle not being used for transportation and which never even comes in contact with the plaintiff can be found to be an "active accessory" in causing the plaintiff's injury, the requirement that a vehicle be an "active accessory" to the injury will become meaningless.

IV. An act of independent significance broke the causal link between the Carson vehicle and the injury sustained by the plaintiff on July 31, 2010.

One of the requirements for establishing insurance coverage is that no act of independent significance break the causal link. State Farm Mutual Automobile Insurance Company v. Bookert, 523 S.E.2d 181, 182 (S.C. 1999) Here, the act of independent significance and, in fact, the only act of significance was Tereso Diaz's driving his automobile at 90 miles an hour into the front of Plemmons' tow truck, thereby knocking the tow truck backwards and over Plemmons' leg. As James Plemmons testified in his deposition, there is no one to blame for his injury other than Diaz (Plemmons Depo., p. 30), the injury would not have occurred but for Diaz and but for Diaz Plemmons would have his left leg today. (Plemmons Depo., p. 48) Officer Barnes corroborated Plemmons' testimony that the Carson vehicle did not contribute to the accident. (Barnes Depo., pp. 22; 26) As stated by Barnes, other than Diaz's car every other vehicle was standing still out of the way and doing nothing. (Barnes Depo., p. 28) Under these undisputed facts the negligence of Tereso Diaz was an act of independent significance which broke any causal link (of which there was none in any event) between the Carson vehicle and the injury sustained by Plemmons.

V. The vehicle owned by John Carson and insured by State Farm was not an active accessory to the plaintiff's injury on July 31, 2010.

One of the requirements for establishing UIM coverage is that the vehicle under which UIM coverage is sought must be an active accessory to the injury. Peagler v. USAA Insurance Company, 628 S.E.2d 475, 479 (S.C. 2006) The Plaintiffs have no proof the Carson vehicle was an accessory to James Plemmons' injury, much less an "active" accessory. As attested by Officer Amanda Barnes, the sole cause of the accident was Tereso Diaz. Every other vehicle was standing still out of the way doing nothing. (Barnes Depo. p. 28) A vehicle standing still, out of the way and doing nothing and which simply happens to be in the proximity of the accident, cannot be an active accessory to the injury. Otherwise, the requirement that a party seeking UIM coverage establish the vehicle with UIM coverage be an active accessory to the injury will become meaningless.

VI. The Plaintiffs injury on July 31, 2010, was not foreseeably identifiable with the normal use of the car owned by John Carson and insured by State Farm.

South Carolina Courts have used a three part test to determine whether an individual's personal injuries arise out of the ownership, operation, maintenance or use of an automobile such that they are covered by an automobile insurance policy. State Farm Mutual Automobile Insurance Company v. Bookert, 523 S.E.2d 181, 182 (S.C. 1999) One of the three elements of this test is that there exist a causal connection between the vehicle and the injury. There are three components to the causal connection requirement, one of which is that the injury must be foreseeably identifiable with the normal use of the automobile. 523 S.E.2d at 182

The normal use of an automobile is to transport persons or goods from point A to point B. At the time of Plemmons' injury, the Carson vehicle was not being used for this purpose. In fact, the Carson vehicle was not being used for any purpose at all. Instead, it was in a secured position on a tow truck because, as alleged in the Plaintiff's Amended Complaint, "the Neon was otherwise inoperable." (Plaintiffs' Amended Complaint ¶ 14) Under no construction of the facts can a car in an inoperable condition sitting on a tow truck be considered to be a normal use of that car.

State Farm Fire and Casualty Company v. Pinson, 984 F.2d 610 (4th Circuit 1993), pre-dates the decision of the South Carolina Supreme Court in Bookert. While the Fourth Circuit in Pinson cited federal common law for the proposition that a towed vehicle is a "used" vehicle (984 F.2d at 612), the Pinson decision does not address the requirement that the party seeking coverage prove the injury was foreseeably identifiable with the normal use of the automobile under which coverage is sought. Granted, the normal use of a boat does involve towing the boat to a place where the boat can be used – water. However, this reasoning does not apply to an inoperable vehicle sitting on a tow truck.

VII. State Farm is entitled to summary judgment on the Plaintiffs' third cause of action alleging insurance bad faith because as a matter of law State Farm did not act unreasonably or in bad faith because it had a reasonable basis for denying the Plaintiffs' claim.

Where an insurer's decision is reasonable an appellate court will reverse a trial court's determination that the insurer breached the covenant of good faith and fair dealing. Doe v. South Carolina Medical Malpractice Association, 557 S.E.2d 670 (S.C. 2001) Bad faith is a knowing failure on the part of an insurer to exercise an

honest and informed judgment in processing a claim. An insurer acts in bad faith only where there is no reasonable basis to support the insurer's decision. Where the only reasonable inference is that an insurer did not act in bad faith or unreasonably in handling the claim, there is no error in the lower Court's decision to direct a verdict in favor of the insurance company. American Fire & Casualty v. Johnson, 504 S.E.2d 356, 359 (S.C. 1998) In fact, as long as an insurer denies coverage in good faith and with a reasonable basis in fact and law, it has no extra contractual duty to determine the existence of coverage by bringing a declaratory judgment action or otherwise. Brown v. South Carolina Insurance Company, 324 S.E.2d 641, 645 (S.C. 1984)

If there is a reasonable ground for contesting a claim, there is no bad faith. Crossley v. State Farm Mutual Automobile Insurance Company, 415 S.E.2d 393, 397 (S.C. 1992) If an insurer has a reasonable ground for contesting the claim summary judgment is properly granted as to the bad faith claim. Helena Chemical Company v. Lexington Insurance Company, 594 S.E.2d 455, 462 (S.C. 2004); BMW of North America vs. Complete Auto Recon Services, 2012 WL 3101726 (S.C. App. 2012)

State Farm has a number of reasonable grounds for contesting the Plaintiffs' claim for UIM coverage under the Carson vehicle. As explained in sections I through VI, State Farm's grounds for denying coverage to the Plaintiffs under Carson's policy are:

1. James Plemmons' accident was not caused by the ownership, operation, use or maintenance of the Carson vehicle;

2. The Carson vehicle was not being used for transportation purposes at the time of Plemmons' injury;
3. No causal connection exists between the Carson vehicle and the Plaintiffs' injury;
4. An act of independent significance broke any causal link between the Carson vehicle and the Plaintiffs' injury;
5. The vehicle owned by Carson and insured by State Farm was not an active accessory to the Plaintiffs' injury;
6. The Plaintiffs' injury was not foreseeably identifiable with the normal use of the car owned by Carson.

Any of these elements provides State Farm a reasonable basis for denying coverage to the Plaintiff under the policy insuring Carson's vehicle. Instead, all of these elements are applicable. Under these circumstances, State Farm as a matter of law has a reasonable basis for denying the Plaintiffs' claim.

VIII. State Farm is entitled to summary judgment on the cause of action for bad faith because an element of this cause of action is a refusal to pay benefits due under the contract of insurance and State Farm has not refused to pay benefits which are due under the contract of insurance.

One of the elements of a bad faith refusal to pay benefits is a refusal by the insurer to pay benefits due under the contract. Mixson v. American Loyalty Insurance Company, 562 S.E.2d 659 (S.C. 2000); Hansen v. United Services Automobile Association, 565 S.E.2d 114, 119 (S.C. 2000); Peterson v. West American Insurance Company, 518 S.E.2d 608, 614, 615 (S.C. 1999); Howard v. State Farm Mutual Automobile Insurance Company, 450 S.E.2d 582, 586 (S.C. 1994) Where it is

determined an insured is not entitled to recover a claim for insurance benefits, the insured's cause of actions for bad faith refusal to pay the claim must fail. Carolina Amusement Company, Inc. v. Connecticut National Life Insurance, 437 S.E.2d 122, 127 (S.C. 1993) As explained in the earlier sections of this memorandum, the Plaintiffs are not entitled to UIM coverage under State Farm's policy insuring the Carson vehicle. Therefore, the Plaintiffs' cause of action for bad faith must be dismissed.

IX. State Farm is entitled to summary judgment on the Plaintiffs' claim for attorneys' fees as there is no contractual or legal basis for an award of attorneys' fees.

The Plaintiffs' Amended Complaint dated April 4, 2012, requests in subparagraph C of the prayer of the Complaint an award of attorneys' fees. /However, the Plaintiffs' most recent Amended Complaint deletes the request for attorneys' fees. State Farm assumes this omission is intentional and this alone entitles State Farm to summary judgment for any claim for attorneys' fees. If, however, the omission of attorneys' fees from the most recent Amended Complaint is inadvertent, State Farm is still entitled to summary judgment on the Plaintiffs' claim for attorneys' fees because generally attorneys' fees are not recoverable unless authorized by contract or statute. Cullen v. McNeal, 702 S.E.2d 378, 389 (S.C. App. 2010) No contract authorizes an award of attorneys' fees to the Plaintiff. The only statute which might authorize an award of attorneys' fees – § 38-59-40 – requires a finding by the trial judge that the refusal to pay the claim was without reasonable cause or in bad faith. As explained in previous sections of this memorandum, State Farm had numerous, reasonable grounds for denying the Plaintiffs' claim for UIM coverage.

X. State Farm is entitled to summary judgment on the Plaintiffs' claim for PIP benefits because the Plaintiffs do not fit the definition of insured for this coverage.

Again, although the Plaintiffs' Amended Complaint of April 4, 2012 requested in paragraph 61 Personal Injury Protection (PIP) coverage up to the limit of the policy, the Plaintiffs' most recent Amended Complaint omits a claim for PIP coverage. Nonetheless, if this omission is inadvertent, State Farm is still entitled to summary judgment because the policy attached as Exhibit A provides at page 13 of Form 8403 that an insured for purposes of PIP coverage is the named insured, the named insured's spouse, any relative, or any other person while occupying the named insured's car. It is undisputed that James Plemmons is not the named insured under the policy State Farm issued to Carson, nor is Plemmons a relative of Carson. Additionally, Plemmons was not occupying the Carson car at the time of Plemmons' injury. Accordingly, Plemmons does not meet the definition of insured for PIP coverage.

CONCLUSION

The facts of the accident which injured James Plemmons are not in dispute. In fact, the Plaintiffs' Interrogatory Answer filed in Federal Court states that the Plaintiffs' Declaratory Judgment Action against State Farm does not have questions of material fact and should be decided as a matter of law by a judge.

There are numerous reasons Plemmons does not qualify for UIM coverage under the Carson vehicle. These numerous reasons also provide State Farm with a reasonable basis for denying UIM coverage to the Plaintiffs. For these reasons State Farm is entitled to summary judgment on the Plaintiffs' claim for declaratory

judgment relief and on the Plaintiffs' allegation that State Farm acted in bad faith. State Farm is also entitled to summary judgment on the Plaintiffs' claim for attorneys' fees and PIP benefits if those claims are still part of the Plaintiffs' lawsuit.

NELSON MULLINS RILEY & SCARBOROUGH LLP

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SC Bar No. 004238
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Attorneys for State Farm Mutual Automobile
Insurance Company

Charleston, South Carolina

September 18, 2012

State Farm Insurance Companies®



Atlanta Operations Center
11350 Johns Creek Parkway
Duluth, Georgia 30098-0001

CERTIFICATE

I, the undersigned, do hereby certify that I am custodian of the records pertaining to the issuance of policies issued by the South Carolina Division of State Farm Mutual Automobile Insurance Company of Bloomington, Illinois.

I further certify that the attached policy number 148 6207-C02-40A is a copy of the policy issued to John Raymond Carson, 301 Birchwood Dr., Union, SC 29379-1869, based on our available records:

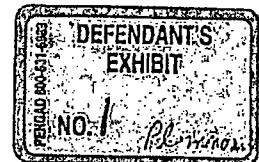
The policy was in effect on the loss date of July 31, 2010.

Brenda Holmes

Brenda Holmes
Underwriting Operations Team Manager

Dated this 27 day of July, 2011.

[Signature]
Notary Public



Joni Slowe
Notary Public
Forsyth County, Georgia
My Commission Expires
April 22, 2014

State Farm Insurance Companies®



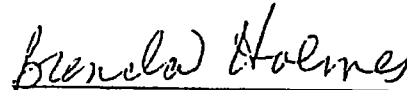
Atlanta Operations Center
11350 Johns Creek Parkway
Duluth, Georgia 30098-0001

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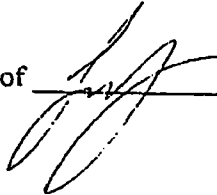
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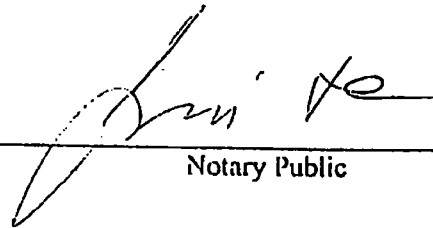
The policy was in effect on the loss date of July 31, 2010.



Brenda Holmes
Underwriting Operations Team Manager

Dated this 27 day of July, 2011.




Notary Public

Joni Stowe
Notary Public
Wayne County, Georgia
Commission Expires
April 22, 2014

HOME OFFICES: BLOOMINGTON, ILLINOIS 61710-0001

ROA 000087
APP 000090



40-1989-503D A

CARSON, JOHN RAYMOND
301 BIRCHWOOD DR
UNION SC 29379-1869

1. **Identify the main topic of the passage.**

53094-5-0

MUTL VOL

DECLARATIONS PAGE

POLICY NUMBER 148 6207-C02-40A
POLICY PERIOD FEB 26 2000 to SEP 02 2000

AGENT
MARC MEEKER
400 N DUNCAN BYP STE C
UNION, SC 29379-8640

PHONE: (864)427-5634

**DO NOT PAY PREMIUMS SHOWN ON THIS PAGE.
SEPARATE STATEMENT ENCLOSED IF AMOUNT DUE.**

Total premium for this policy period FEB 26 2000 to SEP 02 2008. \$411.35 • This is not a bill.

IMPORTANT MESSAGES

Your policy consists of this declarations page, the policy booklet - form 9840.3, and any endorsements that apply, including those issued to you with any subsequent renewal notice.

Replaced policy number 1486207-40.

* The total premium for the policy period listed above reflects a recent change to your policy plus the 6 month renewal premium.

ROA 000088
APP 000091

RED'S

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Page 2 of 3

is changed to read:

Expenses are reasonable only if they are the lowest of any one of the following charges:

1. the usual and customary fees charged by a majority of health-care providers who provide similar medical services in the geographical area in which the charges were incurred;

2. the fees agreed to by both the injured person's healthcare provider and us; or

3. the fees agreed upon between the injured person's healthcare provider and a third party when we have a contract with such third party.

b. The following is added to both Personal Injury Protection Coverage and Medical Payments Coverage:

We have the right to:

1. obtain and use:

a. peer reviews; and

b. medical bill reviews

of the medical expenses and services to determine if they are reasonable and necessary for the *bodily injury* sustained;

2. use a medical examination of the injured person to determine if:

a. the *bodily injury* was caused by a motor vehicle accident; and

b. the medical expenses and services are reasonable and necessary for the *bodily injury* sustained; and

3. enter into a contract with a third party that has an agreement with the injured person's

6127YY

healthcare provider to charge fees as determined by that agreement.

c. The following is added to Deciding Amount under both Personal Injury Protection Coverage and Medical Payments Coverage:

Arbitrators shall have no authority to decide any questions of law or conduct arbitration on a class-wide or class-representative basis.

4. SECTION IV — PHYSICAL DAMAGE COVERAGES

COMPREHENSIVE — COVERAGE D
and COLLISION — COVERAGE G

a. The following is added:

We agree that replacement glass need not have any insignia, logo, trademark, etching, or other marking that was on the replaced glass.

b. The following is added to Settlement of Loss Comprehensive and Collision Coverages.

Appraisers shall have no authority to decide any questions of law or conduct appraisal on a class-wide or class-representative basis.

5. MOTORCYCLE COVERAGE ENDORSEMENT and TRAILER ENDORSEMENT

The definition of *newly-acquired car* in the above item 1. replaces the definition of *newly-acquired car* in both the MOTORCYCLE COVERAGE endorsement and the TRAILER ENDORSEMENT if either endorsement is a part of your policy. In addition, under the TRAILER ENDORSEMENT, the definition of *car* as found in the definition of *newly-acquired car* is changed to include a trailer newly owned by or newly leased to you if it is of the same type as the trailer described on the declarations page.

Page 3 of 3

6127YY

ROA 000089
APP 000092

CERTIFICATE OF GUARANTEED RENEWAL **6091 Amendment of Cancellation and Renewal Conditions**

This endorsement is a part of your policy. Except for the changes it makes, all other terms of the policy remain the same and apply to this endorsement. It is effective at the same time as your policy, unless a different effective date is shown for the endorsement on the Declarations Page.

This endorsement is issued by the **STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY** of Decatur, Illinois.

We agree that we will not cancel or non-renew this policy as long as:

1. this policy insures a *private passenger car*;
2. premiums are paid when due;
3. all drivers of *your car* maintain valid drivers licenses;
4. *you* continue to reside in an area in which State Farm Mutual Automobile Insurance Company sells automobile insurance and has the Certificate of Guaranteed Renewal available for use; and
5. no person other than the current named insured or that person's spouse becomes a named insured on this policy.

You will be able to select from these coverages which continue to be available from State Farm Mutual Automobile Insurance Company. Coverage will be provided by our car policy, including any revisions that may be made to it.

Edward R. W. Jr.
 Chief Executive Officer

6127YY AMENDATORY ENDORSEMENT

This endorsement is a part of your policy. Except for the changes it makes, all other terms of the policy remain the same and apply to this endorsement. It is effective at the same time as your policy, unless a different effective date is specified by us in writing.

In consideration of the premium charged, it is agreed that *your* policy is

1. DEFINED WORDS

n. The definition of *Newly-Acquired Car* is changed to read:

Newly-Acquired Car means a car newly owned by or newly leased to *you* or *your spouse*. A car ceases to be a *newly acquired car* on the earlier of:

1. the effective date and time of a policy, including any binder, issued by us or any other company that describes the car as an insured vehicle; or
2. the end of the 14th calendar day immediately following the date the car is delivered to *you* or *your spouse*.

If *you* or *your spouse* want coverage for a car newly owned by or newly leased to *you* or *your spouse* and it:

1. replaces *your car*, then *you* or *your spouse* must ask us to insure that car within 14 days after it is delivered to *you* or *your spouse* and pay us any added amount due. The added amount due will be calculated based on the date the replacement car is delivered to *you* or *your spouse*.

2. does not replace *your car*, then *you* or *your spouse* must apply to us for a separate policy to insure that added car. Such policy will be issued only if both the applicant and the vehicle are eligible for coverage at the time of the application.

If a new car is covered by this or a policy, coverage for the car ceases for subject to any coverage of this policy until the day in which the date the car is delivered to

h. The definition of *Newly-Acquired Car* is changed to read:

Newly-Acquired Car means a car newly owned by or newly leased to *you* or *your spouse*. A car ceases to be a *newly acquired car* on the earlier of:

1. the effective date and time of a policy, including any binder, issued by us or any other company that describes the car as an insured vehicle; or
2. the end of the 14th calendar day immediately following the date the car is delivered to *you* or *your spouse*.

If *you* or *your spouse* want coverage for a car newly owned by or newly leased to *you* or *your spouse* and it:

1. replaces *your car*, then *you* or *your spouse* must ask us to insure that car within 14 days after it is delivered to *you* or *your spouse* and pay us any added amount due. The added amount due will be calculated based on the date the replacement car is delivered to *you* or *your spouse*.

2. does not replace *your car*, then *you* or *your spouse* must apply to us for a separate policy to insure that added car. Such policy will be issued only if both the applicant and the vehicle are eligible for coverage at the time of the application.

6940.2 AMENDATORY ENDORSEMENT

This endorsement is a part of *your* policy. Except for the changes it makes, all other terms of the policy remain the same and apply to this endorsement. It is effective at the same time as *your* policy unless a different effective date is specified by us in writing.

In consideration of the premium charged, it is agreed that *your* policy is changed as follows:

1. DEFINED WORDS

- a. The following definition is added:

Fungi – means any type or form of fungus or fungi and includes:

1. mold;
2. mildew; and
3. any of the following that are produced or released by fungi:
 - a. mycotoxins;
 - b. spores;
 - c. scents; or
 - d. byproducts.

- b. *Non-Owned Car* – The provision which reads:

Non-owned car does not include a rented *car* while it is used in connection with the *insured's* employment or business.

is deleted.

2. SECTION I — LIABILITY — COVERAGE A

Under the paragraph that reads "In addition to the limits of liability, we will pay for an *insured* any costs listed below resulting from such accident":

- a. item 3.c. is deleted.
- b. item 4 is changed to read:
 4. The following costs and expenses if related to and incurred after a civil lawsuit has been filed against an *insured* for damages for which liability coverage is provided by this policy:

- a. loss of wages or salary, but not other income, up to \$100 for each day an *insured* attends at *our* request:

- (1) an arbitration;
- (2) a mediation; or
- (3) a trial of a civil suit.

- b. reasonable expenses incurred by an *insured* at *our* request, other than loss of wages, salary, or other income.

The amount of any of the costs or expenses listed above that are incurred by an *insured* must be reported to us before we will pay.

- c. The provision titled Trailer Coverage is changed to read:

Trailer Coverage

The liability coverage extends to the ownership, maintenance or use, by an *insured*, of:

1. trailers designed to be pulled by a *private passenger car* or a *utility vehicle*, except those trailers in 2.a. below.

Farm implements and farm wagons are considered trailers while pulled on public roads by a *car* we insure for liability.

These trailers are not described in the declarations and no extra premium is charged.

2. the following trailers only if they are described on the declarations page and extra premium is paid:

a. trailers designed to be pulled by a *private passenger car* or a *utility vehicle*:

(1) if designed to carry *persons*; or

(2) while used with a motor vehicle whose use is shown as "commercial" on the declarations page (trailers used only for pleasure use are covered even if not described and no extra premium paid); or

(3) while used as premises for office, store or display purposes; or

b. trailers not designed to be pulled by a *private passenger car* or a *utility vehicle*.

When we refer to trailer coverage, *insured* means:

1. *you*;
2. *your spouse*;
3. the *relatives* of the first *person* named in the declarations;
4. any other *person* while using *your car*, a *newly acquired car* or a *temporary substitute car*, if its use is within the scope of consent of *you* or *your spouse*; and

5. any other *person* or organization liable for the use of a covered trailer by one of the above *insureds*.

d. The first paragraph under Limits of Liability is changed to read:

Limits of Liability

1. The amount of bodily injury liability coverage is shown on the declarations page under "Limits of Liability — Coverage A — Bodily Injury, Each Person, Each Accident". Under "Each Person" is the amount of coverage for all damages due to *bodily injury* to one *person*. "*Bodily injury* to one *person*" includes all injury and damages to other *persons* resulting from this *bodily injury*, and all emotional distress resulting from this *bodily injury* sustained by other *persons* who do not sustain *bodily injury*. Under "Each Accident" is the total amount of coverage, subject to the amount shown under "Each Person", for all damages due to *bodily injury* to two or more *persons* in the same accident.

3. MEDICAL PAYMENTS — COVERAGE C

The following is added to What Is Not Covered Under Coverage C:

- a. THERE IS NO COVERAGE FOR *BODILY INJURY* THAT RESULTS FROM EXPOSURE TO *FUNGI*.
- b. THERE IS NO COVERAGE FOR *BODILY INJURY* THAT RESULTS FROM:
 - (1) NUCLEAR REACTION;
 - (2) RADIATION OR RADIOACTIVE CONTAMINATION FROM ANY SOURCE; OR

- (3) THE ACCIDENTAL OR INTENTIONAL DETONATION OF, OR RELEASE OF RADIATION FROM, ANY NUCLEAR OR RADIOACTIVE DEVICE.

4. SECTION III — UNINSURED MOTOR VEHICLE — COVERAGE U AND UNDERINSURED MOTOR VEHICLE — COVERAGE W

- a. The following wording under the definition of "*Uninsured Motor Vehicle*" is deleted:

An *uninsured motor vehicle* does not include any motor vehicle owned by the *insured* who sustains *bodily injury* or *property damage*.

- b. Who Is an Insured is changed to read:

Who Is an Insured

Insured — means:

1. *you, your spouse and relatives;*
2. *any other person while occupying or using your car, a newly acquired car or a trailer attached to either, if that person is occupying or using the vehicle with your consent; and*
3. *any person to the extent he or she may recover damages under a state wrongful death statute because of the death of an insured under 1. or 2. above.*

- c. Item 1. Bodily Injury, under Limits of Liability Coverage U is changed to read:

1. Bodily Injury

The amount of coverage is shown on the declarations page under "Limits of Liability — U — Each Person, Each Accident". Under "Each Person" is the amount of coverage for all damages due to *bodily injury* to one *person*. "*Bodily injury* to one

person" includes all injury and damages to others resulting from this *bodily injury*, and all emotional distress resulting from this *bodily injury* sustained by other *persons* who do not sustain *bodily injury*. Under "Each Accident" is the total amount of coverage, subject to the amount shown under "Each Person", for all damages due to *bodily injury* to two or more *persons* in the same accident.

- d. Item 1. Bodily Injury, under Limits of Liability Coverage W is changed to read:

1. Bodily Injury

The amount of coverage is shown on the declarations page under "Limits of Liability — W — Each Person, Each Accident". Under "Each Person" is the amount of coverage for all damages due to *bodily injury* to one *person*. "*Bodily injury* to one *person*" includes all injury and damages to others resulting from this *bodily injury*, and all emotional distress resulting from this *bodily injury* sustained by other *persons* who do not sustain *bodily injury*. Under "Each Accident" is the total amount of coverage, subject to the amount shown under "Each Person", for all damages due to *bodily injury* to two or more *persons* in the same accident.

- e. Item 4. under When Coverages U and W Do Not Apply is replaced with the following:

THERE IS NO COVERAGE TO THE EXTENT THE COVERAGE LIMITS UNDER THIS SECTION OF THIS POLICY EXCEED THE

**LIMITS REQUIRED BY THE
FINANCIAL RESPONSIBILITY
ACT:**

- a. WHILE ANY *INSURED* IS *OCCUPYING A MOTOR VEHICLE* OWNED BY OR LEASED TO *YOU, YOUR SPOUSE, OR ANY RELATIVE* IF:
 - (1) IT IS NOT *YOUR CAR* OR A *NEWLY ACQUIRED CAR*; AND
 - (2) IT IS NOT *INSURED FOR THE COVERAGE SOUGHT UNDER THIS SECTION OF THIS POLICY*;
- b. IF THE *UNINSURED MOTOR VEHICLE OR UNDERINSURED MOTOR VEHICLE* IS OWNED BY OR LEASED TO *YOU, YOUR SPOUSE, OR ANY RELATIVE*.
- f. Item 5. under When Coverages U and W Do Not Apply is deleted.
- g. The following is added to When Coverages U and W Do Not Apply
THERE IS NO COVERAGE FOR PROPERTY DAMAGE THAT WAS PROXIMATELY CAUSED BY THE DRIVER OF YOUR CAR OR A NEWLY ACQUIRED CAR.
- h. The provision titled If There Is Other Uninsured Motor Vehicle Coverage is replaced with the following:
If There Is Other Uninsured Motor Vehicle Coverage
 - 1. If uninsured motor vehicle coverage for *bodily injury* or *property damage* is available to *you, your spouse or a relative* from more than one policy provided by us or any other insurer, then the uninsured motor vehicle

coverage provided by this policy shall apply:

- a. on a primary basis if *you, your spouse or a relative* sustains *bodily injury* or *property damage* while *occupying your car*, or while not *occupying* a motor vehicle or trailer.
 - b. on an excess basis if *you, your spouse or a relative* sustains *bodily injury* or *property damage* while *occupying* a motor vehicle or trailer other than *your car*.
2. If:
- a. *you, your spouse or a relative* sustains *bodily injury* or *property damage* while not *occupying* a motor vehicle or trailer; and
 - b. uninsured motor vehicle coverage from more than one of our policies issued to *you, your spouse or a relative* applies to the accident, then:
 - (1) only one policy with the highest uninsured motor vehicle coverage limit shall apply in that limit; and
 - (2) the uninsured motor vehicle coverage from each of the other policies we issued shall apply only in an amount equal to the minimum limits required by the *Financial Responsibility Act* for *bodily injury* and *property damage* liability.
3. If *you, your spouse or a relative* sustains *bodily injury* or

property damage while occupying a motor vehicle or trailer other than *your car*, that is owned by or leased to *you*, *your spouse* or a *relative*, then this coverage applies only to the extent of:

- a. the uninsured motor vehicle coverage applicable to the occupied motor vehicle or trailer, or
- b. the minimum limits required by the *Financial Responsibility Act* for bodily injury and property damage,

whichever is higher.

4. If *you*, *your spouse* or a *relative* sustains *bodily injury* or *property damage* while occupying a motor vehicle or trailer not owned by or leased to *you*, *your spouse* or a *relative*, then only one policy issued by us to *you*, *your spouse* or any *relative* with the highest uninsured motor vehicle coverage limit shall apply.

5. Subject to items 1, 2, 3 and 4 above, if this policy and one or more other policies provide uninsured motor vehicle coverage for *bodily injury* or *property damage*:

- a. on a primary basis, then we are liable only for our share. Our share is that percent of the damages payable on a primary basis that the limit of liability that applies from this policy bears to the total of all applicable uninsured motor vehicle coverage provided on a primary basis.
- b. on an excess basis, then we are liable only for our

share. Our share is that percent of the damages payable on an excess basis that the limit of liability that applies from this policy bears to the total of all applicable uninsured motor vehicle coverage provided on an excess basis.

- i. The provision titled *If There Is Other Underinsured Motor Vehicle Coverage* is replaced with the following:

If There Is Other Underinsured Motor Vehicle Coverage

1. If underinsured motor vehicle coverage for *bodily injury* or *property damage* is available to *you*, *your spouse* or a *relative* from more than one policy provided by us or any other insurer, then the underinsured motor vehicle coverage provided by this policy shall apply:

- a. on a primary basis if *you*, *your spouse* or a *relative* sustains *bodily injury* or *property damage* while occupying *your car*, or while not occupying a motor vehicle or trailer.
- b. on an excess basis if *you*, *your spouse* or a *relative* sustains *bodily injury* or *property damage* while occupying a motor vehicle or trailer other than *your car*.

2. If:

- a. *you*, *your spouse* or a *relative* sustains *bodily injury* or *property damage* while not occupying a motor vehicle or trailer; and
- b. underinsured motor vehicle coverage from more than one of our policies issued to *you*, *your spouse*

2. We will pay *you* for transportation costs incurred if *your car* is stolen. We will pay up to \$25 per day beginning when *you* tell us of the theft and ending when we offer to pay for the *loss*.

If the daily incurred transportation costs are payable under both Comprehensive Coverage and Car Rental and Travel Expenses Coverage, we will pay only under the one coverage where *you* collect the most. If payments have been made under Car Rental and Travel Expenses Coverage and such payments have either exhausted the total amount payable under Car Rental Expense or reduced the total amount payable under Car Rental Expense to less than \$25, then we will pay under Comprehensive Coverage.

- c. The following is added to COLLISION - COVERAGE G:

Loss caused by *collision* does not include *loss* due to:

1. missiles or falling objects;
2. windstorm or hail;
3. earthquake, water or flood;
4. theft or larceny;
5. malicious mischief or vandalism; or
6. riot or civil commotion.

- d. The first paragraph of Limit of Liability - Comprehensive and Collision Coverages is changed to read:

The limit of our liability for *loss* to property or any part of it is the lower of:

1. the actual cash value; or

2. the cost of repair or replacement. The cost of repair or replacement does not include any reduction in the value of the property after it has been repaired, as compared to its value before it was damaged.

- e. The paragraph under CAR RENTAL AND TRAVEL EXPENSES - COVERAGE R1 in *your* policy booklet that reads:

Any car rent payable under this coverage is REDUCED TO THE EXTENT IT IS PAYABLE UNDER COMPREHENSIVE.

is changed to read:

If the incurred daily rental charge is payable under both Comprehensive Coverage and Car Rental and Travel Expenses Coverage, we will pay only under the one coverage where *you* collect the most.

- f. The provision titled Total Amount of Expenses Payable - Coverage R1 in *your* policy booklet is changed to read:

Total Amount of Expenses Payable - Coverage R1

1. The most we will pay for Car Rental Expense incurred in any one occurrence is \$400.
2. The most we will pay for Travel Expenses incurred by all *persons* in any one occurrence is \$400.
3. The most we will pay for Rental Car - Repayment of Deductible Amount Expense incurred in any one occurrence is \$400.

- g. Trailer Coverage

The paragraph which reads:

The most we will pay under the comprehensive or collision coverage for a *loss* to such non-owned trailer or unit is \$500.

is changed to read:

The most we will pay under the comprehensive or collision coverage for a *loss* to such non-owned trailer or unit is \$2500.

- h. Item 2.c. of Trailer Coverage is deleted.
- i. The following is added to When The Physical Damage Coverages Do Not Apply:
 - a. THERE IS NO COVERAGE FOR *LOSS* TO ANY VEHICLE DUE TO *FUNGI*. THIS APPLIES REGARDLESS OF WHETHER OR NOT THE *FUNGI* RESULT FROM A *LOSS* THAT IS PAYABLE UNDER ANY OF THE PHYSICAL DAMAGE COVERAGES. WE WILL ALSO NOT PAY FOR ANY TESTING OR REMEDIATION OF *FUNGI*, OR ANY ADDITIONAL COSTS REQUIRED TO REPAIR *YOUR CAR* THAT ARE DUE TO THE EXISTENCE OF *FUNGI*.
 - b. THERE IS NO COVERAGE FOR *LOSS* TO ANY VEHICLE THAT RESULTS FROM:

- (1) NUCLEAR REACTION;
- (2) RADIATION OR RADIOACTIVE CONTAMINATION FROM ANY SOURCE; OR
- (3) THE ACCIDENTAL OR INTENTIONAL DETONATION OF, OR RELEASE OF RADIATION FROM, ANY NUCLEAR OR RADIOACTIVE DEVICE.

6. CONDITIONS

The following is added to 1. Policy Changes:

e. Change of Policy Address

We may change the named insured's policy address as shown on the Declarations Page and in our records to the most recent address provided to us by:

- 1. *you*; or
- 2. the United States Postal Service.

7. The following is added to *your* policy:

Your purchase of this policy may allow *you* to purchase certain coverages, coverage options, coverage deductibles, coverage limits, or coverage terms on other policies from State Farm Mutual Automobile Insurance Company, State Farm Fire and Casualty Company, and subsidiaries or affiliates of either, subject to their applicable eligibility rules.

PLEASE READ YOUR POLICY CAREFULLY. IF YOU HAVE AN ACCIDENT, CONTACT YOUR STATE FARM AGENT OR ONE OF OUR CLAIM OFFICES AT ONCE. (SEE "REPORTING A CLAIM-INSURED'S DUTIES" IN THIS POLICY.)

Authorized Representative



State Farm Mutual Automobile Insurance Company, Home Office, Bloomington, Illinois
Georgia-South Carolina Office • 11350 Johns Creek Parkway • Duluth, GA 30098-0001 • Ph. (770) 418-5413

YOUR
STATE FARM
CAP
POLICY

South Carolina
Policy Form 9840.3

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8403

ROA 000099
APP 000102

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY
BLOOMINGTON, ILLINOIS
A MUTUAL COMPANY

DEFINED WORDS
WHICH ARE USED IN SEVERAL PARTS OF THE POLICY

We define some words to shorten the policy. This makes it easier to read and understand. Defined words are printed in boldface italics. *You* can pick them out easily.

Bodily Injury – means bodily injury to a *person* and sickness, disease or death which results from it.

Car – means a land motor vehicle with four or more wheels, which is designed for use mainly on public roads. It does not include:

1. any vehicle while located for use as a dwelling or other premises; or
2. a truck-tractor designed to pull a trailer or semi-trailer.

Car Business – means a business or job where the purpose is to sell, lease, repair, service, transport, store or park land motor vehicles or trailers.

Insured – means the *person, persons* or organization defined as *insureds* in the specific coverage. If the information *you* have provided State Farm is incorrect or incomplete, or changes during the policy period, State Farm may decrease or increase the premium during the policy period as set out in the provision titled Premium of the Conditions section of this policy.

Loss – defined in Sections IV and V.

Motor Vehicle – defined in Sections II and III.

Newly Acquired Car – means a *replacement car* or an *additional car*.

Replacement Car – means a *car* purchased by or leased to *you* or *your spouse* to replace *your car*. This policy will only provide coverage for the *replacement car* if *you* or *your spouse*:

1. tell us about it within 30 days after its delivery to *you* or *your spouse*; and
2. pay us any added amount due.

Additional Car – means an added *car* purchased by or leased to *you* or *your spouse*. This policy will only provide coverage for the *additional car* if:

1. it is a *private passenger car* and we insure all other *private passenger cars*; or
2. it is other than a *private passenger car* and we insure all *cars*

owned by or leased to *you* or *your spouse* on the date of its delivery to *you* or *your spouse*.

This policy provides coverage for the *additional car* only until the earlier of:

1. 12:01 A.M. Standard Time at the address shown on the declarations page on the 31st day after the delivery of the *car* to *you* or *your spouse*; or
2. the effective date and time of a policy issued by us or any other company that describes the *car* on its declarations page.

You or *your spouse* may apply for a policy that will provide coverage beyond the 30th day for the *additional car*. Such policy will be issued only if both the applicant and the vehicle are eligible for coverage at the time of application.

If a *newly acquired car* is not otherwise afforded comprehensive or collision coverage by this or any other policy, this policy will provide the comprehensive or collision coverage not otherwise provided for the *newly acquired car*. If

such coverage is provided by this paragraph, it will apply only until 12:01 A.M. Standard Time at the address shown on the declarations page on the sixth day after the delivery of the *car* to *you* or *your spouse*. Any comprehensive or collision coverage provided by this paragraph is subject to a deductible of \$500.

Non-Owned Car – means a *car* not owned by, registered to or leased to:

1. *you, your spouse*;
2. any *relative* unless at the time of the accident or *loss*:
 - a. the *car* currently is or has within the last 30 days been insured for liability coverage; and
 - b. the driver is an *insured* who does not own or lease the *car*;
3. any other *person* residing in the same household as *you, your spouse* or any *relative*; or
4. an employer of *you, your spouse* or any *relative*.

Non-owned car does not include a:

1. rented *car* while it is used in connection with the *insured's* employment or business; or
2. *car* which has been operated or rented by or in the possession of an *insured* during any part of each of the last 21 or more consecutive days. If the *insured* is an *insured* under one or more other car policies issued by us, the 21 day limit is increased by an additional 21 days for each such additional policy.

A **non-owned car** must be a *car* in the lawful possession of the *person* operating it.

Occupying – means in, on, entering or alighting from.

Person – means a human being.

Private Passenger Car – means a *car*:

1. with four wheels;
2. of the private passenger or station wagon type; and
3. designed solely to carry *persons* and their luggage.

Relative – means a *person* related to *you* or *your spouse* by blood, marriage or adoption who resides primarily with *you*. It includes *your* unmarried and unemancipated child away at school.

Spouse – means *your* husband or wife who resides primarily with *you*.

Temporary Substitute Car – means a *car* not owned by or leased to *you* or *your spouse*, if it replaces *your car* for a short time. Its use has to be with the consent of the owner. *Your car* has to be out of use due to its breakdown, repair, servicing, damage or *loss*. A **temporary substitute car** is not considered a **non-owned car**.

Utility Vehicle – means a motor vehicle with:

1. a pickup, panel or van body; and
2. a Gross Vehicle Weight of 10,000 pounds or less.

You or Your – means the named insured or named insureds shown on the declarations page.

Your Car – means the *car* or the vehicle described on the declarations page.

DECLARATIONS CONTINUED

We, the State Farm Mutual Automobile Insurance Company, agree to insure *you* according to the terms of this policy based:

1. on *your* payment of premium for the coverages *you* chose; and
2. in reliance on *your* statements in these declarations.

You agree, by acceptance of this policy that:

1. the statements in these declarations are *your* statements and are true; and
2. we insure *you* on the basis *your* statements are true; and
3. this policy contains all of the agreements between *you* and us or any of our agents.

Unless otherwise stated in the exceptions space on the declarations page, *your* statements are:

1. Ownership. *You* are the sole owner of *your car*.
2. Insurance and License History. Neither *you* nor any member of *your* household within the past three years has had:
 - a. vehicle insurance canceled by an insurer; or
 - b. a license to drive or vehicle registration suspended, revoked or refused.
3. Use. *Your car* is used for pleasure and business.

WHEN AND WHERE COVERAGE APPLIES

When Coverage Applies

The coverages *you* chose apply to accidents and losses that take place during the policy period.

The policy period is shown under "Policy Period" on the declarations page and is for successive periods of six months each for which *you* pay the renewal premium. Payments must be made on or before the end of the current policy period. The policy period begins and ends at 12:01 A.M. Standard Time at the address shown on the declarations page.

Where Coverage Applies

The coverages *you* chose apply:

1. in the United States of America, its territories and possessions or Canada; or
2. while the insured vehicle is being shipped between their ports.

The liability, personal injury protection, medical payments and physical damage coverages also apply in Mexico within 50 miles of the United States border. A physical damage coverage loss in Mexico is determined on the basis of cost at the nearest United States point.

Death, dismemberment and loss of sight coverage applies anywhere in the world.

FINANCED VEHICLES

If a creditor is shown in the declarations, we may pay any comprehensive or collision *loss* to:

1. *you* and, if unpaid, the repairer; or
2. *you* and such creditor, as its interest may appear, when we find it is not practical to repair *your car*; or
3. the creditor, as to its interest, if *your car* has been repossessed.

When we pay the creditor for *loss* for which *you* are not covered, we are entitled to the creditor's right of recovery against *you* to the extent of our payment. Our right of recovery shall not impair the creditor's right to recover the full amount of its claim.

The coverage for the creditor's interest only is valid until we terminate it. We will not terminate such coverage because of:

1. any act or negligence of the owner or borrower; or
2. a change in the ownership or interest unknown to us, unless the creditor knew of it and failed to tell us within 10 days; or
3. an error in the description of the vehicle.

The date of termination of the creditor's interest will be at least 10 days after the date we mail or electronically transmit the termination notice.

REPORTING A CLAIM — INSURED'S DUTIES

1. Notice to Us of an Accident or Loss

The *insured* must give us or one of our agents written notice of the accident or *loss* as soon as reasonably possible. The notice must give us:

- a. *your* name;
- b. the names and addresses of all *persons* involved;
- c. the hour, date, place and facts of the accident or *loss*; and
- d. the names and addresses of witnesses.

2. Notice to Us of Claim or Suit

If a claim or suit is made against an *insured*, that *insured* must at once send us every demand, notice or claim made and every summons or legal process received.

3. Other Duties Under the Physical Damage Coverages

When there is a *loss*, *you* or the owner of the property also shall:

- a. make a prompt report to the police when the *loss* is the result of theft or larceny.
- b. protect the damaged vehicle. We will pay any reasonable expense incurred to do it.
- c. show us the damage, when we ask.
- d. provide all records, receipts and invoices, or certified copies of them. We may make copies.
- e. answer questions under oath when asked by anyone we name, as often as we reasonably ask, and sign copies of the answers.

l. Other Duties Under Personal Injury Protection, Medical Payments, Uninsured Motor Vehicle, Underinsured Motor Vehicle and Death, Dismemberment and Loss of Sight Coverages

Any *person* who suffers a *bodily injury* which results in a personal injury protection or medical payments coverage claim must notify us of the claim in writing as soon as reasonably possible after the *person's* first examination or treatment resulting from the *bodily injury*. Another *person* may give us the required notice on behalf of the injured *person*.

The *person* making claim also shall:

a. under personal injury protection, medical payments, uninsured motor vehicle, underinsured motor vehicle, and death, dismemberment and loss of sight coverages:

(1) give us all the details about the death, injury, treatment and other information we need to determine the amount payable.

(2) be examined by physicians chosen and paid by us as often as we reasonably may require. A copy of the report will be sent to the *person* upon written request. The *person*, or his or her legal representative if the *person* is dead or unable to act, shall authorize us to obtain all medical reports and records.

(3) answer questions under oath when asked by anyone we name, as often as we reasonably ask, and sign copies of the answers.

b. under the uninsured motor vehicle coverage:

(1) report a "hit-and-run" accident to the police within a reasonable time and to us within 30 days.

(2) let us see the insured *car* the *person* occupied in the accident.

(3) send us at once a copy of all suit papers if the *person* sues the party liable for the accident for damages.

c. under the uninsured motor vehicle and underinsured motor vehicle coverages, if making claim for damage to property, give us a sworn proof of loss within 60 days of the accident. This proof must state as to the property:

(1) who owns it and how much they own;

(2) the amount of any claims or liens;

(3) its value at the time of the accident; and

(4) details of the accident and any other insurance on it.

If we ask, the *insured* shall show us the property.

d. under the death, dismemberment and loss of sight coverage, give us proof of claim on forms we furnish.

5. Insured's Duty to Cooperate With Us

The *insured* shall cooperate with us and, when asked, assist us in:

a. making settlements;

b. securing and giving evidence;

c. attending, and getting witnesses to attend, hearings and trials; and

d. preserving his or her right to recover damages from others.

The *insured* shall not, except at his or her own cost, voluntarily:

a. make any payment or assume any obligation to others; or

b. incur any expense, other than for first aid to others.

SECTION I — LIABILITY — COVERAGE A

You have this coverage if "A" appears in the "Coverages" space on the declarations page.

We will:

1. pay damages which an *insured* becomes legally liable to pay because of:
 - a. *bodily injury* to others, and
 - b. damage to or destruction of property including loss of its use, caused by accident resulting from the ownership, maintenance or use of *your car*; and
2. defend any suit against an *insured* for such damages with attorneys hired and paid by us. We will not defend any suit after we have paid the applicable limit of our liability for the accident which is the basis of the lawsuit.

In addition to the limits of liability, we will pay for an *insured* any costs listed below resulting from such accident.

1. Court costs of any suit for damages that we defend.
2. Interest on damages owed by the *insured* due to a judgment and accruing:
 - a. after the judgment, and until we pay, offer or deposit in court, the amount due under this coverage; or
 - b. before the judgment, where owed by law, and until we pay, offer or deposit in court the amount due under this coverage, but only on that part of the judgment we pay.
3. Premiums or costs of bonds:
 - a. to secure the release of an *insured's* property attached under a court order;
 - b. required to appeal a decision in a suit for damages if we have not paid our

limit of liability that applies to the suit; and

- c. up to \$250 for each bail bond needed because of an accident or related traffic law violation.

We have no duty to furnish or apply for any bonds. The amount of any bond we pay for shall not be more than our limit of liability.

4. Expenses incurred by an *insured*:

- a. for loss of wages or salary up to \$100 per day if we ask the *insured* to attend the trial of a civil suit.
- b. for first aid to others at the time of the accident.
- c. at our request.

We have the right to investigate, negotiate and settle any claim or suit.

Coverage for the Use of Other Cars

The liability coverage extends to the use, by an *insured*, of a *newly acquired car*, a *temporary substitute car* or a *non-owned car*.

Who Is an Insured

When we refer to *your car*, a *newly acquired car* or a *temporary substitute car*, *insured* means:

1. *you*;
2. *your spouse*;
3. the *relatives* of the first *person* named in the declarations;
4. any other *person* while using such a *car* if its use is within the scope of consent of *you* or *your spouse*; and

5. any other *person* or organization liable for the use of such a *car* by one of the above *insureds*.

When we refer to a *non-owned car, insured* means:

1. the first *person* named in the declarations;
2. his or her *spouse*;
3. their *relatives*; and
4. any *person* or organization which does not own or hire the *car* but is liable for its use by one of the above *persons*.

THERE IS NO COVERAGE FOR NON-OWNED CARS:

1. IF THE DECLARATIONS STATE THE "USE" OF *YOUR CAR* IS OTHER THAN "PLEASURE AND BUSINESS"; OR
2. WHILE:
 - a. BEING REPAIRED, SERVICED OR USED BY ANY *PERSON* WHILE THAT *PERSON* IS WORKING IN ANY *CAR BUSINESS*; OR
 - b. USED IN ANY OTHER BUSINESS OR OCCUPATION. This does not apply to a *private passenger car* driven or *occupied* by the first *person* named in the declarations, his or her *spouse* or their *relatives*.

Trailer Coverage

1. Trailers designed to be pulled by a *private passenger car* or a *utility vehicle*, except those trailers in 2.a. below, are covered while owned or used by an *insured*.

Farm implements and farm wagons are considered trailers while pulled on public roads by a *car* we insure for liability.

These trailers are not described in the declarations, and no extra premium is charged.

2. The following trailers are covered only if described on the declarations page and extra premium is paid:

- a. those trailers designed to be pulled by a *private passenger car* or a *utility vehicle*:
 - (1) if designed to carry *persons*; or
 - (2) while used with a motor vehicle whose use is shown as "commercial" on the declarations page (trailers used only for pleasure use are covered even if not described and no extra premium paid); or
 - (3) while used as premises for office, store or display purposes; or
- b. any trailer not designed for use with a *private passenger car* or a *utility vehicle*.

THERE IS NO COVERAGE WHEN A TRAILER IS USED WITH A MOTOR VEHICLE OWNED OR HIRED BY *YOU* WHICH WE DO NOT INSURE FOR LIABILITY COVERAGE.

Limits of Liability

The amount of bodily injury liability coverage is shown on the declarations page under "Limits of Liability - Coverage A - Bodily Injury, Each Person, Each Accident". Under "Each Person" is the amount of coverage for all damages due to *bodily injury* to one *person*. "*Bodily injury* to one *person*" includes all injury and damages to others resulting from this *bodily injury*. Under "Each Accident" is the total amount of coverage, subject to the amount shown under "Each Person", for all damages due to *bodily injury* to two or more *persons* in the same accident.

The amount of property damage liability coverage is shown on the declarations page under "Limits of Liability - Coverage A - Property Damage, Each Accident".

We will pay damages for which an *insured* is legally liable up to these amounts.

The limits of liability are not increased because more than one *person* or organization may be an *insured*.

A motor vehicle and attached trailer are one vehicle. Therefore, the limits are not increased.

The liability coverage shall be excess over and shall not pay again any expenses paid under the personal injury protection or medical payments coverages.

When Coverage A Does Not Apply

In addition to the limitations of coverage in Who Is an Insured and Trailer Coverage:

THERE IS NO COVERAGE:

1. WHILE ANY VEHICLE INSURED UNDER THIS SECTION IS:

- a. RENTED OR LEASED TO OTHERS.
- b. USED TO CARRY *PERSONS* FOR A CHARGE. This does not apply to the use on a share expense basis of:
 - (1) a *private passenger car*; or
 - (2) a *utility vehicle*, if all passengers are riding in that area of the vehicle designed by the manufacturer of the vehicle for carrying passengers.

c. BEING REPAIRED, SERVICED OR USED BY ANY *PERSON* EMPLOYED OR ENGAGED IN ANY WAY IN A *CAR BUSINESS* TO THE EXTENT THE LIMITS OF LIABILITY OF THIS POLICY EXCEED THE LIMITS OF LIABILITY REQUIRED BY LAW. This does not apply to:

- (1) *you* or *your spouse*;
- (2) any *relative*;
- (3) any resident of *your* household; or

- (4) any agent, employee or partner of *you*, *your spouse*, any *relative* or such resident.

This coverage is excess for (3) and (4) above.

2. FOR ANY *BODILY INJURY* TO:

- a. A FELLOW EMPLOYEE WHILE ON THE JOB AND ARISING FROM THE MAINTENANCE OR USE OF A VEHICLE BY ANOTHER EMPLOYEE IN THE EMPLOYER'S BUSINESS. *You* and *your spouse* are covered for such injury to a fellow employee.
- b. ANY EMPLOYEE OF AN *INSURED* ARISING OUT OF HIS OR HER EMPLOYMENT. This does not apply to a household employee who is not covered or required to be covered under any workers' compensation insurance.

3. FOR:

- a. THE UNITED STATES OF AMERICA OR ANY OF ITS AGENCIES; OR
- b. ANY *PERSON* WHO IS AN EMPLOYEE OF THE UNITED STATES OF AMERICA OR ANY OF ITS AGENCIES, IF THE PROVISIONS OF THE FEDERAL TORT CLAIMS ACT APPLY.

4. FOR ANY DAMAGES TO PROPERTY OWNED BY, RENTED TO, IN THE CHARGE OF OR TRANSPORTED BY AN *INSURED*. But coverage applies to a rented:

- a. residence; or
 - b. private garage
- damaged by a *car* we insure.

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5. FOR ANY OBLIGATION OF AN *INSURED*, OR HIS OR HER INSURER, UNDER ANY TYPE OF WORKERS' COMPENSATION OR DISABILITY OR SIMILAR LAW.

6. FOR LIABILITY ASSUMED BY THE *INSURED* UNDER ANY CONTRACT OR AGREEMENT.

If There Is Other Liability Coverage

1. Policies Issued by Us to You, Your Spouse or Any Relative

If two or more vehicle liability policies issued by us to *you*, *your spouse*, or any *relative* apply to the same accident, the total limits of liability under all such policies shall not exceed that of the policy with the highest limit of liability.

2. Other Liability Coverage Available From Other Sources

Subject to item 1, if other vehicle liability coverage applies, we are liable only for our share of the damages. Our share is the percent that the limit of liability of this policy bears to the total of all vehicle liability coverage applicable to the accident.

3. Temporary Substitute Car, Non-Owned Car, Trailer

Subject to items 1 and 2, if a *temporary substitute car*, a *non-owned car* or a trailer designed for use with a *private passenger car* or *utility vehicle*:

- has other vehicle liability coverage on it; or
- is self-insured under any motor vehicle financial responsibility law, a motor carrier law or any similar law,

then this coverage is excess over such insurance or self-insurance.

4. Newly Acquired Car

THIS COVERAGE DOES NOT APPLY IF THERE IS OTHER VEHICLE LIABILITY COVERAGE ON A *NEWLY ACQUIRED CAR*.

Motor Vehicle Compulsory Insurance Law or Financial Responsibility Law

1. Out-of-State Coverage

If an *insured* under the liability coverage is in another state or Canada and, as a nonresident, becomes subject to its motor vehicle compulsory insurance, financial responsibility or similar law:

- the policy will be interpreted to give the coverage required by the law; and
- the coverage so given replaces any coverage in this policy to the extent required by the law for the *insured's* operation, maintenance or use of a *car* insured under this policy.

Any coverage so extended shall be reduced to the extent other coverage applies to the accident. In no event shall a *person* collect more than once.

2. Financial Responsibility Law

When certified under any law as proof of future financial responsibility, and while required during the policy period, this policy shall comply with such law to the extent required. The *insured* agrees to repay us for any payment we would not have had to make under the terms of this policy except for this agreement.

SECTION II — PERSONAL INJURY PROTECTION — COVERAGE P AND MEDICAL PAYMENTS — COVERAGE C

PERSONAL INJURY PROTECTION — COVERAGE P

You have this coverage if "P" with a number beside it appears in the "Coverages" space on the declarations page. "P" with a number beside it is *your* coverage symbol.

Check *your* coverage symbol with the Schedule in the Limits of Liability for the choice of coverage *you* made.

What We Pay

We will pay for *bodily injury* to an *insured*, caused by accident, resulting from the maintenance or use of a *motor vehicle* as a vehicle:

1. **Medical Expenses.** These are reasonable expenses incurred, for services furnished within three years of the date of the accident, for necessary medical, surgical, X-ray, dental, ambulance, hospital, professional nursing services, eyeglasses, hearing aids and prosthetic devices.

REASONABLE MEDICAL EXPENSES DO NOT INCLUDE EXPENSES:

- a. FOR TREATMENT, SERVICES, PRODUCTS OR PROCEDURES THAT ARE:
 - (1) EXPERIMENTAL IN NATURE, FOR RESEARCH, OR NOT PRIMARILY DESIGNED TO SERVE A MEDICAL PURPOSE; OR
 - (2) NOT COMMONLY AND CUSTOMARILY RECOGNIZED THROUGHOUT THE MEDICAL PROFESSION AND WITHIN THE

UNITED STATES AS APPROPRIATE FOR THE TREATMENT OF THE *BODILY INJURY*; OR

b. INCURRED FOR:

- (1) THE USE OF THERMOGRAPHY OR OTHER RELATED PROCEDURES OF A SIMILAR NATURE; OR
- (2) THE PURCHASE OR RENTAL OF EQUIPMENT NOT PRIMARILY DESIGNED TO SERVE A MEDICAL PURPOSE.

Expenses are reasonable only if they are consistent with the usual fees charged by the majority of similar medical providers in the geographical area in which the expenses were incurred for the specific medical service.

Services are necessary only if the services are rendered by a medical provider within the legally authorized scope of the provider's practice and are essential in achieving maximum medical improvement for the *bodily injury* sustained in the accident.

We have the right to make or obtain a utilization review of the medical expenses and services to determine if they are reasonable and necessary for the *bodily injury* sustained.

The *bodily injury* must be discovered and treated within one year of the date of the accident.

2. **Funeral Expenses.** These are funeral, burial or cremation expenses. Subject to the Aggregate Limit shown for *your* coverage symbol in the Schedule in Limits of Liability, the most we pay for Funeral Expenses is \$3,000 per *person*.

If *your* coverage symbol is P1, P2, P3, P4, P5, P6 or P7, we will also pay for the following for *bodily injury* to an *insured*, caused by accident, resulting from the maintenance or use of a *motor vehicle* as a vehicle:

1. **Loss of Income.** This is 85% of an *insured's* actual loss of earnings from work due to *bodily injury* to the *insured*. This applies only if the *insured* was receiving earnings from work at the time of the accident. The loss must be incurred within three years of the date of the accident and while the *insured* is living.
2. **Essential Services Expenses.** These are reasonable expenses incurred for needed services the *insured* would have done for his or her family. This benefit applies only if the *insured* was not receiving earnings from work at the time of the accident. The expense must be incurred within three years of the date of the accident and while the *insured* is living.

Definitions

Insured – means:

1. *you, your spouse* and any *relative*:
 - a. while *occupying a motor vehicle* other than a motorcycle; or
 - b. when struck as a *pedestrian* by a *motor vehicle*; or
2. any other *person* while *occupying your car, a non-owned car, a newly acquired car or a temporary substitute car*, if Coverage P is carried on *your car*.

The vehicle must be used by or with the permission of *you* or *your spouse*.

Motor Vehicle – means a vehicle or trailer of a kind required to be registered under South Carolina law.

Pedestrian – means a *person* not *occupying* a land motor vehicle.

Deciding Amount

The amount due under this coverage shall be decided by agreement between the *insured* and us. If there is no agreement, the amount due shall be decided by arbitration upon written request of the *insured* or us. Each party shall select a competent and impartial arbitrator. These two shall select a third one. If unable to agree on the third one within 30 days, either party may request a judge of a court of record in the county in which the arbitration is pending to select a third one. The written decision of any two arbitrators shall be binding on us, the *insured*, any assignee of the *insured* and any *person* or organization with whom the *insured* expressly or impliedly contracts for the rendition of medical, essential or funeral services. The arbitrators shall not award punitive damages or other noncompensatory damages.

The cost of the arbitrator and any expert witness shall be paid by the party who hired them. The cost of the third arbitrator and other expenses of arbitration shall be shared equally by both parties.

The arbitration shall take place in the county in which the *insured* resides unless the parties agree to another place. State court rules governing procedure and admission of evidence shall be used.

If There Is Other Coverage

1. No Duplication of Benefits

No *insured* shall recover more than once for the same expense or loss under this or similar vehicle insurance or self-insurance.

2. If an *insured* sustains *bodily injury* while *occupying your car*, and *your car* is described on the declarations page of another policy providing personal injury protection coverage:

- a. the total limits of liability under all such coverages shall not exceed that of the coverage with the highest limit of liability; and
 - b. we are liable only for our share. Our share is that percent of the damages that the limit of liability of this coverage bears to the total of all such personal injury protection coverage applicable to the accident.
3. If an *insured* sustains *bodily injury* while *occupying a motor vehicle* which is not *your car* or a *newly acquired car*; and:
- a. such vehicle is described on the declarations page of another policy providing personal injury protection coverage; or
 - b. its driver, other than *you*, *your spouse* or any *relative*, is an *insured* under another policy.
- coverage under this policy applies:
- a. as excess to any similar coverage that applies to the vehicle or driver as primary coverage; but
 - b. only in the amount by which the limits of this coverage exceed the primary coverage.
- If coverage from more than one policy applies as excess:
- a. the total limit of liability shall not exceed the difference between the limit of liability of the coverage that applies as primary and the highest limit of liability of any one of the coverages that apply as excess; and
 - b. we will pay our share. Our share is that percent of the expense or loss that the excess coverage provided by this policy bears to the total of all applicable limits of liability of all personal injury protection coverages that apply as excess.
4. If an *insured* sustains *bodily injury*:
- a. as a *pedestrian*; or
 - b. while *occupying a motor vehicle* which is not *your car* or a *newly acquired car*; and:
 - (1) such vehicle is not described on the declarations page of another policy providing personal injury protection coverage; and
 - (2) its driver is:
 - (i) *you* or *your spouse*; or
 - (ii) any other *person* who does not have personal injury protection coverage that covers the occupants of such vehicle,
- then:
- a. the total limits of liability under all policies issued by us shall not exceed that of the policy with the highest limit of liability; and
 - b. we will pay our share. Our share is that percent of the expense or loss that the applicable limit of liability of this policy bears to the total applicable limit of liability.
5. Coverage under this policy applies as excess over any benefits recovered under any workers' compensation law.
6. THIS COVERAGE DOES NOT APPLY IF THERE IS OTHER PERSONAL INJURY PROTECTION COVERAGE ON A *NEWLY ACQUIRED CAR*.
- What Is Not Covered Under Coverage P**
1. THERE IS NO COVERAGE FOR *BODILY INJURY* TO ANY *PERSON*:
 - a. WHO INTENTIONALLY CAUSES AN ACCIDENT;
 - b. VOLUNTARILY *OCCUPYING A MOTOR VEHICLE* KNOWN BY THAT *PERSON* TO BE STOLEN;
 - c. WHILE COMMITTING A FELONY;

- d. WHILE ATTEMPTING TO ELUDE A POLICE OFFICER; OR
- e. *OCCUPYING*, USING OR MAINTAINING A MOTORCYCLE.
2. THERE IS NO COVERAGE:
- a. WHILE A *NON-OWNED CAR* IS USED:
- (1) BY ANY *PERSON* EMPLOYED OR ENGAGED IN ANY WAY IN A *CAR BUSINESS*; OR
- (2) IN ANY OTHER BUSINESS OR JOB. This does not apply when the first *person* named in the declarations, his or her *spouse* or any *relative* is operating or *occupying* a *private passenger car*.
- b. WHILE *OCCUPYING* OR THROUGH BEING STRUCK BY ANY *MOTOR VEHICLE* OR TRAILER:
- (1) DESIGNED MAINLY FOR USE OFF PUBLIC ROADS WHILE OFF PUBLIC ROADS; OR
- (2) LOCATED FOR USE AS A RESIDENCE OR PREMISES; OR
- (3) THAT RUNS ON RAILS OR CRAWLER-TREADS.
- c. FOR *BODILY INJURY* DUE TO WAR OF ANY KIND.
- d. FOR *BODILY INJURY*:
- (1) SUSTAINED WHILE *OCCUPYING* OR THROUGH BEING STRUCK BY A VEHICLE OWNED BY OR LEASED TO *YOU, YOUR SPOUSE* OR ANY *RELATIVE*, WHICH IS NOT INSURED FOR THIS COVERAGE UNDER THIS POLICY; OR
- (2) SUSTAINED BY ANY *PERSON*, other than the first *person* named in the declarations, his or her *spouse* or

their *relatives*, WHILE *OCCUPYING* A VEHICLE:

- (i) RENTED OR LEASED TO OTHERS; OR
- (ii) USED TO CARRY *PERSONS* FOR A CHARGE. This does not apply to a *private passenger car* used on a share expense basis.

Limits of Liability

1. The Most We Pay

The most we pay for all loss and expense due to *bodily injury* to one *insured* is the amount shown under "Aggregate Limit" in the Schedule for *your* coverage symbol.

A *motor vehicle* and attached trailer are one vehicle as respects limits.

2. Schedule

Coverage Symbol	Aggregate Limit
P1	\$ 1,000
P2	1,500
P3	2,000
P4	2,500
P5	5,000
P6	10,000
P7	25,000
P8*	1,000
P9*	1,500
P10*	2,000
P11*	2,500
P12*	5,000
P13*	10,000
P14*	25,000

* Coverages P8 through P14 do not include loss of income and essential services expenses coverages.

MEDICAL PAYMENTS – COVERAGE C
You have this coverage if "C" appears in the "Coverages" space on the declarations page.

MEDICAL EXPENSES

We will pay reasonable medical expenses incurred, for *bodily injury* caused by accident, for services furnished within three years of the date of the accident. These expenses are for necessary medical, surgical, X-ray, dental, ambulance, hospital, professional nursing and funeral services, eyeglasses, hearing aids and prosthetic devices.

REASONABLE MEDICAL EXPENSES DO NOT INCLUDE EXPENSES:

1. FOR TREATMENT, SERVICES, PRODUCTS OR PROCEDURES THAT ARE:
 - a. EXPERIMENTAL IN NATURE, FOR RESEARCH, OR NOT PRIMARILY DESIGNED TO SERVE A MEDICAL PURPOSE; OR
 - b. NOT COMMONLY AND CUSTOMARILY RECOGNIZED THROUGHOUT THE MEDICAL PROFESSION AND WITHIN THE UNITED STATES AS APPROPRIATE FOR THE TREATMENT OF THE *BODILY INJURY*; OR
2. INCURRED FOR:
 - a. THE USE OF THERMOGRAPHY OR OTHER RELATED PROCEDURES OF A SIMILAR NATURE; OR
 - b. THE PURCHASE OR RENTAL OF EQUIPMENT NOT PRIMARILY DESIGNED TO SERVE A MEDICAL PURPOSE.

Expenses are reasonable only if they are consistent with the usual fees charged by the majority of similar medical providers in the geographical area in which the expenses were incurred for the specific medical service.

Services are necessary only if the services are rendered by a medical provider within the legally authorized scope of the provider's practice and are essential in achieving maximum medical improvement for the *bodily injury* sustained in the accident.

We have the right to make or obtain a utilization review of the medical expenses and services to determine if they are reasonable and necessary for the *bodily injury* sustained.

The *bodily injury* must be discovered and treated within one year of the date of the accident.

Persons for Whom Medical Expenses Are Payable

We will pay medical expenses for *bodily injury* sustained by:

1. a. the first *person* named in the declarations;
- b. his or her *spouse*; and
- c. their *relatives*.

These *persons* have to sustain the *bodily injury*:

- a. while they operate or *occupy* a vehicle covered under the liability section; or
- b. through being struck as a *pedestrian* by a motor vehicle or trailer.

A *pedestrian* means a *person* not an occupant of a motor vehicle or trailer.

2. any other *person* while *occupying*:
 - a. a vehicle covered under the liability coverage, except a *non-owned car*. Such vehicle has to be used by a *person* who is insured under the liability coverage; or
 - b. a *non-owned car*. The *bodily injury* has to result from such *car's* operation or occupancy by the first *person* named in the declarations, his or her *spouse* or their *relatives*.

Deciding Amount

The amount due under this coverage shall be decided by agreement between the *person* making claim and us. If there is no agreement, the amount due shall be decided by arbitration upon written request of the *person* making claim or us. Each party shall select a competent and impartial arbitrator. These two shall select a third one. If unable to agree on the third one within 30 days, either party may request a judge of a court of record in the county in which the arbitration is pending to select a third one. The written decision of any two arbitrators shall be binding on us, the *person* making claim, any assignee of the *person* making claim and any *person* or organization with whom the *person* making claim expressly or impliedly contracts for the rendition of medical services. The arbitrators shall not award punitive damages or other noncompensatory damages.

The cost of the arbitrator and any expert witness shall be paid by the party who hired them. The cost of the third arbitrator and other expenses of arbitration shall be shared equally by both parties.

The arbitration shall take place in the county in which the *person* making claim resides unless the parties agree to another place. State court rules governing procedure and admission of evidence shall be used.

Payment of Medical Expenses

We may pay the injured *person* or any *person* or organization performing the services.

Limit of Liability

Medical Expenses. The amount of coverage for medical expenses, including funeral services, is shown on the declarations page under "Limit of Liability - Coverage C - Each Person". If the amount shown is \$3,000 or more, the most we pay for funeral services is \$3,000 per *person*.

A motor vehicle and attached trailer are one vehicle as respects limits.

If There Are Other Medical Payments Coverages

1. Non-Duplication

No *person* for whom medical expenses are payable under this coverage shall recover more than once for the same medical expense under this or similar vehicle insurance.

2. Policies Issued by Us to You, Your Spouse or Relatives

If two or more policies issued by us to *you*, *your spouse* or *your relatives* provide vehicle medical payments coverage and apply to the same *bodily injury* sustained:

- while *occupying* a *non-owned car*, a *temporary substitute car*; or
- as a *pedestrian*

the total limits of liability under all such policies shall not exceed that of the policy with the highest limit of liability.

3. Subject to items 1 and 2 above, if other vehicle medical payments, personal injury protection or similar coverage applies to *bodily injury*, this coverage is excess.

4. THIS COVERAGE DOES NOT APPLY IF THERE IS OTHER VEHICLE MEDICAL PAYMENTS COVERAGE ON A **NEWLY ACQUIRED CAR**.

What Is Not Covered Under Coverage C

THERE IS NO COVERAGE:

1. WHILE A **NON-OWNED CAR** IS USED:

- BY ANY **PERSON** EMPLOYED OR ENGAGED IN ANY WAY IN A **CAR BUSINESS**; OR

- IN ANY OTHER BUSINESS OR JOB. This does not apply when the first *person* named in the declarations, his or her *spouse* or any *relative* is operating or *occupying* a *private passenger car*.

2. WHILE *OCCUPYING* OR THROUGH BEING STRUCK BY ANY MOTOR VEHICLE OR TRAILER:

- a. DESIGNED MAINLY FOR USE OFF PUBLIC ROADS WHILE OFF PUBLIC ROADS; OR
 - b. LOCATED FOR USE AS A RESIDENCE OR PREMISES; OR
 - c. THAT RUNS ON RAILS OR CRAWLER-TREADS.
3. FOR *BODILY INJURY* DUE TO WAR OF ANY KIND.
4. FOR MEDICAL EXPENSES FOR *BODILY INJURY*:
- a. SUSTAINED WHILE *OCCUPYING* OR THROUGH BEING STRUCK BY A VEHICLE OWNED

BY OR LEASED TO YOU, YOUR SPOUSE, OR ANY RELATIVE, WHICH IS NOT INSURED UNDER THIS COVERAGE; OR

- b. TO THE EXTENT WORKERS' COMPENSATION BENEFITS ARE REQUIRED TO BE PAYABLE; OR
 - c. SUSTAINED BY ANY PERSON, other than the first person named in the declarations, his or her spouse or their relatives, WHILE *OCCUPYING* A VEHICLE:
- (1) RENTED OR LEASED TO OTHERS; OR
 - (2) USED TO CARRY PERSONS FOR A CHARGE. This does not apply to a private passenger car used on a share expense basis.

SECTION III — UNINSURED MOTOR VEHICLE — COVERAGE U AND UNDERINSURED MOTOR VEHICLE — COVERAGE W

UNINSURED MOTOR VEHICLE — COVERAGE U

You have this coverage if "U" appears in the "Coverages" space on the declarations page.

We will pay damages for *bodily injury* or *property damage* an *insured* is legally entitled to collect from the owner or driver of an *uninsured motor vehicle*. The *bodily injury* or *property damage* must be caused by accident arising out of the operation or ownership of the *uninsured*

motor vehicle. The *bodily injury* must be sustained by an *insured*.

Uninsured Motor Vehicle — means:

- 1. a *motor vehicle*, the ownership, maintenance or use of which is:
 - a. not insured or bonded for *bodily injury* and *property damage* liability at the time of the accident; or

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b. insured or bonded for bodily injury and property damage liability at the time of the accident, but:

- (1) the limits of liability are less than required by the *Financial Responsibility Act*;
- (2) the insuring company denies coverage or is, or becomes, insolvent; or
- (3) a cause of action for the *bodily injury* or *property damage* is barred by the South Carolina Tort Claims Act; or

2. a "hit-and-run" *motor vehicle* whose owner or operator remains unknown, but only if:

- a. the *bodily injury* or *property damage* was caused by physical contact with the unknown vehicle, or the accident was witnessed by someone other than the owner or operator of the insured vehicle. The witness must sign an affidavit attesting to the truth of the facts of the accident contained in the affidavit; and
- b. the *insured* was not negligent in failing to determine the identity of the other vehicle and the driver of the other vehicle at the time of the accident.

An *uninsured motor vehicle* does not include any motor vehicle owned by:

1. the *insured* who sustains *bodily injury* or *property damage*;
2. a self-insurer in accordance with the applicable provisions of law; or
3. the State or any of its political subdivisions when the vehicle is operated by a *person* with proper authorization.

UNDERINSURED MOTOR VEHICLE - COVERAGE W

You have this coverage if "W" appears in the "Coverages" space on the declarations page.

We will pay damages for *bodily injury* or *property damage* an *insured*:

1. is legally entitled to collect from the owner or driver of an *underinsured motor vehicle*; or
2. would have been legally entitled to collect except for the existence of any damages cap or limitation imposed by statute.

The *bodily injury* or *property damage* must be caused by accident arising out of the operation or ownership of the *underinsured motor vehicle*. The *bodily injury* must be sustained by an *insured*.

THERE IS NO COVERAGE UNTIL THE LIMITS OF LIABILITY OF ALL APPLICABLE BODILY INJURY LIABILITY AND PROPERTY DAMAGE LIABILITY INSURANCE POLICIES OR BONDS THAT APPLY TO THE *BODILY INJURY* OR *PROPERTY DAMAGE* HAVE BEEN USED UP BY PAYMENT OF JUDGMENTS OR SETTLEMENTS, OR PAYMENT HAS BEEN MADE UNDER SUCH POLICIES OR BONDS UP TO ANY DAMAGES CAP OR LIMITATION IMPOSED BY STATUTE.

Underinsured Motor Vehicle - means a *motor vehicle*, as to which there is bodily injury liability insurance or a bond applicable at the time of the accident in an amount of at least that specified in the *Financial Responsibility Act* and:

1. the amount of the insurance or bond is less than the amount of the *insured's* damages; or
2. the *insured's* damages exceed any damages cap or limitation imposed by statute.

An *underinsured motor vehicle* does not include any *motor vehicle* while located for use as premises.

Our Right to Defend

If the *insured* files suit against the owner or driver of the *underinsured motor vehicle*, we have the right to defend on the issues of the legal liability of and the damages owed by such owner or driver.

Definitions

Financial Responsibility Act – means the Motor Vehicle Financial Responsibility Act of South Carolina.

Motor Vehicle – means a self-propelled vehicle or trailer designed for use on public roads.

A *motor vehicle* does not include:

1. traction engines;
2. road rollers;
3. farm tractors;
4. tractor cranes;
5. power shovels;
6. well drillers; or
7. electric trolleys.

Property Damage – means damage to property of the *insured*.

Who Is an Insured

Insured – means:

1. *you, your spouse and relatives*;
2. any other *person* while *occupying* or using *your car*, a *newly acquired car* or a trailer attached to either, if such vehicle is:
 - a. insured under the liability coverage; and
 - b. being used with *your* consent; and
3. any *person* to the extent he or she may recover damages under a state wrongful death statute because of the death of an *insured* under 1. or 2. above.

Payment of Any Amount Due

We will pay any amount due to the *insured* or the *insured's* representative.

Limits of Liability

Coverage U

1. Bodily Injury

The amount of coverage is shown on the declarations page under "Limits of Liability – U – Each Person, Each Accident". Under "Each Person" is the amount of coverage for all damages due to *bodily injury* to one *person*. "*Bodily injury* to one *person*" includes all injury and damages to others resulting from this *bodily injury*. Under "Each Accident" is the total amount of coverage, subject to the amount shown under "Each Person", for all damages due to *bodily injury* to two or more *persons* in the same accident.

2. Property Damage

The amount of coverage is shown on the declarations page under "Limits of Liability – U – Property Damage, Each Accident". This is the amount of coverage for all *property damage* as the result of one accident.

3. The most we pay will be the lesser of:

a. the difference between:

(1) the amount of the *insured's* damages; and

(2) the amount paid to the *insured* by or for any *person* or organization who is or may be held legally liable for the *bodily injury* or *property damage*; or

b. the limit of liability of this coverage.

Coverage W

1. Bodily Injury

The amount of coverage is shown on the declarations page under "Limits of Liability – W – Each Person, Each Accident". Under "Each Person" is the amount of coverage for all damages due to *bodily injury* to one *person*. "*Bodily injury* to one *person*" includes

all injury and damages to others resulting from this *bodily injury*. Under "Each Accident" is the total amount of coverage, subject to the amount shown under "Each Person", for all damages due to *bodily injury* to two or more *persons* in the same accident.

2. Property Damage

The amount of coverage is shown on the declarations page under "Limits of Liability - W - Property Damage, Each Accident". This is the amount of coverage for all *property damage* as the result of the accident.

3. Any amount payable under this coverage shall be reduced by any amount paid or payable under any:

- a. workers' compensation;
- b. disability benefits;
- c. or similar law.

This does not reduce the limits of liability of this coverage.

4. The most we pay will be the lesser of:

- a. the difference between:
 - (1) the amount of the *insured's* damages; and
 - (2) the amount paid to the *insured* by or for any *person* or organization who is or may be held legally liable for the *bodily injury* or *property damage*; or
- b. the limit of liability of this coverage.

Coverages U and W

1. The limits of liability are not increased because more than one vehicle or *person* is insured under this policy.
2. Any amount paid under these coverages shall reduce any amount paid or payable to or for the *insured* under the liability coverage of this policy.

When Coverages U and W Do Not Apply THERE IS NO COVERAGE:

1. UNDER COVERAGE U FOR ANY *INSURED* WHO, WITHOUT OUR WRITTEN CONSENT:
 - a. SETTLES WITH ANY *PERSON* OR ORGANIZATION WHO MAY BE LIABLE FOR THE *BODILY INJURY* OR *PROPERTY DAMAGE*; AND
 - b. THEREBY IMPAIRS OUR RIGHT TO RECOVER OUR PAYMENTS.
2. TO THE EXTENT IT BENEFITS:
 - a. ANY WORKERS' COMPENSATION OR DISABILITY BENEFITS INSURANCE COMPANY.
 - b. A SELF-INSURER UNDER ANY WORKERS' COMPENSATION, OR DISABILITY BENEFITS OR SIMILAR LAW.
3. FOR *PROPERTY DAMAGE* FOR WHICH THE *INSURED* HAS BEEN PAID.
4. FOR *BODILY INJURY* OR *PROPERTY DAMAGE* TO THE EXTENT THE LIMITS OF LIABILITY OF COVERAGES U AND W UNDER THIS POLICY EXCEED THE LIMITS REQUIRED BY THE *FINANCIAL RESPONSIBILITY ACT* WHILE:
 - a. *YOU*,
 - b. *YOUR SPOUSE*, OR
 - c. ANY *RELATIVE*IS OCCUPYING A MOTOR VEHICLE OWNED BY OR LEASED TO:
 - a. *YOU*,
 - b. *YOUR SPOUSE*, OR
 - c. ANY *RELATIVE*IF IT IS NOT *YOUR CAR* OR A *NEWLY ACQUIRED CAR*.

5. FOR **BODILY INJURY OR PROPERTY DAMAGE**:

a. WHILE AN **INSURED**, OTHER THAN:

- (1) **YOU**;
- (2) **YOUR SPOUSE**; OR
- (3) **ANY RELATIVE**.

IS OCCUPYING A **MOTOR VEHICLE** OTHER THAN **YOUR CAR**, A **NEWLY ACQUIRED CAR** OR A **TRAILER** ATTACHED TO EITHER.

b. IF ANY **INSURED** IS STRUCK AS A **PEDESTRIAN** BY A **MOTOR VEHICLE** OWNED BY OR LEASED TO:

- (1) **YOU**;
- (2) **YOUR SPOUSE**; OR
- (3) **ANY RELATIVE**.

6. UNDER COVERAGE U, FOR THE FIRST \$200 OF **PROPERTY DAMAGE** SUSTAINED BY EACH **INSURED** IN EACH ACCIDENT.

If There Is Other Uninsured Motor Vehicle Coverage

1. If:

- a. **you, your spouse** or a **relative** sustains **bodily injury** or **property damage** as a **pedestrian**; and
- b. coverage from more than one of our policies issued to **you, your spouse** or a **relative** applies to the accident:
 - (1) the one policy with the highest limit shall apply in that limit; and
 - (2) each of the other policies we issued shall apply only in an amount equal to the minimum limits required by the **Financial Responsibility Act** for **bodily injury** and **property damage liability**.

Subject to the above, if policies issued by other insurers apply, we are liable only for our share. Our share is that percent of the damages that the amount of the limit of liability that applies from this policy bears to the total of all such uninsured motor vehicle coverage that applies to the accident.

2. If:

- a. the **insured** sustains **bodily injury** or **property damage** while occupying **your car**; and
- b. **your car** is described on the declarations page of another policy providing uninsured motor vehicle coverage:
 - (1) the total limits of liability under all such coverages shall not exceed that of the coverage with the highest limits of liability; and
 - (2) we are liable only for our share. Our share is that percent of the damages that the limits of liability of this coverage bear to the total of all such uninsured motor vehicle coverage that applies.

3. If **you, your spouse** or a **relative** sustains **bodily injury** or **property damage** while occupying a **motor vehicle** owned by or leased to **you, your spouse** or **relative** which is not **your car** or a **newly acquired car**, this policy shall:

- a. be excess; and
- b. apply only in an amount equal to the minimum limits required by the **Financial Responsibility Act** for **bodily injury** and **property damage liability**.

Subject to the above, if other policies apply as excess, we are liable only for our share. Our share is that percent of the damages in excess of the limits of the primary coverage that the minimum amount required by the **Financial Responsibility Act** for **bodily injury** and **property damage liability** bear to the total of all uninsured motor vehicle coverage that applies as excess to the accident.

1. If *you, your spouse* or a *relative* sustains *bodily injury* or *property damage* while occupying a vehicle not owned by or leased to *you, your spouse* or any *relative*, this coverage applies as excess to any uninsured motor vehicle coverage which applies to the vehicle as primary coverage.

If coverage from more than one of our policies issued to *you, your spouse* or a *relative* applies to the accident:

- a. the one policy with the highest limit shall apply in that limit; and
- b. each of the other policies we issued shall apply only in an amount equal to the minimum limits required by the *Financial Responsibility Act* for bodily injury and property damage liability.

Subject to the above, if policies issued by other insurers apply, we are liable only for our share. Our share is that percent of the damages that the amount of the limit of liability that applies from this policy bears to the total of all uninsured motor vehicle coverage that applies as excess to the accident.

If There Is Other Underinsured Motor Vehicle Coverage

1. If:

- a. *you, your spouse* or a *relative* sustains *bodily injury* or *property damage* as a pedestrian; and
- b. coverage from more than one of our policies issued to *you, your spouse*, or a *relative* applies to the accident:

(1) the one policy with the highest limit shall apply in that limit; and

(2) each of the other policies we issued shall apply only in an amount equal to the minimum limits required by the *Financial Responsibility Act* for bodily injury and property damage liability.

Subject to the above, if policies issued by other insurers apply, we are liable only for

our share. Our share is that percent of the damages that the amount of the limit of liability that applies from this policy bears to the total of all underinsured motor vehicle coverage that applies to the accident.

2. If:

- a. the *insured* sustains *bodily injury* or *property damage* while occupying your car; and
- b. your car is described on the declarations page of another policy providing underinsured motor vehicle coverage:

(1) the total limits of liability under all such coverages shall not exceed that of the coverage with the highest limits of liability; and

(2) we are liable only for our share. Our share is that percent of the damages that the limits of liability of this coverage bear to the total of all such underinsured motor vehicle coverage that applies.

3. If *you, your spouse* or a *relative* sustains *bodily injury* or *property damage* while occupying a motor vehicle owned by or leased to *you, your spouse* or *relative* which is not your car or a newly acquired car, this policy shall:

- a. be excess; and
- b. apply only in an amount equal to the minimum limits required by the *Financial Responsibility Act* for bodily injury and property damage liability.

Subject to the above, if other policies apply as excess, we are liable only for our share. Our share is that percent of the damages in excess of the limits of the primary coverage that the minimum amount required by the *Financial Responsibility Act* for bodily injury and property damage liability bears to the total of all underinsured motor vehicle coverage that applies as excess to the accident.

4. If *you, your spouse* or a *relative* sustains *bodily injury or property damage* while *occupying* a vehicle not owned by or leased to *you, your spouse* or any *relative*, this coverage applies as excess to any underinsured motor vehicle coverage which applies to the vehicle as primary coverage.

If coverage from more than one of our policies issued to *you, your spouse* or a *relative* applies to the accident:

- a. the one policy with the highest limit shall apply in that limit; and

- b. each of the other policies we issued shall apply only in an amount equal to the minimum limits required by the *Financial Responsibility Act* for bodily injury and property damage liability.

Subject to the above, if policies issued by other insurers apply, we are liable only for our share. Our share is that percent of the damages that the amount of the limit of liability that applies from this policy bears to the total of all underinsured motor vehicle coverage that applies to the accident.

SECTION IV — PHYSICAL DAMAGE COVERAGES

Loss — means, when used in this section, each direct and accidental loss of or damage to:

1. *your car*;
2. its equipment which is common to the use of *your car* as a vehicle;
3. clothes and luggage insured; and
4. a detachable living quarters attached or removed from *your car* for storage. Detachable living quarters includes its body and items securely fixed in place as a permanent part of the body. *You* must have told us about the living quarters

before the *loss* and paid any extra premium needed.

COMPREHENSIVE — COVERAGE D. *You* have this coverage if "D" appears in the "Coverages" space on the declarations page. If a deductible applies the amount is shown by the number beside "D".

1. **Loss to Your Car.** We will pay for *loss* to *your car* EXCEPT *LOSS BY COLLISION* but only for the amount of each such *loss* in excess of the deductible amount, if any. The deductible amount does not apply to *loss* to safety glass.

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Breakage of glass, or loss caused by missiles, falling objects, fire, theft, larceny, explosion, earthquake, windstorm, hail, water, flood, malicious mischief or vandalism, riot or civil commotion, is payable under this coverage. Loss due to hitting or being hit by a bird or an animal is payable under this coverage.

2. We will repay *you* for transportation costs if *your car* is stolen. We will pay up to \$16 per day for the period that begins 48 hours after *you* tell us of the theft. The period ends when we offer to pay for *loss*.

COLLISION - COVERAGE G. *You* have this coverage if "G" appears in the "Coverages" space on the declarations page. The deductible amount is shown by the number beside "G".

We will pay for *loss* to *your car* caused by *collision* but only for the amount of each such *loss* in excess of the deductible amount. The deductible amount does not apply to *loss* to safety glass. If the *collision* is with another motor vehicle insured with us, *you* do not pay *your* deductible if it is \$100 or less as we pay it.

Collision - means *your car* upset or hit or was hit by a vehicle or other object.

Clothes and Luggage - Comprehensive and Collision Coverages

We will pay for *loss* to clothes and luggage owned by the first *person* named in the declarations, his or her *spouse*, and their *relatives*. These items have to be in or on *your car*. *Your car* has to be covered under this policy for:

1. Comprehensive, and the *loss* caused by fire, lightning, flood, falling objects, explosion, earthquake, or theft. If the *loss* is due to theft **YOUR ENTIRE CAR MUST HAVE BEEN STOLEN**; or
2. Collision, and the *loss* caused by *collision*.

We will pay up to \$200 for *loss* to clothes and luggage in excess of any deductible amount shown for comprehensive or collision. \$200 is the most we will pay in any one occurrence even though more than one *person* has a *loss*. This coverage is excess over any other coverage.

Limit of Liability - Comprehensive and Collision Coverages

The limit of our liability for *loss* to property or any part of it is the lower of:

1. the actual cash value; or
2. the cost of repair or replacement.

Actual cash value is determined by the market value, age and condition at the time the *loss* occurred. Any deductible amount that applies is then subtracted.

The cost of repair or replacement is based upon one of the following:

1. the cost of repair or replacement agreed upon by *you* and us;
2. a competitive bid approved by us; or
3. an estimate written based upon the prevailing competitive price. The prevailing competitive price means prices charged by a majority of the repair market in the area where the *car* is to be repaired as determined by a survey made by us. If *you* ask, we will identify some facilities that will perform the repairs at the prevailing competitive price. We will include in the estimate parts sufficient to restore the vehicle to its pre-loss condition. *You* agree with us that such parts may include either parts furnished by the vehicle's manufacturer or parts from other sources including non-original equipment manufacturers.

Any deductible amount that applies is then subtracted.

Settlement of Loss – Comprehensive and Collision Coverages

We have the right to settle a *loss* with *you* or the owner of the property in one of the following ways:

1. pay the agreed upon actual cash value of the property at the time of the *loss* in exchange for the damaged property. If the owner keeps the damaged property, we will deduct its value after the *loss* from our payment. The damaged property cannot be abandoned to us;
2. pay to:
 - a. repair the damaged property or part, or
 - b. replace the property or part.If the repair or replacement results in betterment, *you* must pay for the amount of betterment; or
3. return the stolen property and pay for any damage due to the theft.

If we can pay the *loss* under either comprehensive or collision, we will pay under the coverage where *you* collect the most.

When there is *loss* to *your car*, clothes and luggage in the same occurrence, any deductible will be applied first to the *loss* to *your car*. *You* pay only one deductible.

If the owner of the property and we cannot agree on the amount due, it shall be decided by an appraisal of the *loss* upon written request by either party. Each party shall select a competent appraiser. These two shall select a third appraiser. The written decision of any two appraisers shall be binding on each party. The cost of the appraiser shall be paid by the party who hired him or her. The cost of the third appraiser and other appraisal expenses shall be shared equally by both parties. We do not waive any of our rights by any act relating to appraisal. The terms of the provision titled Limit of Liability – Comprehensive and Collision Coverages are not

subject to appraisal. If *you* give us *your* consent, we may move the damaged property, at our expense, to reduce storage costs during the appraisal process. If *you* do not give us *your* consent, we will pay only the storage costs which would have resulted if we had moved the damaged property.

The Settlement of Loss provision for comprehensive and collision coverages incorporates the Limit of Liability provision of those coverages.

EMERGENCY ROAD SERVICE – COVERAGE H. *You* have this coverage if "H" appears in the "Coverages" space on the declarations page.

We will pay the fair cost *you* incur for *your car* for:

1. mechanical labor up to one hour at the place of its breakdown;
2. towing to the nearest place where the necessary repairs can be made during regular business hours if it will not run;
3. towing it out if it is stuck on or immediately next to a public highway;
4. delivery of gas, oil, loaned battery, or tire. WE DO NOT PAY THE COST OF THE GAS, OIL, BATTERY OR TIRE;
5. locksmith services, up to one hour, to open *your car* if *your* key is lost, stolen or locked inside *your car*. We will only pay the cost of labor.

CAR RENTAL EXPENSE – COVERAGE R. *You* have this coverage if "R" appears in the "Coverages" space on the declarations page.

We will repay *you* up to \$10 per day when *you* rent a *car* from a car rental agency or garage due to a *loss* to *your car* which would be payable under coverage D or G, starting:

1. when it cannot run due to the *loss*; or
2. if it can run, when *you* leave it at the shop for agreed repairs;

and ending when:

1. it has been repaired or replaced, or
 2. we offer to pay for the *loss*, or
 3. *you* incur 30 days rent,
- whichever comes first.

Any car rent payable under Coverage R is REDUCED TO THE EXTENT IT IS PAYABLE UNDER COMPREHENSIVE.

CAR RENTAL AND TRAVEL EXPENSES - COVERAGE R1. *You* have this coverage if "R1" appears in the "Coverages" space on the declarations page.

1. Car Rental Expense. We will:

- a. pay *you* up to \$16 of the daily rental charge when *you* rent a *car* from a car rental agency or garage; or
- b. pay *you* \$10 for each complete 24 hour period that *your car* is not drivable if *you* choose to not rent a *car*. *You* must report to us the period of time that *your car* was not drivable.

We will pay only if *your car* is not drivable because of a *loss* which would be payable under coverage D or G.

This applies during a period starting:

- a. when *your car* cannot run due to the *loss*; or
- b. if *your car* can run, when *you* leave it at the shop for agreed repairs;

and ending:

- a. when it has been repaired or replaced, or
- b. (1) when we offer to pay for the *loss*, if *your car* is repairable, or
- (2) five days after we offer to pay for the *loss*, if *your car* was stolen and not recovered or we declared it a total loss,

whichever comes first.

Any car rent payable under this coverage is REDUCED TO THE EXTENT IT IS PAYABLE UNDER COMPREHENSIVE.

2. Travel Expenses. If *your car* cannot run due to a *loss* which would be payable under coverage D or G more than 50 miles from home, we will repay *you* for expenses incurred by *you*, *your spouse* and any *relative* for:

- a. Commercial transportation fares to continue to *your* destination or home.
- b. Extra meals and lodging needed when the *loss* to *your car* causes a delay enroute. The expenses must be incurred between the time of the *loss* and *your* arrival at *your* destination or home or by the end of the fifth day, whichever occurs first.
- c. Meals, lodging and commercial transportation fares incurred by *you* or a *person* *you* choose to drive *your car* from the place of repair to *your* destination or home.

3. Rental Car - Repayment of Deductible Amount Expense. We will repay the expense of any deductible amount *you* are required to pay the owner under comprehensive or collision coverage in effect on a substitute *car* rented from a car rental agency or garage.

Total Amount of Expenses Payable - Coverage R1

1. The most we will pay for the total of the "Car Rental Expense" and "Rental Car - Repayment of Deductible Amount Expense" incurred in any one occurrence is \$400.
2. The most we will pay for "Travel Expenses" incurred by all *persons* in any one occurrence is \$400.

CAR RENTAL AND TRAVEL EXPENSES – COVERAGE R2. *You* have this coverage if "R2" appears in the "Coverages" space on the declarations page.

1. Car Rental Expense.

a. We will:

- (1) pay 80% of the rental charge when *you* rent a *car* from a car rental agency or garage. "Rental charge" means the daily rental rate plus charges for mileage and related taxes; or
- (2) pay *you* \$10 for each complete 24 hour period that *your car* is not drivable if *you* choose to not rent a *car*. *You* must report to us the period of time that *your car* was not drivable.

We will pay only if *your car* is not drivable because of a *loss* which would be payable under coverage D or G.

b. Payment will be made for a period that:

(1) starts:

- (a) when *your car* is not drivable due to the *loss*; or
- (b) if *your car* is drivable, when *you* leave it at the shop for agreed repairs; and

(2) ends:

- (a) when *your car* has been repaired or replaced; or
- (b) when we offer to pay for the *loss*, if *your car* is repairable but *you* choose to delay repairs; or
- (c) five days after we offer to pay for the *loss* if:
 - (i) *your car* was stolen and not recovered; or
 - (ii) we declare that *your car* is a total loss;

whichever comes first.

Any car rent payable under this coverage is **REDUCED TO THE EXTENT IT IS PAYABLE UNDER COMPREHENSIVE.**

2. Travel Expenses. If *your car* is not drivable due to a *loss* which occurs more than 50 miles from home and which would be payable under coverage D or G, we will pay *you* for expenses incurred by *you*, *your spouse* and any *relative* for:

- a. commercial transportation fares to continue to *your* destination or home;
- b. extra meals and lodging needed when the *loss* to *your car* causes a delay enroute. The expenses must be incurred between the time of the *loss* and *your* arrival at *your* destination or home or by the end of the fifth day, whichever occurs first; and
- c. meals, lodging and commercial transportation fares incurred by *you* or a *person* *you* choose to drive *your car* from the place of repair to *your* destination or home.

3. Rental Car – Repayment of Deductible Amount Expense. We will pay the expense of any deductible amount *you* are required to pay the owner under comprehensive or collision coverage in effect on a substitute *car* rented from a car rental agency or garage.

Total Amount of Expenses Payable – Coverage R2

1. The most we will pay for "Car Rental Expense" incurred in any one occurrence is \$500.
2. The most we will pay for "Travel Expenses" incurred by all *persons* in any one occurrence is \$400.
3. The most we will pay for "Rental Car – Repayment of Deductible Amount Expense" incurred in any one occurrence is \$400.

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Trailer Coverage

1. Owned Trailer

Your trailer is covered:

- when it is described on the declarations page of the policy; and
- for the coverages shown as applying to it.

2. Non-Owned Trailer or Detachable Living Quarters

Any physical damage coverage in force on your car applies to a non-owned:

- trailer, if it is designed for use with a *private passenger car*; or
- detachable living quarters unit

used by the first *person* named in the declarations, his or her *spouse* or their *relatives*.

The most we will pay under the comprehensive or collision coverage for a *loss* to such non-owned trailer or unit is \$500.

A non-owned trailer or detachable living quarters unit is one that:

- is not owned by or registered in the name of:
 - you, your spouse, any relative*;
 - any other *person* residing in the same household as *you, your spouse* or any *relative*; or
 - an employer of *you, your spouse* or any *relative*; and
- has not been used or rented by or in the possession of *you, your spouse* or any *relative* during any part of each of the last 21 or more consecutive days. If *you* are insured by one or more other car policies issued by us, the 21 day limit is increased by an additional 21 days for each such additional policy; and

- is not rented and used in connection with the employment or business of *you, your spouse* or any *relative*.

Coverage for the Use of Other Cars

The coverages in this section *you* have on *your car* extend to a *loss* to a *newly acquired car*, a *temporary substitute car* or a *non-owned car*. These coverages extend to a *non-owned car* while it is driven by or in the custody of an *insured*.

Insured - as used in this provision means:

- the first *person* named in the declarations;
- his or her *spouse*; or
- their *relatives*.

When the Physical Damage Coverages Do Not Apply

THERE IS NO COVERAGE FOR:

1. A NON-OWNED CAR:

- IF THE DECLARATIONS STATE THE "USE" OF *YOUR CAR* IS OTHER THAN PLEASURE AND BUSINESS;
- WHILE BEING REPAIRED, SERVICED OR USED BY ANY *PERSON* WHILE THAT *PERSON* IS WORKING IN ANY *CAR BUSINESS*; OR
- WHILE USED IN ANY OTHER BUSINESS OR OCCUPATION. This does not apply to a *private passenger car* driven or *occupied* by the first *person* named in the declarations, his or her *spouse* or their *relatives*.

2. ANY VEHICLE WHILE:

- RENTED OR LEASED TO OTHERS; OR

- b. USED TO CARRY *PERSONS* FOR A CHARGE. This does not apply to the use on a share expense basis.
- 3. LOSS TO ANY VEHICLE DUE TO:
 - a. TAKING BY ANY GOVERNMENTAL AUTHORITY;
 - b. WAR OF ANY KIND;
 - c. AND LIMITED TO WEAR AND TEAR, FREEZING, MECHANICAL OR ELECTRICAL BREAKDOWN OR FAILURE. This does not apply when the *loss* is the result of a theft covered by this policy. Nor does it apply to emergency road service; OR
 - d. CONVERSION, EMBEZZLEMENT OR SECRETION BY ANY *PERSON* WHO HAS THE VEHICLE DUE TO ANY LIEN, RENTAL, LEASE OR SALES AGREEMENT.
- 4. TIRES unless:
 - a. stolen, or damaged by fire or vandalism; or
 - b. other *loss* covered by this section happens at the same time.
- 5. TAPES OR DISCS FOR RECORDING OR REPRODUCING SOUND.
- 6. ANY LASER OR RADAR DETECTOR.

- 7. *YOUR CAR* WHILE SUBJECT TO ANY LIEN, LEASE OR SALES AGREEMENT NOT SHOWN IN THE DECLARATIONS.

If There Is Other Coverage

- 1. Policies Issued by Us to You, Your Spouse, or Any Relative

If two or more vehicle policies issued by us to *you*, *your spouse*, or any *relative* apply to the same *loss* or occurrence, we will pay under the policy with the highest limit.

- 2. Coverage Available From Other Sources

Subject to item 1, if other coverage applies to the *loss* or expenses, we will pay only our share. Our share is the percent the limit of liability of this policy bears to the total of all coverage that applies.

- 3. Temporary Substitute Car, Non-Owned Car or Trailer

Subject to items 1 and 2, if a *temporary substitute car*, a *non-owned car* or trailer designed for use with a *private passenger car* has other coverage on it, then this coverage is excess.

No Benefit to Bailee

These coverages shall not benefit any carrier or other bailee for hire liable for *loss*.

SECTION V — DEATH, DISMEMBERMENT AND LOSS OF SIGHT — COVERAGES

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If "S" is shown in the "Coverages" space on the declarations page each *insured* has the coverage.

We will pay the amount shown in the schedule that applies for death, or *loss*, caused by accident. The *insured* has to be *occupying* or be struck by a land motor vehicle or trailer. The death or *loss* must be the direct result of the accident and not due to any other cause. The death or *loss* must occur within 90 days of the accident.

Insured — means a *person* listed under "Persons Insured — Coverage S" on the declarations page.

Loss — means the loss of:

1. the foot or hand, cut off through or above the ankle or wrist; or
2. the whole thumb or finger; or
3. all sight.

The Most We Pay

The most we will pay because of the death of, or *loss* to, the *insured*, except as provided below, is shown under "Amount" next to his or her name on the declarations page.

The amount shown in the schedule for death or *loss* is doubled for an *insured* who, at the time of the accident, is using the vehicle's complete restraint system as recommended by the vehicle's manufacturer.

If the *insured* dies as a result of this accident, any payment made or due for *loss* reduces the amount of the death payment.

SCHEDULE

	If amount under S in the declarations is:	
	\$5,000	\$10,000
Death	\$5,000	\$10,000
<i>Loss</i> of:		
hands; feet; sight of eyes;		
one hand & one foot; or		
one hand or one foot &		
sight of one eye	5,000	10,000
one hand or one foot; or		
sight of one eye	2,500	5,000
thumb & finger on one		
hand; or three fingers	1,500	3,000
any two fingers	1,000	2,000

Payment of Any Amount Due

We will pay any amount due:

1. to the *insured*;
2. to a parent or guardian if the *insured* is a minor or an incompetent *person*;
3. to the surviving *spouse*; or
4. at our option, to any *person* or organization authorized by law to receive such payment.

Any payment made is to its extent a complete discharge of our obligations. We are not responsible for the way the money is used.

Autopsy

We have the right to have an autopsy made where it is not forbidden by law.

When Coverage S Does Not Apply

THIS COVERAGE DOES NOT APPLY TO:

1. AN *INSURED* WHILE ON THE JOB, OPERATING, *OCCUPYING*, LOADING OR UNLOADING:

- a. AN EMERGENCY VEHICLE; OR
- b. A VEHICLE USED IN THE *INSURED'S* BUSINESS OR JOB.

But 1.b. does not apply if the vehicle is:

- (1) a *private passenger car* or school bus; or
- (2) of the pickup or van type, with a Gross Vehicle Weight of 10,000 pounds or less, while not used for delivery.

2. AN *INSURED* WHILE:

- a. ON THE JOB IN ANY *CAR BUSINESS*; OR
- b. *OCCUPYING* ANY:

- (1) VEHICLE WHILE BEING USED IN A RACE; OR

- (2) MILITARY VEHICLE.

3. AN *INSURED* WHILE *OCCUPYING* OR THROUGH BEING STRUCK BY A MOTOR VEHICLE OR TRAILER:

- a. THAT RUNS ON RAILS OR CRAWLER-TREADS;
- b. DESIGNED FOR USE MAINLY OFF PUBLIC ROADS WHILE OFF PUBLIC ROADS; OR
- c. LOCATED FOR USE AS PREMISES.

4. THE DEATH OF OR *LOSS* TO AN *INSURED* DUE TO:

- a. DISEASE except pus forming infection due to *bodily injury* received in the accident; or
- b. SUICIDE OR ATTEMPTED SUICIDE WHILE SANE OR INSANE; OR
- c. WAR OF ANY KIND.

CONDITIONS

1. Policy Changes

a. **Policy Terms.** The terms of this policy may be changed or waived only by:

- (1) an endorsement issued by us; or
- (2) the revision of this policy form to give broader coverage without an extra charge. If any coverage *you* carry is changed to give broader coverage, we will give *you* the broader coverage without the issuance of a new policy as of the date we make the change effective.

b. **Change of Interest.** No change of interest in this policy is effective unless we consent in writing. However, if *you* die, we will protect as named insured, except under death, dismemberment and loss of sight coverage:

- (1) *your* surviving spouse;
- (2) any *person* with proper custody of *your car*, a *newly acquired car* or a *temporary substitute car* until a legal representative is qualified; and then
- (3) the legal representative while acting within the scope of his or her duties.

Policy notice requirements are met by mailing the notice to the deceased named insured's last known address.

c. **Consent of Beneficiary.** Consent of the beneficiary under death, dismemberment and loss of sight coverage is not needed to cancel or change the policy.

d. **Joint and Individual Interests.** When there are two or more named insureds, each acts for all to cancel or change the policy.

2. Suit Against Us

There is no right of action against us:

a. until all the terms of this policy have been met; and

b. under the liability coverage, until the amount of damages an *insured* is legally liable to pay has been finally determined by:

(1) judgment after actual trial, and appeal if any; or

(2) agreement between the *insured*, the claimant and us.

Bankruptcy or insolvency of the *insured* or his or her estate shall not relieve us of our obligations.

c. under personal injury protection, medical payments, any physical damage and death, dismemberment and loss of sight coverages, until 30 days after we get the *insured's* notice of accident or loss.

d. under the underinsured motor vehicle coverage, unless copies of the pleadings in the action establishing liability are served upon us in the manner provided by law.

3. Our Right to Recover Our Payments

a. Underinsured motor vehicle and death, dismemberment and loss of sight coverage payments are not recoverable by us.

b. Under personal injury protection and medical payments coverages:

- (1) we are subrogated to the extent of our payment to the right of recovery the injured *person* has against any party liable for the *bodily injury*.

- (2) if the *person* to or for whom we have made payment has not recovered from any party liable for the *bodily injury*, he or she shall:
 - (a) not hurt our rights to recover;
 - (b) keep these rights in trust for us;
 - (c) execute any legal papers we need; and
 - (d) when we ask, take action through our representative to recover our payments.
- (3) if the *person* to or for whom we make payment recovers from any party liable for the *bodily injury*, that *person* shall hold in trust for us the proceeds of the recovery, and reimburse us to the extent of our payment.
- c. To the extent allowed by law, under uninsured motor vehicle coverage:
 - (1) the right of recovery of the *insured* passes to us, to the extent of our payments.
 - (2) we shall pay our share of the reasonable costs of any recovery. Our share is the percent that our recovery bears to the total recovery. We reserve the right to select an attorney to handle the recovery.
 - (3) an *insured* making claim for *property damage* shall assign to us, to the extent of our payments, the right to any other compensation for it. We do not have to make any payment until the *insured* has done this.
- d. Under all other coverages, the right of recovery of any party we pay passes to us. Such party shall:
 - (1) not hurt our rights to recover; and
 - (2) help us get our money back.

4. Cancellation

How You May Cancel. *You* may cancel *your* policy by notifying us in writing of the date to cancel, which must be later than the date *you* mail or deliver it to us. We may waive these requirements by confirming the date and time of cancellation to *you* in writing.

How and When We May Cancel. We may cancel *your* policy by written notice, mailed or delivered to *your* last known address. The notice shall give the date cancellation is effective.

If we cancel *your* policy effective during the first 90 days that the policy is in force, the cancellation notice will be mailed or delivered to *you* at least 15 days before the cancellation effective date.

If we cancel *your* policy effective after it has been in force for more than 90 days, any notice of cancellation will be mailed or delivered to *you* at least:

- a. 15 days before the cancellation effective date if the cancellation is because *you* did not pay the premium; or
- b. 20 days before the cancellation effective date if the cancellation is because of any other reason.

The mailing of the notice shall be sufficient proof of notice.

Unless we cancel *your* policy effective during the first 90 days that the policy is in force, we will not cancel *your* policy before the end of the current policy period unless:

- a. *you* fail to pay the premium when due; or
- b. *you*, *your spouse*, any *relative* or any other *person* who usually drives *your car* has had his or her driver's license suspended or revoked:
 - (1) during the policy period or,

(2) if the policy is a renewal, during its policy period or the 30 days immediately preceding the last anniversary of the effective date of the policy.

Return of Unearned Premium. If you cancel, premium may be earned on a short rate basis. If we cancel, premium will be earned on a pro-rata basis. Any unearned premium may be returned at the time we cancel or within a reasonable time thereafter. Delay in the return of unearned premium does not affect the cancellation.

5. Renewal

Unless we mail or deliver to you a notice of cancellation or a notice of our intention not to renew the policy, we agree to renew the policy for the next policy period upon your payment of the renewal premium when due. It is agreed that the renewal premium will be based upon the rates in effect, the coverages carried, the applicable limits of liability, deductibles and other elements that affect the premium that apply at the time of renewal.

Other elements that may affect your premium include, but are not limited to:

- drivers of *your car* and their ages and marital status;
- your car* and its use;
- eligibility for discounts or other premium credits;
- applicability of a surcharge based either on accident history, or on other factors.

A notice of our intention to not renew will be mailed or delivered to your last known address at least 30 days before the end of the current policy period. The mailing of it shall be sufficient proof of notice.

6. Conformity With State Statutes

If any terms of this policy are in conflict with the statutes of South Carolina, they are amended to conform to those statutes.

7. Premium

The premium for this policy may vary based upon the purchase of other insurance from one of the State Farm affiliated companies.

The premium for this policy is based on information State Farm has received from you or other sources. If the information is incorrect or incomplete, or changes during the policy period, you must inform State Farm of any changes regarding the following:

- your car*, or its use, including annual mileage;
- the *persons* who regularly drive *your car*, including newly licensed family members;
- your* marital status; or
- the location where *your car* is principally garaged.

You agree that if this information or any other information used to determine the premium is incorrect or incomplete, or changes during the policy period, we may decrease or increase the premium during the policy period based upon the corrected, completed or changed information. You agree that if the premium is decreased or increased during the policy period, State Farm will refund or credit to you any decrease in premium and you will pay for any increase in premium.

8. Concealment or Fraud

There is no coverage under this policy if you or any other *person* insured under this policy has made false statements with the intent to conceal or misrepresent any material fact or circumstance in connection with any claim under this policy.

MUTUAL CONDITIONS

1. **Membership.** While this policy is in force, the first insured named in the declarations is entitled to vote at all meetings of members and to receive dividends the Board of Directors in its discretion may declare in accordance with reasonable classifications and groupings of policyholders established by such Board.
2. **No Contingent Liability.** This policy is non-assessable.
3. **Annual Meeting.** The annual meeting of the members of the company shall be held at its home office at Bloomington, Illinois, on the second Monday of June at the hour of 10:00 A.M., unless the Board of Directors shall elect to change the time and place of such meeting, in which case, but not otherwise, due notice shall be mailed each member at the address disclosed in this policy at least 10 days prior thereto.

In Witness Whereof, the State Farm Mutual Automobile Insurance Company has caused this policy to be signed by its President and Secretary at Bloomington, Illinois, and countersigned on the declarations page by a duly authorized representative of the Company.

Kim M. Brunner

SECRETARY

Edward B. Rust, Jr.

PRESIDENT

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APP 000137

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- 5 Declarations Continued
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- 6 Financed Vehicles – Coverage for Creditor

Coverages

- 8 A – Liability – When there is damage to others.
- 12 P – Personal Injury Protection – When there are medical expenses, loss of income, essential services expenses or funeral expenses.
- 16 C – Medical Payments – When there are medical and funeral expenses.
- 18 U – Uninsured Motor Vehicle – When the other *car* or driver is not insured.
- 19 W – Underinsured Motor Vehicle – When the other *car* or driver is underinsured.
- 24 D – Comprehensive – When *your car* is damaged except by collision or upset. Any deductible amount is shown by the number beside "D" on the declarations page.
- 25 G – Collision – When *your car* is damaged by collision or upset. The deductible is shown by the number beside "G" on the declarations page.
- 26 H – Emergency Road Service – When *your car* breaks down or needs a tow.
- 26 R – Car Rental Expense – When *you* need to rent a *car* because of damage to *your car*.
- 27 R1 – Car Rental and Travel Expenses – When *you* need to rent a *car* and pay extra travel expenses because of damage to *your car*.
- 28 R2 – Car Rental and Travel Expenses – When *you* need to rent a *car* and pay extra travel expenses because of damage to *your car*.
- 31 S – Death, Dismemberment and Loss of Sight – Pays for death of or certain injuries to *persons* named.

Conditions

- 33 1. Policy Changes
- 33 2. Suit Against Us
- 33 3. Our Right To Recover Our Payments
- 34 4. Cancellation
- 35 5. Renewal
- 35 6. Conformity With State Statutes
- 35 7. Premium
- 35 8. Concealment or Fraud

- 36 Mutual Conditions

Policy Form 9840.3

ROA 000135
APP 000138

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

James Luther Plemmons and Wanda Sue	)	C.A. No.: 7:12-CV-495-HMH
Clark Plemmons,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	PLAINTIFFS' ANSWERS TO LOCAL
	)	RULE 26.01 INTERROGATORIES
State Farm Mutual Automobile Insurance	)	
Company, John Carson, Plaza Insurance	)	
Company,	)	
	)	
Defendants.	)	
_____	)	

LOCAL CIVIL RULE 26.01 DISCLOSURES BY PLAINTIFFS

Plaintiffs answer Local Civil Rule 26.01 Interrogatories as follows:

INTERROGATORY (A)

State the full name, address, and telephone number of all persons or legal entities who may have a subrogation interest in each claim and state the basis and extent of said interest.

ANSWER:

Anthem Blue Cross/Blue Shield has a subrogation interest in Plaintiffs claims pursuant to health insurance benefits provided to Plaintiff James Plemmons after the accident of July 31, 2010. The extent of this interest, as of September 15, 2011, was \$131,430.36.

INTERROGATORY (B)

As to each claim, state whether it should be tried jury or nonjury and why.

ANSWER:



Plaintiffs have alleged three declaratory judgment actions and one tort action.

- **Plaintiffs' declaratory judgment action as to Plaza Insurance Company related to stacking of under-insured motorist does not involve material issues of fact and should be tried by a judge.**
- **Plaintiffs' declaratory judgment action against Plaza Insurance Company related to the existence of a meaningful offer of under-insured motorist coverage and reformation of policy may have material issues to be determined by a jury if the Plaintiffs do not prevail at Summary Judgment.**
- **Plaintiffs' declaratory judgment action against State Farm Mutual Automobile Insurance Company does not have questions of material fact and should be decided as a matter of law by a judge.**
- **Plaintiffs' common law bad faith action against State Farm may have material issues of fact to be determined by a jury if the Plaintiffs do not prevail at Summary Judgment.**

INTERROGATORY (C)

State whether the party submitting these responses is a publicly owned company and separately identify: (1) each publicly owned company of which it is a parent, subsidiary, partner, or affiliate; (2) each publicly owned company which owns ten percent or more of the outstanding shares or other indicia of ownership of the party; and (3) each publicly owned company in which the party owns ten percent or more of the outstanding shares.

ANSWER:

Plaintiffs are natural persons and not publicly owned companies or corporations.

INTERROGATORY (D)

State the basis for asserting the claim in the division in which it was filed (or the basis of any challenge to the appropriateness of the division).

ANSWER:

Plaintiffs originally filed this action in Spartanburg County Court of Common Pleas because the transactions and occurrences giving rise to the Plaintiffs' cause of action occurred in Spartanburg County, South Carolina. Plaintiffs challenge the appropriateness of this forum on the ground that there is a non-diverse party to the action and this Court lacks subject matter jurisdiction pursuant to 28 U.S.C. Section 1332.

INTERROGATORY (E)

Is this action related in whole or in part to any other matter filed in this District, whether civil or criminal?

ANSWER:

No.

INTERROGATORY (F)

If the defendant is improperly identified, give the proper identification and state whether counsel will accept service of an amended summons and pleading reflecting the correct identification.

ANSWER:

To Plaintiffs' knowledge, the Defendants are properly identified.

INTERROGATORY (G)

If you contend that some other person or legal entity is, in whole or in part, liable to you or the party asserting a claim against you in this matter, identify such person or entity and describe the basis of said liability.

ANSWER:

Not applicable.

March 9, 2012

By:

s/D. Alan Lazenby

D. Alan Lazenby

R. Patrick Martin

LAZENBY LAW FIRM, LLC

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Spartanburg, SC 29304

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ANDREW J. JOHNSTON LAW OFFICE

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184 North Daniel Morgan Avenue

Spartanburg, SC 29306-2321

(864) 591-1093

ATTORNEYS FOR PLAINTIFFS

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION
CIVIL ACTION FILE NO. 7:12-CV-00495-HMH

JAMES LUTHER PLEMMONS AND
WANDA SUE CLARK PLEMMONS,
Plaintiffs,
vs.

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,
PLAZA INSURANCE COMPANY,
Defendants.

COPY

DEPOSITION OF JAMES PLEMMONS

DATE TAKEN: Friday, May 18, 2012
TIME BEGAN: 9:05 a.m.
TIME ENDED: 1:15 p.m.
LOCATION: Lazenby Law Firm
134 Oakland Avenue
Spartanburg, South Carolina 29302

REPORTED BY: TARI B. KRAMER, RMR, CRR
GALLAGHER COURT REPORTING
864-234-5744

1 A. Believe it to be criminal domestic violence.

2 Q. And did you plead guilty to that?

3 A. Yes.

4 Q. And what year was that?

5 A. I need to see my SLED check to be able to tell
6 you that correct year.

7 Q. Let me ask you this. Was it within the last ten
8 years?

9 A. I do not believe so.

10 Q. Other than criminal domestic violence, have you
11 been convicted of any other crimes?

12 A. No.

13 Q. What is your social security number?

14 A. 249-19-3412.

15 Q. Now, what year did you leave Spartanburg Tech?

16 A. '06.

17 Q. And where did you go to high school?

18 A. Byrnes.

19 Q. Is that in Spartanburg --

20 A. James F. Byrnes.

21 Q. You are employed as a tow truck operator? Do
22 you work as a tow truck operator?

23 A. Yes.

24 Q. And since your accident in July, 2010, have you
25 continued to work as a tow truck operator?

1 A. Yes.

2 Q. And you own -- is it JLP Towing?

3 A. Automotive.

4 Q. In addition to being a tow truck operator, are
5 you also a mechanic?

6 A. Yes, sir.

7 Q. Have your own garage?

8 A. Yes, sir.

9 Q. And is that here in Spartanburg?

10 A. Yes, sir. Spartanburg County. Greer city.

11 Q. How long have you been a mechanic and a tow
12 truck operator?

13 A. Since '06. No. I'm sorry. That is not
14 correct. A mechanic since '06. A tow truck
15 operator -- I'm not exactly sure what day I
16 bought the first truck but I think it was March.
17 Believe March of 2009. There's some paperwork,
18 I could tell you. It would be the first Watson
19 Insurance policy, would be. . .

20 Q. So whenever you got insurance coverage through
21 the Watson Agency, that's when you first became
22 a tow truck operator?

23 A. Yes.

24 Q. What did you do before you became a mechanic in
25 2006?

1 that point on what happened through the accident
2 where Mr. Diaz hit your tow truck.

3 Now, it's my understanding at some time on July
4 30th of 2010 you get a call from Kim Carson to
5 come pick up her father's car because it will
6 not operate.

7 A. Kim called me and asked me to pick up her car.

8 Q. All right. And was it her car or actually her
9 dad's car?

10 A. I believed it to be hers.

11 Q. And was this on July 30th of 2010?

12 A. I don't recall the exact day of getting the
13 call. The exact day that I picked it up was the
14 30th.

15 Q. The 30th of July, 2010?

16 A. Yes, sir.

17 Q. And did you have to come to her house to pick it
18 up because the car would not operate?

19 A. Yes.

20 Q. Did she tell you or did you ever determine what
21 was wrong with the car?

22 A. Never determined.

23 Q. What did she say? It wouldn't start or what?

24 A. She said it would not start.

25 Q. So you don't know if it was a dead battery or

1 something else?

2 A. I know nothing.

3 Q. So you take your tow truck, go over to
4 Ms. Carson's house, and you load her car onto
5 your tow truck; right?

6 A. Correct.

7 Q. And about what time of the day was this?

8 A. In the evening.

9 Q. Do you remember what -- 6, 7, 8, 8 o'clock?

10 A. I don't remember specifics.

11 Q. All right. And what did Ms. Carson want you to
12 do? In other words, did she want you to take it
13 back to your shop and fix it?

14 A. Yes.

15 Q. Is that a yes?

16 A. I'm sorry. Yes.

17 Q. What day of the week was this that you recall?

18 A. It was a Friday.

19 Q. Now, once you loaded the Carson vehicle -- which
20 I understand was a 2005 Dodge Neon -- did you
21 take it back to your shop or did you take it to
22 your house?

23 A. Took it to my house.

24 Q. And is this because it was a Friday evening and
25 you're not open on Saturdays?

1 A. Correct.

2 Q. And you took it back to your house and parked
3 the Carson car on top of your tow truck in front
4 of your house and went in for the evening;
5 right?

6 A. Correct.

7 Q. Okay. Now, at some point the next morning, do
8 you get a call to come pick up another car?

9 A. Correct.

10 Q. And I'm going to show you the wrecker log which
11 I'll mark as Exhibit 2. I think you're on a
12 rotating list of tow truck operators to come
13 pick up vehicles. Is that how it works?
14 (Exhibit No. 2 marked: Attached.)

15 A. Correct.

16 Q. So you were next on the list?

17 A. Correct.

18 Q. Let me show you Exhibit 2 which is a document
19 that your attorneys have produced to us. Is
20 that the wrecker log for your picking up the
21 vehicle owned by Queen Mills?

22 A. Appears to be.

23 Q. And it's the fifth one down, isn't it, on
24 Exhibit 2?

25 A. I count six. It's the JLP entry.

1 Q. Okay. All right. And it has, on date and time,
2 7/31/10 and it has 4:21. Would that be 4:21
3 a.m.?

4 A. Yes.

5 Q. So you're at home asleep and you get this call
6 at home to come pick up a car; right?

7 A. Correct.

8 Q. And the number on there, the phone number for
9 JLP, is that your home number or your cell phone
10 number?

11 A. That would be my business cell phone.

12 Q. Which obviously had you at home.

13 A. Yes.

14 Q. And did the call come from the Greer Police
15 Department?

16 A. From Greer dispatch.

17 Q. So you hop out of bed, throw your clothes on, go
18 to the tow truck with the Carson car already on
19 top of it, and drive to where they've told you
20 the car owned by Ms. Mills is; right?

21 A. Correct.

22 Q. And how long does it take you to get there? 10,
23 15 minutes, something like that?

24 A. Possibly ten minutes.

25 Q. When you get there -- well, first of all, let me

- 1 stop there. Where was the car that Queen Mills
2 owned? What highway was it?
- 3 A. Wade Hampton, or 29.
- 4 Q. It was on Highway 29?
- 5 A. Yes.
- 6 Q. In Spartanburg County?
- 7 A. In -- yes. Still in Spartanburg County.
- 8 Q. And what's the nearest intersection?
- 9 A. Bible Brook and 29.
- 10 Q. And when you drive up, what do you see?
- 11 A. Two police cars and a third car.
- 12 Q. That would be Ms. Mills's car?
- 13 A. Correct.
- 14 Q. Had she been stopped and pulled over for drunk
15 driving?
- 16 A. No.
- 17 Q. Why had she -- why was her car there?
- 18 A. Because the driver of the car had been stopped
19 for driving.
- 20 Q. Oh, I see. She was just a passenger?
- 21 A. She was -- I never met the woman.
- 22 Q. But it was the driver of Mills's car that had
23 been pulled over by the cops?
- 24 A. To my knowledge. They don't -- I'm not privy to
25 that.

1 Q. I understand. You really don't care, do you?
2 You're just there to pick up a car; right? It
3 doesn't matter to you why it's disabled.

4 A. When dispatch calls me, I go pick them up.

5 Q. And the only thing that matters to you is
6 there's a disabled car; right? Or a car that
7 needs to be picked up, rather.

8 A. Correct.

9 Q. Okay. So you go there and there are two cops
10 there; right?

11 A. Correct.

12 Q. Do you know their names?

13 A. I know Officer Barnes because I've had prior
14 dealings with her on the sides of the road
15 picking up other vehicles.

16 Q. Do you know who the other officer was?

17 A. No, sir.

18 Q. So you drive up. There's one car stopped. You
19 got two police cars. They got their little blue
20 lights flashing; right?

21 A. Correct.

22 Q. And since this is around 4 or 5 in the morning,
23 I assume there's very little other traffic.

24 A. Correct.

25 Q. Now, at this point, Highway 29, is that two lane

1 Q. And the way it works is you get one car actually
2 on top on the flatbed; right?

3 A. Correct.

4 Q. And in this case, that was the Carson car, the
5 2005 Dodge Neon; right?

6 A. Correct.

7 Q. It was up on the flatbed and secured; right?

8 And the way you tow a second car is you've got a
9 device at the very back of the tow truck that
10 you can operate with a series of levers on the
11 side of the tow truck; right?

12 A. Correct.

13 Q. And the way you get the second car is you kind
14 of back up to the second car and there's a metal
15 bar at the back and you lower it up under the
16 second car and attach it and then pull the front
17 wheels up and that's the way you tow it.

18 A. Correct.

19 Q. And that's what you were in the process of
20 trying to do with Mills's car at the time this
21 accident happened; right?

22 A. Correct.

23 Q. And during this time, the Carson car was sitting
24 on top on the flatbed stationary; right?

25 A. Correct.

1 Q. But the controls you were operating at the time
2 of the accident were on the driver's side?

3 A. Correct.

4 Q. And you went to the controls at the back of the
5 tow truck on the driver's side and you knelt
6 down to operate the levers?

7 A. Correct.

8 Q. And you had your back to the back of the front
9 of the tow truck at the time of the accident
10 such that you were actually looking at
11 Ms. Mills's car.

12 A. Correct.

13 Q. That's 'cause you had to look at it in order to
14 engage that device at the back of the tow truck
15 to attach to her car; right?

16 A. Correct.

17 Q. So you never even saw Mr. Diaz's car?

18 A. Correct.

19 Q. Tell me what happened next. You were on your
20 knees at the panels trying to operate the device
21 at the back to load Ms. Mills's car. And tell
22 me what happens.

23 A. I woke up in the hospital without a leg, is my
24 next memory.

25 Q. Do you even remember hearing anything?

1 A. Correct.

2 Q. So what actually hit you physically was the left
3 rear on the driver's side of your tow truck.

4 A. Correct.

5 Q. And as a result of that, you had to have your
6 left leg amputated above the knee.

7 A. Correct.

8 Q. Were you hit by the -- did the Queen Mills car
9 come into contact with you?

10 A. Not to my knowledge.

11 Q. Did the Dodge Neon come into contact with you?

12 A. The weight of it did.

13 Q. You mean the weight of it on the tow truck?

14 A. Correct.

15 Q. But did any part of the Dodge Neon hit you?

16 A. I have no recollection.

17 Q. Has anybody told you that the Dodge Neon itself
18 hit you?

19 A. No.

20 Q. Was the Dodge Neon being used itself for
21 transportation at the time of the accident?

22 A. Rephrase, please.

23 Q. Well, you know, we use cars for transportation;
24 right? You get in and you drive it; right?

25 A. Correct.

1 Q. Nobody was driving the Dodge Neon at the time of
2 the accident, were they?

3 A. Correct.

4 Q. So nobody was using the Dodge Neon for
5 transportation at the time of the accident?

6 A. Correct.

7 Q. In fact, it couldn't be used for transportation
8 because it was inoperable.

9 A. Correct.

10 (Discussion held off the record.)

11 EXAMINATION RESUMED BY MR. NORRIS:

12 Q. Were you using the Dodge Neon at the time of the
13 accident?

14 MR. MARTIN:

15 Objection to form.

16 MR. NORRIS:

17 You can answer.

18 A. Yes.

19 EXAMINATION RESUMED BY MR. NORRIS:

20 Q. Explain to me how you were using the Dodge Neon
21 at the time of the accident.

22 MR. MARTIN:

23 Objection to form.

24 A. I was on the vehicle.

25 EXAMINATION RESUMED BY MR. NORRIS:

1 Q. So the use to which you were putting the Dodge
2 Neon at the time of the accident was you were
3 hauling it?

4 A. Transporting it.

5 Q. And hauling -- actually, you were in the process
6 of towing it; right?

7 A. Transporting it. Yes.

8 Q. Okay. And your intent was to take both the
9 Dodge Neon and Ms. Mills's car back to your
10 shop?

11 A. Correct.

12 Q. Do you know whether John Carson made a claim
13 under your policy with Plaza Insurance Company
14 for the damage to the Dodge Neon?

15 A. I believe he has.

16 Q. Do you know why he made a claim under the Plaza
17 policy instead of making a claim under his State
18 Farm policy?

19 A. I do not know that.

20 Q. Do you know what happened to the Carson car
21 after the impact?

22 A. It was hauled off.

23 Q. Was it knocked off the tow truck?

24 A. Rephrase the question, please.

25 Q. The question is: Do you know what happened to

1 Q. Do you feel that Ms. Mills did anything wrong in
2 causing your injury?

3 A. I don't know Ms. Mills.

4 Q. I understand you don't know her but do you think
5 that she did anything wrong in causing your
6 injury?

7 MR. MARTIN:

8 objection to the form.

9 A. No.

10 EXAMINATION RESUMED BY MR. NORRIS:

11 Q. I'm sorry? I couldn't hear you over your --

12 A. No.

13 Q. Is there anyone to blame for your injury other
14 than Mr. Diaz?

15 A. No.

16 Q. Of course, you understand Mr. Diaz was killed in
17 the accident; right?

18 A. Correct.

19 Q. Have you ever learned where he had been or what
20 he was doing before the accident other than
21 obviously consuming some degree of alcoholic
22 beverages?

23 A. No.

24 Q. Do you know where he got the alcohol or if he'd
25 been to bars or anything like that?

1 A. No. But if you find out that, you could tell
2 us, it would help me out.

3 Q. Well, I don't know. I'd be glad to tell you if
4 I -- I mean, you hadn't talked to any friends or
5 relatives or any of Mr. Diaz's acquaintances to
6 perhaps find out where he had been that night
7 and how he came to, at least according to the
8 police report, have a .18 blood alcohol content?

9 A. No. It is my understanding that he was from
10 North Carolina. I don't know any of his friends
11 or relatives.

12 (Discussion held off the record.)

13 EXAMINATION RESUMED BY MR. NORRIS:

14 Q. Now, let me confirm. I think you answered this
15 question. The Neon itself did not hit you;
16 right?

17 A. My physical body; correct.

18 Q. Well, it hit you --

19 A. It did hit the truck.

20 Q. Well, it hit you -- and really, the only thing
21 that hit you was your tow truck.

22 MR. MARTIN:

23 Object to the form.

24 A. Correct.

25 EXAMINATION RESUMED BY MR. NORRIS:

1 Q. Did the Dodge Neon cause the accident or
2 contribute to the accident?

3 MR. MARTIN:

4 Objection to the form.

5 A. No.

6 EXAMINATION RESUMED BY MR. NORRIS:

7 Q. Now, the accident was in the early morning hours
8 of July 31st, 2010. Is that correct?

9 A. Correct.

10 Q. Going to show you Exhibit 3.

11 (Exhibit No. 3 marked: Attached.)

12 Q. Is Exhibit 3 a letter written by your attorney
13 on August 3rd of 2010?

14 A. Appears to be.

15 Q. Have you ever seen this letter?

16 A. I believe I have.

17 Q. So three days after the accident, if not before,
18 you were represented by an attorney. Is that
19 correct?

20 A. Correct.

21 Q. Did you ever have any communications yourself
22 with State Farm or were the communications with
23 State Farm handled by your attorney?

24 A. Every communication was through my attorney.

25 Q. So you have never communicated or in any way

1 Q. And the next paragraph below that is correct
2 which alleges the Neon was otherwise inoperable;
3 right?

4 A. Correct.

5 Q. And turning to the next page, page three and
6 part of 17, you allege that, without notice and
7 warning to the Plaintiffs, Diaz crossed over the
8 median and crashed into the front of the
9 wrecker. Do you see that?

10 A. That would be 17?

11 Q. Yes, sir.

12 A. Correct.

13 Q. Would you agree that your injury in this
14 accident would not have occurred but for
15 Mr. Diaz?

16 A. Correct.

17 Q. But for Mr. Diaz, you'd have your left leg
18 today; right?

19 A. Correct.

20 Q. And you allege in paragraph 19 a little bit
21 below that that the Neon owned by Carson after
22 Diaz struck the wrecker played a role in causing
23 damages to Plemmons. Is that what you
24 previously testified to, that the Dodge Neon
25 caused the wrecker to weigh more?

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION
CASE NO. 7:12-cv-00495-HMH

James Luther Plemmons and
Wanda Sue Clark Plemmons,
Plaintiffs,

vs.

State Farm Mutual Automobile
Insurance Company and Plaza
Insurance Company,
Defendants.

COPY

DEPOSITION OF AMANDA BARNES

DATE TAKEN: June 22, 2012
TIME BEGAN: 8:57 a.m.
TIME ENDED: 9:55 a.m.
LOCATION: Nelson, Mullins, Riley & Scarborough
104 South Main Street
Suite 900
Greenville, South Carolina

REPORTED BY: Traci L. Barr, RPR
GALLAGHER COURT REPORTING
864-234-5744

1 Q. Do you recall whether it was Gwen Mills or
2 anything like that?

3 A. I really couldn't attest to that.

4 Q. Was there just one person in that car?

5 A. There was one person in the vehicle.

6 Q. All right. So I'm sorry I interrupted you.
7 You had pulled up and you were administering
8 the field sobriety test to the driver of the
9 car who had been pulled over, and I think you
10 gave your opinion about whether that person was
11 --

12 A. If I felt they were under the influence or not.

13 Q. And did you?

14 A. I felt that they had had something to drink.
15 As far as that person initially, would I have
16 made the arrest based on DUI for that person,
17 probably not just because I like to have a lot
18 more basis. Obviously, I did not see them
19 driving, but based on field sobriety alone, I
20 would have allowed them a few more mistakes
21 before I would have made the arrest. But I
22 told her what I found, and she made that
23 determination. That was not my call.

24 Q. Again, she, being Officer Weaver?

25 A. Officer Weaver. Sorry.

1 Q. Now, how did Mr. Plemmons, who I think operated
2 JLP Towing Service, how did he come to come
3 there?

4 A. When Officer Weaver decided to make the arrest,
5 I told her that she could go ahead and take the
6 prisoner because we have a two-hour time frame
7 before they can get on the data master. I told
8 her to go ahead and take him on to the jail and
9 I would wait on her tow truck; he was called on
10 rotation, and I'd complete her tow sheet and
11 wait on him to get there. At that point she
12 left the scene with the prisoner.

13 Usually in this instance I would pull my car up
14 closer to the vehicle that was being towed.

15 However, since Deputy Plount was out there we
16 just carried on a conversation in front of the
17 car waiting on the tow truck driver to get
18 there. My camera was on at this point, but due
19 to the conversation, him and I going back and
20 forth, since I'm not employed there, everything
21 is audio recorded as well, and since I was
22 discussing the administrator over my department
23 I decided to go ahead and turn off my camera
24 and remove my mike box and laid it in my car.
25 I kept my mike box on me, but I did turn off

1 the camera.

2 Q. Let me ask you one thing. If you hadn't turned
3 off the camera, would that have depicted the
4 accident?

5 A. It would have from the rear end of it. You may
6 not have seen the vehicle actually impact, but
7 you would have seen everything that transpired
8 after. It would have been a perfect view. .

9 Q. But it doesn't exist?

10 A. It doesn't exist. Sorry.

11 Q. That's okay. What happens next?

12 A. James Plemmons gets there on scene. He pulls
13 in front of the vehicle that was being towed.
14 I know James. He actually knows my brother.
15 He is one of two actual tow truck drivers that
16 I actually knew and would carry on
17 conversations with whenever I worked with them.
18 So I told Deputy Plount, I'm going to go up
19 here and talk to James for a little bit, and he
20 told me he was going to go back and knock out
21 some of his paperwork in his truck.

22 So I went up there with James. We were
23 actually talking about my brother while he was
24 working. He had a vehicle already on the back
25 of the truck that was already chained down, so

1 he was using what I refer to as the scissor
2 grips to tow the vehicle that we had.

3 Q. Let me ask you this. It's my understanding
4 that this tow truck can tow two vehicles?

5 A. Yes, that's correct.

6 Q. One vehicle would be mounted on the flatbed of
7 the tow truck and secured?

8 A. Correct.

9 Q. And there is some kind of a metal bar at the
10 back of the tow truck and you operate that with
11 levers on the back side of the tow truck?

12 A. Hydraulic.

13 Q. And you could attach that lever to the front of
14 another car and lift it up and tow the second
15 car that way?

16 A. That's correct.

17 Q. And that was what James Plemmons was in the
18 process of doing when the accident happened?

19 A. That's correct.

20 Q. And the vehicle he was trying to attach with
21 the lever at the back of the tow truck was the
22 vehicle of the driver that Officer Weaver had
23 stopped and had taken away?

24 A. That's correct.

25 Q. And this was on Highway 29 in Spartanburg

1 County?

2 A. That's correct.

3 Q. And I think the time of the accident was around
4 four a.m.?

5 A. Yes.

6 Q. Now, would you continue your narrative?

7 A. Yes. I walked up there to talk to James. He
8 let down the scissor grips or the bar that you
9 referred to and was using the hydraulics to get
10 it into place. He had to crawl under the front
11 end of the vehicle that he was going to tow for
12 us I believe it was two or three times. He had
13 to get underneath there to make sure his
14 placement was correct. The whole time that
15 we're talking his rig was still running, along
16 with hydraulics and everything. It was fairly
17 loud. So I maintained a small distance from
18 him whenever we were talking and able to be
19 heard.

20 A couple of times he came back to the levers to
21 -- you know, the hydraulic controls and was
22 moving those around. I cannot remember if the
23 vehicle had already been lifted off the ground
24 and he was going for the straps to strap onto
25 the tires. I can't remember if that had been

1 done. From this point is kind of when
2 everything kind of went chaotic.

3 We were standing at the hydraulic controls; he
4 was standing there, we weren't crouched down,
5 within about I'd say a foot and a half from
6 each other. It was a very small distance.

7 Q. You were kind of right behind him?

8 A. Yeah, I was right next to him kind of at an
9 angle. I caught something out of the corner of
10 my eye and looked to the left, and coming from
11 the Greenville side heading southbound on 29,
12 or I guess eastbound, I saw lights, and I could
13 tell it was at a high rate of speed. I
14 honestly didn't know at that point, but it was
15 coming so quick. The vehicle was in the lane I
16 was actually standing in. I was just off the
17 median into that lane.

18 Q. Let me ask you this. This part of 29 is a
19 four-lane highway?

20 A. That's correct, with an open median.

21 Q. Now, an open median?

22 A. No grass, an unprotected median. Basically the
23 only thing that differentiates it from the road
24 is lines that open it up. Right next to where
25 this occurred there was a grassed median with

1 trees, but we were right in front of that and
2 it was an open median. We weren't in grass.
3 We were on asphalt.

4 Q. And the median itself is about how wide?

5 A. Wide enough for a rig, and I couldn't estimate
6 in feet. I'd say his rig is a diesel rig, and
7 you probably had one or two feet on either
8 side. It's fairly wide.

9 Q. The tow truck is in the median?

10 A. Yes.

11 Q. And the vehicle driven by the person arrested
12 for DUI is right behind it?

13 A. That's correct.

14 Q. In the process of being secured?

15 A. That's correct.

16 Q. Okay. So you look to your left and you see
17 lights approaching at a fast rate of speed?

18 A. Correct.

19 Q. And I guess one thing that got your attention
20 is there is not a lot of traffic at four a.m.?

21 A. The traffic was dead. This is the first car I
22 had seen since we had been out there.

23 Q. That in and of itself attracted your attention
24 because there just wasn't any traffic, period?

25 A. Correct.

1 Q. What happens next?

2 A. At this point, like I said, it was very loud
3 with the rig running, and the controls and this
4 -- when I tell it, it sounds a lot longer, but
5 it happened instantaneously. I thought that
6 the vehicle was going to hit me in the lane of
7 travel, which I would consider the fast lane,
8 which is closest to the median, so I jumped
9 towards the rig. When I did, I hollered at
10 James. I knew there was no way that Shawn, or
11 Deputy Plount, could hear me, and I glanced --
12 I don't think I took my eyes off the car
13 coming, and I saw it start to veer. I grabbed
14 James' shirt and yelled. I couldn't -- he's a
15 big guy. I couldn't get a good grip on him,
16 and I'm stepping back and yelling at the same
17 time. Like I said, it sounds longer, but it
18 was really quick. Couldn't get a grip on him,
19 and the next thing I heard was the explosion.

20 Q. All right. Now, first of all, you didn't know
21 it at that time but you know it now that the
22 car travelling at a high rate of speed that hit
23 the front of the tow truck was operated by Mr.
24 Diaz?

25 A. Correct.

1 Q. And Mr. Diaz was killed at the accident scene?

2 A. That's correct.

3 Q. He survived for a brief period of time, but
4 nobody was able to interview him to get his
5 side of the story?

6 A. Correct.

7 Q. And it was later determined that he was under
8 the influence of both cocaine and alcohol?

9 A. Correct.

10 Q. Do you have any idea or opinion how fast Mr.
11 Diaz was going when he hit the front of the tow
12 truck?

13 A. Yes. I initially told highway patrol when they
14 arrived on scene that my estimation was about
15 90 miles an hour. I have taken the speed
16 estimate classes; radar, Lidar, and all of that
17 where you have to be able to judge speed by
18 just viewing a vehicle, and that was my initial
19 estimate was about 90 miles an hour.

20 Q. Have you ever had any reason to change that
21 estimate?

22 A. No.

23 Q. So I take it that when something's going 90
24 miles an hour and hits a stationary object,
25 there is, first of all, just a huge explosion

1 --

2 A. Uh-huh.

3 Q. -- of noise, right?

4 A. Yes.

5 Q. Okay. And the impact from Mr. Diaz's vehicle
6 hitting the front of the tow truck, did it
7 knock the tow truck backwards?

8 A. Yes.

9 Q. And did the left or driver's side of the rear
10 wheels of the tow truck go over Mr. Plemmons'
11 leg?

12 A. I wouldn't say it went over. The wheels were
13 locked and what it did was -- I'll explain it
14 in transition. I stepped back. The last thing
15 I remember with my eyes open was seeing the
16 vehicle which was actually on the flatbed
17 airborne above my head. I had my hands above
18 my head, closed my eyes, and just ran backward.
19 When I put my hands down in a matter of
20 seconds, the next thing I saw was the rig I say
21 rolling. It wasn't rolling. It was skidding
22 because all the wheels were locked in it. It
23 was skidding backward, and James was on his
24 back. Kind of sounds morbid, but his head was
25 bouncing against the asphalt as his leg was

1 being drug. The truck skidded back to the
2 point -- I guess the truck bumped him. That
3 was my assumption because I did not actually
4 see James go down.

5 Q. Let me stop you there. The last time you saw
6 Mr. Plemmons before the impact he was standing?

7 A. That's correct.

8 Q. And the next thing you saw is he's on the
9 ground being drug along with the tow truck
10 skidding?

11 A. Yes.

12 Q. So do you believe -- something caused him to be
13 knocked over, right?

14 A. Yes.

15 Q. Presumably being hit by the tow truck?

16 A. Yes. When it was impacted, he had canted the
17 wheels, which I believe to this day saved my
18 life, he had canted the wheels ever so slightly
19 to the right, so when the vehicle impacted the
20 truck, it actually pulled it away.

21 Q. Away from you?

22 A. Yes, at an angle. And I believe the bed to
23 have maybe bumped him and knocked him off
24 balance enough to -- and then just being
25 startled from the explosion. I never saw him

1 go down. That's when I had my eyes crossed --
2 not crossed, closed, and was running backwards.

3 Q. The vehicle that was on the top of the tow
4 truck, do you know what kind of car that was?

5 A. It was a black vehicle. I would say it looks
6 something similar to like a Nissan or Honda
7 sedan.

8 Q. Do you know who owned that car?

9 A. I have no clue.

10 Q. And that vehicle was being towed?

11 A. Yes.

12 Q. Was that vehicle on top of the tow truck being
13 used at the time of the accident?

14 A. No.

15 Q. Now, you said that vehicle, the vehicle on top
16 of the tow truck, when you saw it, it was
17 airborne?

18 A. Uh-huh.

19 Q. You have to say yes or no.

20 A. Yes. Sorry.

21 Q. Did it come off of the tow truck?

22 A. Yes, it did.

23 Q. Did it hit Mr. Plemmons?

24 A. No.

25 Q. Did it come off the back of the tow truck or

1 the side of the tow truck?

2 A. It came off the back of the tow truck, and I
3 believe from what I remember the only thing
4 that was holding it at an angle was the bumper
5 was laid on the end of the flatbed.

6 Q. All right.

7 A. It snapped the chains when it hit.

8 Q. Okay. And the vehicle on top of the tow truck
9 itself was not being used for transportation at
10 the time of the accident?

11 MR. JOHNSTON:

12 Object to the form.

13 THE DEPONENT:

14 No.

15 EXAMINATION RESUMED BY MR. NORRIS:

16 Q. Let me repeat the question subject to his
17 objection.

18 The vehicle on top of the tow truck was not
19 being used for transportation at the time of
20 the accident?

21 A. No, it was not.

22 Q. Nobody was driving it obviously?

23 A. No.

24 Q. Because it was being towed?

25 A. Right.

1 Q. Was anybody using the vehicle at the time of
2 the accident? I'm talking about the vehicle on
3 top of the tow truck.

4 A. No.

5 MR. JOHNSTON:

6 Object to the form.

7 EXAMINATION RESUMED BY MR. NORRIS:

8 Q. Do you have any idea whether the vehicle on top
9 of the tow truck in any way contributed to the
10 accident?

11 A. No.

12 MR. JOHNSTON:

13 Object to the form.

14 EXAMINATION RESUMED BY MR. NORRIS:

15 Q. Let me be clear. No, you don't have any idea,
16 or no, it did not?

17 A. No, it did not contribute.

18 Q. All right. Did you say that once there was the
19 impact or shortly before the impact, did you
20 actually -- well, you tried to grab Mr.
21 Plemmons but couldn't pull him back because he
22 is a big guy, right?

23 A. Correct.

24 Q. Did you actually for a second or two turn your
25 back to try to get away?

1 that we were having towed, when it was
2 impacted, the scissor grips having hit and with
3 the rig actually canting away from me spun the
4 I believe it was a gold -- I know it was a
5 golden color car. I just don't know what kind
6 of model it was. Spun it around and it came
7 within two feet of hitting me when it landed in
8 the ditch behind me, the vehicle that we were
9 having towed.

10 Q. The vehicle that was being towed, did that have
11 anything to do with causing the accident?

12 A. No.

13 Q. All right. So you've called -- you and Officer
14 Plount called everybody you could think of with
15 the highest level of urgency, and at this point
16 do you go attend to Mr. Plemmons?

17 A. Yes, I was on the ground with him from the
18 moment I opened my eyes.

19 Q. I presume he was either unconscious or in
20 shock?

21 A. He was conscious, but yeah, he was definitely
22 in shock. He kept trying to sit up, and I
23 could tell that he was bleeding from his head.
24 Whenever he would sit up, it would aggravate.
25 He kept saying, my leg, my leg.

1 Q. And he did?

2 A. He did.

3 Q. Was it later determined that the driver of that
4 car was a Mr. Diaz?

5 A. Yes.

6 Q. Was it determined whether Mr. Diaz was under
7 the influence of drugs or alcohol?

8 A. Yes, I believe his blood alcohol level, from
9 what I can recall, was .22, and he was also
10 under the influence of cocaine via the reports
11 that we received from the hospital.

12 Q. And I presume that Mr. Diaz's car contributed
13 to the accident?

14 A. Yes, it did.

15 Q. Caused the accident?

16 A. Yes, it did.

17 Q. Sole cause of the accident?

18 A. Yes, it did.

19 Q. Every other vehicle was standing still --

20 A. Out of the way.

21 Q. -- and doing nothing?

22 A. Correct.

23 Q. Okay. Now, after the accident, did you visit
24 Mr. Plemmons in the hospital?

25 A. I did.

1 (Recess taken.)

2 (Exhibit Number 2 marked for identification.)

3 EXAMINATION RESUMED BY MR. NORRIS:

4 Q. Is Exhibit 2 a diagram of the accident scene?

5 A. If you will give me just a moment. I'm just
6 kind of following where they're going with it.

7 Q. Take your time, sure.

8 A. My recollection is vehicle number 2 -- the
9 second picture of vehicle number 2 was not
10 canted towards the right but, in looking at it
11 from this direction, was rather canted toward
12 the left because that's the direction the truck
13 took when it got hit.

14 Q. Do you know who prepared this diagram?

15 A. I do not. It was part of the MAIT team I
16 believe.

17 Q. And the MAIT team investigates automobile
18 accidents where a fatality is involved?

19 A. That's correct.

20 Q. Were you still there at the scene when the MAIT
21 team arrived?

22 A. I was.

23 Q. And they asked you what happened?

24 A. That's correct.

25 Q. And you told them?

1 A. Yes, I did.

2 Q. All right. Now, on this diagram, this Exhibit
3 2, vehicle number 1 is the vehicle operated by
4 Mr. Diaz?

5 A. Yes.

6 Q. And vehicle number 2 is the tow truck?

7 A. That's correct.

8 Q. Number 3 is not a vehicle, it's actually Mr.
9 Plemmons?

10 A. Yes.

11 Q. And vehicle number 4 is the car that was owned
12 by the driver who had been pulled over for
13 drunk driving and whose vehicle was in the
14 process of being attached to the rear of the
15 tow truck at the time of the accident?

16 A. That's correct.

17 Q. All right. Now, is it my understanding that
18 this diagram is accurate except that the
19 resting location of the tow truck, which is
20 number 2, should be pointed at an angle the
21 opposite way from the way it's depicted in
22 Exhibit 2?

23 A. That's correct. I do remember, and in one of
24 those photos that I have it may or may not show
25 it, but the vehicle, I remember the bed of the

1 tow truck actually going over into the lane on
2 opposing traffic not on this end.

3 Q. Why don't you do this, in blue ink I'd like you
4 to draw on Exhibit 2 the accurate final resting
5 place of the tow truck as opposed to where it's
6 depicted on Exhibit 2.
7 Okay. So whoever prepared this diagram that's
8 Exhibit 2, they got everything right except
9 they got the angle wrong of the resting
10 position of the tow truck?

11 A. Yes, that's correct.

12 (Exhibit Number 3 marked for identification.)

13 EXAMINATION RESUMED BY MR. NORRIS:

14 Q. And what is Number 3?

15 A. Can I have a moment to read it real quick?

16 Q. Take your time.

17 A. That would be the narrative given on the TR 310
18 forms that we have to fill out for collisions.

19 Q. And is this, Exhibit 3, your narrative or
20 somebody else's?

21 A. No, it's not; it would be the MAIT officer who
22 completed the TR 310.

23 Q. As far as you can tell, is the narrative on
24 Exhibit 3 accurate?

25 A. Yes.

1 Q. It's an accurate description of what happened?

2 A. It's very basic, yes.

3 Q. And the unit numbers referenced on Exhibit 3,
4 do those correspond to the unit numbers on the
5 diagram that's Exhibit 2?

6 A. Yes, it does.

7 (Exhibit Number 4 marked for identification.)

8 EXAMINATION RESUMED BY MR. NORRIS:

9 Q. What is Exhibit 4?

10 A. I believe it would be just an addendum or
11 addition to the TR 310 listing witnesses and
12 whether statements were taken. It's not my
13 form.

14 Q. That's prepared by the MAIT team?

15 A. That's correct.

16 (Exhibit Number 5 marked for identification.)

17 EXAMINATION RESUMED BY MR. NORRIS:

18 Q. And is Exhibit 5 part of the MAIT report also
19 or is that prepared by the highway patrol?

20 A. Well, highway patrol -- the MAIT team is
21 highway patrol.

22 Q. I see.

23 A. But, yeah, this is prepared by them.

24 Q. Now, the persons whose names are on Exhibit 5;
25 officers Kesler Smith, and Mace, they didn't

1 actually witness this accident, did they?

2 A. No. They arrived after the fact.

3 (Exhibit Number 6 marked for identification.)

4 EXAMINATION RESUMED BY MR. NORRIS:

5 Q. And is Exhibit 6 the traffic report for this
6 accident?

7 A. This would be the TR 310 that I referred to.

8 Q. And who prepared Exhibit 6?

9 A. I believe at the bottom it says Kesler did,
10 J.J. Kesler, Sergeant Kesler.

11 Q. Actually, the bottom left, does it say Officer
12 L.B. Smith and Kesler reviewed it?

13 A. That's correct.

14 Q. And do the numbers on the diagram of the first
15 page of Exhibit 6 correspond to the numbers on
16 the diagram that is Exhibit 2?

17 A. Yes.

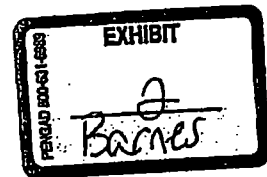
18 Q. And does Exhibit 6 accurately depict what
19 happened and the position of the vehicle at
20 impact?

21 A. It does correctly show the positions of the
22 vehicles at impact from what I can tell, yes.

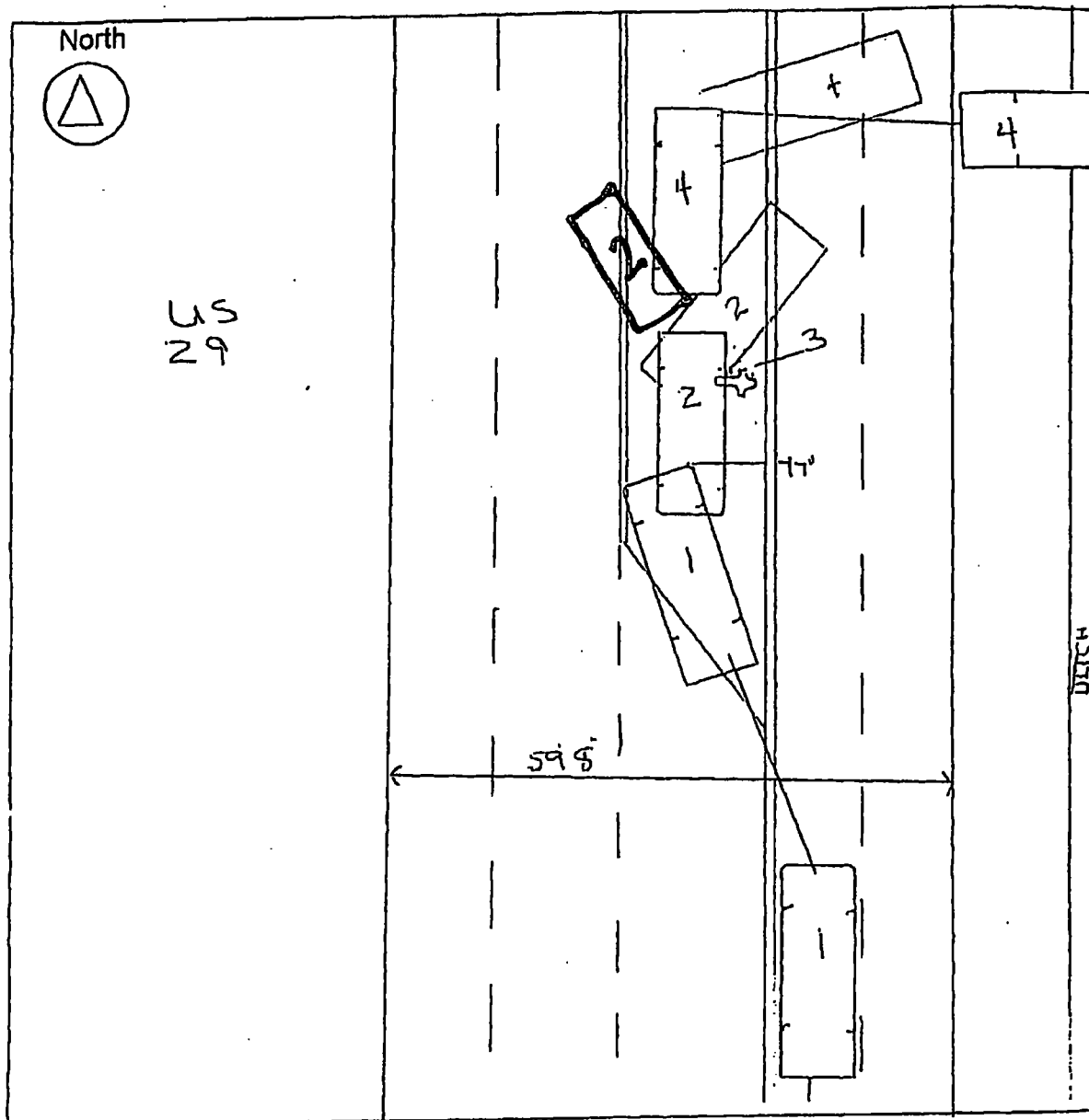
23 Q. Did you ever talk to anyone from State Farm
24 about this accident?

25 A. No, I have not.

Diagram of Collision Scene



Use Drawing Templates for the Diagram.



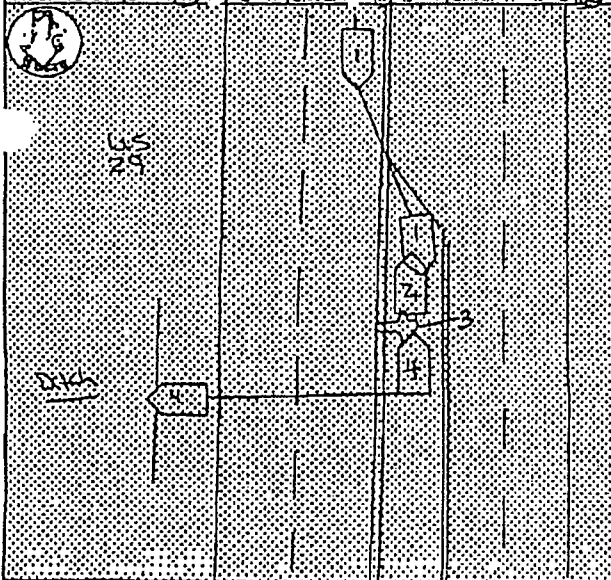
ORIGINAL

Fatal

AUG 29 2010

HP2010-11466

D.P.R. USE ONLY		Page # 1 of 2		SOUTH CAROLINA TRAFFIC COLLISION REPORT FORM		# of Units 4		Amended - / Issue Copy of Original Report		Noted 0500		Armed 0540	
10084001		Date 7-31-2010		Time 0505		County 42		1- Interstate 4- Secondary		Collision Location (Rt. # / Name) 5 29		In / Near City or Town of: Sptas	
Line # / Dir. N/A		Distance Offset .05		Direction S W		1- Interstate 4- Secondary		2- US Primary 3- County		Base Intersection (Rt. # / Name) Bible Brook		2- Alternate 7- Business	
Rt. Id. N/A		From Ramp Only		To		1- Interstate 4- Secondary		2- US Primary 3- County		Second Intersection (Rt. # / Name) 220		2- Alternate 7- Business	
N/A		S W		N E		1- Entrance 2- Exit		N E		2- US Primary 3- County		2- Alternate 7- Business	
X-811750		Driver/Deponent's Full Name		X-811751		Driver/Deponent's Full Name		Locally Bel		ASRU code		MP/Grd	
Unit # 1		Sex M		Race W		Street 445B Long St		Unit # 2		Sex M		Race W	
Birth Date 4-15-88		City, State, & Zip		Rutherfordton NC 28139		Birth Date		City, State, & Zip		Insurance Company			
State NC		Driver's License #		Insurance Company		State NC		Driver's License #		Insurance Company			
Year 09		Body 403		Vehicle Make VW		VIN 3VWSA29MXXM02706		Year 09		Body 403		Vehicle Make GMC	
State SC		Year 10		License Plate #		Owner's D.L. #		State SC		Year 10		License Plate #	
Home Telephone		Owner's Full Name		Home Telephone		Owner's Full Name		Home Telephone		Owner's Full Name		Home Telephone	
N/A		Garcia - Pablo		N/A		Plemmons - James		N/A		Plemmons - James		N/A	
Bus. Telephone		Street		Bus. Telephone		Street		Bus. Telephone		Street		Bus. Telephone	
N/A		653 French St		N/A		125 Hill St		N/A		125 Hill St		N/A	
Contributed To Collision		City, State, & Zip		Contributed To Collision		City, State, & Zip		Contributed To Collision		City, State, & Zip		Contributed To Collision	
Yes		Rt 29		Yes		Rt 29		Yes		Rt 29		Yes	
Estimated Speed		C.D.L. Rec. Yes (No)		T/A B Rec. Yes (No)		Alc/Dry Info (see back) Yes (No)		Estimated Speed		C.D.L. Rec. Yes (No)		T/A B Rec. Yes (No)	
80		N/A		N/A		N/A		80		N/A		N/A	
Unit # 3		Sex M		Race W		Street 125 Hill St		Unit # 3		Sex M		Race W	
Birth Date 8-15-1983		City, State, & Zip		Walter 2 S 2085		Birth Date		City, State, & Zip		Insurance Company			
State NC		Driver's License #		Insurance Company		State NC		Driver's License #		Insurance Company			
Year 09		Body 403		Vehicle Make VW		VIN #		Year 09		Body 403		Vehicle Make VW	
State SC		Year 10		License Plate #		Owner's D.L. #		State SC		Year 10		License Plate #	
Home Telephone		Owner's Full Name		Home Telephone		Owner's Full Name		Home Telephone		Owner's Full Name		Home Telephone	
N/A		Garcia - Pablo		N/A		Plemmons - James		N/A		Plemmons - James		N/A	
Bus. Telephone		Street		Bus. Telephone		Street		Bus. Telephone		Street		Bus. Telephone	
N/A		653 French St		N/A		125 Hill St		N/A		125 Hill St		N/A	
Contributed To Collision		City, State, & Zip		Contributed To Collision		City, State, & Zip		Contributed To Collision		City, State, & Zip		Contributed To Collision	
Yes		Rt 29		Yes		Rt 29		Yes		Rt 29		Yes	
Estimated Speed		C.D.L. Rec. Yes (No)		T/A B Rec. Yes (No)		Alc/Dry Info (see back) Yes (No)		Estimated Speed		C.D.L. Rec. Yes (No)		T/A B Rec. Yes (No)	
80		N/A		N/A		N/A		80		N/A		N/A	
Unit # 3		Sex M		Race W		Street 125 Hill St		Unit # 3		Sex M		Race W	
Birth Date 8-15-1983		City, State, & Zip		Walter 2 S 2085		Birth Date		City, State, & Zip		Insurance Company			
State NC		Driver's License #		Insurance Company		State NC		Driver's License #		Insurance Company			
Year 09		Body 403		Vehicle Make VW		VIN #		Year 09		Body 403		Vehicle Make VW	
State SC		Year 10		License Plate #		Owner's D.L. #		State SC		Year 10		License Plate #	
Home Telephone		Owner's Full Name		Home Telephone		Owner's Full Name		Home Telephone		Owner's Full Name		Home Telephone	
N/A		Garcia - Pablo		N/A		Plemmons - James		N/A		Plemmons - James		N/A	
Bus. Telephone		Street		Bus. Telephone		Street		Bus. Telephone		Street		Bus. Telephone	
N/A		653 French St		N/A		125 Hill St		N/A		125 Hill St		N/A	
Contributed To Collision		City, State, & Zip		Contributed To Collision		City, State, & Zip		Contributed To Collision		City, State, & Zip		Contributed To Collision	
Yes		Rt 29		Yes		Rt 29		Yes		Rt 29		Yes	
Estimated Speed		C.D.L. Rec. Yes (No)		T/A B Rec. Yes (No)		Alc/Dry Info (see back) Yes (No)		Estimated Speed		C.D.L. Rec. Yes (No)		T/A B Rec. Yes (No)	
80		N/A		N/A		N/A		80		N/A		N/A	



Unit 1 Dam. \$1000 Unit 2 Dam. \$4000 Unit 3 Dam. N/A Prop. Dam. 1 N/A Prop. Dam. 2 N/A

Property Owner/Witness

Address

Date Zip Phone

Photo: Describe What Happened (Refer to Units by Number)

Unit 1 Vehicle #1 was traveling North on US 29.

Vehicle #2 (A tow truck) was stopped in the paved median head South to pickup Veh #4. Unit #3 (Pedestrian) was the tow truck operator. Veh #1 struck Veh #2 causing Veh #2 to strike the tow truck operator. Veh #2 also struck Veh #4. Vehicle came to rest in a ditch.

Investigator's Name Smith, LD Date 7-31-2010 Reviewer's Name Kester, J Date 8-1-2010



PLAINTIFFS 000017

 ROA 000181
 APP 000184

Unit	Date of Bth	Sex	Race	INJ	Soal	RSC	AAD	Eloc	LAI	Tran	Name	Street Address	Zip Code
1	4-18-1966	M	W	4	9	00	33	1	2	1	Drive Venu		
3	9-15-1973	M	W	3	20	5	7	7	1	1	Unit # 3 (Belham)		

Race A - Asian/Pacific Islander B - African American C - Caucasian D - Other E - Hispanic F - American Indian G - Unknown		W - Caucasian G - Other H - Unknown		Injury Status 1 - Possible 2 - Not Ejected 3 - Ejected 4 - Not Ejected 5 - Ejected 6 - Not Ejected 7 - Ejected 8 - Not Ejected 9 - Unknown		Non-Injury Status 1 - Possible 2 - Not Ejected 3 - Ejected 4 - Not Ejected 5 - Ejected 6 - Not Ejected 7 - Ejected 8 - Not Ejected 9 - Unknown		Seating Loc. 01 02 03 04 05 06 07 08 09		20 - Pedestrian 20 - Pedestrian 21 - Riding on Unit Exterior 22 - Out of Van (Off road or Higher) 23 - Other Enclosed Area (nontrailing) 24 - Other Unenclosed Area (nontrailing)		25 - Sleeper of Cab 25 - Sleeper of Cab 26 - Riding on Unit Exterior 27 - Out of Van (Off road or Higher) 28 - Other Enclosed Area (nontrailing) 29 - Other Unenclosed Area (nontrailing)		Restraint/Safety Device 30 - None Used 31 - Shoulder Belt Only 32 - Lap Belt Only 33 - Lap & Shoulder Belt 34 - Other 35 - Unknown			
Air Bag Deployment / Switch 1 - Deployed Front 4-Not Deployed 2 - Deployed Side 7-Not Deployed 3 - Deployed Both 9-Deployed Unit 4 - Switch in On Position 5-Not Switch 6 - Switch in Off Position 8-Unknown		Ejection 1 - Not Ejected 2 - Part Ejected 3 - Not Ejected 4 - Not Ejected 5 - Not Ejected 6 - Not Ejected 7 - Not Ejected 8 - Not Ejected 9 - Unknown		Head Injury 1 - Yes 2 - No 3 - Not Trapped 4 - Not Trapped 5 - Not Trapped 6 - Not Trapped 7 - Not Trapped 8 - Not Trapped 9 - Unknown		Location After Impact 1 - Not Trapped 2 - Not Trapped 3 - Not Trapped 4 - Not Trapped 5 - Not Trapped 6 - Not Trapped 7 - Not Trapped 8 - Not Trapped 9 - Unknown		Sequence of Events 1 - Not Trapped 2 - Not Trapped 3 - Not Trapped 4 - Not Trapped 5 - Not Trapped 6 - Not Trapped 7 - Not Trapped 8 - Not Trapped 9 - Unknown		Collision Free Object 1 - Yes 2 - No 3 - Unknown 4 - Yes 5 - No 6 - Unknown 7 - Yes 8 - No 9 - Unknown		Collision Free Object 1 - Yes 2 - No 3 - Unknown 4 - Yes 5 - No 6 - Unknown 7 - Yes 8 - No 9 - Unknown		Collision Free Object 1 - Yes 2 - No 3 - Unknown 4 - Yes 5 - No 6 - Unknown 7 - Yes 8 - No 9 - Unknown		Collision Free Object 1 - Yes 2 - No 3 - Unknown 4 - Yes 5 - No 6 - Unknown 7 - Yes 8 - No 9 - Unknown	
Non-Collision 01 - Cargo/Equip Load or Shift 02 - Cross Median/Center Line 03 - Downhill Runaway 04 - Equipment Failure 05 - Fire/Explosion 06 - Inversion 07 - Jackknife 08 - Overturn/Rollover 09 - Run off Road Left 10 - Run off Road Right 11 - Separation of Units 12 - Spill (Non-Hazardous) 13 - Other Non-Collision 14 - Unit Non-Collision 15 - Unit Non-Collision		04 - Equipment Failure 04 - Equipment Failure 05 - Fire/Explosion 06 - Inversion 07 - Jackknife 08 - Overturn/Rollover 09 - Run off Road Left 10 - Run off Road Right 11 - Separation of Units 12 - Spill (Non-Hazardous) 13 - Other Non-Collision 14 - Unit Non-Collision 15 - Unit Non-Collision		05 - Fire/Explosion 05 - Fire/Explosion 06 - Inversion 07 - Jackknife 08 - Overturn/Rollover 09 - Run off Road Left 10 - Run off Road Right 11 - Separation of Units 12 - Spill (Non-Hazardous) 13 - Other Non-Collision 14 - Unit Non-Collision 15 - Unit Non-Collision		06 - Inversion 06 - Inversion 07 - Jackknife 08 - Overturn/Rollover 09 - Run off Road Left 10 - Run off Road Right 11 - Separation of Units 12 - Spill (Non-Hazardous) 13 - Other Non-Collision 14 - Unit Non-Collision 15 - Unit Non-Collision		07 - Jackknife 07 - Jackknife 08 - Overturn/Rollover 09 - Run off Road Left 10 - Run off Road Right 11 - Separation of Units 12 - Spill (Non-Hazardous) 13 - Other Non-Collision 14 - Unit Non-Collision 15 - Unit Non-Collision		08 - Overturn/Rollover 08 - Overturn/Rollover 09 - Run off Road Left 10 - Run off Road Right 11 - Separation of Units 12 - Spill (Non-Hazardous) 13 - Other Non-Collision 14 - Unit Non-Collision 15 - Unit Non-Collision		09 - Run off Road Left 09 - Run off Road Left 10 - Run off Road Right 11 - Separation of Units 12 - Spill (Non-Hazardous) 13 - Other Non-Collision 14 - Unit Non-Collision 15 - Unit Non-Collision		10 - Run off Road Right 10 - Run off Road Right 11 - Separation of Units 12 - Spill (Non-Hazardous) 13 - Other Non-Collision 14 - Unit Non-Collision 15 - Unit Non-Collision		11 - Separation of Units 11 - Separation of Units 12 - Spill (Non-Hazardous) 13 - Other Non-Collision 14 - Unit Non-Collision 15 - Unit Non-Collision	
012 - Spill (Hazardous) 012 - Spill (Hazardous) 013 - Other Non-Collision 014 - Unit Non-Collision 015 - Unit Non-Collision		013 - Other Non-Collision 013 - Other Non-Collision 014 - Unit Non-Collision 015 - Unit Non-Collision		014 - Unit Non-Collision 014 - Unit Non-Collision 015 - Unit Non-Collision		015 - Unit Non-Collision 015 - Unit Non-Collision		016 - Unit Non-Collision 016 - Unit Non-Collision		017 - Unit Non-Collision 017 - Unit Non-Collision		018 - Unit Non-Collision 018 - Unit Non-Collision		019 - Unit Non-Collision 019 - Unit Non-Collision			
Vehicle Type 01 - Automobile 02 - Pickup Truck 03 - Truck Tractor 04 - Other Truck 05 - Semi-Trailer 06 - Motor Vehicle 07 - Motorcycle 08 - Pedestrian 09 - Other 10 - Unknown		15 - Full Size Van 15 - Full Size Van 16 - Mini Van 17 - School Bus 18 - Other 19 - Unknown		27 - Motorcycle 27 - Motorcycle 28 - Pedestrian 29 - Other 30 - Unknown		31 - School Bus 31 - School Bus 32 - Other 33 - Unknown		34 - Other 34 - Other 35 - Unknown		36 - Unknown 36 - Unknown		37 - Unknown 37 - Unknown		38 - Unknown 38 - Unknown			
Vehicle Use Code 01 - Personal 02 - Driver Training 03 - Construction/Maint 04 - Other 05 - Unknown		04 - Ambulance 04 - Ambulance 05 - Military 06 - Other 07 - Unknown		08 - Farm Use 08 - Farm Use 09 - Other 10 - Unknown		12 - Fire Fighting 12 - Fire Fighting 13 - Logging 14 - Other 15 - Unknown		16 - Other 16 - Other 17 - Unknown		18 - Unknown 18 - Unknown		19 - Unknown 19 - Unknown		20 - Unknown 20 - Unknown			
Vehicle Attachment 01 - None 02 - Trailer 03 - Semi-Trailer 04 - Other 05 - Unknown		04 - Ambulance 04 - Ambulance 05 - Military 06 - Other 07 - Unknown		08 - Farm Use 08 - Farm Use 09 - Other 10 - Unknown		12 - Fire Fighting 12 - Fire Fighting 13 - Logging 14 - Other 15 - Unknown		16 - Other 16 - Other 17 - Unknown		18 - Unknown 18 - Unknown		19 - Unknown 19 - Unknown		20 - Unknown 20 - Unknown			
Action Prior to Impact 01 - Backing 02 - Changing Lanes 03 - Entering Traffic Lane 04 - Leaving Traffic Lane 05 - Making Turn 06 - Movement Essentially Straight Ahead 07 - Overtaking/Passing		08 - Parked 08 - Parked 09 - Stopped or Stopped in Traffic 10 - Turning Left 11 - Turning Right 12 - Waiting, Plying, Cycling 13 - Other		21 - Approaching/Leaving Vehicle 21 - Approaching/Leaving Vehicle 22 - Entering/Crossing Location 23 - Plying/Working on Vehicle 24 - Pushing Vehicle 25 - Standing 26 - Waiting, Plying, Cycling 27 - Working		28 - Entering/Crossing Location 28 - Entering/Crossing Location 29 - Plying/Working on Vehicle 30 - Pushing Vehicle 31 - Standing 32 - Waiting, Plying, Cycling 33 - Working		34 - Pushing Vehicle 34 - Pushing Vehicle 35 - Standing 36 - Waiting, Plying, Cycling 37 - Working		38 - Standing 38 - Standing 39 - Waiting, Plying, Cycling 40 - Working		41 - Waiting, Plying, Cycling 41 - Waiting, Plying, Cycling 42 - Working		43 - Working 43 - Working			
Weather Condition 1 - Clear (no adverse conditions) 2 - Rain 3 - Cloudy 4 - Fog, Smog, Smoke 5 - Snow 6 - Other		3 - Cloudy 3 - Cloudy 4 - Fog, Smog, Smoke 5 - Snow 6 - Other		4 - Fog, Smog, Smoke 4 - Fog, Smog, Smoke 5 - Snow 6 - Other		5 - Snow 5 - Snow 6 - Other		6 - Other 6 - Other		7 - Other 7 - Other		8 - Other 8 - Other		9 - Other 9 - Other			
Light Condition 1 - Daylight 2 - Dawn 3 - Dusk 4 - Dark (Lighting Unspecified) 5 - Dark (Street Lamp Lit) 6 - Dark (No Light)		3 - Cloudy 3 - Cloudy 4 - Fog, Smog, Smoke 5 - Snow 6 - Other		4 - Fog, Smog, Smoke 4 - Fog, Smog, Smoke 5 - Snow 6 - Other		5 - Snow 5 - Snow 6 - Other		6 - Other 6 - Other		7 - Other 7 - Other		8 - Other 8 - Other		9 - Other 9 - Other			
Junction Type 01 - Crossroad 02 - Driveway 03 - Freeway Points 04 - Four-way Intersection 05 - Roadway Grade Crossing 06 - T-Intersection 07 - Traffic Circle 08 - Unknown		03 - Freeway Points 03 - Freeway Points 04 - Four-way Intersection 05 - Roadway Grade Crossing 06 - T-Intersection 07 - Traffic Circle 08 - Unknown		04 - Four-way Intersection 04 - Four-way Intersection 05 - Roadway Grade Crossing 06 - T-Intersection 07 - Traffic Circle 08 - Unknown		05 - Roadway Grade Crossing 05 - Roadway Grade Crossing 06 - T-Intersection 07 - Traffic Circle 08 - Unknown		06 - T-Intersection 06 - T-Intersection 07 - Traffic Circle 08 - Unknown		07 - Traffic Circle 07 - Traffic Circle 08 - Unknown		08 - Unknown 08 - Unknown		09 - Unknown 09 - Unknown			
Primary Contributing Factors 01 - Disregard Signs, Signals, Etc. 02 - Distracted/Inattention 03 - Overtaking Too Fast for Conditions 04 - Exceeded Authorized Speed Limit 05 - Failed to Yield Right of Way 06 - Ran off Road 07 - Fatigued/Alcohol 08 - Followed Too Closely		03 - Freeway Points 03 - Freeway Points 04 - Four-way Intersection 05 - Roadway Grade Crossing 06 - T-Intersection 07 - Traffic Circle 08 - Unknown		04 - Four-way Intersection 04 - Four-way Intersection 05 - Roadway Grade Crossing 06 - T-Intersection 07 - Traffic Circle 08 - Unknown		05 - Roadway Grade Crossing 05 - Roadway Grade Crossing 06 - T-Intersection 07 - Traffic Circle 08 - Unknown		06 - T-Intersection 06 - T-Intersection 07 - Traffic Circle 08 - Unknown		07 - Traffic Circle 07 - Traffic Circle 08 - Unknown		08 - Unknown 08 - Unknown		09 - Unknown 09 - Unknown			
01 - Disregard Signs, Signals, Etc. 01 - Disregard Signs, Signals, Etc. 02 - Distracted/Inattention 03 - Overtaking Too Fast for Conditions 04 - Exceeded Authorized Speed Limit 05 - Failed to Yield Right of Way 06 - Ran off Road 07 - Fatigued/Alcohol 08 - Followed Too Closely		02 - Distracted/Inattention 02 - Distracted/Inattention 03 - Overtaking Too Fast for Conditions 04 - Exceeded Authorized Speed Limit 05 - Failed to Yield Right of Way 06 - Ran off Road 07 - Fatigued/Alcohol 08 - Followed Too Closely		03 - Overtaking Too Fast for Conditions 03 - Overtaking Too Fast for Conditions 04 - Exceeded Authorized Speed Limit 05 - Failed to Yield Right of Way 06 - Ran off Road 07 - Fatigued/Alcohol 08 - Followed Too Closely		04 - Exceeded Authorized Speed Limit 04 - Exceeded Authorized Speed Limit 05 - Failed to Yield Right of Way 06 - Ran off Road 07 - Fatigued/Alcohol 08 - Followed Too Closely		05 - Failed to Yield Right of Way 05 - Failed to Yield Right of Way 06 - Ran off Road 07 - Fatigued/Alcohol 08 - Followed Too Closely		06 - Ran off Road 06 - Ran off Road 07 - Fatigued/Alcohol 08 - Followed Too Closely		07 - Fatigued/Alcohol 07 - Fatigued/Alcohol 08 - Followed Too Closely		08 - Followed Too Closely 08 - Followed Too Closely			
02 - Distracted/Inattention 02 - Distracted/Inattention 03 - Overtaking Too Fast for Conditions 04 - Exceeded Authorized Speed Limit 05 - Failed to Yield Right of Way 06 - Ran off Road 07 - Fatigued/Alcohol 08 - Followed Too Closely		03 - Overtaking Too Fast for Conditions 03 - Overtaking Too Fast for Conditions 04 - Exceeded Authorized Speed Limit 05 - Failed to Yield Right of Way 06 - Ran off Road 07 - Fatigued/Alcohol 08 - Followed Too Closely		04 - Exceeded Authorized Speed Limit 04 - Exceeded Authorized Speed Limit 05 - Failed to Yield Right of Way 06 - Ran off Road 07 - Fatigued/Alcohol 08 - Followed Too Closely		05 - Failed to Yield Right of Way 05 - Failed to Yield Right of Way 06 - Ran off Road 07 - Fatigued/Alcohol 08 - Followed Too Closely		06 - Ran off Road 06 - Ran off Road 07 - Fatigued/Alcohol 08 - Followed Too Closely		07 - Fatigued/Alcohol 07 - Fatigued/Alcohol 08 - Followed Too Closely		08 - Followed Too Closely 08 - Followed Too Closely		09 - Unknown 09 - Unknown			
03 - Overtaking Too Fast for Conditions 03 - Overtaking Too Fast for Conditions 04 - Exceeded Authorized Speed Limit 05 - Failed to Yield Right of Way 06 - Ran off Road 07 - Fatigued/Alcohol 08 - Followed Too Closely		04 - Exceeded Authorized Speed Limit 04 - Exceeded Authorized Speed Limit 05 - Failed to Yield Right of Way 06 - Ran off Road 07 - Fatigued/Alcohol 08 - Followed Too Closely		05 - Failed to Yield Right of Way 05 - Failed to Yield Right of Way 06 - Ran off Road 07 - Fatigued/Alcohol 08 - Followed Too Closely		06 - Ran off Road 06 - Ran off Road 07 - Fatigued/Alcohol 08 - Followed Too Closely		07 - Fatigued/Alcohol 07 - Fatigued/Alcohol 08 - Followed Too Closely		08 - Followed Too Closely 08 - Followed Too Closely		09 - Unknown 09 - Unknown		10 - Unknown 10 - Unknown			
04 - Exceeded Authorized Speed Limit 04 - Exceeded Authorized Speed Limit 05 - Failed to Yield Right of Way 06 - Ran off Road 07 - Fatigued/Alcohol 08 - Followed Too Closely		05 - Failed to Yield Right of Way 05 - Failed to Yield Right of Way 06 - Ran off Road 07 - Fatigued/Alcohol 08 - Followed Too Closely		06 - Ran off Road 06 - Ran off Road 07 - Fatigued/Alcohol 08 - Followed Too Closely		07 - Fatigued/Alcohol 07 - Fatigued/Alcohol 08 - Followed Too Closely		08 - Followed Too Closely 08 - Followed Too Closely		09 - Unknown 09 - Unknown		10 - Unknown 10 - Unknown		11 - Unknown 11 - Unknown			
05 - Failed to Yield Right of Way 05 - Failed to Yield Right of Way 06 - Ran off Road 07 - Fatigued/Alcohol 08 - Followed Too Closely		06 - Ran off Road 06 - Ran off Road 07 - Fatigued/Alcohol 08 - Followed Too Closely		07 - Fatigued/Alcohol 07 - Fatigued/Alcohol 08 - Followed Too Closely		08 - Followed Too Closely 08 - Followed Too Closely		09 - Unknown 09 - Unknown		10 - Unknown 10 - Unknown		11 - Unknown 11 - Unknown		12 - Unknown 12 - Unknown			
06 - Ran off Road 06 - Ran off Road 07 - Fatigued/Alcohol 08 - Followed Too Closely		07 - Fatigued/Alcohol 07 - Fatigued/Alcohol 08 - Followed Too Closely		08 - Followed Too Closely 08 - Followed Too Closely		09 - Unknown 09 - Unknown		10 - Unknown 10 - Unknown		11 - Unknown 11 - Unknown		12 - Unknown 12 - Unknown		13 - Unknown 13 - Unknown			
07 - Fatigued/Alcohol 07 - Fatigued/Alcohol 08 - Followed Too Closely		08 - Followed Too Closely 08 - Followed Too Closely		09 - Unknown 09 - Unknown		10 - Unknown 10 - Unknown		11 - Unknown 11 - Unknown		12 - Unknown 12 - Unknown		13 - Unknown 13 - Unknown		14 - Unknown 14 - Unknown			
08 - Followed Too Closely 08 - Followed Too Closely		09 - Unknown 09 - Unknown		10 - Unknown 10 - Unknown		11 - Unknown 11 - Unknown		12 - Unknown 12 - Unknown		13 - Unknown 13 - Unknown		14 - Unknown 14 - Unknown		15 - Unknown 15 - Unknown			
09 - Unknown 09 - Unknown		10 - Unknown 10 - Unknown		11 - Unknown 11 - Unknown		12 - Unknown 12 - Unknown		13 - Unknown 13 - Unknown		14 - Unknown 14 - Unknown		15 - Unknown 15 - Unknown		16 - Unknown 16 - Unknown			
10 - Unknown 10 - Unknown		11 - Unknown 11 - Unknown		12 - Unknown 12 - Unknown		13 - Unknown 13 - Unknown		14 - Unknown 14 - Unknown		15 - Unknown 15 - Unknown		16 - Unknown 16 - Unknown		17 - Unknown 17 - Unknown			
11 - Unknown 11 - Unknown		12 - Unknown 12 - Unknown		13 - Unknown 13 - Unknown		14 - Unknown 14 - Unknown		15 - Unknown 15 - Unknown		16 - Unknown 16 - Unknown		17 - Unknown 17 - Unknown		18 - Unknown 18 - Unknown			
12 - Unknown 12 - Unknown		13 - Unknown 13 - Unknown		14 - Unknown 14 - Unknown		15 - Unknown 15 - Unknown		16 - Unknown 16 - Unknown		17 - Unknown 17 - Unknown		18 - Unknown 18 - Unknown		19 - Unknown 19 - Unknown			
13 - Unknown 13 - Unknown		14 - Unknown 14 - Unknown		15 - Unknown 15 - Unknown		16 - Unknown 16 - Unknown		17 - Unknown 17 - Unknown		18 - Unknown 18 - Unknown		19 - Unknown 19 - Unknown		20 - Unknown 20 - Unknown			
14 - Unknown 14 - Unknown		15 - Unknown 15 - Unknown		16 - Unknown 16 - Unknown		17 - Unknown 17 - Unknown		18 - Unknown 18 - Unknown		19 - Unknown 19 - Unknown		20 - Unknown 20 - Unknown		21 - Unknown 21 - Unknown			
15 - Unknown 15 - Unknown		16 - Unknown 16 - Unknown		17 - Unknown 17 - Unknown		18 - Unknown 18 - Unknown		19 - Unknown 19 - Unknown		20 - Unknown 20 - Unknown		21 - Unknown 21 - Unknown		22 - Unknown 22 - Unknown			
16 - Unknown 16 - Unknown		17 - Unknown 17 - Unknown		18 - Unknown 18 - Unknown		19 - Unknown 19 - Unknown		20 - Unknown 20 - Unknown		21 - Unknown 21 - Unknown		22 - Unknown 					

ORIGINAL

Page 2

AUG 09 2010

D.P. USE ONLY		Page 2 of 2		SOUTH CAROLINA TRAFFIC COLLISION REPORT FORM		# Of Units	Amended - Attach Copy of Original Report	Notified	Arrived
10084001						4	6530	6530	
Date	Time	Carry	1- Interstate 4- Secondary	Collision Location (Rt. # / Name)		1- Main 6- Connection	2- Alternate 7- Business	3- Spur	In / Near City or Town at
7/30/10	0330	42	2- US Primary 5- County	8 2A		6	6	6	Sotog
Long # / Dir	Distance	Dir	1- Interstate 4- Secondary	Usage Intersection (Rt. # / Name)		1- Main 6- Connection	2- Alternate 7- Business	3- Spur 8- Other	ASAU code
N 105	105	W	2- US Primary 5- County	Blue Bank		2- Main 7- Business	3- Spur 8- Other		
R.R. Id.	From	Ramp Only	1- Interstate 4- Secondary	Second Intersection (Rt. # / Name)		1- Main 6- Connection	2- Alternate 7- Business	3- Spur 8- Other	Latitude
N/A	N 105	W	2- US Primary 5- County	220		2- Main 7- Business	3- Spur 8- Other		34 35 1470
	1- Entrance	N 105	3- SO Primary 8- Other			2- Main 7- Business	3- Spur 8- Other		Longitude
	2- Exit	W				2- Main 7- Business	3- Spur 8- Other		81 55 2810
X-811753		Driver/Pedestrian's Full Name		X-811754		Driver/Pedestrian's Full Name			
Unit #	Sex	Race	Street	Unit #	Sex	Race	Street		
4									
Birth Date		City, State, & Zip		Birth Date		City, State, & Zip			
State		Driver's License #		State		Driver's License #		Insurance Company	
Year		Body		Year		Body		Vehicle Make	
10		403		10		403		VIN #	
10		10		10		10		KLAU6L27028377	
State		Year		State		Year		License Plate #	
SC		10		SC		10		Owner's D.L. #	
Home Telephone		Owner's Full Name		Home Telephone		Owner's Full Name			
804 501-0514		MRS. Queen E		Home Telephone		Owner's Full Name			
Bus. Telephone		Street		Bus. Telephone		Street			
204 Oak St				Bus. Telephone		Street			
Contributed To Collision		City, State, & Zip		Contributed To Collision		City, State, & Zip			
Yes		Queen S - 2951		Yes		No			
Estimated Speed	Speed Limit	C.D.L. Rec: Yes	Y/N	Estimated Speed	Speed Limit	C.D.L. Rec: Yes	Y/N	Y/N	Y/N
45	45	Y	Y	45	45	Y	Y	Y	Y
X-811755		Driver/Pedestrian's Full Name		X-811755		Driver/Pedestrian's Full Name			
Unit #	Sex	Race	Street	Unit #	Sex	Race	Street		
Birth Date		City, State, & Zip		Birth Date		City, State, & Zip			
State		Driver's License #		State		Driver's License #		Insurance Company	
Year		Body		Year		Body		Vehicle Make	
10		403		10		403		VIN #	
10		10		10		10		KLAU6L27028377	
State		Year		State		Year		License Plate #	
SC		10		SC		10		Owner's D.L. #	
Home Telephone		Owner's Full Name		Home Telephone		Owner's Full Name			
804 501-0514		MRS. Queen E		Home Telephone		Owner's Full Name			
Bus. Telephone		Street		Bus. Telephone		Street			
204 Oak St				Bus. Telephone		Street			
Contributed To Collision		City, State, & Zip		Contributed To Collision		City, State, & Zip			
Yes		Queen S - 2951		Yes		No			
Estimated Speed	Speed Limit	C.D.L. Rec: Yes	Y/N	Estimated Speed	Speed Limit	C.D.L. Rec: Yes	Y/N	Y/N	Y/N
45	45	Y	Y	45	45	Y	Y	Y	Y
X-811755		Driver/Pedestrian's Full Name		X-811755		Driver/Pedestrian's Full Name			
Unit #	Sex	Race	Street	Unit #	Sex	Race	Street		
Birth Date		City, State, & Zip		Birth Date		City, State, & Zip			
State		Driver's License #		State		Driver's License #		Insurance Company	
Year		Body		Year		Body		Vehicle Make	
10		403		10		403		VIN #	
10		10		10		10		KLAU6L27028377	
State		Year		State		Year		License Plate #	
SC		10		SC		10		Owner's D.L. #	
Home Telephone		Owner's Full Name		Home Telephone		Owner's Full Name			
804 501-0514		MRS. Queen E		Home Telephone		Owner's Full Name			
Bus. Telephone		Street		Bus. Telephone		Street			
204 Oak St				Bus. Telephone		Street			
Contributed To Collision		City, State, & Zip		Contributed To Collision		City, State, & Zip			
Yes		Queen S - 2951		Yes		No			
Estimated Speed	Speed Limit	C.D.L. Rec: Yes	Y/N	Estimated Speed	Speed Limit	C.D.L. Rec: Yes	Y/N	Y/N	Y/N
45	45	Y	Y	45	45	Y	Y	Y	Y
X-811755		Driver/Pedestrian's Full Name		X-811755		Driver/Pedestrian's Full Name			
Unit #	Sex	Race	Street	Unit #	Sex	Race	Street		
Birth Date		City, State, & Zip		Birth Date		City, State, & Zip			
State		Driver's License #		State		Driver's License #		Insurance Company	
Year		Body		Year		Body		Vehicle Make	
10		403		10		403		VIN #	
10		10		10		10		KLAU6L27028377	
State		Year		State		Year		License Plate #	
SC		10		SC		10		Owner's D.L. #	
Home Telephone		Owner's Full Name		Home Telephone		Owner's Full Name			
804 501-0514		MRS. Queen E		Home Telephone		Owner's Full Name			
Bus. Telephone		Street		Bus. Telephone		Street			
204 Oak St				Bus. Telephone		Street			
Contributed To Collision		City, State, & Zip		Contributed To Collision		City, State, & Zip			
Yes		Queen S - 2951		Yes		No			
Estimated Speed	Speed Limit	C.D.L. Rec: Yes	Y/N	Estimated Speed	Speed Limit	C.D.L. Rec: Yes	Y/N	Y/N	Y/N
45	45	Y	Y	45	45	Y	Y	Y	Y
X-811755		Driver/Pedestrian's Full Name		X-811755		Driver/Pedestrian's Full Name			
Unit #	Sex	Race	Street	Unit #	Sex	Race	Street		
Birth Date		City, State, & Zip		Birth Date		City, State, & Zip			
State		Driver's License #		State		Driver's License #		Insurance Company	
Year		Body		Year		Body		Vehicle Make	
10		403		10		403		VIN #	
10		10		10		10		KLAU6L27028377	
State		Year		State		Year		License Plate #	
SC		10		SC		10		Owner's D.L. #	
Home Telephone		Owner's Full Name		Home Telephone		Owner's Full Name			
804 501-0514		MRS. Queen E		Home Telephone		Owner's Full Name			
Bus. Telephone		Street		Bus. Telephone		Street			
204 Oak St				Bus. Telephone		Street			
Contributed To Collision		City, State, & Zip		Contributed To Collision		City, State, & Zip			
Yes		Queen S - 2951		Yes		No			
Estimated Speed	Speed Limit	C.D.L. Rec: Yes	Y/N	Estimated Speed	Speed Limit	C.D.L. Rec: Yes	Y/N	Y/N	Y/N
45	45	Y	Y	45	45	Y	Y	Y	Y
X-811755		Driver/Pedestrian's Full Name		X-811755		Driver/Pedestrian's Full Name			
Unit #	Sex	Race	Street	Unit #	Sex	Race	Street		
Birth Date		City, State, & Zip		Birth Date		City, State, & Zip			
State		Driver's License #		State		Driver's License #		Insurance Company	
Year		Body		Year		Body		Vehicle Make	
10		403		10		403		VIN #	
10		10		10		10		KLAU6L27028377	
State		Year		State		Year		License Plate #	
SC		10		SC		10		Owner's D.L. #	
Home Telephone		Owner's Full Name		Home Telephone		Owner's Full Name			
804 501-0514		MRS. Queen E		Home Telephone		Owner's Full Name			
Bus. Telephone		Street		Bus. Telephone		Street			
204 Oak St				Bus. Telephone		Street			
Contributed To Collision		City, State, & Zip		Contributed To Collision		City, State, & Zip			
Yes		Queen S - 2951		Yes		No			
Estimated Speed	Speed Limit	C.D.L. Rec: Yes	Y/N	Estimated Speed	Speed Limit	C.D.L. Rec: Yes	Y/N	Y/N	Y/N
45	45	Y	Y	45	45	Y	Y	Y	Y
X-811755		Driver/Pedestrian's Full Name		X-811755		Driver/Pedestrian's Full Name			
Unit #	Sex	Race	Street	Unit #	Sex	Race	Street		
Birth Date		City, State, & Zip		Birth Date		City, State, & Zip			
State		Driver's License #		State		Driver's License #		Insurance Company	
Year		Body		Year		Body		Vehicle Make	
10		403		10		403		VIN #	
10		10		10		10		KLAU6L27028377	
State		Year		State		Year		License Plate #	
SC		10		SC		10		Owner's D.L. #	
Home Telephone		Owner's Full Name		Home Telephone		Owner's Full Name			
804 501-0514		MRS. Queen E		Home Telephone		Owner's Full Name			
Bus. Telephone		Street		Bus. Telephone		Street			
204 Oak St				Bus. Telephone		Street			
Contributed To Collision		City, State, & Zip		Contributed To Collision		City, State, & Zip			
Yes		Queen S - 2951		Yes		No			
Estimated Speed	Speed Limit	C.D.L. Rec: Yes	Y/N	Estimated Speed	Speed Limit	C.D.L. Rec: Yes	Y/N	Y/N	Y/N
45	45	Y	Y	45	45	Y	Y	Y	Y
X-811755		Driver/Pedestrian's Full Name		X-811755		Driver/Pedestrian's Full Name			
Unit #	Sex	Race	Street	Unit #	Sex	Race	Street		
Birth Date		City, State, & Zip		Birth Date		City, State, & Zip			
State		Driver's License #		State		Driver's License #		Insurance Company	
Year		Body		Year		Body		Vehicle Make	
10		403		10		403		VIN #	
10		10		10		10		KLAU6L27028377	
State		Year		State		Year		License Plate #	
SC		10		SC		10		Owner's D.L. #	
Home Telephone		Owner's Full Name		Home Telephone		Owner's Full Name			
804 501-0514		MRS. Queen E		Home Telephone		Owner's Full Name			
Bus. Telephone		Street		Bus. Telephone		Street			
204 Oak St				Bus. Telephone		Street			
Contributed To Collision		City, State, & Zip		Contributed To Collision		City, State, & Zip			
Yes		Queen S - 2951		Yes		No			
Estimated Speed	Speed Limit	C.D.L. Rec: Yes	Y/N	Estimated Speed	Speed Limit	C.D.L. Rec: Yes	Y/N	Y/N	Y/N
45	45	Y	Y	45	45	Y	Y	Y	Y
X-811755		Driver/Pedestrian's Full Name		X-811755		Driver/Pedestrian's Full Name			
Unit #	Sex	Race	Street	Unit #	Sex	Race	Street		
Birth Date		City, State, & Zip		Birth Date		City, State, & Zip			
State		Driver's License #		State		Driver's License #		Insurance Company	
Year		Body		Year		Body		Vehicle Make	
10		403		10		403		VIN #	
10		10		10		10		KLAU6L27028377	
State		Year		State		Year		License Plate #	
SC		10		SC		10		Owner's D.L. #	
Home Telephone		Owner's Full Name		Home Telephone		Owner's Full Name			
804 501-0514		MRS. Queen E		Home Telephone		Owner's Full Name			
Bus. Telephone		Street		Bus. Telephone		Street			
204 Oak St				Bus. Telephone		Street			
Contributed To Collision		City, State, & Zip		Contributed To Collision		City, State, & Zip			
Yes		Queen S - 2951		Yes		No			
Estimated Speed	Speed Limit	C.D.L. Rec: Yes	Y/N	Estimated Speed	Speed Limit	C.D.L. Rec: Yes	Y/N	Y/N	Y/N
45	45	Y	Y	45	45	Y	Y	Y	Y
X-811755		Driver/Pedestrian's Full Name		X-811755		Driver/Pedestrian's Full Name			
Unit #	Sex	Race	Street						

[illegible]

CERTIFICATE OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough, L.L.P., counsel for State Farm Mutual Automobile Insurance Company, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by sending a copy of the same via U.S. Regular mail, postage paid, and via electronic email to the following counsel of record:

Pleadings: Motion for Summary Judgment
 Memorandum in Support of Motion for Summary Judgment by State
 Farm Mutual Automobile Insurance Company

Counsel Served:

D. Alan Lazenby, Esquire
R. Patrick Martin, Esquire
Lazenby Law Firm, LLC
134 Oakland Avenue (29302)
P.O. Box 6099
Spartanburg, SC 29304

Andy Johnston, Esquire
Andrew J. Johnston Law Office
184 North Daniel Morgan Avenue
Spartanburg, SC 29306-2321

Counsel for Plaintiff

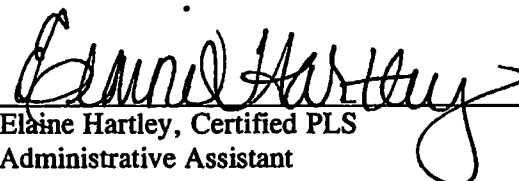
Counsel for Plaintiff

Charles F. Turner, Jr., Esquire
Turner Padgett Graham & Laney, PA
P.O. Box 1509
Greenville, SC 29602

Bernie W. Ellis, Esquire
McNair Law Firm
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Counsel for Plaza Insurance Company

*Counsel for The Stover Company, Inc. and
Howard E. Newton, III*


Elaine Hartley, Certified PLS
Administrative Assistant

September 18, 2012

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

James Luther Plemmons and Wanda Sue Clark)
Plemmons)

☐ Plaintiff)

v.)

State Farm Mutual Automobile Insurance Company,)
Plaza Insurance Company, The Stover Company,)
Inc. And Howard E. Newton, III)

☒ Defendant.)

IN THE COURT OF COMMON PLEAS

CASE NO.

2012-CP-42-00346

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:

D. Alan Lazenby, Bar No.

Address:

Lazenby Law Firm, LLC, P.O. Box 6099,
Spartanburg, SC 29302

phone: 864.804.5050 fax:

e-mail: other:

Defendant's Attorney:

Charles R. Norris, Esquire, Bar No. 004238

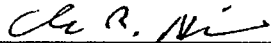
Address:

Nelson Mullins Riley & Scarborough, LLP, P.O. Box
1806, Charleston, SC 29402

phone: 843-720-4303 fax: 843-720-4352

e-mail: Charles.norris@nelsonmullins.com other:

- ☒ **MOTION HEARING REQUESTED** (attach written motion and complete **SECTIONS I and III**)
☐ **FORM MOTION, NO HEARING REQUESTED** (complete **SECTIONS II and III**)
☐ **PROPOSED ORDER/CONSENT ORDER** (complete **SECTIONS II and III**)

SECTION I: Hearing Information	
Nature of Motion: Supplemental Motion for Summary Judgment	
Estimated Time Needed: 20 Minutes Court Reporter Needed: ☒ 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 / ☒ Defendant	May 13, 2013 Date submitted
SECTION III: Motion Fee	
☒ PAID – AMOUNT: 25.00 ☐ EXEMPT:	
(check reason) ☐ 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) ☐ Proposed 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:	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:	JUDGE _____ CODE: _____ Date: _____
CLERK'S VERIFICATION	
Collected by: _____ Date Filed: _____	
☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED – AMOUNT DUE: _____	

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	
 JAMES LUTHER PLEMMONS AND	)	Civil Action No. 2012-CP-42-00346
WANDA SUE CLARK PLEMMONS,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
STATE FARM MUTUAL	)	<u>SUPPLEMENTAL MOTION FOR</u>
AUTOMOBILE INSURANCE	)	<u>SUMMARY JUDGMENT</u>
COMPANY, PLAZA INSURANCE	)	
COMPANY, THE STOVER	)	
COMPANY, INC., and HOWARD E.	)	
NEWTON, III,	)	
	)	
Defendants.	)	

Pursuant to SCRPC 56 State Farm Mutual Automobile Insurance Company (State Farm) supplements its motion for summary judgment dated September 18, 2012 to assert as an additional ground for summary judgment on all causes of action that the plaintiffs are not entitled to stack underinsurance motorist (UIM) coverage from a State Farm policy insuring John Carson above UIM coverage provided to the plaintiffs by Plaza Insurance Company. State Farm further requests that this supplemental motion for summary judgment be heard on May 17, 2013 along with State Farm's motion for summary judgment dated September 18, 2012. Hearing these motions in one hearing will promote judicial economy and will not unfairly prejudice the plaintiffs. This motion is based upon SCRPC 56 and applicable cases and statutes.

NELSON MULLINS RILEY & SCARBOROUGH LLP

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Attorneys for State Farm Mutual Automobile
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Charleston, South Carolina

May 13, 2013

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG) IN THE COURT OF COMMON PLEAS

JAMES LUTHER PLEMMONS AND) Civil Action No. 2012-CP-42-00346
WANDA SUE CLARK PLEMMONS,)

Plaintiffs,)

vs.)

STATE FARM MUTUAL)
AUTOMOBILE INSURANCE)
COMPANY, PLAZA INSURANCE)
COMPANY, THE STOVER)
COMPANY, INC., and HOWARD E.)
NEWTON, III,)

Defendants.)

MEMORANDUM IN SUPPORT OF
SUPPLEMENTAL MOTION FOR
SUMMARY JUDGMENT

James Plemmons had an insurance policy with Plaza Insurance Company which provided UIM coverage on his tow truck. (Plaintiffs' Amended Complaint, ¶¶ 2, 22, 26) This policy provided at least \$100,000 of UIM coverage. (Plaintiffs' Amended Complaint, ¶ 32; James Plemmons deposition, Exhibit 8, Page 3 – attached as Exhibit A)¹ State Farm insured a 2005 Dodge Neon owned by John Carson and which the plaintiff James Plemmons alleges he was using at the time of his accident. (Plaintiffs' Amended Complaint, ¶ 3) The plaintiffs were not named insureds under the State Farm policy, they were not spouses of the named insured under that policy nor were they relatives residing in the household of John Carson. The plaintiffs seek to recover UIM benefits under the State Farm policy insuring Carson after having recovered UIM benefits from Plaza under the policy insuring Plemmons' tow truck.

¹ The plaintiffs have settled their claim against Plaza Insurance Company. Attached as Exhibit B is correspondence affirming the settlement and a stipulation of dismissal.

Stacking refers to an insured's recovery of damages under more than one insurance policy in succession until all damages are satisfied or until the total limits of all policies are exhausted. Nakatsu v. Encompass Indemnity Company, 700 S.E.2d 283, 286 (S.C. App. 2010); Nationwide Mutual Insurance Company v. Rhoden, 728 S.E.2d 477, 481 (S.C. 2012)

The right to stack coverages is available only to a Class I insured. A Class I insured is a named insured, his spouse and relatives residing in his household. Richardson v. South Carolina Farm Bureau, 519 S.E.2d 120, 121 (S.C. App. 1999) One who is not a resident relative of the named insured's household is not a Class I insured entitled to stack UIM benefits. Auto Owners Insurance Company v. Horne, 586 S.E.2d 865, 874 (S.C. 2003) One who is not the named insured or the named insured's spouse or a resident relative and is only using the vehicle with the named insured's permission is a Class II insured and is not entitled to stack coverage. Ex Parte: United Services Automobile Association; In Re Smith v. Moore, 614 S.E.2d 652 (S.C. App. 2005)

Because James Plemmons was not a named insured under the State Farm policy, was not a spouse of the named insured under the State Farm policy nor was a resident relative of the named insured under the State Farm policy, Plemmons is a Class II insured under that policy. In fact, the plaintiffs' Rule 26(f) report filed in Federal Court and attached as Exhibit B states at page 5 that in regard to the Carson vehicle insured with State Farm "plaintiffs believe Mr. Plemmons was a Class II user of the vehicle." As such, Plemmons is not entitled to stack coverage from a policy under which he is a Class II insured on the plaintiffs' UIM coverage with Plaza

Insurance Company under which the plaintiff was a Class I insured. It is apparent from Exhibit A that the plaintiffs have already stacked UIM coverages with Plaza as Class I insureds under that policy – see page 5 of Exhibit A.² Accordingly, even if the plaintiffs are entitled to UIM coverage under the State Farm policy (they are not, as explained in State Farm's motion for summary judgment filed September 2012), the plaintiffs cannot in any event stack UIM coverage from the State Farm policy on UIM coverage from the Plaza policy.

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*Counsel for State Farm Mutual Automobile
Insurance Company*

Charleston, South Carolina

May 13, 2013

² The plaintiffs' first complaint dated January 25, 2012 sought to litigate whether the plaintiffs could stack UIM coverages under the Plaza policy. (¶ 36 – 45) This issue was apparently resolved by the time of the amended complaint dated April 4, 2012 because the allegations of stacking coverages under the Plaza policy were removed.

Exhibit

A

00500/03345

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

James Luther Plemmons and Wanda Sue
Clark Plemmons,

Plaintiffs,

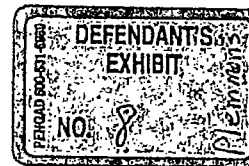
vs.

State Farm Mutual Automobile Insurance
Company, John Carson, Plaza Insurance
Company,

Defendants.

Case No.: 7:12-CV-00495-HMH

PLAINTIFFS' RULE 26(F) REPORT



The parties, having consulted pursuant to Rule 26(f), Fed. R. Civ. P., hereby report as follows (check one below):

- ☒ We agree that the schedule set forth in the Conference and Scheduling Order filed is appropriate for this case. The parties' proposed discovery plan as required by Fed. R. Civ. P. Rule 26(f) and the information required by Local Civil Rule 26.03 are attached.
- ☐ We agree that the schedule set forth in the Conference and Scheduling Order filed requires modification as set forth in the proposed Consent Amended Scheduling Order (which will be e-mailed to chambers as required (use format of the Court's standard scheduling order). The parties' proposed discovery plan as required by Fed. R. Civ. P. Rule 26(f) and the information required by Local Civil Rule 26.03 are attached.
- ☐ We are unable, after consultation, to agree on a schedule for this case. We, therefore, request a scheduling conference with the Court. The parties' proposed discovery plan as required by 26(f) Fed. R. Civ. P., with disagreements noted, is attached. The information required by Local Civil Rule 26.03 is also attached.

SIGNATURE PAGE TO FOLLOW

March 28, 2012

By: /s/ D. Alan Lazenby
D. Alan Lazenby (Fed. I.D. No. 7385)

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ATTORNEYS FOR PLAINTIFFS

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

James Luther Plemmons and Wanda Sue
Clark Plemmons,

Plaintiffs,

vs.

State Farm Mutual Automobile Insurance
Company, John Carson, Plaza Insurance
Company,

Defendants.

Case No.: 7:12-CV-00495-HMH

PLAINTIFFS' 26(F)(3) DISCLOSURES AND
LOCAL RULE 26.03 RESPONSES

Plaintiffs James Luther Plemmons and Wanda Sue Clark Plemmons, ("Plaintiffs"), by
counsel, file this report pursuant to Federal Rule of Civil Procedure 26(f), Local Rule 26.03.

F.R.C.P. 26(f)(3) DISCLOSURES

(1) Rule 26(f)(3)(a): What changes should be made in the timing form, or requirement for
disclosures under Rule 26(a), including a statement of when initial disclosures were made or will
be made?

Response: None

(2) Rule 26(f)(3)(b): The subjects on which discovery may be needed, when discovery
should be completed, and whether discovery should be conducted in phases or be limited to or
focused on particular issues.

Response:

Plaintiffs anticipate that discovery will be needed concerning the facts surrounding
the accident, the facts surrounding Mr. Plemmons' purchase of insurance coverage from
Plaza, and the facts and circumstances surrounding Mr. Plemmons' use of the vehicle
owned by Mr. Carson.

Plaintiffs do not anticipate that discovery will need to be completed in phases or limited to certain issues.

(3) Rule 26(f)(3)(c): Any issues about disclosure or discovery of electronically stored information, including the form or forms in which it should be produced.

Response: None anticipated at this time.

(4) Rule 26(f)(3)(d): Any issues about claims of privilege or of protection as trial preparation materials, including - if the parties agree on a procedure to assert these claims after production - whether to ask the court to include their agreement in an order.

Response: Plaintiffs anticipate that State Farm and Plaza will claim a privilege as to its claim file. Plaintiffs are not in agreement with this claim of privilege.

(5) Rule 26(f)(3)(e): What changes should be made in the limitations on discovery imposed under these rules or by local rule, and what other limitations should be imposed?

Response: None.

(6) Rule 26(f)(3)(e): Any other orders that the court should issue under Rule 26(c) or under Rule 16(b) and (c).

Response: None of which Plaintiffs are currently aware.

DESCRIPTION OF THE CASE

26.03(A)(1) A short statement of the facts of the case.

Response: On July 31, 2010, at approximately 5:00 a.m., Mr. Plemmons was standing alongside his 2000 GMC Wrecker truck (the Wrecker) which was legally parked on the paved median headed south on U.S. Highway 29 in Spartanburg County, South Carolina. Mr. Plemmons was operating the lever on his truck in the process of loading a vehicle owned by Queen Mills onto the Wrecker. Mr. Plemmons had already loaded a 2005 Dodge Neon belonging to the Defendant Carson and said car was atop the Wrecker for towing. Mr. Plemmons had picked up this vehicle at the specific request of the owner for the purpose of transporting the vehicle to Mr. Plemmons' shop so he could perform

mechanical work on said vehicle. This vehicle was otherwise inoperable.

Tereso Garcia Diaz, now deceased, was driving his 1999 Volkswagen headed north on U.S. Highway 29, under the influence of alcohol and cocaine. While driving under the influence of cocaine and alcohol, Diaz traveled approximately thirty miles per hour over the posted speed limit. Without notice or warning to Plaintiffs, Diaz crossed over the median, crashing into the front of the Wrecker.

The impact of Decedent's vehicle caused the Wrecker, which was legally parked and under the supervision of Greer Police Department, to roll backwards, running over Mr. Plemmons and instantly severing his leg above the knee causing extraordinary blood loss and injury. The Dodge Neon owned by Carson, after Diaz struck the Wrecker, played a role in causing damages to Plemmons and was knocked off of the Wrecker in the collision.

Mr. Plemmons has sustained significant injuries in excess of Diaz's liability coverage and in excess of Mr. Plemmons' own UIM policy as it now exists. Mr. Plemmons' subsequent injuries have caused a loss of consortium for Mrs. Plemmons.

Plaintiffs contend that Mr. Plemmons was, at the time of the incident, a permissive "user" of the car owned by John Carson and has rights under the Defendant State Farm's policy with John Carson. Mr. Plemmons had a UIM policy through Defendant Plaza Insurance Company in the amount of \$100,000, which purported to be the "combined single limit" of coverage even though Mr. Plemmons insured two vehicles under the Plaza Policy. Plaintiffs contend that Plaza failed to make a meaningful offer of UIM coverage because it did not explain the nature of underinsured motorist coverage, and had pre-selected a coverage amount of \$100,000 without explaining such to Mr. Plemmons and did not explain that he could purchase up to \$300,000 of UIM coverage since that was his liability limit.

FACT WITNESSES

26.03(A)(2) The names of fact witnesses likely to be called by the party and a brief summary of their expected testimony.

Response: Investigation and discovery for all parties is ongoing, but as things stand, it is anticipated that the following people may or will be percipient witnesses:

Fact Witness	Summary of Expected Testimony
James Plemmons	Mr. Plemmons is expected to testify to the circumstances of procuring the insurance policy from Plaza and the day of the accident.
Wanda Sue Clark Plemmons	Mrs. Plemmons is expected to testify to the aftermath of the accident including Mr. Plemmon's pain, suffering, and the change the accident has had in their lives.
Marcus McGarr	Mr. McGarr was an attorney for State Farm in the underlying negligence action. Mr. McGarr is expected to testify as to the reasons for filing the pleadings he did and the lack of correspondence in response to Mr. Plemmons' request for coverage.
Josetta Greene	Ms. Greene is expected to testify as to the circumstances of State Farm's rejection of UIM coverage to Mr. Plemmons before a formal demand for coverage was made and in failing to respond to formal requests for coverage.
John Carson	Mr. Carson is expected to testify as to the ownership of the Dodge Neon.
Kim Carson	Ms. Carson is expected to testify to the circumstances of Mr. Plemmons towing the Dodge Neon and the permission she gave him to do so.
Queen Mills	Ms. Mills is expected to testify as to the circumstances of the day of the accident.
Howard Newton	Mr. Newton is expected to testify as to the circumstances of The Stover Company, Inc.'s procurement of insurance for Mr. Plemmons.
Representative The Stover Company, Inc.	This witness is expected to testify as to the circumstances of The Stover Company, Inc.'s procurement of insurance for Mr. Plemmons.
Representative State Farm Mutual Automobile Insurance Company	This witness is expected to testify as to the circumstances surrounding State Farm's rejection of UIM coverage to Mr. Plemmons.
Officer Amanda Barnes	This witness is expected to testify as to the circumstances surrounding the accident of July 31, 2010.
Officer Shaun Plount	This witness is expected to testify as to the circumstances surrounding the accident of July 31, 2010.

EXPERT WITNESSES

26.03(A)(3) The names and subject matter of expert witnesses (if not witnesses have been identified, the subject matter and field of expertise should be given as to experts likely to be offered).

Discovery is still ongoing and while Plaintiffs have not retained an expert witness at this time, they reserve the right to do so in the future.

SUMMARY OF CLAIMS AND/OR DEFENSES

26.03(A)(4) A summary of the claims or defenses with statutory and/or case citations supporting the same.

Summary of Plaintiff's claims and/or defenses:

Plaintiffs filed a Declaratory Judgment action against the Defendant State Farm to determine coverage under a policy in effect between John Carson and State Farm, of which Plaintiffs believe Mr. Plemmons to be a Class II user of the vehicle. At the time of the accident, Mr. Plemmons was towing Carson's vehicle.

Plaintiffs have asserted a cause of action for insurance bad faith against the Defendant State Farm. Upon information and belief, State Farm denied coverage to Mr. Plemmons on the grounds he was not "using" the Dodge Neon that State Farm insured. Plaintiffs believe this is bad faith because there is clear primary and secondary law to state that a towed vehicle is a used vehicle. Furthermore, State Farm interposed an improper defense to the underlying tort action and refused to communicate with Mr. Plemmons concerning his request for coverage.

Plaintiffs filed a Declaratory Judgment action to determine whether Mr. Plemmons can stack benefits of an insurance policy in effect between Plaza and Plaintiffs. Counsel for Plaza has indicated that Plaza will concede that Mr. Plemmons can stack coverage; however, the parties have not entered a stipulation in this regard.

Plaintiffs filed a Declaratory Judgment action to determine whether a meaningful offer of Under Insured Motorist Coverage (UIM) was made to Plaintiff James Plemmons. This is based on an improperly completed UIM offer form and Mr. Plemmons lack of understanding of the coverage.

In support of its claims against the defendants, Plaintiffs rely on the following relevant case and statutory authority:

<u>Cause of Action/Asserted Against</u>	<u>Statutory and/or Case Citations</u>
Declaratory Judgment against State Farm	<i>S.C. Code Ann. Section 15-53-10 et seq., State Farm Fire and Cas. Co. v. Pinson</i> , 984 F.2d 610 (4th Cir. 1993); 8 Couch on Ins. § 111:36; and 7 Am. Jur. 2d Automobile Insurance § 95.
Insurance Bad Faith against State Farm	<i>Nichols v. State Farm Mut. Auto. Ins. Co.</i> , 306 S.E.2d 616, 279 S.C. 336 (S.C. 1983); <i>Orangeburg Sausage Co. v. Cincinnati Ins. Co.</i> , 450 S.E.2d 66, 316 S.C. 331 (S.C.App. 1994); <i>Potylicki v. Allstate Insurance Co.</i> , 386 Fed.Appx. 435, 2010 WL 2640477 (C.A.-4 (S.C.)); <i>State Farm Fire and Cas. Co. v. Pinson</i> , 984 F.2d 610 (4th Cir. 1993); 8 Couch on Ins. § 111:36; and 7 Am. Jur. 2d Automobile Insurance § 95.
Declaratory Judgment as to Plaza-Meaningful Offer	<i>S.C. Code Ann. Section 15-53-10 et seq.; Croft v. Old Republic Ins. Co.</i> , 365 S.C. 402, 618 S.E.2d 909 (2005); <i>State Farm Mut. Auto. Ins. Co. v. Wannamaker</i> 291 S.C. 518, 354 S.E.2d 555 (1987), <i>Bower v. National General Insurance Company</i> , 312 S.C. 112, 569 S.E.2d 313 (S.C. 2002), <i>Grinnell v. Wood</i> , 389 S.C. 350, 698 S.E.2d 796 (S.C. 2010)
Declaratory Judgment as to Plaza- Stacking	<i>S.C. Code Ann. Section 15-53-10 et seq.; Nakatsu v. Encompass Indemnity Company</i> , 390 S.C. 172, 700 S.E.2d 283 (S.C. 2010).

PROPOSED DATES

26.03(A)(5) Absent special instructions from the assigned judge, the parties shall propose dates for the following deadlines listed in Local Rule 16.02:

- (a) Exchange of Fed. R. Civ. P. 26(a)(2) expert disclosures; and
- (b) Completion of discovery.

Response: Plaintiffs will identify and complete their discovery in accordance with the scheduling order.

26.03(A)(6)

The parties shall inform the Court whether there are any special circumstances which would affect the time frames applied in preparing the scheduling order. *See generally* Local Civil Rule 16.02(C).

Response: Plaintiffs are not currently aware of any special circumstances.

26.03(A)(7)

The parties shall provide any additional information requested in the Pre-Scheduling Order (Local Civil Rule 16.01) or otherwise requested by the assigned judge.

Response: Plaintiffs are not aware of any additional information requested in the Pre-Scheduling Order or otherwise requested by the assigned Judge.

March 28, 2012

By: /s/ D. Alan Lazenby
D. Alan Lazenby (Fed. I.D. No. 7385)

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ATTORNEYS FOR PLAINTIFFS

Exhibit

B

TURNER PADGET

TURNER PADGET GRAHAM & LANEY P.A.

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FLORENCE
GREENVILLE

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cturner@TurnerPadget.com
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March 18, 2013

D. Alan Lazenby, Esq.
LAZENBY LAW FIRM, LLC
Post Office Box 6099
Spartanburg, SC 29304

RE: *James Luther Plemmons and Wanda Sue Plemmons v State Farm Mutual Automobile Ins., Plaza Insurance Company, The Stover Company and Howard E. Newton, III*
Insured: James Luther Plemmons and/or JLP Automotive
C.A. No.: 2012-CP-42-00346
Claim No.: KBPL10080025
DOL: July 31, 2010
Our File No. 05943.00109

500/3345
ccc
3/20/13

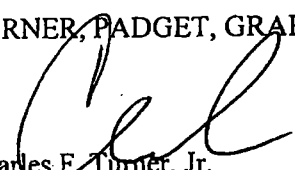
Dear Alan:

This will confirm we have agreed to settle the above-referenced matter on behalf of Plaza Insurance for payment of \$100,000 to your client in return for a complete release/Covenant Not to Execute and stipulation of dismissal with prejudice regarding the DJ action. This will confirm you will satisfy any and all liens or interests of third persons against these settlement funds. As soon as we receive the settlement draft we will forward the release and settlement documents on to you for your review and execution by your client. In the meantime, if you have any questions or comments, please let me know.

With warm regards, we remain,

Very truly yours,

TURNER, PADGET, GRAHAM & LANEY, PA


Charles F. Turner, Jr.

CFTjr/svr
Enclosures

cc: Bernie W. Ellis, Esq., Attorney for Stover Company and Howard Newton
Charles R. Norris, Esq., Attorney for State Farm Mutual Ins.

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200 East Broad Street • Suite 250 (29601) • PO Box 1509 • Greenville, SC 29602
Phone (864) 552-4600 • Fax (864) 552-4620 • turnerpadget.com

ROA 000204
APP 000207

TURNER PADGET
TURNER PADGET GRAHAM & LANEY P.A.

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CHARLESTON
COLUMBIA
FLORENCE
GREENVILLE
MYRTLE BEACH

Charles F. Turner, Jr.

cturner@TurnerPadget.com
Telephone: (864) 552-4628
Fax: (864) 282-5945

March 25, 2013

D. Alan Lazenby, Esq.
LAZENBY LAW FIRM, LLC
Post Office Box 6099
Spartanburg, SC 29304

RE: *James Luther Plemmons and Wanda Sue Plemmons v State Farm Mutual Automobile Ins., Plaza Insurance Company, The Stover Company and Howard E. Newton, III*
Insured: James Luther Plemmons and/or JLP Automotive
C.A. No.: 2012-CP-42-00346
Claim No.: KBPL10080025; Policy No.: PTOWK001541-001
DOL: July 31, 2010
Our File No. 05943.00109

Dear Alan:

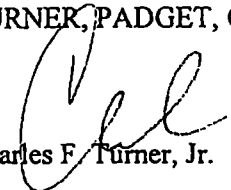
Please find enclosed settlement draft in the amount of \$100,000, Policy Release and Stipulation of Dismissal regarding the settlement in the above-referenced matter. Please have the documents properly executed and returned to me prior to releasing said funds. This will also confirm that you will satisfy, protect and/or negotiate any liens or interests of third persons against settlement funds.

If you have any questions or comments, please let me know.

With warm regards, we remain,

Very truly yours,

TURNER, PADGET, GRAHAM & LANEY, PA


Charles F. Turner, Jr.

CFTjr/svr
Enclosures

cc: Bernie W. Ellis, Esq., *Attorney for Stover Company and Howard Newton*
Charles R. Norris, Esq., *Attorney for State Farm Mutual Ins.*

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Phone (864) 552-4600 • Fax (864) 552-4620 • turnerpadget.com

ROA 000205
APP 000208

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG)

C.A. NO.: 2012-CP-42-00346

James Luther Plemmons and Wanda Sue
Clark Plemmons,

Plaintiffs,

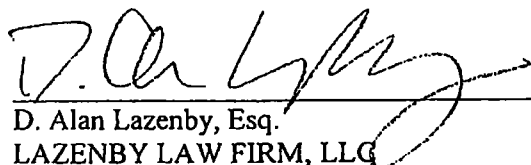
vs.

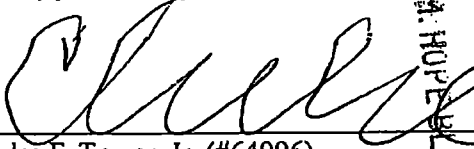
STIPULATION OF DISMISSAL

State Farm Mutual Automobile Insurance
Company, Plaza Insurance Company,
The Stover Company, Inc., and
Howard E. Newton, III,
Defendants.

This matter having been settled by and between the parties,

NOW, THEREFORE, pursuant to Rule 41, the Parties hereby stipulate that Plaintiff's
claims against Defendant Plaza Insurance Company, be dismissed with prejudice, each party to bear
its own costs.


D. Alan Lazenby, Esq.
LAZENBY LAW FIRM, LLC
Post Office Box 6099
Spartanburg, SC 29304
Attorney for Plaintiffs


Charles F. Turner, Jr. (#64996)
TURNER, PADGET, GRAHAM & LANEY,
P. O. Box 1509
(864) 552-4600
Fax: 864) 552-4620
Attorney for Plaza Insurance

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SPARTANBURG COUNTY
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M. HOPE LARLEY

March 25, 2013

CERTIFICATE OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough, L.L.P., counsel for State Farm Mutual Automobile Insurance Company, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by sending a copy of the same via U.S. Regular mail, postage paid, to the following counsel of record:

Pleadings: Supplemental Motion for Summary Judgment
 Memorandum in Support of Supplemental Motion for Summary
 Judgment

Counsel Served:

D. Alan Lazenby Esquire
Lazenby Law Firm, LLC
340 E. Main Street, Suite 240 (29302)
P.O. Box 6099
Spartanburg, SC 29304

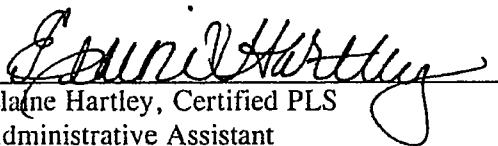
Counsel for Plaintiff

Bernie W. Ellis, Esquire
McNair Law Firm
P.O. Box 447
Greenville, SC 29602

*Counsel for The Stover Company, Inc. and
Howard E. Newton, III*

Andy Johnston, Esquire
Andrew J. Johnston Law Office
184 North Daniel Morgan Avenue
Spartanburg, SC 29306-2321

Counsel for Plaintiff


Elaine Hartley, Certified PLS
Administrative Assistant

May 13, 2013

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

CASE NO.: 2012-CP-42-00346

James Luther Plemmons and Wanda Sue
Clark Plemmons

MOTION AND ORDER INFORMATION

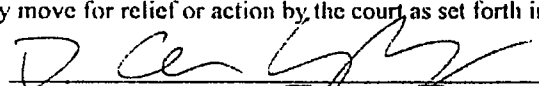
Plaintiff,)

FORM AND COVERSHEET

vs.)

State Farm Mutual Automobile Insurance
Company, Plaza Insurance Company, The
Stover Company, Inc., and Howard
E. Newton, III

Defendant.)

Plaintiff's Attorney: D. Alan Lazenby, Bar No. 13906 Address: P.O. Box 6099, Spartanburg, SC 29302 Phone: 864-804-5050 Fax 864-804-5051 E-mail: alan@lazenbylawfirm.com Other: _____		Defendant's Attorney: _____, Bar No. _____ Address: _____ Phone: _____ Fax _____ E-mail: _____ Other: _____	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: Plaintiffs' Motion for Partial Summary Judgment Estimated Time Needed: 15 min Court Reporter Needed: ☒ 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 ☐ Defendant		May 7, 2013 Date submitted	
SECTION III: Motion Fee			
☒ PAID - AMOUNT: \$ _____ ☐ EXEMPT: (check reason) ☐ 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, SGRCP) ☐ Proposed 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: _____			
JUDGE'S SECTION			
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____		JUDGE CODE _____ Date: _____	

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IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

C.A. No.: 2012-CP-42-00346

Plaintiffs,

vs.

**MOTION FOR PARTIAL SUMMARY
JUDGMENT**

State Farm Mutual Automobile Insurance Company, Plaza Insurance Company, The Stover Company, Inc., and Howard E. Newton, III.

Defendants.

**TO: CHARLES NORRIS, ESQUIRE, ATTORNEY FOR THE DEFENDANT STATE
FARM MUTUAL AUTOMOBILE INSURANCE COMPANY**

YOU WILL PLEASE TAKE NOTICE that ten (10) days after the service hereof, or as soon as counsel for the Plaintiffs may be heard, the Plaintiffs will move before the presiding judge of the Spartanburg County Court of Common Pleas for Partial Summary Judgment Pursuant to Rule 56, SCRPC on the basis that the undisputed facts show that Plaintiff James Plemmons is a State Farm insured and entitled to UIM coverage.

This motion is also based upon the applicable state law, persuasive authority, the pleadings in this case, affidavits, depositions, and documents to be presented to the Court and any memoranda of authority as may be filed hereafter.

May 7, 2013

By:

D. Alan Lazenby, Esq.
LAZENBY LAW FIRM, LLC
 Post Office Box 6099
 Spartanburg, SC 29304
 Phone: (864) 804-5050
alan@lazenbylawfirm.com

ANDREW J. JOHNSTON LAW
Andy Johnston, Esq.
184 North Daniel Morgan Avenue
Spartanburg, SC 29306-2321
Phone: (864) 591-1093
ajohnston@spartanburglegal.com
ATTORNEYS FOR PLAINTIFFS

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FUTURE DAWSON & SONS
LAW OFFICE
EVANSVILLE

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

James Luther Plemmons and Wanda Sue
Clark Plemmons,

Plaintiffs,

vs.

State Farm Mutual Automobile Insurance
Company, The Stover Company, Inc., and
Howard E. Newton, III.

Defendants.

) IN THE COURT OF COMMON PLEAS
) SEVENTH JUDICIAL CIRCUIT
)

) C.A. No.: 2012-CP-42-00346
)
)

) **PLAINTIFFS' MEMORANDUM IN**
) **OPPOSITION TO STATE FARM'S**
) **MOTION FOR SUMMARY JUDGMENT**
) **AND IN SUPPORT OF ITS MOTION FOR**
) **SUMMARY JUDGMENT**
)

Plaintiffs sued State Farm Mutual Automobile Insurance Company (State Farm) for declaratory judgment and bad faith arising out of an accident which occurred on July 31, 2010 (Accident). The Accident involved Plaintiff James Plemmons ("Plemmons"), who was operating his 2000 GMC Wrecker (Tow Truck); and Teresio Garcia Diaz ("Diaz"), deceased, who was operating a 1999 Volkswagen. Diaz was at fault in causing the Accident (Exhibit A). At the time of the Accident, Plemmons had already loaded a 2005 Dodge Neon (Neon) belonging to John Carson on the Tow Truck; and he was attempting to load a vehicle owned by Queen Mills. Plemmons sustained personal injury damages far exceeding Diaz's liability coverage.

State Farm insured the Neon being towed by Plemmons at the time of the Accident. Plaintiffs contend Plemmons was an "insured" and entitled to the Underinsured Motorist coverage ("UIM") under the State Farm Policy. Plaintiffs also contend that State Farm acted in bad faith in its handling of Plaintiffs' claim by its refusal to communicate with Plemmons.

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STATEMENT OF FACTS

- On July 31, 2010 at approximately 5:00 a.m., Plaintiff James Luther Plemmons stood alongside the Tow Truck.¹
- Plemmons was operating the Tow Truck in an attempt to load a car owned by Queen Mills which was left idling.²
- Plemmons had already loaded a 2005 Dodge Neon (Neon) belonging to Jon Carson on the Tow Truck.³
- Mr. Plemmons had the permission of the owner to load and transport the Neon from the owner's residence to his shop as he saw fit.⁴
- The Neon was unable to be operated under its own power.⁵
- At that time, Diaz, under the influence of cocaine and alcohol, crossed the median line and collided with the Tow Truck.⁶
- The collision caused the Tow Truck with the Neon atop it to roll back, the weight and force of which amputated Plemmons' leg.⁷
- The Neon was knocked partially off the Tow Truck and sustained damage in the Accident.⁸
- State Farm insured the Neon, and this insurance included UIM coverage.

¹ Answer of State Farm Mutual Automobile Company paragraph 9, adopting UIM Carrier Plaza Insurance Company's Answer on Behalf of Def., 2011-CP-42-3867, paragraph 10 (Exhibit B). Dep. Of Amanda Barnes, 12:9-13:5 (Exhibit C). Deposition of James Plemmons, Page 13, lines 1-24 (Exhibit D).

² *Id.*, and paragraph 15 Dep. Of Amanda Barnes, 13:15.

³ Answer of State Farm Mutual Automobile Company paragraph 11. Dep. of Amanda Barnes, 20:3-11. Dep. Of James Plemmons, 11:3-14.

⁴ Affidavit of Kim Carson. (Exhibit E).

⁵ Answer of State Farm Mutual Automobile Company paragraph 11. Dep. of James Plemmons, page 22:25 - 23:2.

⁶ Answer of State Farm Mutual Automobile Company paragraph 14, adopting UIM Carrier Plaza Insurance Company's Answer on Behalf of Def., 2011-CP-42-3867, paragraph 10. Dep. of Amanda Barnes, 14:8 -16:24.

⁷ Answer of State Farm Mutual Automobile Insurance Company paragraph 15, adopting UIM Carrier Plaza Insurance Company's Answer on Behalf of Def., 2011-CP-42-3867, paragraph 12. Dep. Of Amanda Barnes, 25:1-12.

⁸ Paragraph 15. Dep. Of Amanda Barnes, 20:15-21:10, Loss Run Report of Plaza Insurance Company (Exhibit F).

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- State Farm has denied UIM coverage to Plemmons.¹⁰
- State Farm has filed a Motion for Summary Judgment on the second cause of action in the Plaintiffs' amended complaint for declaratory judgment, on the third cause of action in the amended Complaint for bad faith and on the Plaintiffs' claim for attorney's fees and PIP benefits.¹¹
- Plaintiffs have filed a cross Motion for Summary Judgment on the second cause of action in the amended complaint for declaratory judgment.

STANDARD OF REVIEW

Summary judgment is appropriate when no genuine issue of material fact exists and the moving party "is entitled to judgment as a matter of law." Rule 56(a) SCRPC. Summary judgment will be granted unless "a reasonable jury could return a verdict for the nonmoving party" on the evidence presented. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). The party opposing summary judgment must demonstrate that there are genuine disputes of material fact so as to preclude the entry of judgment as a matter of law. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). "A party opposing a properly supported motion for summary judgment 'may not rest upon the mere allegations or denials of [his] pleadings,' but rather must 'set forth specific facts' showing that there is a dispute of material facts." *Bouchat v. Balt. Ravens Football Club, Inc.*, 346 F.3d 514, 522 (4th Cir.2003).

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⁹ Answer of State Farm Mutual Automobile Insurance Company, paragraphs 3 and 20.

¹⁰ Answer of State Farm Mutual Automobile Insurance Company, paragraph 50.

¹¹ State Farm's Motion for Summary Judgment.

ARGUMENT

I. PLAINTIFFS ARE ENTITLED TO A DECLARATION AS A MATTER OF LAW THAT PLEMMONS WAS AN INSURED UNDER THE PLAIN LANGUAGE OF THE STATE FARM POLICY BECAUSE PLEMMONS WAS "USING" THE NEON.

Plaintiffs are entitled to Partial Summary Judgment pursuant to Rule 56(a) SCRCP on the Declaratory Judgment action against State Farm because Plemmons was an insured under the plain language of the State Farm Policy (Policy) (Exhibit G).

The Policy defines what an "insured" is:

Insured- means:

1. *you, your spouse, and relatives;*
2. Any other *person* while *occupying* or using *your car*, a *newly acquired car*, or a trailer attached to either, if such vehicle is:
 - a. Insured under the liability coverage; and
 - b. Being used with *your* consent; and
3. ...

(Ex. G, page 20).

The Policy provides:

We will pay damages for *bodily injury* or *property damage* an *insured*:

1. Is legally entitled to collect from the owner or driver of an *underinsured motor vehicle*;
2.

The *bodily injury* or *property damage* must be caused by accident arising out of the operation or ownership of the *underinsured motor vehicle*. The *bodily injury* must be sustained by an *insured*.

(Ex. G, page 19).

The Policy also defines underinsured motor vehicle as:

Underinsured Motor Vehicle – means a *motor vehicle*, as to which there is bodily injury liability insurance or a bond applicable at the time of the accident in an amount of at least that specified in the *Financial Responsibility Act* and:

1. The amount of the insurance or bond is less than the amount of the *insured's* damages; or

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2. The *insured's* damages exceed any damages cap or limitation imposed by statute.

(Ex. G, page 19).

Plemmons was clearly using the Neon at the time of the accident. "In South Carolina, the term 'use' has been broadly, not narrowly, construed." *State Farm Fire and Casualty v. Pinson*, 984 F.2d 610, 612 (4th Cir. 1993). The term "use" is broader than the term "operation" when referring to an automobile. See *Hite v. Hartford Acc. & Indem. Co.* 288 S.C. 616, 344 S.E.2d 173, 175 (1986). As noted by the Fourth Circuit Court of Appeals, South Carolina State Courts have approved an expansive definition of "use:"

The South Carolina Supreme Court has frequently cited with approval cases from other jurisdictions defining the concept of use very broadly. See *Howser*, 422 S.E.2d at 107; *Coletrain v. Coletrain*, 238 S.C. 555, 121 S.E.2d 89 (1961). One case cited approvingly in both *Coletrain* and *Howser* is *Fidelity & Casualty Co. of N.Y. v. Lott*, 273 F.2d 500 (5th Cir.1960). In *Fidelity*, the driver of the insured vehicle was using its roof as a gun rest to shoot a deer when, "[f]or some unexplained reason, ... the bullet tore through the top of the car, was deflected downward and inflicted the fatal injuries [to the passenger]." *Id.* at 501. The Fifth Circuit found that using the car as a *gun rest* was within the liability policy. The court explained that the policy language was "not restricted to occasions when the insured party was hurt either because of the running of the automobile or because of its standing after normal use." *Id.* at 502. Certainly, resting a gun on a car is a more obscure "use" of a vehicle than the commonplace occurrence in this case.

State Farm Fire and Cas. v. Pinson, at 612-613.

Pinson, *supra*, also reaches the conclusion that a towed vehicle is in "use." *Id.* at 613. ("For the aforementioned reasons we believe that South Carolina would continue to construe 'use' broadly and find that a towed boat is in 'use.'"). "The vehicle which is being towed is also considered as being 'used' during the towing operation, and it has sometimes been said that both vehicles in a towing operation are being 'used' by the owners or operators of each other's vehicles." 7 Am. Jur. 2d Automobile Insurance § 95, citing 8 Couch on Ins. § 111:36, which

reads:

Generally, when a vehicle is being towed, pulled, or pushed by another independent vehicle, the operator of the towing vehicle is found to be "using" the towed vehicle. This broader concept of "use" is based on the operator of the towing vehicle exercising supervisory control or guidance of the towed vehicle's movements. This concept of use has also been extended to encompass the preparation for towing a disabled vehicle. Since it is not uncommon for vehicles to require towing, pulling or pushing, these activities are found to fall within the contemplation of "use" in an omnibus clause.

8 Couch on Ins. § 111:36. Although *Pinson* involved the towing of a boat, the Fourth Circuit applying South Carolina law has ruled that a towed vehicle is also in "use." See *American Fire & Cas. Co. v Allstate Ins. Co.*, 214 F.2d 523 (4th Cir. 1954).

Here, Plemmons was towing the Neon at the time of the accident. Specifically, the Neon was secured atop the Tow Truck. Under the law set forth above, Plemmons was "using" the Neon because Plemmons "exercised supervisory control or guidance." Further, towing a vehicle is within the contemplation of the omnibus clause because: "it is not uncommon to require towing, pulling or pushing" of a disabled vehicle. Thus, at the time of the accident, Plemmons was a "user" of the Neon at the time of the accident. Pursuant to the Policy, an insured is one who is "using" the named insured's car with the insured's "consent." Because Plemmons was "using" the vehicle and had the consent of the owner, Plemmons is an "insured" under the Policy. Therefore, Plaintiffs respectfully request this Court enter judgment as a matter of law and declare that Plemmons is an "insured" under the Policy and entitled to claim UIM coverage benefits.

II. STATE FARM MISREPRESENTS UIM COVERAGE LAW IN ASSERTING THERE IS NO COVERAGE AS A MATTER OF LAW.

State Farm's argument in its Motion for Summary Judgment is based upon a misrepresentation of statutes and selectively referenced cases which relate to the liability and

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UM coverage requirements of an insurance policy instead of statutes and cases relating to what are coverage requirements for UIM coverage. That is to say, State Farm would have this Court to believe that all dicta to which it cites related to liability coverage and UM coverage should, by virtue of State Farm's assurances, apply also to UIM coverage such as exists in this case. State Farm uses the dicta from its cases related to UM and liability insurance to make its prime argument for summary judgment while using minimal and largely distinguishable law related to UIM coverage in an attempt to fill in the holes in its argument and lend plausibility.

State Farm begins by stating that "Under the State Farm policy and applicable statutes (§§ 38-77-140, 38-77-160) UIM coverage exists only if the bodily injury arises out of the operation, ownership, maintenance or use of a motor vehicle." This simply is not true.

Section 38-77-140 applies to the minimum general requirements for bodily injury and property limits. Section 38-77-150, to which State Farm neglects to cite, regulates the mandatory minimum coverage required for UIM Coverage.

Section 38-77-160 applies to additional coverage above and beyond that stipulated in the previously mentioned statutes for optional additional coverage for uninsured motorists and optional coverage to be provided "in the event that damages are sustained in excess of the liability limits carried by an at-fault insured or underinsured motorist or in excess of any damages cap or limitation imposed by statute." This statute provides that the insured is to be protected to the extent of the coverage he has on the vehicle which was involved in the accident.

When none of the insured's vehicles are involved in the accident at issue, coverage is to be available, pursuant to this statute, to the extent of coverage on any one of the vehicles with the excess or underinsured coverage. (Nowhere in this statute does it state or even remotely imply that coverage exists "only if the bodily injury arises out of the ownership,

maintenance, or use of a motor vehicle.”)

Quite simply, Section 38-77-160 makes it clear that the UIM coverage follows the insured regardless of whether the vehicle of the insured is involved in the salient accident. Consequently, it is of importance to determine who is considered to be the “insured.” Who qualifies as an “insured” is both a function of the insurance policy provisions and the law which has defined the salient wording of those provisions.

Page twenty of the Policy defines “insured” for purposes of underinsured motorist coverage as follows¹²:

Insured – means:

1. you, your spouse and relatives;
2. any other person while occupying or using your car, a newly acquired car or a trailer attached to either, if such vehicle is:
 - a. insured under the liability coverage; and
 - b. being used with your consent...

The Policy further states that State farm will pay damages for bodily injury or property damage an insured “is legally entitled to collect from the owner or driver of an underinsured motor vehicle” with the stipulation that the injury or damage must be caused by an accident arising out of the operation or ownership of the underinsured vehicle.”

Clearly, this defines the underinsured vehicle as a vehicle other than the one owned by the insured, in the case at hand, the Volkswagen driven by Tereso Garcia Diaz, the at-fault driver. There is no dispute that the accident arose out of the operation of the underinsured Volkswagen. State Farm’s long and distracting legal perusing through cases which deal with how

¹² Note there is a separate definition for “insured” under the general liability policy on page 8. (State Farm Policy Attached as Exhibit G).

the Court determines whether an accident arose out of or was caused by the operation, ownership, maintenance or use of a motor vehicle are intended to somehow superimpose the causation requirements of the underinsured vehicle to the vehicle which was being used by the insured. State Farm can cite to no case which holds that UIM coverage must be on the vehicle causing the accident and most certainly cannot cite to a case which holds the UIM coverage must be on the underinsured vehicle causing the accident.

This utterly defeats the purpose of UIM coverage. UIM coverage is acquired by responsible motorists who wish to protect themselves and those who use their vehicle when, despite their best attempts to insure themselves, they are involved in an accident where another is liable and has not purchased enough insurance to cover the injuries he has caused. It is precisely because this coverage is optional and provides for coverage which is above and beyond what is required by law under uninsured and liability sections that an insurer is required to make a meaningful offer of this type of insurance pursuant to S.C. Code Ann. Sec. 38-77-350.

Because the accident arose out of the operation of an underinsured vehicle, the Diaz vehicle, it would seem State Farm's argument is limited to whether or not James Plemmons is an "insured" under the Policy as defined in its policy and delineated hereinabove. It is apparent Mr. Plemmons does not qualify as an insured under subsection 1 as a spouse or relative of the named insured. It is also established that the Dodge Neon was covered under the liability policy of the State Farm policy, thereby meeting the requirements in subsection 2.a.

Further, Mr. Plemmons had explicit permission to use the Dodge Neon as is evidenced by the affidavit of Kim Carson, attached hereto as Exhibit D, thereby meeting the requirements of subsection 2.b.

This leaves for State Farm the sole argument that somehow Plemmons was not using the

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Neon. State Farm provides a table of cases, breaking these cases into two columns entitled "Cases finding accidents arose out of operation, ownership, maintenance, or use of a motor vehicle" and "Cases finding accidents did not arise out of operation, ownership, maintenance or use of a motor vehicle."

This qualification of cases is, in itself, erroneous. One method of being qualified as an insured is to be "using" the vehicle covered in the policy. To qualify for underinsured benefits under the policy, the injuries of the insured must arise "out of the operation or ownership of the underinsured vehicle," again, in this case, the car driven by Mr. Diaz. State Farm's intermingling of the two separate qualifications is misleading and erroneous. The insured need not be driving or operating or owning the underinsured car to qualify for underinsured motorist benefits as an insured under the policy.

State Farm cites to *Chapman v. Allstate Insurance Company*, 211 S.E. 2d 876 (S.C. 1975) and *Wasau Underwriters Insurance Company v. Howser*, 422 S.E.2d 106 (S.C. 1992) in defining the causal connection and ownership, maintenance, or use of an uninsured vehicle. In *Chapman*, the underinsured coverage was provided based upon the policy of the injured's father's policy on his vehicles not even present at the scene of the accident wherein the injured fell from a car which was uninsured. Likewise, in *Wasau*, the issue was whether or not injuries arose out of the ownership, maintenance or use of the uninsured vehicle. Again, in the case at hand, there is no question as to the contribution of the underinsured vehicle to the injuries. Further, these two cases related to Uninsured Motorist provisions rather than Underinsured Motorist provisions.

State Farm next cites to *Home Insurance Company v. Towe*, 441 S.E.2d 825 (S.C. 1994), a case involving a dispute regarding liability coverage as opposed to underinsured motorist coverage wherein the Court held that when a bottle was thrown out of a vehicle with insurance coverage,

the injuries sustained by someone as a result of that bottle being thrown from the vehicle should be covered under the liability coverage of the vehicle's policy. Again, there is no question that the underinsured vehicle that of Mr. Diaz, not the Neon, in this case contributed to the injuries sustained.

State Farm, having referenced the three cases hereinabove, state that these cases "do not apply to the present case because...the Carson vehicle was not an active accessory to Plemmons' injury." Again, the issue of the contribution of the Neon to the injuries sustained is not the issue at hand.

State Farm next cites to *South Carolina Farm Bureau v. Kennedy*, 2012 WL 3029581 (S.C. 2012), initially calling it the "fourth case to find UIM coverage," when in fact, the first three cited cases do not reference UIM coverage at all. While State Farm is correct that *Kennedy* is a UIM case and that the issues being considered were different from the case at bar, the *Kennedy* case does make clear that physical contact at the time of the accident with the vehicle on which the underinsured motorist coverage is claimed is not a requirement to qualify for underinsured motorist coverage under the policy. *Kennedy*, Id. at 866-868.

Moving into their cases cited as "finding accidents did not arise out of operation, ownership, maintenance or use of a motor vehicle," State Farm cites to *Hite v. Hartford Accident Indemnity Company*, 344 S.E.2d 173 (S.C. App. 1996) which is, once again, not a case related to Underinsured Motorist coverage but rather Uninsured Motorist coverage and is based upon the former S.C. Code Ann. 56-9-810 which is no longer applicable.

State Farm cites to *Canal Insurance Company v. Insurance Company of North America*, 431 S.E.2d 577 (S.C. 1993) which, again, is not a case which bears a relation to Underinsured Motorist Coverage, but, instead was considering whether or not a crane should be covered under

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the mandatory general liability provisions and whether or not the exclusion of such a crane in an insurance policy was contrary to policy and statutes.

In citing to *Carraway v. Smith*, 467 S.E.2d 120 (S.C. App. 1995), State Farm again cites to a case related to Uninsured Motorist Coverage rather than Underinsured Motorist Coverage in which the insurer moved for summary judgment related to whether it was liable for injuries under the "statutory motorist provision involving injuries 'arising out of the ownership, maintenance, or use' of an uninsured vehicle. *Carraway*, Id., quoting S.C. Code Ann. Section 38-77-140 (Supp. 1994). Likewise, in *State Farm Fire & Casualty Co. v. Aytes*, 503 S.E.2d 744 (S.C. 1988), the issue was also coverage under the Uninsured Motorist provisions of a policy.

Doe v. South Carolina State Budget and Control Board, 523 S.E.2d 457, (S.C. 1999), is also a case wherein mandatory coverage under the liability portion of an insurance policy was at issue. Again, this case does not reference Underinsured Motorist coverage. Likewise, State Farm's reference to *Peagler v. USAA Insurance Co.*, 628 S.E.2d 475 (S.C. 2006) is misplaced as it also dealt with the mandatory coverage under the liability portion of an insurance policy.

State Farm finally references a case involving Underinsured Motorist Coverage with *State Farm Mutual Automobile Insurance Co. v. Bookert*, 523 S.E.2d 181 (S.C. 1999). This case involved a young man insured under his mother's insurance policy on her vehicle which was nowhere near the scene of the incident where the young man was injured. The young man was shot by a soldier in an entirely unrelated vehicle. The issue was not whether the mother's car, which was covered under her policy, was involved but rather related to the underinsured vehicle. Again, in the case at hand, there is no question of the role of the underinsured vehicle in the injuries sustained by Mr. Plemmons.

In *South Carolina Property and Casualty Guaranty Association v. Yensen*, 548 S.E.2d

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880 (2001), the issue was the policy language which defined insured as someone who occupied a covered auto. *Id.* at 517. The policy wording and provisions make that case an inapplicable comparison to the case at hand.

State Farm's selective referencing of dicta from the above-referenced cases intermingling the requirements of uninsured motorist coverage, liability coverage, unrelated insurance policies and underinsured motorist cases in which the underinsured vehicle was not involved is somehow supposed to validate its assertion of what Plemmons must prove before he is entitled to UIM coverage under the policy are just plain wrong. The only relevant and applicable element to Plemmons being covered is whether or not he was an insured under the policy.

Plaintiffs having already established the vehicle had UIM coverage and that Plemmons had the vehicle permissively, State Farm's only remaining argument is that somehow Plemmons was not "using" the Dodge Neon and therefore does not qualify as an insured under the policy. It is precisely because of the weakness of its argument against Plemmons as a user of the vehicle that State Farm has created the illusory factors it claims as required.

State Farm cites to *State Farm Fire and Casualty Company v. Pinson*, 984 F.2d 610 (4th Circuit 1993) which related to a claim for a boat which was covered under the liability portion of the policy but was being towed at the time of the accident. The Court in *Pinson* held that a boat being towed was covered. State Farm argues that a car is different from a boat in that a boat must be towed in order to get to a lake where it is then usable. This completely ignores the finding of the same *Pinson* Court that "(f)irst and foremost, this Court has already held that a towed vehicle is a 'used' vehicle." *Pinson*, *Id.*, 612. Citing *American Fire and Casualty Co. v. Allstate Ins. Co.*, 214 F.2d 523 (4th Cir. 1954) and referencing *Bray v Ins. Co. of State of Pennsylvania*, 917 F.2d 130, 133 (4th Cir. 1990) and *Automobile liability insurance: what are*

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accidents or injuries 'arising' out of ownership, maintenance or use' of insured vehicle. 89 A.L.R. 2d 150 Section 9(f) (1963 & Supp.).

In *American Fire & Casualty Co. v Allstate Insurance Co.*, 214 F.2d 523 (4th Cir. 1954), the Court found that the contention of the appellant that "the bodily injuries suffered....did not arise 'out of the ownership, maintenance or use' of the jeep within the meaning of the quoted phrase of the policy, since the jeep was an automotive vehicle capable of self propulsion and designed to be so used; and it is said that it was not in use when it was being transported without power of its own in tow of the other car" should be rejected and that it could not be said that the towing of the vehicle was so unusual as to not have been in the contemplation of the parties to the policy. The Court held that "It would violate the usual rule of liberal interpretation of such an agreement in favor of the insured, if it should be held that a car being transported under the circumstances was not actually in use." *American Fire & Casualty Co.*, *Id.* at 524-525.

III. STATE FARM MISSTATES THE DEFINITION OF A CLASS I INSURED WITH RESPECT TO UIM COVERAGE.

State Farm's filing of its Supplemental Brief in Support of Summary Judgment is yet another attempt at using inapplicable dicta to support its position. In brief, State Farm argues that since James Plemmons is, at most, a Class II insured under the State Farm policy, that he is prohibited from stacking UIM coverage to include the State Farm policy. (Exhibit G)

State Farm cites to *Auto Owners Ins. Co. v Horne* stating "One who is not a resident relative of the named insured's household is not a Class I insured entitled to stack UIM benefits." *Auto Owners Insurance Company v. Horne*, 586 S.E.2d 865, 874 (S.C. 2003). State Farm then argues that one who is not the named insured or the spouse or resident relative and is a permissive user is a Class II insured and, as a result, not entitled to stack coverage. *Ex Parte: United States Services Automobile Association; In Re Smith v. Moore*, 614 S.E.2d 652 (S.C.

App. 2005). While State Farm is correct in its citations, the application is misplaced. The Court in *Horne* further explained its position by citing to *Concrete Servs. Inc. v. United States Fid. & Guar. Co.*, 331 S.C. 506, 512 clarifying that with regard to UIM coverage, "A Class I insured is an insured or named insured who 'has' a vehicle involved in the accident, and quite saliently, that "In order 'to "have" a vehicle involved in the accident as a prerequisite to stacking mean[s] only that a person must be a Class I insured with respect to a vehicle involved in the accident." *Id.* at 513. (emphasis added).

Quite clearly, as admitted by State Farm in its supplemental brief, Plemmons was a Class I insured with respect to a vehicle involved in the accident, to wit, the Tow Truck. As a result, State Farm's argument is inapplicable to the case at hand and Plemmons is entitled to stacking of UIM coverage.

IV. PLAINTIFFS ARE NOT SEEKING PIP COVERAGE.

Plaintiffs are not seeking coverage under the Personal Injury Protection (PIP) portion of the State Farm policy as the definition of an "insured" under the policy is different for PIP coverage from that of UIM coverage and does not apply to Plemmons.

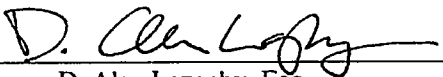
V. STATE FARM IS NOT ENTITLED TO SUMMARY JUDGMENT ON THE BAD FAITH CLAIM BECAUSE IT IMPROPERLY REFUSED TO PROVIDE COVERAGE AND BECAUSE IT REFUSED TO COMMUNICATE WITH ITS INSURED.

As demonstrated above it is that the Accident arose out of the operation of the underinsured vehicle owned by Diaz. Plemmons was a Class I insured of a vehicle involved in the Accident. And Plemmons was using a vehicle insured by State Farm. As a result, State Farm's refusal to pay benefits which are due under its contract constitutes bad faith and Plaintiffs are entitled to coverage under the UIM portion of the policy and award of attorney's fees and State Farm is not entitled to Summary Judgment.

Furthermore, State Farm's actions in refusing coverage demonstrate bad faith. The undersigned wrote State Farm on July 20, 2011¹³ and requested a copy of the Policy. After State Farm sent a copy of the Policy, the undersigned wrote State Farm again on September 1, 2011 and detailed why coverage existed.¹⁴ State Farm did not respond to this coverage demand nor Plemmons' repeated attempts to obtain a response from State Farm.¹⁵ State Farm forced Plemmons to file a lawsuit in order to get a response from State Farm. This demonstrates bad faith on the part of State Farm.

May 16, 2013

By:


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ATTORNEYS FOR PLAINTIFFS

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¹³ Exhibit H Attached.
¹⁴ Exhibit I Attached.
¹⁵ Exhibit J Attached.

EXHIBIT A

James Luther Plemmons and Wanda Sue Clark Plemmons vs. State Farm Mutual Automobile
Insurance Company, Plaza Insurance Company, The Stover Company, Inc., and Howard
E.Newton, III.

C.A. No.: 2012-CP-42-00346

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B-233131 Driver/Operator's Full Name Diaz - Teresa Garcia					B-233132 Driver/Operator's Full Name Legally Ankel																																																											
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B-233133 Driver/Operator's Full Name Plummer - James					State					Year					License Plate #					Owner's D.L. #																																												
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Date <u>12/10/02</u>		Time <u>0230</u>		County <u>HL</u>		1- Interstate 4- Secondary 2- US Primary 5- County 3- SC Primary		Collision Location (RL # / Name) <u>E 29</u>				0- Main 6- Connection 2- Alternate 7- Business 5- Spur		Miles <u>6</u>		Dir. <u>N E</u>		In / Near City or Town at: <u>Saty</u>													
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B-233134 Driver/Participant's Full Name <u>Legally Parked</u>										B-233135 Driver/Participant's Full Name																					
Unit # <u>4</u>		Sex <u>M</u>		Race		Street/R.F.D.		Birth Date		City, State, & Zip		State		Driver's License #		Insurance Company		Year		Body		Vehicle Make		VIN #							
State		Year		Body		Vehicle Make		VIN #		State		Year		Body		Vehicle Make		VIN #		State		Year		Body		Vehicle Make		VIN #			
Home Telephone		Owner's Full Name		Home Telephone		Owner's Full Name		Bus. Telephone		Street/R.F.D.		Contributed to Collision		City, State, & Zip		Contributed to Collision		City, State, & Zip		Contributed to Collision		City, State, & Zip		Contributed to Collision		City, State, & Zip					
Estimated Speed		Speed Limit		C.D.L. Req: Yes No		T/B S Req: Yes No		Alt/Dig Info (see back): Yes No		Summons #		Code		Summons #		Code		Towed By		Estimated Speed		Speed Limit		C.D.L. Req: Yes No		T/B S Req: Yes No		Alt/Dig Info (see back): Yes No			
B-233136 Driver/Participant's Full Name		Sex		Race		Street/R.F.D.		Birth Date		City, State, & Zip		State		Year		Body		Vehicle Make		VIN #		Home Telephone		Owner's Full Name		Bus. Telephone		Street/R.F.D.			
State		Year		Body		Vehicle Make		VIN #		State		Year		Body		Vehicle Make		VIN #		State		Year		Body		Vehicle Make		VIN #			
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Property Owner/Witness		Property Owner/Witness		Property Owner/Witness		Property Owner/Witness		Property Owner/Witness		Property Owner/Witness		Property Owner/Witness		Property Owner/Witness		Property Owner/Witness		Property Owner/Witness		Property Owner/Witness		Property Owner/Witness		Property Owner/Witness		Property Owner/Witness		Property Owner/Witness			
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NOTICE: THE TR-10 IS FOR STATISTICAL REPORTING PURPOSES ONLY AND IS NOT A SUBSTITUTE FOR THE OFFICIAL INVESTIGATION OF THE ACCIDENT. THE TR-10 IS TO BE COMPLETED BY THE COLLISION REPORTING AGENTS AND NOT THE AGENT AT THE SCENE OF THE ACCIDENT.

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Date 7-31-2010	Time 0500	County 42	1- Interstate 2- US Primary 3- SC Primary	4- Secondary 5- County 6- Other	Collision Location (RL # / Name) 29	1- Main 2- Alternate 3- Spur	4- Connection 5- Business 6- Other	Miles 6	In / Near City or Town of Spartanburg
Lat / Long N 10° 05' 00" W 81° 05' 00"	Distance Observed 0.5	Direction E	1- Interstate 2- US Primary 3- SC Primary	4- Secondary 5- County 6- Other	Basic Intersection (RL # / Name) Bible Bank	1- Main 2- Alternate 3- Spur	4- Connection 5- Business 6- Other	Miles 6	In / Near City or Town of Spartanburg
Lat / Long N 10° 05' 00" W 81° 05' 00"	Distance Observed 0.5	Direction E	1- Interstate 2- US Primary 3- SC Primary	4- Secondary 5- County 6- Other	Second Intersection (RL # / Name) 220	1- Main 2- Alternate 3- Spur	4- Connection 5- Business 6- Other	Miles 6	In / Near City or Town of Spartanburg
X-811750 Driver/Pedestrian's Full Name Tereso Garcia					X-811751 Driver/Pedestrian's Full Name Joseph Peral				
Unit # 1	Sex M	Race H	Street 4458 Long St	City, State, & Zip Spartanburg, SC 29309	Unit # 2	Sex M	Race H	Street 125 Hill St	City, State, & Zip Spartanburg, SC 29309
Birth Date 4-14-1980	Driver's License # 1937-572 (D)	Insurance Company Access Ins			Birth Date 4-14-1980	Driver's License # 1937-572 (D)	Insurance Company Access Ins		
State SC	Year 10	Vehicle Make GMC	VIN # 1G056H1CX1504938	Owner's D.L. N/A	State SC	Year 10	Vehicle Make GMC	VIN # 1G056H1CX1504938	Owner's D.L. N/A
Home Telephone 803-271-7115	Owner's Full Name Garcia - Pablo				Home Telephone 803-271-7115	Owner's Full Name Peral - Joseph			
Bus. Telephone N/A	Street 4458 Long St				Bus. Telephone N/A	Street 125 Hill St			
Contributed To Collision Yes	City, State, & Zip Spartanburg, SC 29309				Contributed To Collision Yes	City, State, & Zip Spartanburg, SC 29309			
Estimated Speed 300	Speed Limit 45	Code N/A	Code N/A	Code N/A	Estimated Speed 300	Speed Limit 45	Code N/A	Code N/A	Code N/A
X-811752 Driver/Pedestrian's Full Name Tereso Garcia					X-811753 Driver/Pedestrian's Full Name Tereso Garcia				
Unit # 1	Sex M	Race H	Street 4458 Long St	City, State, & Zip Spartanburg, SC 29309	Unit # 2	Sex M	Race H	Street 4458 Long St	City, State, & Zip Spartanburg, SC 29309
Birth Date 4-14-1980	Driver's License # 1937-572 (D)	Insurance Company Access Ins			Birth Date 4-14-1980	Driver's License # 1937-572 (D)	Insurance Company Access Ins		
State SC	Year 10	Vehicle Make GMC	VIN # 1G056H1CX1504938	Owner's D.L. N/A	State SC	Year 10	Vehicle Make GMC	VIN # 1G056H1CX1504938	Owner's D.L. N/A
Home Telephone 803-271-7115	Owner's Full Name Garcia - Pablo				Home Telephone 803-271-7115	Owner's Full Name Garcia - Pablo			
Bus. Telephone N/A	Street 4458 Long St				Bus. Telephone N/A	Street 4458 Long St			
Contributed To Collision Yes	City, State, & Zip Spartanburg, SC 29309				Contributed To Collision Yes	City, State, & Zip Spartanburg, SC 29309			
Estimated Speed 300	Speed Limit 45	Code N/A	Code N/A	Code N/A	Estimated Speed 300	Speed Limit 45	Code N/A	Code N/A	Code N/A
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Unit 1 Dam. \$6000					Unit 2 Dam. \$8000				
Unit 3 Dam. \$N/A					Unit 4 Dam. \$N/A				
Property Dam. \$N/A					Property Dam. \$N/A				
Address					Address				
City, State, Zip					City, State, Zip				
Phone					Phone				
Notes: Describe what happened (Refer to Units by Number) Vehicle #1 was traveling North on 4458 Long St. Vehicle #2 (A tow truck) was stopped in the road median head South to pickup Veh-4. Unit #3 (Pedestrian) was the tow truck operator Veh-1 struck Veh-2 causing Veh-2 to strike the tow truck operator Veh-2 also struck Veh-4. Veh-4 came to rest in a ditch.									
Investigator's Name: Smith, LD Date: 7-31-2010									

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CLERK OF COURT
Spartanburg County

JOHNSTON 000367

ROA 000231
APP 000234

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CLERK OF COURT

Fatal

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JAN 10 1964

ROA 000233
APP 000236

EXHIBIT B

James Luther Plemmons and Wanda Sue Clark Plemmons vs. State Farm Mutual Automobile
Insurance Company, Plaza Insurance Company, The Stover Company, Inc., and Howard
E.Newton, III.
C.A. No.: 2012-CP-42-00346

FILED
CLERK OF COURT
JANUARY 17
2013 MAY 17 AM 9:36
J. ROSE BLACKLEY

ROA 000235
APP 000238

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

JAMES LUTHER PLEMMONS and
WANDA SUE CLARK PLEMMONS,

Plaintiffs,

vs.

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY, JOHN
CARSON and PLAZA INSURANCE
COMPANY,

Defendants.

Civil Action No. 7:12-CV-00495-HMH

ANSWER OF STATE FARM MUTUAL
AUTOMOBILE INSURANCE
COMPANY

Jury Trial Requested

State Farm Mutual Automobile Insurance Company (State Farm) answers the
plaintiffs' complaint as follows:

FOR A FIRST DEFENSE

1. Paragraph 1 is admitted upon information and belief.
2. Answering paragraph 2, State Farm admits Plaza Insurance Company
(Plaza) is a corporation organized and existing under the laws of the State of Missouri; that it is
licensed to do business in South Carolina and that it was an underinsurance motorist carrier for
James Plemmons but otherwise paragraph 2 is denied.

3. Answering paragraph 3, State Farm admits it is an insurance company
organized and existing under the laws of the State of Illinois with its principle place of business
in the State of Illinois, that it is licensed to do business in South Carolina and that it issued a
policy to John Carson insuring a 2005 Dodge Neon but State Farm refers to that policy for the
coverages contained in that policy and denies the remaining allegations in paragraph 3.

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2013 MAY 17 AM 10:30
H. HOPE BRADLEY

4. State Farm is without knowledge or information sufficient to form a belief as to whether John Carson is a citizen of Union County, South Carolina and, therefore, that allegation is denied and the remaining allegations in paragraph 4 are denied.

5. Answering paragraph 5, State Farm admits that this complaint asserts claims under a policy issued by Plaza and a policy issued by State Farm but otherwise paragraph 5 is denied.

6. Answering paragraph 6, State Farm admits that the accident in which the plaintiff was involved occurred in Spartanburg County, South Carolina but State Farm is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 6 and, therefore, those allegations are denied.

7. Answering paragraph 7, State Farm would show that venue and subject matter jurisdiction are proper in the United States District Court for the District of South Carolina, Spartanburg Division and otherwise paragraph 7 is denied.

8. Answering paragraph 8, State Farm incorporates its answers to paragraphs 1 through 7 as fully and effectually as if set forth verbatim.

9. Answering paragraph 9, State Farm pursuant to FRCP 10(c) adopts by reference the UIM carrier's answer to the complaint in Civil Action No. 2011-CP-42-3867 and otherwise paragraph 9 is denied.

10. Answering paragraph 10, State Farm pursuant to FRCP 10(c) adopts by reference the answer to paragraph 10 in the answer of the UIM carrier to the complaint in Civil Action No. 2011-CP-42-3867 and otherwise paragraph 10 is denied.

11. Paragraph 11 is admitted.

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H. REE CLARK

12. Answering paragraph 12, State Farm pursuant to FRCP 10(c) adopts by reference the answer of the UIM carrier to the complaint in Civil Action No. 2011-CP-42-3867 and otherwise paragraph 12 is denied.

13. Answering paragraph 13, State Farm pursuant to FRCP 10(c) adopts by reference the answer of the UIM carrier to the complaint in Civil Action No. 2011-CP-42-3867 and otherwise paragraph 13 is denied.

14. Answering paragraph 14, State Farm pursuant to FRCP 10(c) adopts by reference the answer of the UIM carrier to the complaint in Civil Action No. 2011-CP-42-3867 and otherwise paragraph 14 is denied.

15. Answering paragraph 15, State Farm pursuant to FRCP 10(c) adopts by reference the answer of the UIM carrier to the complaint in Civil Action No. 2011-CP-42-3867 and otherwise paragraph 15 is denied.

16. Paragraph 16 is denied.

17. State Farm is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 17 and, therefore, that paragraph is denied.

18. State Farm is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 18 and, therefore, that paragraph is denied.

19. Paragraph 19 is denied.

20. State Farm admits, upon information and belief, paragraph 20.

21. State Farm is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 21 and, therefore, that paragraph is denied.

22. State Farm is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 22 and, therefore, that paragraph is denied.

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U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

23. State Farm is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 23 and, therefore, that paragraph is denied.

24. State Farm is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 24 and, therefore, that paragraph is denied.

25. State Farm is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 25 and, therefore, that paragraph is denied.

26. State Farm is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 26 and, therefore, that paragraph is denied.

27. State Farm is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 27 and, therefore, that paragraph is denied.

28. State Farm is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 28 and, therefore, that paragraph is denied.

29. Answering paragraph 29, State Farm incorporates its answers to paragraphs 1 through 28 as fully and effectually as if set forth verbatim.

30. State Farm is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 30 and, therefore, that paragraph is denied.

31. State Farm is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 31 and, therefore, that paragraph is denied.

32. Answering paragraph 32, State Farm refers to the case cited in that paragraph for the holding of that case and, to the extent the holding in that case differs from the allegations in paragraphs 32, paragraph 32 is denied and otherwise paragraph 32 is denied.

33. State Farm is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 33 and, therefore, that paragraph is denied.

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2013 MAY 17 9:36
FREDERICKS

34. State Farm is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 34 and, therefore, that paragraph is denied.

35. Answering paragraph 35, State Farm incorporates its answers to paragraphs 1 through 34 as fully and effectually as if set forth verbatim.

36. State Farm is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 36 and, therefore, that paragraph is denied.

37. State Farm is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 37 and, therefore, that paragraph is denied.

38. State Farm is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 38 and, therefore, that paragraph is denied.

39. State Farm is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 39 and, therefore, that paragraph is denied.

40. State Farm is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 40 and, therefore, that paragraph is denied.

41. State Farm is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 41 and, therefore, that paragraph is denied.

42. State Farm is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 42 and, therefore, that paragraph is denied.

43. State Farm is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 43 and, therefore, that paragraph is denied.

44. State Farm is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 44 and, therefore, that paragraph is denied.

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2012 MAY 17
MAY 17 9:36
H. J. O'NEAL
CLERK

45. State Farm is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 45 and, therefore, that paragraph is denied.

46. Answering paragraph 46, State Farm incorporates its answers to paragraphs 1 through 45 as fully and effectually as if set forth verbatim.

47. Answering paragraph 47, State Farm admits that prior to the accident James Plemmons loaded John Carson's 2005 Dodge Neon which was insured with State Farm onto Plemmons' wrecker for towing but the remaining allegations in paragraph 47 are denied.

48. Paragraph 48 is denied.

49. Paragraph 49 is denied.

50. Answering paragraph 50, State Farm admits it has denied coverage for James Plemmons' claim but the remaining allegations in paragraph 50 are denied.

51. Answering paragraph 51, State Farm admits a controversy exists between the plaintiffs and State Farm but otherwise paragraph 51 is denied.

52. Paragraph 52 is admitted.

53. Paragraph 53 is denied.

54. Answering paragraph 54, State Farm incorporates its answers to paragraphs 1 through 53 as fully and effectually as if set forth verbatim.

55. Answering paragraph 55, State Farm admits that it and John Carson have a valid and binding contract for insurance but State Farm refers to the contract of insurance for the terms and conditions therein and otherwise paragraph 55 is denied.

56. Paragraph 56 is denied.

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2013 MAY 17 AM 9:30
JAMES PLEMMONS
STATE FARM INSURANCE CO.

57. Answering paragraph 57, State Farm admits only that prior to the wreck Carson or his daughter gave Plemmons permission to tow the Dodge Neon but otherwise paragraph 57 is denied.

58. Paragraph 58 is denied.

59. Answering paragraph 59, State Farm would show that while John Carson's Dodge Neon was sitting on the plaintiff's tow truck and was in a stationary position and the plaintiff was in the process of loading another car onto the tow truck an accident occurred which injured Plemmons but otherwise paragraph 59 is denied.

60. Answering paragraph 60, State Farm admits it has declined the plaintiff's claim for coverage under State Farm's policy issued to Carson but the remaining allegations in paragraph 60 are denied.

61. Paragraph 61 is denied.

62. Paragraph 62 is denied.

63. Paragraph 63 is denied.

64. Paragraph 64 is denied.

65. Paragraph 65 is denied.

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

FOR A SECOND DEFENSE

67. The complaint fails to set forth facts sufficient to constitute a cause of action.

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2013 MAY 17 AM 9:36
M. HOPE BLACKLEY

Wherefore, having fully answered the complaint, State Farm Mutual Automobile Insurance Company prays that the complaint be dismissed, with costs, and for such other and further relief as this Court may deem just and proper.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: s/CHARLES R. NORRIS

Charles R. Norris
Federal Bar No. 2549
E-Mail: charles.norris@nelsonmullins.com
151 Meeting Street / Sixth Floor
Post Office Box 1806 (29402-1806)
Charleston, SC 29401-2239
(843) 853-5200

Attorneys for State Farm Mutual Automobile Insurance Company

Charleston, South Carolina

February 22, 2012

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2013 MAY 17 AM 9:36
MARIE BLACKLEY

EXHIBIT C

James Luther Plemmons and Wanda Sue Clark Plemmons vs. State Farm Mutual Automobile
Insurance Company, Plaza Insurance Company, The Stover Company, Inc., and Howard
E. Newton, III.

C.A. No.: 2012-CP-42-00346

FILED
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2013 MAY 17 AM 9:36
ALICE BLACKLEY

AMANDA BARNES

1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION
CASE NO. 7:12-cv-00495-HMH

James Luther Plemmons and
Wanda Sue Clark Plemmons,
Plaintiffs,

vs.

State Farm Mutual Automobile
Insurance Company and Plaza
Insurance Company,
Defendants.

DEPOSITION OF AMANDA BARNES

DATE TAKEN: June 22, 2012
TIME BEGAN: 8:57 a.m.
TIME ENDED: 9:55 a.m.
LOCATION: Nelson, Mullins, Riley & Scarborough
104 South Main Street
Suite 900
Greenville, South Carolina

REPORTED BY: Traci L. Barr, RPR
GALLAGHER COURT REPORTING
864-234-5744

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2013 MAY 17 AM 9:37
A. HOPE BLACKLEY

864-234-5744

GALLAGHER COURT REPORTING

gcr@charter.net

ROA 000245
APP 000248

1 he was using what I refer to as the scissor
2 grips to tow the vehicle that we had.

3 Q. Let me ask you this. It's my understanding
4 that this tow truck can tow two vehicles?

5 A. Yes, that's correct.

6 Q. One vehicle would be mounted on the flatbed of
7 the tow truck and secured?

8 A. Correct.

9 Q. And there is some kind of a metal bar at the
10 back of the tow truck and you operate that with
11 levers on the back side of the tow truck?

12 A. Hydraulic.

13 Q. And you could attach that lever to the front of
14 another car and lift it up and tow the second
15 car that way?

16 A. That's correct.

17 Q. And that was what James Plemmons was in the
18 process of doing when the accident happened?

19 A. That's correct.

20 Q. And the vehicle he was trying to attach with
21 the lever at the back of the tow truck was the
22 vehicle of the driver that Officer Weaver had
23 stopped and had taken away?

24 A. That's correct.

25 Q. And this was on Highway 29 in Spartanburg

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2013 MAY 17 AM 9:37
J. HOPKINS

1 County?

2 A. That's correct.

3 Q. And I think the time of the accident was around
4 four a.m.?

5 A. Yes.

6 Q. Now, would you continue your narrative?

7 A. Yes. I walked up there to talk to James. He
8 let down the scissor grips or the bar that you
9 referred to and was using the hydraulics to get
10 it into place. He had to crawl under the front
11 end of the vehicle that he was going to tow for
12 us I believe it was two or three times. He had
13 to get underneath there to make sure his
14 placement was correct. The whole time that
15 we're talking his rig was still running, along
16 with hydraulics and everything. It was fairly
17 loud. So I maintained a small distance from
18 him whenever we were talking and able to be
19 heard.

20 A couple of times he came back to the levers to
21 -- you know, the hydraulic controls and was
22 moving those around. I cannot remember if the
23 vehicle had already been lifted off the ground
24 and he was going for the straps to strap onto
25 the tires. I can't remember if that had been

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JANUARY 17 AM 9:37
J. HERRICK

1 done. From this point is kind of when
2 everything kind of went chaotic.

3 We were standing at the hydraulic controls; he
4 was standing there, we weren't crouched down,
5 within about I'd say a foot and a half from
6 each other. It was a very small distance.

7 Q. You were kind of right behind him?

8 A. Yeah, I was right next to him kind of at an
9 angle. I caught something out of the corner of
10 my eye and looked to the left, and coming from
11 the Greenville side heading southbound on 29,
12 or I guess eastbound, I saw lights, and I could
13 tell it was at a high rate of speed. I
14 honestly didn't know at that point, but it was
15 coming so quick. The vehicle was in the lane I
16 was actually standing in. I was just off the
17 median into that lane.

18 Q. Let me ask you this. This part of 29 is
19 four-lane highway?

20 A. That's correct, with an open median.

21 Q. Now, an open median?

22 A. No grass, an unprotected median. Basically the
23 only thing that differentiates it from the road
24 is lines that open it up. Right next to where
25 this occurred there was a grassed median with

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JAMES M. BLACKLEY
MAY 17 AM 9:37

1 trees, but we were right in front of that and
2 it was an open median. We weren't in grass.
3 We were on asphalt.

4 Q. And the median itself is about how wide?

5 A. Wide enough for a rig, and I couldn't estimate
6 in feet. I'd say his rig is a diesel rig, and
7 you probably had one or two feet on either
8 side. It's fairly wide.

9 Q. The tow truck is in the median?

10 A. Yes.

11 Q. And the vehicle driven by the person arrested
12 for DUI is right behind it?

13 A. That's correct.

14 Q. In the process of being secured?

15 A. That's correct.

16 Q. Okay. So you look to your left and you see
17 lights approaching at a fast rate of speed?

18 A. Correct.

19 Q. And I guess one thing that got your attention
20 is there is not a lot of traffic at four a.m.?

21 A. The traffic was dead. This is the first car I
22 had seen since we had been out there.

23 Q. That in and of itself attracted your attention
24 because there just wasn't any traffic, period?

25 A. Correct.

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2013 MAY 17 AM 9:37
H. HOPKINS

1 Q. What happens next?

2 A. At this point, like I said, it was very loud
3 with the rig running, and the controls and this
4 -- when I tell it, it sounds a lot longer, but
5 it happened instantaneously. I thought that
6 the vehicle was going to hit me in the lane of
7 travel, which I would consider the fast lane,
8 which is closest to the median, so I jumped
9 towards the rig. When I did, I hollered at
10 James. I knew there was no way that Shawn, or
11 Deputy Plount, could hear me, and I glanced --
12 I don't think I took my eyes off the car
13 coming, and I saw it start to veer. I grabbed
14 James' shirt and yelled. I couldn't -- he's a
15 big guy. I couldn't get a good grip on him,
16 and I'm stepping back and yelling at the same
17 time. Like I said, it sounds longer, but it
18 was really quick. Couldn't get a grip on him
19 and the next thing I heard was the explosion.

20 Q. All right. Now, first of all, you didn't know
21 it at that time but you know it now that the
22 car travelling at a high rate of speed that hit
23 the front of the tow truck was operated by Mr.
24 Diaz?

25 A. Correct.

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CLERK OF COURT
HARRIS COUNTY
2013 MAY 17 AM 9:37
JIMMIE BLACALE

1 Q. And Mr. Diaz was killed at the accident scene?

2 A. That's correct.

3 Q. He survived for a brief period of time, but
4 nobody was able to interview him to get his
5 side of the story?

6 A. Correct.

7 Q. And it was later determined that he was under
8 the influence of both cocaine and alcohol?

9 A. Correct.

10 Q. Do you have any idea or opinion how fast Mr.
11 Diaz was going when he hit the front of the tow
12 truck?

13 A. Yes. I initially told highway patrol when they
14 arrived on scene that my estimation was about
15 90 miles an hour. I have taken the speed
16 estimate classes; radar, Lidar, and all of that
17 where you have to be able to judge speed by
18 just viewing a vehicle, and that was my initial
19 estimate was about 90 miles an hour.

20 Q. Have you ever had any reason to change that
21 estimate?

22 A. No.

23 Q. So I take it that when something's going 90
24 miles an hour and hits a stationary object,
25 there is, first of all, just a huge explosion

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JAN 17 2013
HARRIS COUNTY
2013 JAN 17 AM 9:37
HARRIS COUNTY

1 --

2 A. Uh-huh.

3 Q. -- of noise, right?

4 A. Yes.

5 Q. Okay. And the impact from Mr. Diaz's vehicle
6 hitting the front of the tow truck, did it
7 knock the tow truck backwards?

8 A. Yes.

9 Q. And did the left or driver's side of the rear
10 wheels of the tow truck go over Mr. Plemmons'
11 leg?

12 A. I wouldn't say it went over. The wheels were
13 locked and what it did was -- I'll explain it
14 in transition. I stepped back. The last thing
15 I remember with my eyes open was seeing the
16 vehicle which was actually on the flatbed
17 airborne above my head. I had my hands above
18 my head, closed my eyes, and just ran backward.
19 When I put my hands down in a matter of
20 seconds, the next thing I saw was the rig I say
21 rolling. It wasn't rolling. It was skidding
22 because all the wheels were locked in it. It
23 was skidding backward, and James was on his
24 back. Kind of sounds morbid, but his head was
25 bouncing against the asphalt as his leg was

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JAMES EARL RAY
2013 MAY 17 AM 9:33
HOPKINS COUNTY

1 being drug. The truck skidded back to the
2 point -- I guess the truck bumped him. That
3 was my assumption because I did not actually
4 see James go down.

5 Q. Let me stop you there. The last time you saw
6 Mr. Plemmons before the impact he was standing?

7 A. That's correct.

8 Q. And the next thing you saw is he's on the
9 ground being drug along with the tow truck
10 skidding?

11 A. Yes.

12 Q. So do you believe -- something caused him to be
13 knocked over, right?

14 A. Yes.

15 Q. Presumably being hit by the tow truck?

16 A. Yes. When it was impacted, he had canted the
17 wheels, which I believe to this day saved my
18 life, he had canted the wheels ever so slightly
19 to the right, so when the vehicle impacted the
20 truck, it actually pulled it away.

21 Q. Away from you?

22 A. Yes, at an angle. And I believe the bed to
23 have maybe bumped him and knocked him off
24 balance enough to -- and then just being
25 startled from the explosion. I never saw him

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CLARK COUNTY
2015 MAY 17 AM 9:37
N. OPB UMCLEY

- 1 go down. That's when I had my eyes crossed --
2 not crossed, closed, and was running backwards.
3 Q. The vehicle that was on the top of the tow
4 truck, do you know what kind of car that was?
5 A. It was a black vehicle. I would say it looks
6 something similar to like a Nissan or Honda
7 sedan.
8 Q. Do you know who owned that car?
9 A. I have no clue.
10 Q. And that vehicle was being towed?
11 A. Yes.
12 Q. Was that vehicle on top of the tow truck being
13 used at the time of the accident?
14 A. No.
15 Q. Now, you said that vehicle, the vehicle on top
16 of the tow truck, when you saw it, it was
17 airborne?
18 A. Uh-huh.
19 Q. You have to say yes or no.
20 A. Yes. Sorry.
21 Q. Did it come off of the tow truck?
22 A. Yes, it did.
23 Q. Did it hit Mr. Plemmons?
24 A. No.
25 Q. Did it come off the back of the tow truck or

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CLERK OF COURT
JANUARY 17 AM 9:37
J. HOPE BLACKLEY

1 the side of the tow truck?

2 A. It came off the back of the tow truck, and I
3 believe from what I remember the only thing
4 that was holding it at an angle was the bumper
5 was laid on the end of the flatbed.

6 Q. All right.

7 A. It snapped the chains when it hit.

8 Q. Okay. And the vehicle on top of the tow truck
9 itself was not being used for transportation at
10 the time of the accident?

11 MR. JOHNSTON:

12 Object to the form.

13 THE DEPONENT:

14 No.

15 EXAMINATION RESUMED BY MR. NORRIS:

16 Q. Let me repeat the question subject to his
17 objection.

18 The vehicle on top of the tow truck was not
19 being used for transportation at the time of
20 the accident?

21 A. No, it was not.

22 Q. Nobody was driving it obviously?

23 A. No.

24 Q. Because it was being towed?

25 A. Right.

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CLERK OF COURT
2013 MAY 17 AM 9:37
HARRIS COUNTY

1 Q. His left leg either at or about the knee was
2 literally crushed?

3 A. From the femur, mid femur all the way down. It
4 was --

5 Q. Is the femur the thigh or the shin?

6 A. The femur would be the thigh. It was mid femur
7 was the first break, and I tell you this
8 because I witnessed it myself, his leg was
9 literally split from inner thigh to ankle wide
10 open. I could see the bone all the way down.
11 The bone was so clean from being drug across
12 the asphalt that it was bright white.

13 Q. And at this point you and Officer Plount get on
14 your radios and call whatever the highest level
15 they call?

16 A. The calvary.

17 Q. Get here now, we've got a serious injury?

18 A. Yes. I believe Officer Plount yelled over the
19 radio, officer down, at one point, so we had
20 all of highway patrol, Duncan, Lyman, Wellford,
21 everybody was there.

22 Q. They were there within five minutes?

23 A. My crew was there within about 30 to 45
24 seconds, my first unit on scene.

25 Another thing I forgot to mention, the vehicle

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JAN 17 2013
11:37 AM
JULIA R. BARNES

EXHIBIT D

James Luther Plemmons and Wanda Sue Clark Plemmons vs. State Farm Mutual Automobile Insurance Company, Plaza Insurance Company, The Stover Company, Inc., and Howard E. Newton, III.
C.A. No.: 2012-CP-42-00346

FILED
CLERK OF COURT
JAN 17 2013
2013 JAN 17 AM 9:37
HONOLULU, HAWAII

ROA 000257
APP 000260

JAMES PLEMMONS

1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION
CIVIL ACTION FILE NO. 7:12-CV-00495-HMH

JAMES LUTHER PLEMMONS AND
WANDA SUE CLARK PLEMMONS,
Plaintiffs,

vs.

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,
PLAZA INSURANCE COMPANY,
Defendants.

DEPOSITION OF JAMES PLEMMONS

DATE TAKEN: Friday, May 18, 2012
TIME BEGAN: 9:05 a.m.
TIME ENDED: 1:15 p.m.
LOCATION: Lazenby Law Firm
134 Oakland Avenue
Spartanburg, South Carolina 29302

FILED
CLERK OF COURT
JAMES PLEMMONS
2013 MAY 17 AM 9:37
MARSHALL COUNTY

REPORTED BY: TARI B. KRAMER, RMR, CRR
GALLAGHER COURT REPORTING
864-234-5744

864-234-5744

GALLAGHER COURT REPORTING

gcr@charter.net

ROA 000258
APP 000261

- 1 something else?
- 2 A. I know nothing.
- 3 Q. So you take your tow truck, go over to
- 4 Ms. Carson's house, and you load her car onto
- 5 your tow truck; right?
- 6 A. Correct.
- 7 Q. And about what time of the day was this?
- 8 A. In the evening.
- 9 Q. Do you remember what -- 6, 7, 8, 8 o'clock?
- 10 A. I don't remember specifics.
- 11 Q. All right. And what did Ms. Carson want you to
- 12 do? In other words, did she want you to take it
- 13 back to your shop and fix it?
- 14 A. Yes.
- 15 Q. Is that a yes?
- 16 A. I'm sorry. Yes.
- 17 Q. What day of the week was this that you recall?
- 18 A. It was a Friday.
- 19 Q. Now, once you loaded the Carson vehicle -- which
- 20 I understand was a 2005 Dodge Neon -- did you
- 21 take it back to your shop or did you take it to
- 22 your house?
- 23 A. Took it to my house.
- 24 Q. And is this because it was a Friday evening and
- 25 you're not open on Saturdays?

FILED
CLERK OF COURT
STARK COUNTY
2013 MAY 17 AM 9:32
JAMES PLEMMONS

EXHIBIT E

James Luther Plemmons and Wanda Sue Clark Plemmons vs. State Farm Mutual Automobile Insurance Company, Plaza Insurance Company, The Stover Company, Inc., and Howard E. Newton, III.

C.A. No.: 2012-CP-42-00346

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CLERK OF COURT
2013 MAY 17 AM 9:37
J. H. ELLIOTT

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

James Luther Plemmons and Wanda Sue
Clark Plemmons,

Plaintiffs,

vs.

State Farm Mutual Automobile Insurance
Company, Plaza Insurance Company, The
Stover Company, Inc., and Howard
E. Newton, III.

Defendants.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

C.A. No.: 2012-CP-42-00346

AFFIDAVIT OF KIM CARSON

PERSONALLY appeared before me, Kim Carson, who being duly sworn, deposes and states
the following:

1. My father, John Carson, is the owner of a 2005 Dodge Neon with VID Number
1B3ES56C35D211659.
2. I was solely responsible for the use, care and keeping of the Dodge Neon.
3. My father placed no restrictions on me in that regard.
4. James Plemmons picked the Dodge Neon up from my home on my instructions.
5. I understood that James Plemmons' home was on the way to his shop.
6. James Plemmons had my permission to transport the Dodge Neon to his shop in a manner
which was fitting to his schedule and travel route as he saw fit.
7. I trusted James Plemmons to use my car in this regard as he saw fit.
8. While not expressly discussed, James Plemmons was authorized to stop at his home with
the Dodge Neon prior to taking it to his shop.

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SPARTANBURG COUNTY
2013 MAY 17 AM 9:33
J. ROBE D. JACKSON

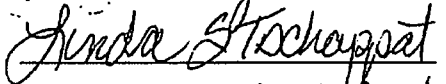
9. The stop at the home of James Plemmons did not exceed the scope of my permission related to the use of the Dodge Neon by James Plemmons.

AFFIANT FURTHER SAYETH NAUGHT.



Kim Carson

SWORN to before me this
16th day of May, 2013



Notary Public for South Carolina
My Commission Expires: 9-12-16

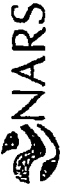
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2013 MAY 17 AM 9:37
JULIE BLANCHET

EXHIBIT F

James Luther Plemmons and Wanda Sue Clark Plemmons vs. State Farm Mutual Automobile
Insurance Company, Plaza Insurance Company, The Stover Company, Inc., and Howard
E. Newton, III.
C.A. No.: 2012-CP-42-00346

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2013 MAY 17 AM 9:37
J. ROSE BLACKLEY

Policy Number: PTOVKS001541-00
 Name of Insured: RLP Automotive
 Name of Agent: THE STOVER COMPANY INC.
 Carrier Name: PLAZA INSURANCE COMPANY



AUTO LOSS RUN BY POLICY

KODK
 Policy Period: 01/11/2010 TO 03/11/2011

Claim #	Date of Loss	Date of Claim	Arrest State	SC	Old Claim#	NEW	Unit Number				
0126/2010	07/11/2010	07/11/2010	Arrest State	SC	Old Claim#	NEW	PLEMONS JAMES				
NOTE: INQUIRIES BY DRIVER HAD LED AMPUTATED OF DRIVER KILLED INSTANTLY											
Claim#	Policy	SI	Loss Paid	Med Paid	Exp Paid	Current Loss Paid	Current Med Paid	Current Exp Paid	Current Unsettled	Current Reserve	Subst. Reserve
RLP AUTOMOTIVE PLEMONS	31261112ACOL	R	\$11,077.00	\$4.00	\$1,894.20	\$9.00	\$10,639.00	\$4.00	\$20,075.00	\$4.00	\$20.00
PLEMONS JAMES	10-00000000	O	\$5.00	\$0.00	\$7,197.16	\$100,000.00	\$7,076.16	\$5.00	\$115,000.00	\$5.00	\$5.00
CALSON JOHN	31A79930ACHC	O	\$1,110.50	\$0.00	\$17.30	\$11.50	\$774.30	\$0.00	\$4,790.00	\$0.00	\$0.00
Grand Total for Claim Inc: 307110000033			\$12,191.50	\$0.00	\$1,909.76	\$100,111.50	\$2,652.31	\$0.00	\$141,715.00	\$0.00	\$0.00

SUB TOTALS for Policy Period: 01/11/2010 TO 03/11/2011

Loss Paid	Med Paid	Exp Paid	Current Loss Paid	Current Med Paid	Current Exp Paid	Current Unsettled	Current Reserve	Subst. Reserve
\$12,191.50	\$0.00	\$1,909.76	\$100,111.50	\$2,652.31	\$0.00	\$141,715.00	\$0.00	\$0.00
TOTALS IN PERIOD:								

NUMBER OF CLAIMS IN PERIOD: 1

GRAND TOTALS

Loss Paid	Med Paid	Exp Paid	Current Loss Paid	Current Med Paid	Current Exp Paid	Current Unsettled	Current Reserve	Subst. Reserve
\$12,191.50	\$0.00	\$1,909.76	\$100,111.50	\$2,652.31	\$0.00	\$141,715.00	\$0.00	\$0.00
GRAND TOTALS:								

TOTAL NUMBER OF CLAIMS: 1

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Page 1 of 1

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STOVER 000262

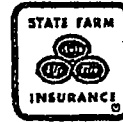
ROA 000264
 APP 000267

EXHIBIT G

James Luther Plemmons and Wanda Sue Clark Plemmons vs. State Farm Mutual Automobile
Insurance Company, Plaza Insurance Company, The Stover Company, Inc., and Howard
E. Newton, III.
C.A. No.: 2012-CP-42-00346

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J. ROE ELSON, JR.

State Farm Insurance Companies



South Carolina Operation Center
P. O. Box 10003
Duluth, GA 30096-9403
Fax: (888) 870-0317

August 3, 2011

D. Alan Lazenby
Lazenby Law Firm, LLC
PO Box 6099
Spartanburg, SC 29304

RE: Claim Number: 40-8676-404
Date of Loss: July 31, 2010
Our Insured: John R Carson
Your Client: James Plemmons

Dear Mr. Lazenby:

We enclose a certified copy of the 2005 Dodge Neon automobile insurance policy as requested.

Sincerely,

A handwritten signature in black ink, appearing to read 'Josetta Greene'.

Josetta Greene
Claim Representative
(770) 418-3917

State Farm Mutual Automobile Insurance Company

Enclosure:

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2013 MAY 17 AM 9:37
M. HOPE BLACKLEY

HOME OFFICES: BLOOMINGTON, ILLINOIS 61710-0001

ROA 000266
APP 000269



State Farm Mutual Automobile Insurance Company
11350 Johns Creek Parkway
Duluth GA 30098

53094-S-D

MUTL VOL

DECLARATIONS PAGE

AT2 NAMED INSURED 40-1989-SQ3D A
000095

CARSON, JOHN RAYMOND
301 BIRCHWOOD DR
UNION SC 29379-1869

POLICY NUMBER 149 6207-C02-40A
POLICY PERIOD FEB 26 2008 to SEP 02 2008

AGENT
MARC MEEKER
408 N DUNCAN BYP STE C
UNION, SC 29379-8640

DO NOT PAY PREMIUMS SHOWN ON THIS PAGE.
SEPARATE STATEMENT ENCLOSED IF AMOUNT DUE.

PHONE: (864)427-5634

YEAR	MAKE	MODEL	BODY STYLE	VEHICLE ID. NUMBER	CLASS
2005	DODGE	NEON	4DR	1B3ES56C35D211659	1D3050H000

SYMBOLS	COVERAGES	PREMIUMS
	See policy for coverage details.	2005 DODGE
A	Body Injury/Property Damage Liability	\$126.26
	Limits of Liability-Coverage A-Body Injury	
	Each Person, Each Accident	
	\$100,000 \$300,000	
	Limits of Liability-Coverage A-Property Damage	
	Each Accident	
	\$100,000	
P5	Personal Injury Protection	\$26.91
	(See Policy Schedule for Limits)	
D250	\$250 Deductible Comprehensive	\$69.44
G250	\$250 Deductible Collision	\$117.74
H	Emergency Road Service	\$2.30
U	Uninsured Motor Vehicle	\$15.01
	Limits of Liability-U	
	Each Person, Each Accident	
	\$100,000 \$300,000	
	Limits of Liability-U-Property Damage	
	Each Accident	
	\$50,000	
W	Underinsured Motor Vehicle	\$53.69
	Limits of Liability-W	
	Each Person, Each Accident	
	\$100,000 \$300,000	
	Limits of Liability-W-Property Damage	
	Each Accident	
	\$50,000	

Total premium for this policy period FEB 26 2008 to SEP 02 2008 \$411.35 This is not a bill.

IMPORTANT MESSAGES

Your policy consists of this declarations page, the policy booklet - form 9840.3, and any endorsements that apply, including those issued to you with any subsequent renewal notice.

Replaced policy number 1486207-40.

* The total premium for the policy period listed above reflects a recent change to your policy plus the 6 month renewal premium.

Your total current 6 month premium for MAR 02 2008 to SEP 02 2008 is \$402.05.

EXCEPTIONS AND ENDORSEMENTS (See individual endorsement for details.)

FINANCED- BANK OF AMERICA, PO BOX 45227 JACKSONVILLE FL 32232-5227.
6091 CERTIFICATE OF GUARANTEED RENEWAL.
6127YY AMENDATORY ENDORSEMENT.
6940.2 AMENDATORY ENDORSEMENT.

Agent: MARC MEEKER

Telephone: (864)427-5634

Prepared FEB 28 2008

1989-853

0001103236
11 09-2003 (01-02-2004)

(01-02-2004)

ROA 000267
APP 000270

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MAR 11 7 AM '08

CERTIFICATE OF GUARANTEED RENEWAL
6191 Amendment of Cancellation and Renewal Conditions

This endorsement is a part of your policy. Except for the changes it makes, all other terms of the policy remain the same and apply to this endorsement. It is effective at the same time as your policy, unless a different effective date is shown for the endorsement on the Declarations Page.

This endorsement is issued by the **STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY** of Bloomington, Illinois.

We agree that we will not cancel or non-renew this policy as long as:

1. this policy insures a *private passenger car*;
2. premiums are paid when due;
3. all drivers of *your car* maintain valid drivers licenses;
4. you continue to reside in an area in which State Farm Mutual Automobile Insurance Company sells automobile insurance and has the Certificate of Guaranteed Renewal available for use; and
5. no person other than the current named insured or that person's spouse becomes a named insured on this policy.

You will be able to select from those coverages which continue to be available from State Farm Mutual Automobile Insurance Company. Coverage will be provided by our car policy, including any revisions that may be made to it.

Edward B. Rind Jr.
Chief Executive Officer

Page 1 of 1

2016 MAY 17 AM 9:37

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STATE OF ILLINOIS

6127YY AMENDATORY ENDORSEMENT

This endorsement is a part of your policy. Except for the changes it makes, all other terms of the policy remain the same and apply to this endorsement. It is effective at the same time as your policy, unless a different effective date is specified by us in writing.

In consideration of the premium charged, it is agreed that your policy is changed as follows:

1. DEFINED WORDS

- a. The definition of *Newly Acquired Car* is changed to read:

Newly Acquired Car means a car newly owned by or newly leased to you or your spouse. A car ceases to be a *newly acquired car* on the earlier of:

1. the effective date and time of a policy, including any binder, issued by us or any other company that describes the car as an insured vehicle; or
2. the end of the 14th calendar day immediately following the date the car is delivered to you or your spouse.

If you or your spouse want coverage for a car newly owned by or newly leased to you or your spouse and it:

1. replaces your car, then you or your spouse must ask us to insure that car within 14 days after it is delivered to you or your spouse and pay us any added amount due. The added amount due will be calculated based on the date the replacement car is delivered to you or your spouse.

2. does not replace your car, then you or your spouse must apply to us for a separate policy to insure that added car. Such policy will be issued only if both the applicant and the vehicle are eligible for coverage at the time of the application.

If a *newly acquired car* is not otherwise afforded comprehensive coverage or collision coverage by this or any other policy, then this policy will provide Comprehensive Coverage or Collision Coverage for that *newly acquired car*, subject to a deductible of \$500. Any coverage provided as a result of this paragraph will apply only until the end of the 5th calendar day immediately following the date the *newly acquired car* is delivered to you or your spouse.

- b. The definition of *Your Car* is changed to read:

Your Car means the vehicle described on the Declarations Page. *Your Car* does not include a vehicle that you no longer own or lease.

If you or your spouse ask us to replace the car shown on the Declarations Page with a car newly owned by or newly leased to you or your spouse, the car being replaced will continue to be considered your car until the earliest of:

1. the end of the 30th calendar day immediately following the date such newly owned or newly leased car is delivered to you or your spouse;
2. the date this policy is no longer in force; or
3. the date you no longer own or lease the car being replaced.

6127YY

Page 1 of 3

ROA 000268
APP 000271

2. REPORTING A CLAIM — INSURED'S DUTIES

The following is added:

A *person* or organization making claim under this policy must, when we ask, give us proof of loss on forms we furnish. A *person* making claim under Personal Injury Protection Coverage, Medical Payments Coverage, Uninsured Motor Vehicle Coverage, and Death, Disability, and Loss of Sight Coverage must provide written authorization for us to obtain:

1. medical bills;
2. medical records;
3. wage, salary, and employment information; and
4. any other information we deem necessary to substantiate the claim.

If an injured *person* is a minor, unable to act, or dead, then his or her legal representative must provide us with the written authorization.

If the holder of the information refuses to provide it to us despite the authorization, then at our request the *person* making claim or his or her legal representative must obtain the information and promptly provide it to us.

3. SECTION II — PERSONAL INJURY PROTECTION — COVERAGE P AND MEDICAL PAYMENTS — COVERAGE C

- a. The following paragraph under both Personal Injury Protection Coverage and Medical Payments Coverage:

Expenses are reasonable only if they are consistent with the usual fees charged by the majority of similar medical providers in the geographical area in which the expenses were incurred for the specific medical service.

is changed to read:

Expenses are reasonable only if they are the lowest of any one of the following changes:

1. the usual and customary fees charged by a majority of health-care providers who provide similar medical services in the geographical area in which the changes were incurred;
2. the fees agreed to by both the injured *person's* healthcare provider and us; or
3. the fees agreed upon between the injured *person's* healthcare provider and a third party when we have a contract with such third party.

- b. The following is added to both Personal Injury Protection Coverage and Medical Payments Coverage:

We have the right to:

1. obtain and use:
 - a. peer reviews; and
 - b. medical bill reviews of the medical expenses and services to determine if they are reasonable and necessary for the *bodily injury* sustained;
2. use a medical examination of the injured *person* to determine if:
 - a. the *bodily injury* was caused by a motor vehicle accident; and
 - b. the medical expenses and services are reasonable and necessary for the *bodily injury* sustained; and
3. enter into a contract with a third party that has an agreement with the injured *person's*

healthcare provider to change fees as determined by that agreement.

- c. The following is added to Deciding Amount under both Personal Injury Protection Coverage and Medical Payments Coverage:

Arbitrators shall have no authority to decide any questions of law or conduct arbitration on a class-wide or class-representative basis.

4. SECTION IV — PHYSICAL DAMAGE COVERAGES COMPREHENSIVE — COVERAGE D and COLLISION — COVERAGE G

- a. The following is added:

You agree that replacement glass need not have any insignia, logo, trademark, etching, or other marking that was on the replaced glass.

- b. The following is added to Settlement of Loss — Comprehensive and Collision Coverages:

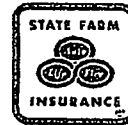
Appraisers shall have no authority to decide any questions of law or conduct appraisal on a class-wide or class-representative basis.

5. MOTORCYCLE COVERAGE ENDORSEMENT and TRAILER ENDORSEMENT

The definition of *newly acquired car* in the above item 1. replaces the definition of *newly acquired car* in both the MOTORCYCLE COVERAGE ENDORSEMENT and the TRAILER ENDORSEMENT. If either endorsement is a part of your policy, in addition, under the TRAILER ENDORSEMENT, the definition of *car* as found in the definition of *newly acquired car* is changed to include a trailer newly owned by or newly leased to you if it is of the same type as the trailer described on the declarations page.

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State Farm Insurance Companies®



Atlanta Operations Center
11350 Johns Creek Parkway
Duluth, Georgia 30098-0001

CERTIFICATE

I, the undersigned, do hereby certify that I am custodian of the records pertaining to the issuance of policies issued by the South Carolina Division of State Farm Mutual Automobile Insurance Company of Bloomington, Illinois.

I further certify that the attached policy number 148 6207-C02-40A is a copy of the policy issued to John Raymond Carson, 301 Birchwood Dr., Union, SC 29379-1869, based on our available records:

The policy was in effect on the loss date of July 31, 2010.

Brenda Holmes

Brenda Holmes
Underwriting Operations Team Manager

Dated this 27 day of July, 2011.

Joni Stowe

Notary Public

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2011 MAY 17 AM 9:37
H. HOPE BLACKLEY

Joni Stowe
Notary Public
Forsyth County, Georgia
My Commission Expires
April 22, 2014

HOME OFFICES: BLOOMINGTON, ILLINOIS 61710-0001

ROA 000270
APP 000273

6940.2 AMENDATORY ENDORSEMENT

This endorsement is a part of your policy. Except for the changes it makes, all other terms of the policy remain the same and apply to this endorsement. It is effective at the same time as your policy unless a different effective date is specified by us in writing.

In consideration of the premium charged, it is agreed that your policy is changed as follows:

1. DEFINED WORDS

a. The following definition is added:

Fungus — means any type or form of fungus or fungi and includes:

1. mold;
2. mildew; and
3. any of the following that are produced or released by fungi:
 - a. mycotoxins;
 - b. spores;
 - c. scents; or
 - d. byproducts.

b. *Non-Owned Car* — The provision which reads:

Non-owned car does not include a rented car while it is used in connection with the *insured's* employment or business.

is deleted.

2. SECTION 1 — LIABILITY — COVERAGE A

Under the paragraph that reads "In addition to the limits of liability, we will pay for an *insured* any costs listed below resulting from such accident":

- a. item 3.c. is deleted.
- b. item 4 is changed to read:
 4. The following costs and expenses if related to and incurred after a civil lawsuit has been filed against an *insured* for damages for which liability coverage is provided by this policy:

- a. loss of wages or salary, but not other income, up to \$100 for each day an *insured* attends at our request:
 - (1) an arbitration;
 - (2) a mediation; or
 - (3) a trial of a civil suit.
- b. reasonable expenses incurred by an *insured* at our request, other than loss of wages, salary, or other income.

The amount of any of the costs or expenses listed above that are incurred by an *insured* must be reported to us before we will pay.

c. The provision titled Trailer Coverage is changed to read:

Trailer Coverage

The liability coverage extends to the ownership, maintenance or use, by an *insured*, of:

1. trailers designed to be pulled by a *private passenger car* or a *utility vehicle*, except those trailers in 2.a. below.
- Farm implements and farm wagons are considered trailers while pulled on public roads by a *car* we insure for liability.
- These trailers are not described in the declarations and no extra premium is charged.

2. the following trailers only if they are described on the declarations and extra premium is paid:

- a. trailers designed to be pulled by a *private passenger car* or a *utility vehicle*:

- (1) if designed to carry *persons*; or
 - (2) while used with a motor vehicle whose use is shown as "commercial" on the declarations page (trailers used only for pleasure use are covered even if not described if no extra premium paid); or
 - (3) while used as premises for office, store or display purposes; or
- b. trailers not designed to be pulled by a *private passenger car* or a *utility vehicle*.

When we refer to trailer coverage, *insured* means:

1. you;
2. your spouse;
3. the relatives of the first person named in the declarations;
4. any other person while using your car, a newly acquired car or a temporary substitute car, if its use is within the scope of consent of you or your spouse; and

5. any other person or organization liable for the use of a covered trailer by one of the above *insureds*.

d. The first paragraph under Limits of Liability is changed to read:

Limits of Liability

1. The amount of bodily injury liability coverage is shown on the declarations page under "Limits of Liability — Coverage A — Bodily Injury, Each Person, Each Accident." Under "Each Person" is the amount of coverage for all damages due to *bodily injury* to one *person*. "*Bodily injury*" to one *person*" includes all injury and damages to other persons resulting from this *bodily injury*, and all emotional distress resulting from this *bodily injury* sustained by other persons who do not sustain *bodily injury*. Under "Each Accident" is the total amount of coverage subject to the amount shown under "Each Person" for all damages due to *bodily injury* to two or more persons in the same accident.

3. MEDICAL PAYMENTS — COVERAGE C

The following is added to What Is Not Covered Under Coverage C:

- a. THERE IS NO COVERAGE FOR *BODILY INJURY* THAT RESULTS FROM EXPOSURE TO *FUNGUS*.
- b. THERE IS NO COVERAGE FOR *BODILY INJURY* THAT RESULTS FROM:
 - (1) NUCLEAR REACTION;
 - (2) RADIATION OR RADIOACTIVE CONTAMINATION FROM ANY SOURCE; OR

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ROA 000272
APP 000275

property damage while occupying a motor vehicle or trailer other than your car that is owned by or leased to you, your spouse or a relative, then this coverage applies only to the extent of:

a. the uninsured motor vehicle coverage applicable to the occupied motor vehicle or trailer, or

b. the minimum limits required by the *Financial Responsibility Act* for bodily injury and property damage, whichever is higher.

4. If you, your spouse or a relative sustains bodily injury or property damage while occupying a motor vehicle or trailer not owned by or leased to you, your spouse or a relative, then only one policy issued by us to you, your spouse or any relative with the highest uninsured motor vehicle coverage limit shall apply.

5. Subject to items 1, 2, 3 and 4 above, if this policy and one or more other policies provide uninsured motor vehicle coverage for bodily injury or property damage:

a. on a primary basis, then we are liable only for our share. Our share is that percent of the damages payable on a primary basis that the limit of liability that applies from this policy bears to the total of all applicable uninsured motor vehicle coverage provided on a primary basis.

b. on an excess basis, then we are liable only for our share.

share. Our share is that percent of the damages payable on an excess basis that the limit of liability that applies from this policy bears to the total of all applicable uninsured motor vehicle coverage provided on an excess basis.

i. The provision titled If There Is Other Underinsured Motor Vehicle Coverage is replaced with the following:

If There Is Other Underinsured Motor Vehicle Coverage

1. If underinsured motor vehicle coverage for bodily injury or property damage is available to you, your spouse or a relative from more than one policy provided by us or any other insurer, then the underinsured motor vehicle coverage provided by this policy shall apply:

a. on a primary basis if you, your spouse or a relative sustains bodily injury or property damage while occupying your car, or while not occupying a motor vehicle or trailer;

b. on an excess basis if you, your spouse or a relative sustains bodily injury or property damage while occupying a motor vehicle or trailer other than your car.

2.

a. If you, your spouse or a relative sustains bodily injury or property damage while not occupying a motor vehicle or trailer; and

b. if you, your spouse or a relative sustains bodily injury or property damage while occupying a motor vehicle or trailer other than your car, then one of our policies issued to you, your spouse

or a relative applies to the accident, then:

(1) only one policy with the highest uninsured motor vehicle coverage limit shall apply to that limit; and

(2) the underinsured motor vehicle coverage from each of the other policies we issued shall apply only in an amount equal to the minimum limits required by the *Financial Responsibility Act* for bodily injury and property damage liability.

3. If you, your spouse or a relative sustains bodily injury or property damage while occupying a motor vehicle or trailer other than your car that is owned by or leased to you, your spouse or a relative, then this coverage applies only to the extent of:

a. the underinsured motor vehicle coverage applicable to the occupied motor vehicle or trailer, or

b. the minimum limits required by the *Financial Responsibility Act* for bodily injury and property damage, whichever is higher.

4. If you, your spouse or a relative sustains bodily injury or property damage while occupying a motor vehicle or trailer not owned by or leased to you, your spouse or a relative, then only the one policy issued by us to you, your spouse or any relative with

the highest underinsured motor vehicle coverage limit shall apply.

5. Subject to items 1, 2, 3 and 4 above, if this policy and one or more other policies provide underinsured motor vehicle coverage for bodily injury or property damage:

a. on a primary basis, then we are liable only for our share. Our share is that percent of the damages payable on a primary basis that the limit of liability that applies from this policy bears to the total of all applicable underinsured motor vehicle coverage provided on a primary basis.

b. on an excess basis, then we are liable only for our share. Our share is that percent of the damages payable on an excess basis that the limit of liability that applies from this policy bears to the total of all applicable underinsured motor vehicle coverage provided on an excess basis.

SECTION IV — PHYSICAL DAMAGE COVERAGES

a. The following is added to the definition of *Loss*:

Loss does not include any reduction in the value of any vehicle or detachable living quarters after it has been repaired, as compared to its value before it was damaged.

b. Item 2 under COMPREHENSIVE — COVERAGE D is changed to read:

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STANDARD COURT

2. We will pay *you* for transportation costs incurred if *your* car is stolen. We will pay up to \$25 per day beginning when you tell us of the theft and ending when we offer to pay for the *loss*.

If the daily incurred transportation costs are payable under both Comprehensive Coverage and Car Rental and Travel Expenses Coverage, we will pay only under the one coverage where *you* collect the most. If payments have been made under Car Rental and Travel Expenses Coverage and such payments have either exhausted the total amount payable under Car Rental Expense or reduced the total amount payable under Car Rental Expense to less than \$25, then we will pay under Comprehensive Coverage.

c. The following is added to COLLISION - COVERAGE G:

Loss caused by *collision* does not include *loss* due to:

1. missiles or falling objects;
2. windstorm or hail;
3. earthquake, water or flood;
4. theft or larceny;
5. malicious mischief or vandalism; or
6. riot or civil commotion.

d. The first paragraph of Limit of Liability - Comprehensive and Collision Coverages is changed to read:

The limit of our liability for *loss* to property or any part of it is the lower of:

1. the actual cash value; or

2. the cost of repair or replacement. The cost of repair or replacement does not include any reduction in the value of the property after it has been repaired, as compared to its value before it was damaged.

e. The paragraph under CAR RENTAL AND TRAVEL EXPENSES - COVERAGE R1 in *your* policy booklet that reads:

Any car rent payable under this coverage is REDUCED TO THE EXTENT IT IS PAYABLE UNDER COMPREHENSIVE.

is changed to read:

If the incurred daily rental charge is payable under both Comprehensive Coverage and Car Rental and Travel Expenses Coverage, we will pay only under the one coverage where *you* collect the most.

f. The provision titled Total Amount of Expenses Payable - Coverage R1 in *your* policy booklet is changed to read:

Total Amount of Expenses Payable - Coverage R1

1. The most we will pay for Car Rental Expense incurred in any one occurrence is \$400.
2. The most we will pay for Travel Expenses incurred by all persons in any one occurrence is \$400.

3. The most we will pay for Rental Car - Reimbursement of Deductible Amount Expense incurred in any one occurrence is \$400.

g. Trailer Coverage

The paragraph which reads:

TRAILER COVERAGE

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6940.2

Page 8 of 8

6940.2

The most we will pay under the comprehensive or collision coverage for a *loss* to such non-owned trailer or unit is \$500.

is changed to read:

The most we will pay under the comprehensive or collision coverage for a *loss* to such non-owned trailer or unit is \$2500.

h. Item 2.c. of Trailer Coverage is deleted.

i. The following is added to When The Physical Damage Coverages Do Not Apply:

a. THERE IS NO COVERAGE FOR LOSS TO ANY VEHICLE DUE TO FUNGI. THIS APPLIES REGARDLESS OF WHETHER OR NOT THE FUNGI RESULT FROM A LOSS THAT IS PAYABLE UNDER ANY OF THE PHYSICAL DAMAGE COVERAGES. WE WILL ALSO NOT PAY FOR ANY TESTING OR REMEDIATION OF FUNGI. OR ANY ADDITIONAL COSTS REQUIRED TO REPAIR YOUR CAR THAT ARE DUE TO THE EXISTENCE OF FUNGI.

b. THERE IS NO COVERAGE FOR LOSS TO ANY VEHICLE THAT RESULTS FROM:

- (1) NUCLEAR REACTION;
- (2) RADIATION OR RADIOACTIVE CONTAMINATION FROM ANY SOURCE; OR
- (3) THE ACCIDENTAL OR INTENTIONAL DETONATION OF, OR RELEASE OF RADIATION FROM, ANY NUCLEAR OR RADIOACTIVE DEVICE.

6. CONDITIONS

The following is added to 1. Policy Changes:

c. Change of Policy Address

We may change the named insured's policy address as shown on the Declarations Page and in our records to the most recent address provided to us by:

1. *you*; or
2. the United States Postal Service.

7. The following is added to *your* policy:

Your purchase of this policy may allow *you* to purchase certain coverages, coverage options, coverage deductibles, coverage limits, or coverage terms on other policies from State Farm Mutual Automobile Insurance Company, State Farm Fire and Casualty Company, and subsidiaries or affiliates of either, subject to their applicable eligibility rules.

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PLEASE READ YOUR POLICY CAREFULLY. IF YOU HAVE AN ACCIDENT, CONTACT YOUR STATE FARM AGENT OR ONE OF OUR CLAIM OFFICES AT ONCE. (SEE "REPORTING A CLAIM-INSURED'S DUTIES" IN THIS POLICY.)

Authorized Representative



State Farm Mutual Automobile Insurance Company, Home Office, Bloomington, Illinois

Georgia-South Carolina Office • 11350 Johns Creek Parkway • Duluth, GA 30098-0001 • Ph (770) 418-5413

YOUR
STATE FARM
CAR
POLICY

South Carolina
Policy Form 9840.3

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ROA 000275
APP 000278

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY
BLOOMINGTON, ILLINOIS
A MUTUAL COMPANY

DEFINED WORDS
WHICH ARE USED IN SEVERAL PARTS OF THE POLICY

We define some words to shorten the policy. This makes it easier to read and understand. Defined words are printed in boldface italics. You can pick them out easily.

Bodily Injury – means bodily injury to a *person* and sickness, disease or death which results from it.

Car – means a land motor vehicle with four or more wheels, which is designed for use mainly on public roads. It does not include:

1. any vehicle while located for use as a dwelling or other premises; or
2. a truck-tractor designed to pull a trailer or semi-trailer.

Car Business – means a business or job where the purpose is to sell, lease, repair, service, transport, store or park land motor vehicles or trailers.

Insured – means the *person, persons* or organization defined as *insureds* in the specific coverage. If the information you have provided State Farm is incorrect or incomplete, or changes during the policy period, State Farm may decrease or increase the premium during the policy period as set out in the provision titled Premium of the Conditions section of this policy.

Loss – defined in Sections IV and V.

Motor Vehicle – defined in Sections II and III.

Newly Acquired Car – means a *replacement car* or an *additional car*.

Replacement Car – means a *car* purchased by or leased to you or your spouse to replace your car. This policy will only provide coverage for the *replacement car* if you or your spouse:

1. tell us about it within 30 days after its delivery to you or your spouse; and
2. pay us any added amount due.

Additional Car – means an added *car* purchased by or leased to you or your spouse. This policy will only provide coverage for the *additional car* if:

1. it is a *private passenger car* and we insure all other *private passenger cars*; or
2. it is other than a *private passenger car* and we insure all *cars*

owned by or leased to you or your spouse on the date of its delivery to you or your spouse.

This policy provides coverage for the *additional car* only until the earlier of:

1. 12:01 A.M. Standard Time at the address shown on the declarations page on the 31st day after the delivery of the *car* to you or your spouse; or
2. the effective date and time of a policy issued by us or any other company that describes the *car* on its declarations page.

You or your spouse may apply for a policy that will provide coverage beyond the 30th day for the *additional car*. Such policy will be issued only if both the applicant and the vehicle are eligible for coverage at the time of application.

If a *newly acquired car* is not otherwise afforded comprehensive or collision coverage by this or any other policy, this policy will provide the comprehensive or collision coverage not otherwise provided for the *newly acquired car*. If

such coverage is provided by this paragraph, it will apply only until 12:01 A.M. Standard Time at the address shown on the declarations page on the sixth day after the delivery of the car to you or your spouse. Any comprehensive or collision coverage provided by this paragraph is subject to a deductible of \$500.

Non-Owned Car - means a car not owned by, registered to or leased to:

1. you, your spouse;
2. any relative, unless at the time of the accident or loss:
 - a. the car currently is or has within the last 30 days been insured for liability coverage; and
 - b. the driver is an insured who does not own or lease the car;
3. any other person residing in the same household as you, your spouse or any relative; or
4. an employer of you, your spouse or any relative.

Non-owned car does not include a:

1. rented car while it is used in connection with the insured's employment or business; or
2. car which has been operated or rented by or in the possession of an insured during any part of each of the last 21 or more consecutive days. If the insured is an insured under one or more other car policies issued by us, the 21 day limit is increased by an additional 21 days for each such additional policy.

A **non-owned car** must be a car in the lawful possession of the person operating it.

Occurring - means in, on, entering or alighting from.

Person - means a human being.

Private Passenger Car - means a car:

1. with four wheels;
2. of the private passenger or station wagon type; and
3. designed solely to carry persons and their luggage.

Relative - means a person related to you or your spouse by blood, marriage or adoption who resides primarily with you. It includes your unmarried and unemancipated child away at school.

Spouse - means your husband or wife who resides primarily with you.

Temporary Substitute Car - means a car not owned by or leased to you or your spouse, if it replaces your car for a short time. Its use has to be with the consent of the owner. Your car has to be out of use due to its breakdown, repair, servicing, damage or loss. A temporary substitute car is not considered a non-owned car.

Utility Vehicle - means a motor vehicle with:

1. a pickup, panel or van body; and
2. a Gross Vehicle Weight of 10,000 pounds or less.

You or Your - means the named insured or named insureds shown on the declarations page.

Your Car - means the car or the vehicle described on the declarations page.

DECLARATIONS CONTINUED

We, the State Farm Mutual Automobile Insurance Company, agree to insure you according to the terms of this policy based:

1. on your payment of premium for the coverage you chose; and
 2. in reliance on your statements in these declarations.
- You agree, by acceptance of this policy that:
1. the statements in these declarations are your statements and are true; and
 2. we insure you on the basis your statements are true; and
 3. this policy contains all of the agreements between you and us or any of our agents.

Unless otherwise stated in the exceptions space on the declarations page, your statements are:

1. Ownership. You are the sole owner of your car.
2. Insurance and License History. Neither you nor any member of your household within the past three years has had:
 - a. vehicle insurance canceled by an insurer; or
 - b. a license to drive or vehicle registration suspended, revoked or refused.
3. Use. Your car is used for pleasure and business.

WHEN AND WHERE COVERAGE APPLIES

When Coverage Applies

The coverages you chose apply to accidents and losses that take place during the policy period.

The policy period is shown under "Policy Period" on the declarations page and is for successive periods of six months each for which you pay the renewal premium. Payments must be made on or before the end of the current policy period. The policy period begins and ends at 12:01 A.M. Standard Time at the address shown on the declarations page.

Where Coverage Applies

The coverages you chose apply:

1. in the United States of America, its territories and possessions or Canada; or
2. while the insured vehicle is being shipped between their ports.

The liability, personal injury protection, medical payments and physical damage coverages also apply in Mexico within 50 miles of the United States border. A physical damage coverage loss in Mexico is determined on the basis of cost at the nearest United States point.

Death, dismemberment and loss of sight coverage applies anywhere in the world.

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FINANCED VEHICLES

If a creditor is shown in the declarations, we may pay any comprehensive or collision loss to:

1. you and, if unpaid, the repairer; or
2. you and such creditor, as its interest may appear, when we find it is not practical to repair your car; or
3. the creditor, as to its interest, if your car has been repossessed.

When we pay the creditor for loss for which you are not covered, we are entitled to the creditor's right of recovery against you to the extent of our payment. Our right of recovery shall not impair the creditor's right to recover the full amount of its claim.

The coverage for the creditor's interest only is valid until we terminate it. We will not terminate such coverage because of:

1. any act or negligence of the owner or borrower; or
2. a change in the ownership or interest unknown to us, unless the creditor knew of it and failed to tell us within 10 days; or
3. an error in the description of the vehicle.

The date of termination of the creditor's interest will be at least 10 days after the date we mail or electronically transmit the termination notice.

REPORTING A CLAIM — INSURED'S DUTIES

1. Notice to Us of an Accident or Loss

The *insured* must give us or one of our agents written notice of the accident or loss as soon as reasonably possible. The notice must give us:

- a. your name;
- b. the names and addresses of all persons involved;
- c. the hour, date, place and facts of the accident or loss; and
- d. the names and addresses of witnesses.

2. Notice to Us of Claim or Suit

If a claim or suit is made against an *insured*, that *insured* must at once send us every demand, notice or claim made and every summons or legal process received.

3. Other Duties Under the Physical Damage Coverages

When there is a loss, you or the owner of the property also shall:

- a. make a prompt report to the police when the loss is the result of theft or larceny;
- b. protect the damaged vehicle. We will pay any reasonable expense incurred to do it;
- c. show us the damage, when we ask;
- d. provide all records, receipts and invoices, or certified copies of them. We may make copies.
- e. answer questions under oath when asked by anyone we name, as often as we reasonably ask, and sign copies of the answers.

4. Other Duties Under Personal Injury Protection, Medical Payments, Uninsured Motor Vehicle, Underinsured Motor Vehicle and Death, Dismemberment and Loss of Sight Coverages

Any person who suffers a bodily injury which results in a personal injury protection or medical payments coverage claim must notify us of the claim in writing as soon as reasonably possible after the person's first examination or treatment resulting from the bodily injury. Another person may give us the required notice on behalf of the injured person.

The person making claim also shall:

- a. under personal injury protection, medical payments, uninsured motor vehicle, underinsured motor vehicle, and death, dismemberment and loss of sight coverages:

(1) give us all the details about the death, injury, treatment and other information we need to determine the amount payable.

(2) be examined by physicians chosen and paid by us as often as we reasonably may require. A copy of the report will be sent to the person upon written request. The person, or his or her legal representative if the person is dead or unable to act, shall authorize us to obtain all medical reports and records.

(3) answer questions under oath when asked by anyone we name, as often as we reasonably ask, and sign copies of the answers.

- b. under the uninsured motor vehicle coverage:

(1) report a "hit-and-run" accident to the police within a reasonable time and to us within 30 days.

(2) let us see the insured car the person occupied in the accident.

(3) send us at once a copy of all suit papers if the person sues the party liable for the accident for damages.

- c. under the uninsured motor vehicle and underinsured motor vehicle coverages, if making claim for damage to property, give us a sworn proof of loss within 60 days of the accident. This proof must state as to the property:

(1) who owns it and how much they own;

(2) the amount of any claims or liens;

(3) its value at the time of the accident; and

(4) details of the accident and any other insurance on it.

If we ask, the *insured* shall show us the property.

d. under the death, dismemberment and loss of sight coverage, give us proof of claim on forms we furnish.

5. Insured's Duty to Cooperate With Us

The *insured* shall cooperate with us and, when asked, assist us in:

- a. making settlements;
- b. securing and giving evidence;
- c. attending and getting witnesses to attend, hearings and trials; and
- d. preserving his or her right to recover damages from others.

The *insured* shall not, except at his or her own cost, voluntarily:

- a. make any payment or assume any obligation to others; or
- b. incur any expense, other than for first aid to others.

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1. pay damages which an *insured* becomes legally liable to pay because of:

- a. *bodily injury* to others, and
- b. damage to or destruction of property including loss of its use,

2. defend any suit against an *insured* for such damages with attorneys hired and paid by us. We will not defend any suit after we have paid the applicable limit of our liability for the accident which is the basis of the lawsuit.

In addition to the limits of liability, we will pay for an *insured* any costs listed below resulting from such accident:

1. Court costs of any suit for damages that we defend.
2. Interest on damages owed by the *Insured* due to a judgment and accretion:
 - a. after the judgment, and until we pay offer or deposit in court; the amount due under this coverage; or
 - b. before the judgment, where owed by law, and until we pay offer or deposit in court the amount due under this coverage, but only on that part of the judgment we pay.
3. Premiums or costs of bonds:
 - a. to secure the release of an *Insured* property attached under a court order;
 - b. required to appeal a decision in a suit for damages if we have not paid out

limit of liability that applies to the suit; and

- c. up to \$250 for each bail bond needed because of an accident or related traffic law violation.

We have no duty to furnish or apply for any bonds. The amount of any bond we pay for shall not be more than our limit of liability.

4. Expenses incurred by an *insured*:
 - a. for loss of wages or salary up to \$1000 per day if we ask the *insured* to attend the trial of a civil suit.
 - b. for first aid to others at the time of the accident.

We have the right to investigate, negotiate and settle any claim or suit.

Coverage for the Use of Other Cars

The liability coverage extends to the use, by an insured, of a newly acquired car, a temporary substitute car or a non-owned car.

Who Is an Insured?

When we refer to your car, a newly acquired car, or a temporary substitute car, insured means:

1. *you*;
2. *your spouse*;
3. the *relatives* of the *first person* named in the declarations;
4. any other *person* while using such a *credit* if its use is within the scope of consent a *you* or *your spouse*; and

5. any other *person* or organization liable for the use of such a *car* by one of the above *insureds*.

When we refer to a non-owned car, insured means:

1. the first *person* named in the declarations;
2. his or her spouse;
3. their relatives; and
4. any *person* or organization which does not own or hire the *car* but is liable for its use by one of the above *persons*.

THERE IS NO COVERAGE FOR NON-OWNED CARS:

1. IF THE DECLARATIONS STATE THE "USE" OF YOUR CAR IS OTHER THAN "PLEASURE AND BUSINESS"; OR

2. WHILE:
- a. BEING REPAIRED, SERVICED OR USED BY ANY PERSON WHILE THAT PERSON IS WORKING IN ANY CAR BUSINESS, OR
 - b. USED IN ANY OTHER BUSINESS OR OCCUPATION. This does not apply to a *private passenger car* driven or occupied by the first person named in the declaration, his or her spouse or their relatives.

Trailer Coverage

1. Trailers designed to be pulled by a *private passenger car* or a *utility vehicle*, except those trailers in 2.a. below, are covered while owned or used by an *insured*.

Farm implements and farm wagons are considered trailers while pulled on public roads by a car we insure for liability.

These trailers are not described in the declarations, and no extra premium is charged.

2. The following trailers are covered only if described on the declarations page and extra premium is paid:

- a. those trailers designed to be pulled by a private passenger car or a utility vehicle:**

- (2) while used with a motor vehicle whose use is shown as "commercial" on the declarations page (trailers used only for pleasure use are covered even if not described and no extra premium paid); or

- (3) while used as premises for office, store or display purposes; or

- b. any trailer not designed for use with a private-passenger car or a utility vehicle.**

THERE IS NO COVERAGE WHEN A TRAILER IS USED WITH A MOTOR VEHICLE OWNED OR HIRED BY YOU WHICH WE DO NOT INSURE FOR LIABILITY COVERAGE.

Limits of Liability

The amount of bodily injury liability coverage shown on the declarations page under "Limits of Liability - Coverage A - Bodily Injury, Each Person, Each Accident," under "Each Person," is the amount of coverage for all damages due to *bodily injury* to *one person*. "*Bodily injury to one person*" includes all injury and damages to others resulting from this *bodily injury*. Under "Each Accident," is the total amount of coverage, subject to the amount shown under "Each Person," for all damages due to *bodily injury* to two or more *persons* in the same accident.

The amount of property damage liability coverage is shown on the declarations page under "Limits of Liability – Coverage A – Property Damage, Each Accident".

We will pay damages for which an insured is legally liable up to these amounts.

The limits of liability are not increased because more than one person or organization may be an insured.

A motor vehicle and attached trailer are one vehicle. Therefore, the limits are not increased. The liability coverage shall be excess over and shall not pay again any expenses paid under the personal injury protection or medical payments coverages.

When Coverage A Does Not Apply

In addition to the limitations of coverage in Who Is an Insured and Trailer Coverage:

THERE IS NO COVERAGE:

1. WHILE ANY VEHICLE INSURED UNDER THIS SECTION IS:

- RENTED OR LEASED TO OTHERS.
- USED TO CARRY PERSONS FOR A CHARGE. This does not apply to the use on a share expense basis of:

- a private passenger car, or
- a utility vehicle, if all passengers are riding in that area of the vehicle designed by the manufacturer of the vehicle for carrying passengers.

- BEING REPAIRED, SERVICED OR USED BY ANY PERSON EMPLOYED OR ENGAGED IN ANY WAY IN A CAR BUSINESS TO THE EXTENT THE LIMITS OF LIABILITY OF THIS POLICY EXCEED THE LIMITS OF LIABILITY REQUIRED BY LAW. This does not apply to:

- you or your spouse;
- any relative;
- any resident of your household; or

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- any agent, employee or partner of you, your spouse, any relative or such resident.

This coverage is excess for (3) and (4) above.

2. FOR ANY BODILY INJURY TO:

- A FELLOW EMPLOYEE WHILE ON THE JOB AND ARISING FROM THE MAINTENANCE OR USE OF A VEHICLE BY ANOTHER EMPLOYEE IN THE EMPLOYER'S BUSINESS. You and your spouse are covered for such injury to a fellow employee.

- ANY EMPLOYEE OF AN INSURED ARISING OUT OF HIS OR HER EMPLOYMENT. This does not apply to a household employee who is not covered or required to be covered under any workers' compensation insurance.

3. FOR:

- THE UNITED STATES OF AMERICA OR ANY OF ITS AGENCIES;

- ANY PERSON WHO IS AN EMPLOYEE OF THE UNITED STATES OF AMERICA OR ANY OF ITS AGENCIES, IF THE PROVISIONS OF THE FEDERAL TORT CLAIMS ACT APPLY.

- FOR ANY DAMAGES TO PROPERTY OWNED BY, RENTED TO, IN THE CHARGE OF OR TRANSPORTED BY AN INSURED. But coverage applies to a rented:

- residence; or
- private garage damaged by a car we insure.

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5. FOR ANY OBLIGATION OF AN INSURED, OR HIS OR HER INSURER, UNDER ANY TYPE OF WORKERS' COMPENSATION OR DISABILITY OR SIMILAR LAW.

6. FOR LIABILITY ASSUMED BY THE INSURED UNDER ANY CONTRACT OR AGREEMENT.

If There Is Other Liability Coverage

- Policies Issued by Us to You, Your Spouse or Any Relative

If two or more vehicle liability policies issued by us to you, your spouse, or any relative apply to the same accident, the total limits of liability under all such policies shall not exceed that of the policy with the highest limit of liability.

2. Other Liability Coverage Available From Other Sources

Subject to item 1, if other vehicle liability coverage applies, we are liable only for our share of the damages. Our share is the percentage that the limit of liability of this policy bears to the total of all vehicle liability coverage applicable to the accident.

3. Temporary Substitute Car, Non-Owned Car, Trailer

Subject to items 1 and 2, if a temporary substitute car, a non-owned car or a trailer designed for use with a private passenger car or utility vehicle:

- has other vehicle liability coverage on it; or
- is self-insured under any motor vehicle financial responsibility law, a motor carrier law or any similar law,

then this coverage is excess over such insurance or self-insurance.

4. Newly Acquired Car

THIS COVERAGE DOES NOT APPLY IF THERE IS OTHER VEHICLE LIABILITY COVERAGE ON A NEWLY ACQUIRED CAR.

Motor Vehicle Compulsory Insurance Law or Financial Responsibility Law

1. Out-of-State Coverage

If an insured under the liability coverage is in another state of Canada and, as a nonresident, becomes subject to its motor vehicle compulsory insurance, financial responsibility or similar law:

- the policy will be interpreted to give the coverage required by the law; and
- the coverage so given replaces any coverage in this policy to the extent required by the law for the insured's operation, maintenance or use of a car insured under this policy.

Any coverage so extended shall be reduced to the extent other coverage applies to the accident. In no event shall a person collect more than once.

2. Financial Responsibility Law

When certified under any law as proof of future financial responsibility, and while required during the policy period, this policy shall comply with such law to the extent required. The insured agrees to repay us for any payment we would not have had to make under the terms of this policy except for this agreement.

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SECTION II — PERSONAL INJURY PROTECTION — COVERAGE P AND MEDICAL PAYMENTS — COVERAGE C

PERSONAL INJURY PROTECTION — COVERAGE P

You have this coverage if "P" with a number beside it appears in the "Coverages" space on the declarations page. "P" with a number beside it is your coverage symbol.

Check your coverage symbol with the Schedule in the Limits of Liability for the choice of coverage you made.

What We Pay

We will pay for *bodily injury* to an *insured*, caused by accident, resulting from the maintenance or use of a *motor vehicle* as a vehicle:

1. Medical Expenses. These are reasonable expenses incurred, for services furnished within three years of the date of the accident, for necessary medical, surgical, X-ray, dental, ambulance, hospital, professional nursing services, eyeglasses, hearing aids and prosthetic devices.

REASONABLE MEDICAL EXPENSES DO NOT INCLUDE EXPENSES:

- a. FOR TREATMENT, SERVICES, PRODUCTS OR PROCEDURES THAT ARE:

- (1) EXPERIMENTAL IN NATURE, FOR RESEARCH, OR NOT PRIMARILY DESIGNED TO SERVE A MEDICAL PURPOSE; OR
- (2) NOT COMMONLY AND CUSTOMARILY RECOGNIZED THROUGHOUT THE MEDICAL PROFESSION AND WITHIN THE

UNITED STATES AS APPROPRIATE FOR THE TREATMENT OF THE BODILY INJURY; OR

- b. INCURRED FOR:

- (1) THE USE OF THERMOGRAPHY OR OTHER RELATED PROCEDURES OF A SIMILAR NATURE; OR

- (2) THE PURCHASE OR RENTAL OF EQUIPMENT NOT PRIMARILY DESIGNED TO SERVE A MEDICAL PURPOSE.

Expenses are reasonable only if they are consistent with the usual fees charged by the majority of similar medical providers in the geographical area in which the expenses were incurred for the specific medical service.

Services are necessary only if the services are rendered by a medical provider within the legally authorized scope of the provider's practice and are essential in achieving maximum medical improvement for the *bodily injury* sustained in the accident.

We have the right to make or obtain a utilization review of the medical expenses and services to determine if they are reasonable and necessary for the *bodily injury* sustained.

The *bodily injury* must be discovered and treated within one year of the date of the accident.

2. Funeral Expenses. These are funeral, burial or cremation expenses. Subject to the Aggregate Limit shown for your coverage symbol in the Schedule in Limits of Liability, the most we pay for Funeral Expenses is \$3,000 per person.

If your coverage symbol is P1, P2, P3, P4, P5, P6 or P7, we will also pay for the following for *bodily injury* to an *insured*, caused by accident, resulting from the maintenance or use of a *motor vehicle* as a vehicle:

1. Loss of Income. This is 85% of an *insured's* actual loss of earnings from work due to *bodily injury* to the *insured*. This applies only if the *insured* was receiving earnings from work at the time of the accident. The loss must be incurred within three years of the date of the accident and while the *insured* is living.
2. Essential Services Expenses. These are reasonable expenses incurred for needed services the *insured* would have done for his or her family. This benefit applies only if the *insured* was not receiving earnings from work at the time of the accident. The expense must be incurred within three years of the date of the accident and while the *insured* is living.

Definitions

Insured — means:

1. you, your spouse and any relative:

- a. while occupying a *motor vehicle* other than a motorcycle; or
- b. when struck as a *pedestrian* by a *motor vehicle*; or

2. any other person while occupying your car, a non-owned car, a newly acquired car or a temporary substitute car, if Coverage P is carried on your car.

The vehicle must be used by or with the permission of you or your spouse.

Motor Vehicle — means a vehicle or trailer of a kind required to be registered under South Carolina law.

Pedestrian — means a person not occupying a land motor vehicle.

Deciding Amount

The amount due under this coverage shall be decided by agreement between the *insured* and us. If there is no agreement, the amount due shall be decided by arbitration upon written request of the *insured* or us. Each party shall select a competent and impartial arbitrator. These two shall select a third one. If unable to agree on the third one, within 30 days, either party may request a judge of a court of record in the county in which the arbitration is pending to select a third one. The written decision of any two arbitrators shall be binding on us, the *insured*, or assignee of the *insured* and any person or organization with whom the *insured* expressly or impliedly contracts for the rendition of medical, essential or funeral services. The arbitrators shall not award punitive damages or other noncompensatory damages.

The cost of the arbitrator and any expert witness shall be paid by the party who hired them. The cost of the third arbitrator and other expenses of arbitration shall be shared equally by both parties.

The arbitration shall take place in the county in which the *insured* resides unless the parties agree to another place. State court rules governing procedure and admission of evidence shall be used.

If There Is Other Coverage

1. No Duplication of Benefits

No *insured* shall recover more than once for the same expense or loss under this or similar vehicle insurance or self-insurance.

2. If an *insured* sustains *bodily injury* while occupying your car, and your car is described on the declarations page of another policy providing personal injury protection coverage:

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- d. WHILE ATTEMPTING TO ELUDE A POLICE OFFICER; OR
- e. OCCUPYING, USING OR MAINTAINING A MOTORCYCLE.
2. THERE IS NO COVERAGE:
- a. WHILE A NON-OWNED CAR IS USED:
- (1) BY ANY PERSON EMPLOYED OR ENGAGED IN ANY WAY IN A CAR BUSINESS; OR
- (2) IN ANY OTHER BUSINESS OR JOB. This does not apply when the first person named in the declarations, his or her spouse or any relative is operating or occupying a private passenger car.
- b. WHILE OCCUPYING OR THROUGH BEING STRUCK BY ANY MOTOR VEHICLE OR TRAILER:
- (1) DESIGNED MAINLY FOR USE OFF PUBLIC ROADS WHILE OFF PUBLIC ROADS; OR
- (2) LOCATED FOR USE AS A RESIDENCE OR PREMISES; OR
- (3) THAT RUNS ON RAILS OR CRAWLER-TREADS.
- c. FOR BODILY INJURY DUE TO WAR OF ANY KIND.
- d. FOR BODILY INJURY:
- (1) SUSTAINED WHILE OCCUPYING OR THROUGH BEING STRUCK BY A VEHICLE OWNED BY OR LEASED TO YOU, YOUR SPOUSE OR ANY RELATIVE, WHICH IS NOT INSURED FOR THIS COVERAGE UNDER THIS POLICY; OR
- (2) SUSTAINED BY ANY PERSON, other than the first person named in the declarations, his or her spouse or

- a. as a pedestrian; or
- b. while occupying a motor vehicle which is not your car or a newly acquired car; and:
- (1) such vehicle is not described on the declarations page of another policy providing personal injury protection coverage; and
- (2) its driver is:
- (i) you or your spouse; or
- (ii) any other person who does not have personal injury protection coverage that covers the occupants of such vehicle.
- then:
- a. the total limits of liability under all policies issued by us shall not exceed that of the policy with the highest limit of liability; and
- b. we will pay our share. Our share is that percent of the expense or loss that the applicable limit of liability of this policy bears to the total applicable limit of liability.
5. Coverage under this policy applies as excess over any benefits recovered under any workers' compensation law.
6. THIS COVERAGE DOES NOT APPLY IF THERE IS OTHER PERSONAL INJURY PROTECTION COVERAGE ON A NEWLY ACQUIRED CAR.
- What Is Not Covered Under Coverage P
1. THERE IS NO COVERAGE FOR BODILY INJURY TO ANY PERSON:
- a. WHO INTENTIONALLY CAUSES AN ACCIDENT;
- b. VOLUNTARILY OCCUPYING A MOTOR VEHICLE KNOWN BY THAT PERSON TO BE STOLEN;
- c. WHILE COMMITTING A FELONY:
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MEDICAL PAYMENTS - COVERAGE C You have this coverage if "C" appears in the "Coverages" space on the declarations page.

MEDICAL EXPENSES

We will pay reasonable medical expenses incurred, for *bodily injury* caused by accident, for services furnished within three years of the date of the accident. These expenses are for necessary medical, surgical, X-ray, dental, ambulance, hospital, professional nursing and funeral services, eyeglasses, hearing aids and prosthetic devices.

REASONABLE MEDICAL EXPENSES DO NOT INCLUDE EXPENSES:

1. FOR TREATMENT, SERVICES, PRODUCTS OR PROCEDURES THAT ARE:

- a. EXPERIMENTAL IN NATURE, FOR RESEARCH, OR NOT PRIMARILY DESIGNED TO SERVE A MEDICAL PURPOSE; OR
- b. NOT COMMONLY AND CUSTOMARILY RECOGNIZED THROUGHOUT THE MEDICAL PROFESSION AND WITHIN THE UNITED STATES AS APPROPRIATE FOR THE TREATMENT OF THE *BODILY INJURY*; OR

2. INCURRED FOR:

- a. THE USE OF THERMOGRAPHY OR OTHER RELATED PROCEDURES OF A SIMILAR NATURE; OR
- b. THE PURCHASE OR RENTAL OF EQUIPMENT NOT PRIMARILY DESIGNED TO SERVE A MEDICAL PURPOSE.

Expenses are reasonable only if they are consistent with the usual fees charged by the majority of similar medical providers in the geographical area in which the expenses were incurred for the specific medical service.

Services are necessary only if the services are rendered by a medical provider within the legally authorized scope of the provider's practice and are essential in achieving maximum medical improvement for the *bodily injury* sustained in the accident.

We have the right to make or obtain a utilization review of the medical expenses and services to determine if they are reasonable and necessary for the *bodily injury* sustained.

The *bodily injury* must be discovered and treated within one year of the date of the accident.

Persons for Whom Medical Expenses Are Payable

We will pay medical expenses for *bodily injury* sustained by:

1. a. the first person named in the declarations;
- b. his or her spouse; and
- c. their relatives.

These persons have to sustain the *bodily injury*:

- a. while they operate or occupy a vehicle covered under the liability section; or
- b. through being struck as a *pedestrian* by a motor vehicle or trailer.

A *pedestrian* means a person not an occupant of a motor vehicle or trailer.

2. any other person while occupying:

- a. a vehicle covered under the liability coverage, except a *non-owned car*. Such vehicle has to be used by a person who is insured under the liability coverage; or
- b. a *non-owned car*. The *bodily injury* has to result from such car's operation or occupancy by the first person named in the declarations, his or her spouse or their relatives.

Deciding Amount

The amount due under this coverage shall be decided by agreement between the person making claim and us. If there is no agreement, the amount due shall be decided by arbitration upon written request of the person making claim or us. Each party shall select a competent and impartial arbitrator. These two shall select a third one. If unable to agree on the third one within 30 days, either party may request a judge of a court of record in the county in which the arbitration is pending to select a third one. The written decision of any two arbitrators shall be binding on us, the person making claim, any assignee of the person making claim, and any person or organization with whom the person making claim expressly or impliedly contracts for the rendition of medical services. The arbitrators shall not award punitive damages or other noncompensatory damages.

The cost of the arbitrator and any expert witness shall be paid by the party who hired them. The cost of the third arbitrator and other expenses of arbitration shall be shared equally by both parties.

The arbitration shall take place in the county in which the person making claim resides unless the parties agree to another place. State court rules governing procedure and admission of evidence shall be used.

Payment of Medical Expenses

We may pay the injured person or any person or organization performing the services.

Limit of Liability

Medical Expenses: The amount of coverage for medical expenses, including funeral services, is shown on the declarations page under "Limit of Liability - Coverage C - Each Person". If the amount shown is \$3,000 or more, the most we pay for funeral services is \$3,000 per person.

A motor vehicle and attached trailer are one vehicle as respects limits.

If There Are Other Medical Payments Coverages

1. Non-Duplication

No person for whom medical expenses are payable under this coverage shall recover more than once for the same medical expense under this or similar vehicle insurance.

2. Policies Issued by Us to You, Your Spouse or Relatives

If two or more policies issued by us to you, your spouse or your relatives provide vehicle medical payments coverage and apply to the same *bodily injury* sustained:

- a. while occupying a *non-owned car*, a *temporary substitute car*; or
- b. as a *pedestrian*

the total limits of liability under all such policies shall not exceed that of the policy with the highest limit of liability.

3. Subject to items 1 and 2 above, if other vehicle medical payments, personal injury protection or similar coverage applies to *bodily injury*, this coverage is excess.

4. THIS COVERAGE DOES NOT APPLY IF THERE IS OTHER VEHICLE MEDICAL PAYMENTS COVERAGE ON A NEWLY-ACQUIRED CAR.

What Is Not Covered Under Coverage C

THERE IS NO COVERAGE:

1. WHILE A *NON-OWNED CAR* IS USED:

- a. BY ANY PERSON EMPLOYED OR ENGAGED IN ANY WAY IN A CAR BUSINESS; OR
- b. IN ANY OTHER BUSINESS OR JOB. This does not apply when the first person named in the declarations, his or her spouse or any relative is operating or occupying a *private passenger car*.

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2. WHILE OCCUPYING OR THROUGH BEING STRUCK BY ANY MOTOR VEHICLE OR TRAILER:

- a. DESIGNED MAINLY FOR USE OFF PUBLIC ROADS WHILE OFF PUBLIC ROADS; OR
 - b. LOCATED FOR USE AS A RESIDENCE OR PREMISES; OR
 - c. THAT RUNS ON RAILS OR CRAWLER-TREADS.
3. FOR BODILY INJURY DUE TO WAR OF ANY KIND.
4. FOR MEDICAL EXPENSES FOR BODILY INJURY:
- a. SUSTAINED WHILE OCCUPYING OR THROUGH BEING STRUCK BY A VEHICLE OWNED

BY OR LEASED TO YOU, YOUR SPOUSE, OR ANY RELATIVE WHICH IS NOT INSURED UNDER THIS COVERAGE; OR

- b. TO THE EXTENT WORKERS' COMPENSATION BENEFITS ARE REQUIRED TO BE PAYABLE; OR
 - c. SUSTAINED BY ANY PERSON other than the first person named in the declarations, his or her spouse or their relatives, WHILE OCCUPYING A VEHICLE:
- (1) RENTED OR LEASED TO OTHERS; OR
 - (2) USED TO CARRY PERSONS FOR A CHARGE. This does not apply to a private passenger car used on a share expense basis.

SECTION III — UNINSURED MOTOR VEHICLE — COVERAGE U AND UNDERINSURED MOTOR VEHICLE — COVERAGE W

UNINSURED MOTOR VEHICLE — COVERAGE U

You have this coverage if "U" appears in the "Coverages" space on the declarations page.

We will pay damages for bodily injury or property damage an insured is legally entitled to collect from the owner or driver of an uninsured motor vehicle. The bodily injury or property damage must be caused by accident arising out of the operation or ownership of the uninsured

motor vehicle. The bodily injury must be sustained by an insured.

Uninsured Motor Vehicle — means:

- 1. a motor vehicle, the ownership, maintenance or use of which is:

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b. insured or bonded for bodily injury and property damage liability at the time of the accident, but:

- (1) the limits of liability are less than required by the Financial Responsibility Act;
 - (2) the insuring company denies coverage or is, or becomes, insolvent; or
 - (3) a cause of action for the bodily injury or property damage is barred by the South Carolina Tort Claims Act; or
- 2. a "hit-and-run" motor vehicle whose owner or operator remains unknown, but only if:

a. the bodily injury or property damage was caused by physical contact with the unknown vehicle, or the accident was witnessed by someone other than the owner or operator of the insured vehicle. The witness must sign an affidavit attesting to the truth of the facts of the accident contained in the affidavit; and

b. the insured was not negligent in failing to determine the identity of the other vehicle and the driver of the other vehicle at the time of the accident.

An uninsured motor vehicle does not include any motor vehicle owned by:

- 1. the insured who sustains bodily injury or property damage;
- 2. a self-insurer in accordance with the applicable provisions of law; or
- 3. the State or any of its political subdivisions when the vehicle is operated by a person with proper authorization.

UNDERINSURED MOTOR VEHICLE — COVERAGE W

You have this coverage if "W" appears in the "Coverages" space on the declarations page. We will pay damages for bodily injury or property damage an insured:

- 1. is legally entitled to collect from the owner or driver of an underinsured motor vehicle; or
 - 2. would have been legally entitled to collect except for the existence of any damages cap or limitation imposed by statute.
- The bodily injury or property damage must be caused by accident arising out of the operation or ownership of the underinsured motor vehicle. The bodily injury must be sustained by an insured.

THERE IS NO COVERAGE UNTIL THE LIMITS OF LIABILITY OF ALL APPLICABLE BODILY INJURY LIABILITY AND PROPERTY DAMAGE LIABILITY INSURANCE POLICIES OR BONDS THAT APPLY TO THE BODILY INJURY OR PROPERTY DAMAGE HAVE BEEN USED UP BY PAYMENT OF JUDGMENTS OR SETTLEMENTS, OR PAYMENT HAS BEEN MADE UNDER SUCH POLICIES OR BONDS UP TO ANY DAMAGES CAP OR LIMITATION IMPOSED BY STATUTE.

Underinsured Motor Vehicle — means a motor vehicle, as to which there is bodily injury liability insurance or a bond applicable at the time of the accident in an amount of at least that specified in the Financial Responsibility Act and:

- 1. the amount of the insurance or bond is less than the amount of the insured's damages; or
- 2. the insured's damages exceed any damages cap or limitation imposed by statute.

An underinsured motor vehicle does not include any motor vehicle while located for use on premises.

Our Right to Defend

If the *insured* files suit against the owner or driver of the *underinsured motor vehicle*, we have the right to defend on the issues of the legal liability of and the damages owed by such owner or driver.

Definitions

Financial Responsibility Act - means the Motor Vehicle Financial Responsibility Act of South Carolina.

Motor Vehicle - means a self-propelled vehicle or trailer designed for use on public roads.

A *motor vehicle* does not include:

1. traction engines;
2. road rollers;
3. farm tractors;
4. tractor cranes;
5. power shovels;
6. well drillers; or
7. electric trolleys.

Property Damage - means damage to property of the *insured*.

Who Is an Insured

Insured - means:

1. you, your spouse and relatives;
2. any other person while occupying or using your car, a newly acquired car or a trailer attached to either, if such vehicle is;

a. insured under the liability coverage;

and

- b. being used with your consent; and
3. any person to the extent he or she may recover damages under a state wrongful death statute because of the death of an *insured* under 1. or 2. above.

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Payment of Any Amount Due

We will pay any amount due to the *insured* or the *insured's* representative.

Limits of Liability

Coverage U

1. Bodily Injury

The amount of coverage is shown on the declarations page under "Limits of Liability - U - Each Person, Each Accident". Under "Each Person" is the amount of coverage for all damages due to *bodily injury* to one person. "Bodily injury to one person" includes all injury and damages to others resulting from this *bodily injury*. Under "Each Accident" is the total amount of coverage, subject to the amount shown under "Each Person", for all damages due to *bodily injury* to two or more persons in the same accident.

2. Property Damage

The amount of coverage is shown on the declarations page under "Limits of Liability - U - Property Damage, Each Accident". This is the amount of coverage for all *property damage* as the result of one accident.

3. The most we pay will be the lesser of:

- a. the difference between:
 - (1) the amount of the *insured's* damages; and
 - (2) the amount paid to the *insured* by or for any person or organization who is or may be held legally liable for the *bodily injury* or *property damage*; or
- b. the limit of liability of this coverage.

Coverage W

1. Bodily Injury

The amount of coverage is shown on the declarations page under "Limits of Liability - W - Each Person, Each Accident". Under "Each Person" is the amount of coverage for all damages due to *bodily injury* to one person. "Bodily injury to one person" includes

all injury and damages to others resulting from this *bodily injury*. Under "Each Accident" is the total amount of coverage, subject to the amount shown under "Each Person", for all damages due to *bodily injury* to two or more persons in the same accident.

2. Property Damage

The amount of coverage is shown on the declarations page under "Limits of Liability - W - Property Damage, Each Accident". This is the amount of coverage for all *property damage* as the result of the accident.

3. Any amount payable under this coverage shall be reduced by any amount paid or payable under any:

- a. workers' compensation;
- b. disability benefits;
- c. or similar law.

This does not reduce the limits of liability of this coverage.

4. The most we pay will be the lesser of:

- a. the difference between:
 - (1) the amount of the *insured's* damages; and
 - (2) the amount paid to the *insured* by or for any person or organization who is or may be held legally liable for the *bodily injury* or *property damage*; or
- b. the limit of liability of this coverage.

Coverages U and W

1. The limits of liability are not increased because more than one vehicle or person is insured under this policy.
2. Any amount paid under these coverages shall reduce any amount paid or payable to or for the *insured* under the liability coverage of this policy.

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When Coverages U and W Do Not Apply THERE IS NO COVERAGE:

1. UNDER COVERAGE U FOR ANY *INSURED* WHO, WITHOUT OUR WRITTEN CONSENT:

a. SETTLES WITH ANY PERSON OR ORGANIZATION WHO MAY BE LIABLE FOR THE *BODILY INJURY* OR *PROPERTY DAMAGE*; AND

b. THEREBY IMPAIRS OUR RIGHT TO RECOVER OUR PAYMENTS.

2. TO THE EXTENT IT BENEFITS:

a. ANY WORKERS' COMPENSATION OR DISABILITY BENEFITS INSURANCE COMPANY;

b. A SELF-INSURER UNDER ANY WORKERS' COMPENSATION, OR DISABILITY BENEFITS OR SIMILAR LAW.

3. FOR *PROPERTY DAMAGE* FOR WHICH THE *INSURED* HAS BEEN PAID.

4. FOR *BODILY INJURY* OR *PROPERTY DAMAGE* TO THE EXTENT THE LIMITS OF LIABILITY OF COVERAGES U AND W UNDER THIS POLICY EXCEED THE LIMITS REQUIRED BY THE FINANCIAL RESPONSIBILITY ACT WHILE:

- a. YOU,
- b. YOUR SPOUSE, OR
- c. ANY RELATIVE

IS OCCUPYING A MOTOR VEHICLE OWNED BY OR LEASED TO:

- a. YOU,
 - b. YOUR SPOUSE, OR
 - c. ANY RELATIVE
- IF IT IS NOT YOUR CAR OR A NEWLY ACQUIRED CAR.

5. FOR BODILY INJURY OR PROPERTY DAMAGE:

a. WHILE AN INSURED, OTHER THAN:

- (1) YOU;
- (2) YOUR SPOUSE; OR
- (3) ANY RELATIVE,

IS OCCUPYING A MOTOR VEHICLE OTHER THAN YOUR CAR, A NEWLY ACQUIRED CAR OR A TRAILER ATTACHED TO EITHER.

b. IF AN INSURED IS STRUCK AS A PEDESTRIAN BY A MOTOR VEHICLE OWNED BY OR LEASED TO:

- (1) YOU;
- (2) YOUR SPOUSE; OR
- (3) ANY RELATIVE.

6. UNDER COVERAGE U, FOR THE FIRST \$100 OF PROPERTY DAMAGE SUSTAINED BY EACH INSURED IN EACH ACCIDENT.

If There Is Other Uninsured Motor Vehicle Coverage

1. If:

- a. you, your spouse or a relative sustains bodily injury or property damage as a pedestrian; and
- b. coverage from more than one of our policies issued to you, your spouse or a relative applies to the accident.

(1) the one policy with the highest limit shall apply in that limit; and

(2) each of the other policies we issued shall apply only in an amount equal to the minimum limits required by the Financial Responsibility Act for bodily injury and property damage liability.

Subject to the above, if policies issued by other insurers apply, we are liable only for our share. Our share is that percent of the damages that the amount of the limit of liability that applies from this policy bears to the total of all such uninsured motor vehicle coverage that applies to the accident.

2. If:

a. the insured sustains bodily injury or property damage while occupying your car; and

b. your car is described on the declarations page of another policy providing uninsured motor vehicle coverage:

(1) the total limits of liability under all such coverages shall not exceed that of the coverage with the highest limits of liability; and

(2) we are liable only for our share. Our share is that percent of the damages that the limits of liability of this coverage bear to the total of all such uninsured motor vehicle coverage that applies.

3. If you, your spouse or a relative sustains bodily injury or property damage while occupying a motor vehicle owned by or leased to you, your spouse or relative which is not your car or a newly acquired car, this policy shall:

- a. be excess; and
- b. apply only in an amount equal to the minimum limits required by the Financial Responsibility Act for bodily injury and property damage liability.

Subject to the above, if other policies apply as excess, we are liable only for our share. Our share is that percent of the damages in excess of the limits of the primary coverage that the minimum amount required by the Financial Responsibility Act for bodily injury and property damage liability bear to the total of all uninsured motor vehicle coverage that applies to the accident.

4. If you, your spouse or a relative sustains bodily injury or property damage while occupying a vehicle not owned by or leased to you, your spouse or any relative, this coverage applies as excess to any uninsured motor vehicle coverage which applies to the vehicle as primary coverage.

If coverage from more than one of our policies issued to you, your spouse or a relative applies to the accident:

a. the one policy with the highest limit shall apply in that limit; and

b. each of the other policies we issued shall apply only in an amount equal to the minimum limits required by the Financial Responsibility Act for bodily injury and property damage liability.

Subject to the above, if policies issued by other insurers apply, we are liable only for our share. Our share is that percent of the damages that the amount of the limit of liability that applies from this policy bears to the total of all uninsured motor vehicle coverage that applies as excess to the accident.

If There Is Other Uninsured Motor Vehicle Coverage

1. If:

- a. you, your spouse or a relative sustains bodily injury or property damage as a pedestrian; and
- b. coverage from more than one of our policies issued to you, your spouse, or a relative applies to the accident.

(1) the one policy with the highest limit shall apply in that limit; and

(2) each of the other policies we issued shall apply only in an amount equal to the minimum limits required by the Financial Responsibility Act for bodily injury and property damage liability.

Subject to the above, if policies issued by other insurers apply, we are liable only for

our share. Our share is that percent of the damages that the amount of the limit of liability that applies from this policy bears to the total of all uninsured motor vehicle coverage that applies to the accident.

2. If:

a. the insured sustains bodily injury or property damage while occupying your car; and

b. your car is described on the declarations page of another policy providing uninsured motor vehicle coverage:

(1) the total limits of liability under all such coverages shall not exceed that of the coverage with the highest limits of liability; and

(2) we are liable only for our share. Our share is that percent of the damages that the limits of liability of this coverage bear to the total of all such uninsured motor vehicle coverage that applies.

3. If you, your spouse or a relative sustains bodily injury or property damage while occupying a motor vehicle owned by or leased to you, your spouse or relative which is not your car or a newly acquired car, this policy shall:

- a. be excess; and
- b. apply only in an amount equal to the minimum limits required by the Financial Responsibility Act for bodily injury and property damage liability.

Subject to the above, if other policies apply as excess, we are liable only for our share. Our share is that percent of the damages in excess of the limits of the primary coverage that the minimum amount required by the Financial Responsibility Act for bodily injury and property damage liability bears to the total of all uninsured motor vehicle coverage that applies as excess to the accident.

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4. If you, your spouse or a relative sustains *badly injury or property damage* while occupying a vehicle not owned by or leased to you, your spouse or any relative, this coverage applies as excess to any underinsured motor vehicle coverage which applies to the vehicle as primary coverage.

If coverage from more than one of our policies issued to you, your spouse or a relative applies to the accident:

- the one policy with the highest limit shall apply in that limit; and

b. each of the other policies we issued shall apply only in an amount equal to the minimum limits required by the *Financial Responsibility Act* for bodily injury and property damage liability.

Subject to the above, if policies issued by other insurers apply, we are liable only for our share. Our share is that percent of the damages that the amount of the limit of liability that applies from this policy bears to the total of all underinsured motor vehicle coverage that applies to the accident.

SECTION IV — PHYSICAL DAMAGE COVERAGES

Loss — means, when used in this section, each direct and accidental loss of or damage to:

- your car;
- its equipment which is common to the use of your car as a vehicle;
- clothes and luggage insured; and
- a detachable living quarters attached or removed from your car for storage. Detachable living quarters includes its body and items securely fixed in place (such as permanent part of the body). Your must have told us about the living quarters

before the loss and paid any extra premium needed.

COMPREHENSIVE — COVERAGE D. You have this coverage if "D" appears in the "Coverages" space on the declarations page. If a deductible applies the amount is shown by the number beside "D".

1. **Loss to Your Car.** We will pay for loss to your car EXCEPT LOSS BY COLLISION but only for the amount of each such loss in excess of the deductible amount, if any. The deductible amount does not apply to loss to safety glass.

Breakage of glass, or loss caused by missiles, falling objects, fire, theft, larceny, explosion, earthquake, windstorm, hail, water, flood, malicious mischief or vandalism, riot or civil commotion, is payable under this coverage. Loss due to hitting or being hit by a bird or an animal is payable under this coverage.

We will pay up to \$200 for loss to clothes and luggage in excess of any deductible amount shown for comprehensive or collision. \$200 is the most we will pay in any one occurrence even though more than one person has a loss. This coverage is excess over any other coverage.

Limit of Liability — Comprehensive and Collision Coverages

The limit of our liability for loss to property or any part of it is the lower of:

- the actual cash value; or
- the cost of repair or replacement.

Actual cash value is determined by the market value, age and condition at the time the loss occurred. Any deductible amount that applies is then subtracted.

The cost of repair or replacement is based upon one of the following:

- the cost of repair or replacement agreed upon by you and us;
- a competitive bid approved by us; or
- an estimate written based upon the prevailing competitive price. The prevailing competitive price means prices charged by a majority of the repair market in the area where the car is to be repaired as determined by a survey made by us. If your ask, we will identify some facilities that will perform the repairs at the prevailing competitive price. We will include in the estimate parts sufficient to restore the vehicle to its pre-loss condition. You agree with us that such parts may include either parts furnished by the vehicle's manufacturer or parts from other sources including non-original equipment manufacturers.

Any deductible amount that applies is then subtracted.

COLLISION — COVERAGE G. You have this coverage if "G" appears in the "Coverages" space on the declarations page. The deductible amount is shown by the number beside "G".

We will pay for loss to your car caused by collision but only for the amount of each such loss in excess of the deductible amount. The deductible amount does not apply to loss to safety glass. If the collision is with another motor vehicle insured with us, you do not pay your deductible if it is \$100 or less as we pay it.

Collision — means your car upset or hit or was hit by a vehicle or other object.

Clothes and Luggage — Comprehensive and Collision Coverages

We will pay for loss to clothes and luggage owned by the first person named in the declarations, his or her spouse, and their relatives. These items have to be in or on your car. Your car has to be covered under this policy for:

- Comprehensive, and the loss caused by fire, lightning, flood, falling objects, explosion, earthquake, or theft. If the loss is due to theft, YOUR ENTIRE CAR MUST HAVE BEEN STOLEN; or
- Collision, and the loss caused by collision.

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Settlement of Loss - Comprehensive and Collision Coverages

We have the right to settle a loss with you or the owner of the property in one of the following ways:

1. pay the agreed upon actual cash value of the property at the time of the loss in exchange for the damaged property. If the owner keeps the damaged property, we will deduct its value after the loss from our payment. The damaged property cannot be abandoned to us;
2. pay to:
 - a. repair the damaged property or part, or
 - b. replace the property or part.If the repair or replacement results in betterment, you must pay for the amount of betterment; or
3. return the stolen property and pay for any damage due to the theft.

If we can pay the loss under either comprehensive or collision, we will pay under the coverage where you collect the most.

When there is loss to your car, clothes and luggage in the same occurrence, any deductible will be applied first to the loss to your car. You pay only one deductible.

If the owner of the property and we cannot agree on the amount due, it shall be decided by appraisal of the loss upon written request by either party. Each party shall select a competent appraiser. These two shall select a third appraiser. The written decision of any two appraisers shall be binding on each party. The cost of appraisal shall be paid by the party who hired him or her. The cost of the third appraiser and other appraisal expenses shall be shared equally by both parties. We do not waive any of our rights by any act relating to appraisal. The terms of the provision titled Limit of Liability - Comprehensive and Collision Coverages are not

subject to appraisal. If you give us your consent, we may move the damaged property, at our expense, to reduce storage costs during the appraisal process. If you do not give us your consent, we will pay only the storage costs which would have resulted if we had moved the damaged property.

The Settlement of Loss provision for comprehensive and collision coverages incorporates the Limit of Liability provision of those coverages. EMERGENCY ROAD SERVICE - COVERAGE H. You have this coverage if "H" appears in the "Coverages" space on the declarations page.

We will pay the fair cost you incur for your car for:

1. mechanical labor up to one hour at the place of its breakdown;
2. towing to the nearest place where the necessary repairs can be made during regular business hours if it will not run;
3. towing it out if it is stuck on or immediately next to a public highway;
4. delivery of gas, oil, loaned battery, or tire. WE DO NOT PAY THE COST OF THE GAS, OIL, BATTERY OR TIRE;
5. locksmith services, up to one hour, to open your car if your key is lost, stolen or locked inside your car. We will only pay the cost of labor.

CAR RENTAL EXPENSE - COVERAGE R. You have this coverage if "R" appears in the "Coverages" space on the declarations page.

We will repay you up to \$10 per day when you rent a car from a car rental agency or garage due to a loss to your car which would be payable under coverage D or G, starting:

1. when it cannot run due to the loss; or
2. if it can run, when you leave it at the shop for agreed repairs;

and ending when:

1. it has been repaired or replaced, or
2. we offer to pay for the loss, or
3. you incur 30 days rent, whichever comes first.

Any car rent payable under Coverage R is REDUCED TO THE EXTENT IT IS PAYABLE UNDER COMPREHENSIVE.

CAR RENTAL AND TRAVEL EXPENSES - COVERAGE RI. You have this coverage if "RI" appears in the "Coverages" space on the declarations page.

1. Car Rental Expense. We will:

- a. pay you up to \$16 of the daily rental charge when you rent a car from a car rental agency or garage; or
 - b. pay you \$10 for each complete 24 hour period that your car is not drivable if you choose to not rent a car. You must report to us the period of time that your car was not drivable.
- We will pay only if your car is not drivable because of a loss which would be payable under coverage D or G.

This applies during a period starting:

- a. when your car cannot run due to the loss; or
- b. if your car can run, when you leave it at the shop for agreed repairs; and ending:

- a. when it has been repaired or replaced, or

- b. (1) when we offer to pay for the loss, if your car is replaceable, or

- (2) five days after we offer to pay for the loss, if your car was stolen and not recovered or we declared it a total loss, whichever comes first.

Any car rent payable under this coverage is REDUCED TO THE EXTENT IT IS PAYABLE UNDER COMPREHENSIVE.

2. Travel Expenses. If your car cannot run due to a loss which would be payable under coverage D or G more than 50 miles from home, we will repay you for expenses incurred by you, your spouse and any relative for:

- a. Commercial transportation fares to continue to your destination or home.
- b. Extra meals and lodging needed when the loss to your car causes a delay enroute. The expenses must be incurred between the time of the loss and your arrival at your destination or home or by the end of the fifth day, whichever occurs first.
- c. Meals, lodging and commercial transportation fares incurred by you or a person you choose to drive your car from the place of repair to your destination or home.

3. Rental Car - Repayment of Deductible Amount Expense. We will repay the expense of any deductible amount, you are required to pay the owner under comprehensive or collision coverage in effect on a substitute car rented from a car rental agency or garage.

Total Amount of Expenses Payable - Coverage RI

1. The most we will pay for the total of the "Car Rental Expense" and "Rental Car - Repayment of Deductible Amount Expense" incurred in any one occurrence is \$400.

2. The most we will pay for "Travel Expenses" incurred by all persons in any one occurrence is \$400.

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CAR RENTAL AND TRAVEL EXPENSES - COVERAGE R2. You have this coverage if "R2" appears in the "Coverages" space on the declarations page.

1. Car Rental Expense.

- a. We will:
- (1) pay 80% of the rental charge when you rent a car from a car rental agency or garage. "Rental charge" means the daily rental rate plus charges for mileage and related taxes; or
 - (2) pay you \$10 for each complete 24 hour period that your car is not drivable if you choose to not rent a car. You must report to us the period of time that your car was not drivable. We will pay only if your car is not drivable because of a loss which would be payable under coverage D or G.
- b. Payment will be made for a period that:
- (1) starts:
 - (a) when your car is not drivable due to the loss; or
 - (b) if your car is drivable, when you leave it at the shop for agreed repairs; and
 - (2) ends:
 - (a) when your car has been repaired or replaced; or
 - (b) when we offer to pay for the loss, if your car is repairable but you choose to delay repairs; or
 - (c) five days after we offer to pay for the loss if:
 - (i) your car was stolen and not recovered; or
 - (ii) we declare that your car is a total loss;
- whichever comes first.

Any car rent payable under this coverage is **REDUCED TO THE EXTENT IT IS PAYABLE UNDER COMPREHENSIVE.**

2. Travel Expenses. If your car is not drivable due to a loss which occurs more than 50 miles from home and which would be payable under coverage D or G, we will pay you for expenses incurred by you, your spouse and any relative for:

- a. commercial transportation fares to continue to your destination or home;
- b. extra meals and lodging needed when the loss to your car causes a delay enroute. The expenses must be incurred between the time of the loss and your arrival at your destination or home or by the end of the fifth day, whichever occurs first; and
- c. meals, lodging and commercial transportation fares incurred by you or a person you choose to drive your car from the place of repair to your destination or home.

3. Rental Car - Repayment of Deductible Amount Expense. We will pay the expense of any deductible amount you are required to pay the owner under comprehensive or collision coverage in effect on a substitute car rented from a car rental agency or garage.

Total Amount of Expenses Payable - Coverage R2

1. The most we will pay for "Car Rental Expense" incurred in any one occurrence is \$500.
2. The most we will pay for "Travel Expenses" incurred by all persons in any one occurrence is \$400.
3. The most we will pay for "Rental Car - Repayment of Deductible Amount Expense" incurred in any one occurrence is \$400.

Trailer Coverage.

1. Owned Trailer

Your trailer is covered:

- a. when it is described on the declarations page of the policy; and
- b. for the coverages shown as applying to it.

2. Non-Owned Trailer or Detachable Living Quarters

Any physical damage coverage in force on your car applies to a non-owned:

- a. trailer, if it is designed for use with a private passenger car; or
- b. detachable living quarters unit used by the first person named in the declarations, his or her spouse or their relatives.

The most we will pay under the comprehensive or collision coverage for a loss to such non-owned trailer or unit is \$500.

A non-owned trailer or detachable living quarters unit is one that:

- a. is not owned by or registered in the name of:
 - (1) you, your spouse, any relative;
 - (2) any other person residing in the same household as you, your spouse or any relative; or
 - (3) an employer of you, your spouse or any relative; and

- b. has not been used or rented by or in the possession of you, your spouse or any relative during any part of each of the last 21 or more consecutive days. If you are insured by one or more other car policies issued by us, the 21 day limit is increased by an additional 21 days for each such additional policy; and

- c. is not rented and used in connection with the employment or business of you, your spouse or any relative.

Coverage for the Use of Other Cars

The coverages in this section you have on your car extend to a loss to a newly acquired car, a temporary substitute car or a non-owned car. These coverages extend to a non-owned car while it is driven by or in the custody of an insured.

Insured - as used in this provision means:

1. the first person named in the declarations;
2. his or her spouse; or
3. their relatives.

When the Physical Damage Coverages Do Not Apply

THERE IS NO COVERAGE FOR:

1. A NON-OWNED CAR:
 - a. IF THE DECLARATIONS STATE THE "USE" OF YOUR CAR IS OTHER THAN PLEASURE AND BUSINESS;
 - b. WHILE BEING REPAIRED, SERVICED OR USED BY ANY PERSON WHILE THAT PERSON IS WORKING IN ANY CAR BUSINESS; OR
 - c. WHILE USED IN ANY OTHER BUSINESS OR OCCUPATION. This does not apply to a private passenger car driven or occupied by the first person named in the declarations, his or her spouse or their relatives.

2. ANY VEHICLE WHILE:
 - a. RENTED OR LEASED TO OTHERS; OR

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SECTION V — DEATH, DISMEMBERMENT AND LOSS OF SIGHT —
COVERAGES

7. YOUR CAR WHILE SUBJECT TO ANY LIEN, LEASE OR SALES AGREEMENT NOT SHOWN IN THE DECLARATIONS.

b. USED TO CARRY PERSONS FOR A CHARGE. This does not apply to the use on a share expense basis.

3. LOSS TO ANY VEHICLE DUE TO:

- TAKING BY ANY GOVERNMENTAL AUTHORITY.
- WAR OF ANY KIND;
- AND LIMITED TO WEAR AND TEAR, FREEZING, MECHANICAL OR ELECTRICAL BREAKDOWN OR FAILURE. This does not apply when the loss is the result of a theft covered by this policy. Nor does it apply to emergency road service; OR
- CONVERSION, EMBEZZLEMENT OR SEIZURE BY ANY PERSON WHO HAS THE VEHICLE DUE TO ANY LIEN, RENTAL, LEASE OR SALES AGREEMENT.

4. TIRES unless:

- stolen, or damaged by fire or vandalism; or
- other loss covered by this section happens at the same time.

5. TAPES OR DISCS FOR RECORDING OR REPRODUCING SOUND.

6. ANY LASER OR RADAR DETECTOR.

If There Is Other Coverage

1. Policies Issued by Us to You, Your Spouse, or Any Relative

If two or more vehicle policies issued by us to you, your spouse, or any relative apply to the same loss or occurrence, we will pay under the policy with the highest limit.

2. Coverage Available From Other Sources

Subject to item 1, if other coverage applies to the loss or expenses, we will pay only our share. Our share is the percent the limit of liability of this policy bears to the total of all coverage that applies.

3. Temporary Substitute Car, Non-Owned Car or Trailer

Subject to items 1 and 2, if a temporary substitute car, a non-owned car or trailer designed for use with a private passenger car has other coverage on it, then this coverage is excess.

No Benefit to Bailee

These coverages shall not benefit any carrier or other bailee for hire liable for loss.

SCHEDULE	
	If amount under S in the declarations is:
Death	\$5,000 - \$10,000
Loss of:	\$5,000 - \$10,000
hands; feet; sight of eyes;	
one hand & one foot; or	
one hand or one foot &	
sight of one eye	5,000 10,000
one hand or one foot; or	
sight of one eye	2,500 5,000
thumb & finger on one	
hand; or three fingers	1,500 3,000
any two fingers	1,000 2,000

Payment of Any Amount Due

We will pay any amount due:

- to the insured;
- to a parent or guardian if the insured is a minor or an incompetent person;
- to the surviving spouse; or
- at our option, to any person or organization authorized by law to receive such payment.

Any payment made is to its extent a complete discharge of our obligations. We are not responsible for the way the money is used.

Autopsy

We have the right to have an autopsy made where it is not forbidden by law.

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When Coverage S Does Not Apply

THIS COVERAGE DOES NOT APPLY TO:

1. AN INSURED WHILE ON THE JOB, OPERATING, OCCUPYING, LOADING OR UNLOADING:
 - a. AN EMERGENCY VEHICLE; OR
 - b. A VEHICLE USED IN THE INSURED'S BUSINESS OR JOB.
But 1.b. does not apply if the vehicle is:
 - (1) a private passenger car or school bus; or
 - (2) of the pickup or van type, with a Gross Vehicle Weight of 10,000 pounds or less, while not used for delivery.
2. AN INSURED WHILE:
 - a. ON THE JOB IN ANY CAR BUSINESS; OR
 - b. OCCUPYING ANY:
 - (1) VEHICLE WHILE BEING USED IN A RACE; OR

(2) MILITARY VEHICLE.

3. AN INSURED WHILE OCCUPYING OR THROUGH BEING STRUCK BY A MOTOR VEHICLE OR TRAILER:
 - a. THAT RUNS ON RAILS OR CRAWLER-TREADS;
 - b. DESIGNED FOR USE MAINLY OFF PUBLIC ROADS WHILE OFF PUBLIC ROADS; OR
 - c. LOCATED FOR USE AS PREMISES.
4. THE DEATH OF OR LOSS TO AN INSURED DUE TO:
 - a. DISEASE except pus forming infection due to bodily injury received in the accident; or
 - b. SUICIDE OR ATTEMPTED SUICIDE WHILE SANE OR INSANE; OR
 - c. WAR OF ANY KIND.

CONDITIONS

1. Policy Changes

- a. Policy Terms. The terms of this policy may be changed or waived only by:
 - (1) an endorsement issued by us; or
 - (2) the revision of this policy form to give broader coverage without an extra charge. If any coverage you carry is changed to give broader coverage, we will give you the broader coverage without the issuance of a new policy as of the date we make the change effective.
- b. Change of Interest. No change of interest in this policy is effective unless we consent in writing. However, if you die, we will protect as named insured except under death, dismemberment and loss of sight coverage:
 - (1) your surviving spouse;
 - (2) any person with proper custody of your car, a newly acquired car or a temporary substitute car until a legal representative is qualified; and then
 - (3) the legal representative while acting within the scope of his or her duties.

Policy notice requirements are met by mailing the notice to the deceased named insured's last known address.

- c. Consent of Beneficiary. Consent of the beneficiary under death, dismemberment and loss of sight coverage is not needed to cancel or change the policy.
- d. Joint and Individual Interests. When there are two or more named insureds, each acts for all to cancel or change the policy.

2. Suit Against Us

- There is no right of action against us:
- a. until all the terms of this policy have been met; and
 - b. under the liability coverage, until the amount of damages an insured is legally liable to pay has been finally determined by:
 - (1) judgment after actual trial, and appeal if any; or
 - (2) agreement between the insured, the claimant and us.
- Bankruptcy or insolvency of the insured or his or her estate shall not relieve us of our obligations.
- c. under personal injury protection; medical payments, any physical damage and death, dismemberment and loss of sight coverages, until 30 days after we get the insured's notice of accident or loss.
 - d. under the uninsured motor vehicle coverage, unless copies of the pleadings in the action establishing liability are served upon us in the manner provided by law.

3. Our Right to Recover Our Payments

- a. Underinsured motor vehicle and death, dismemberment and loss of sight coverages payments are not recoverable by us.
- b. Under personal injury protection and medical payments coverages:
 - (1) we are subrogated to the extent of our payment to the right of recovery the injured person has against any party liable for the bodily injury.

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APP 000294

(2) If the person to or for whom we have made payment has not recovered from any party liable for the bodily injury, he or she shall:

- (a) not hurt our rights to recover;
- (b) keep these rights in trust for us;
- (c) execute any legal papers we need; and
- (d) when we ask take action through our representative to recover our payments.

(3) If the person to or for whom we make payment recovers from any party liable for the bodily injury, that person shall hold in trust for us the proceeds of the recovery, and reimburse us to the extent of our payment.

c. To the extent allowed by law, under uninsured motor vehicle coverage:

(1) the right of recovery of the insured passes to us, to the extent of our payments;

(2) we shall pay our share of the reasonable costs of any recovery. Our share is the percent that our recovery bears to the total recovery. We reserve the right to select an attorney to handle the recovery.

(3) an insured making claim for property damage shall assign to us, to the extent of our payments, the right to any other compensation for it. We do not have to make any payment until the insured has done this.

d. Under all other coverages, the right of recovery of any party we pay passes to us. Such party shall:

- (1) not hurt our rights to recover; and
- (2) help us get our money back.

4. Cancellation

How You May Cancel. You may cancel your policy by notifying us in writing of the date to cancel, which must be later than the date you mail or deliver it to us. We may waive these requirements by confirming the date and time of cancellation to you in writing.

How and When We May Cancel. We may cancel your policy by written notice, mailed or delivered to your last known address. The notice shall give the date cancellation is effective.

If we cancel your policy effective during the first 90 days that the policy is in force, the cancellation notice will be mailed or delivered to you at least 15 days before the cancellation effective date.

If we cancel your policy effective after it has been in force for more than 90 days, any notice of cancellation will be mailed or delivered to you at least:

- a. 15 days before the cancellation effective date if the cancellation is because you did not pay the premium; or
- b. 30 days before the cancellation effective date if the cancellation is because of any other reason.

The mailing of the notice shall be sufficient proof of notice.

Unless we cancel your policy effective during the first 90 days that the policy is in force, we will not cancel your policy before the end of the current policy period unless:

- a. you fail to pay the premium when due; or
- b. you, your spouse, any relative or any other person who usually drives your car has had his or her driver's license suspended or revoked;

(1) during the policy period or,

(2) if the policy is a renewal, during its policy period or the 90 days immediately preceding the last anniversary of the effective date of the policy.

Return of Unearned Premium. If you cancel, premium may be earned on a short rate basis. If we cancel, premium will be earned on a pro-rata basis. Any unearned premium may be returned at the time we cancel, or within a reasonable time thereafter. Delay in the return of unearned premium does not affect the cancellation.

5. Renewal

Unless we mail or deliver to you a notice of cancellation or a notice of our intention not to renew the policy, we agree to renew the policy for the next policy period upon your payment of the renewal premium when due. It is agreed that the renewal premium will be based upon the rates in effect, the coverages carried, the applicable limits of liability, deductibles and other elements that affect the premium that apply at the time of renewal.

Other elements that may affect your premium include, but are not limited to:

- a. drivers of your car and their ages and marital status;
- b. your car and its use;
- c. eligibility for discounts or other premium credits;

d. applicability of a surcharge based either on accident history, or on other factors.

A notice of our intention to not renew will be mailed or delivered to your last known address at least 30 days before the end of the current policy period. The mailing of it shall be sufficient proof of notice.

6. Conformity With State Statutes

If any terms of this policy are in conflict with the statutes of South Carolina, they are amended to conform to those statutes.

7. Premium

The premium for this policy may vary based upon the purchase of other insurance from one of the State Farm affiliated companies.

The premium for this policy is based on information State Farm has received from you or other sources. If the information is incorrect or incomplete, or changes during the policy period, you must inform State Farm of any changes regarding the following:

- a. your car, or its use, including annual mileage;
- b. the persons who regularly drive your car, including newly licensed family members;
- c. your marital status; or
- d. the location where your car is principally garaged.

You agree that if this information or any other information used to determine the premium is incorrect or incomplete, or changes during the policy period, we may decrease or increase the premium during the policy period based upon the corrected, completed or changed information. You agree that if the premium is decreased or increased during the policy period, State Farm will refund or credit to you any decrease in premium and you will pay for any increase in premium.

8. Concealment or Fraud

There is no coverage under this policy if you or any other person insured under this policy has made false statements with the intent to conceal or misrepresent any material fact or circumstance in connection with any claim under this policy.

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MUTUAL CONDITIONS

1. **Membership.** While this policy is in force, the first insured named in the declarations is entitled to vote at all meetings of members and to receive dividends the Board of Directors in its discretion may declare in accordance with reasonable classifications and groupings of policyholders established by such Board.
2. **No Contingent Liability.** This policy is non-assessable.
3. **Annual Meeting.** The annual meeting of the members of the company shall be held at its home office at Bloomington, Illinois, on the second Monday of June at the hour of 10:00 A.M., unless the Board of Directors shall elect to change the time and place of such meeting, in which case, but not otherwise, due notice shall be mailed each member at the address disclosed in this policy at least 10 days prior thereto.

In Witness Whereof, the State Farm Mutual Automobile Insurance Company has caused this policy to be signed by its President and Secretary at Bloomington, Illinois, and countersigned on the declarations page by a duly authorized representative of the Company.

Kim M. Brunner

SECRETARY

Edward E. Ruhl, Jr.

PRESIDENT

11. HOPE BLACKLEY

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- 6 Reporting a Claim — Insured's Duties — What to do if *you* have an accident, claim or are sued.
 3 Defined Words
 5 Declarations Continued
 5 When and Where Coverage Applies
 6 Financed Vehicles — Coverage for Creditor

Coverages

- 8 A — Liability — When there is damage to others.
 12 P — Personal Injury Protection — When there are medical expenses, loss of income, essential services expenses or funeral expenses.
 16 C — Medical Payments — When there are medical and funeral expenses.
 18 U — Uninsured Motor Vehicle — When the other *car* or driver is not insured.
 19 W — Underinsured Motor Vehicle — When the other *car* or driver is underinsured.
 24 D — Comprehensive — When *your car* is damaged except by collision or upset. Any deductible amount is shown by the number beside "D" on the declarations page.
 25 G — Collision — When *your car* is damaged by collision or upset. The deductible is shown by the number beside "G" on the declarations page.
 26 H — Emergency Road Service — When *your car* breaks down or needs a tow.
 26 R — Car Rental Expense — When you need to rent a *car* because of damage to *your car*.
 27 R1 — Car Rental and Travel Expenses — When you need to rent a *car* and pay extra travel expenses because of damage to *your car*.
 28 R2 — Car Rental and Travel Expenses — When you need to rent a *car* and pay extra travel expenses because of damage to *your car*.
 31 S — Death, Dismemberment and Loss of Sight — Pays for death of or certain injuries to persons named.

Conditions

- 33 1. Policy Changes
 33 2. Suit Against Us
 33 3. Our Right To Recover Our Payments
 34 4. Cancellation
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 35 6. Conformity With State Statutes
 35 7. Premium
 35 8. Concealment or Fraud

Mutual Conditions

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 JAMES W. BLACKLEY
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 Policy Form 9840.3

Authorized Representative
 State Farm Mutual Automobile Insurance Company, Home Office, Bloomington, Illinois
 Georgia-South Carolina Office • 1350 Johns Creek Parkway • Dunwoody, GA 30098-0001 • Ph (770) 418-5113



YOUR
 STATE FARM
 CAR
 POLICY

South Carolina
 Policy Form 9840.3

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 APP 000297

EXHIBIT H

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J. HOPE BLACKLEY

LAZENBY LAW FIRM, LLC

D. ALAN LAZENBY
ATTORNEY AT LAW

POST OFFICE BOX 6099 (29304)
134 OAKLAND AVENUE
SPARTANBURG, SC 29302
PHONE: 864-804-5050
FAX: 864-804-5051

ALAN@LAZENBYLAWFIRM.COM

July 20, 2011

VIA FAX ONLY

State Farm Auto Claims
ATTN: Ms. Josetta Greene
11350 Johns Creek Parkway
Duluth, GA 30198

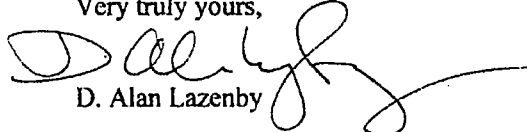
Re: My Client: James Plemmons
Your Insured: Kim Carson/Silvia Carson – John Carson
Insured Address: 301 Birchwood Dr., Union SC 29379
Insured Vehicle Make: 2005 Dodge Neon
Insured VIN: 1B3ES56C35D211659
Date of Loss: July 31, 2010

Dear Ms. Greene:

Following up on our July 20, 2011, telephone conference in this case, please send me a certified copy of the reference policy at your earliest convenience. After I receive this policy, I will make a formal demand for coverage and payment, if applicable. As you know, the South Carolina Omnibus Clause requires automobile liability insurance policies to insure those persons who are "using" the insured automobile. The South Carolina case law interpreting the Omnibus Clause is clear that towing of a vehicle constitutes such use which would entitle Mr. Plemmons to coverage under the reference policy. Please advise if you would like me to send the case law establishing this interpretation of the law.

I appreciate your prompt attention to this matter. If you require any additional information from me, please let me know.

Very truly yours,


D. Alan Lazenby

DAL: jeh

cc: Andy Johnston, Esq. (via email only)
Mr. James Plemmons (via email only)

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SPARTANBURG COUNTY

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EXHIBIT I

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M. HOPE BLACKLEY

LAZENBY LAW FIRM, LLC

D. ALAN LAZENBY
ATTORNEY AT LAW

POST OFFICE BOX 6099 (29304)
134 OAKLAND AVENUE
SPARTANBURG, SC 29302
PHONE: 864-804-5050
FAX: 864-804-5051
ALAN@LAZENBYLAWFIRM.COM

September 1, 2011

VIA FAX & US MAIL

State Farm Auto Claims
ATTN: Ms. Josetta Greene
11350 Johns Creek Parkway
Duluth, GA 30198

Re: James Plemmons v. Estate of Diaz
Your Insured: John R. Carson
Your Claim Number: 40-8676-404
Date of Loss: July 31, 2010

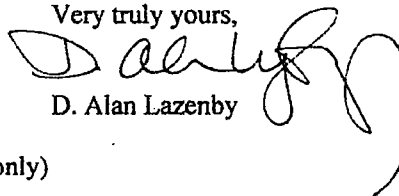
Dear Josetta:

Thank you for your August 3, 2011 correspondence providing me with a copy of the policy applicable to the reference claim. I have reviewed the policy, and I believe the policy provides coverage to Mr. Plemmons because he was using the insured vehicle at the time of the accident. As I indicated in my June 28, 2011 correspondence to State Farm, Mr. Plemmons has sustained injuries in this case including the amputation of his left leg above the knee. Because the at fault driver had only \$50,000 in liability coverage, Mr. Plemmons' damages far exceed the available liability coverage.

Mr. Plemmons had \$100,000 of UIM insurance coverage through his own insurer, North American Risk/Plaza Insurance. We believe that Mr. Plemmons' insurer failed to make a meaningful offer of UIM coverage to him, and we are going to seek to reform this policy to include UIM coverage of \$300,000 which is the limit of his liability coverage. Also, we are seeking to stack this coverage with UIM coverage on another vehicle which Mr. Plemmons had insured under this policy. As noted above, we also intend to seek UIM coverage based upon Mr. Plemmons' status as a user of the State Farm insured vehicle.

I will be filing a Summons and Complaint against the estate of Tereso Diaz in the next week or so in order to establish liability of the UIM carriers. I will serve State Farm according to the UIM statute. I will also send you a courtesy copy of the Summons and Complaint. I hope that we can discuss possible resolution of this matter after I have initiated the lawsuit against the at fault driver.

Very truly yours,


D. Alan Lazenby

DAL: jeh

cc: Andy Johnston, Esq. (via email only)

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APP 000301

EXHIBIT J

FILED
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JANUARY 17 2013
AM 9:37
J. HOPE BLACKLEY

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

JAMES LUTHER PLEMMONS and
WANDA SUE CLARK PLEMMONS,

Plaintiffs,

vs.

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY, JOHN
CARSON and PLAZA INSURANCE
COMPANY,

Defendants.

Civil Action No. 7:12-CV-00495-HMH

ANSWER OF STATE FARM MUTUAL
AUTOMOBILE INSURANCE
COMPANY TO PLAINTIFFS' FIRST
SET OF INTERROGATORIES

Pursuant to FRCP 33 State Farm Mutual Automobile Insurance Company (State Farm) answers the plaintiffs' first set of interrogatories dated February 27, 2012 as follows:

1. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

ANSWER:

- (a) James Luther Plemmons
Address known to plaintiff

The plaintiff will testify about the facts of his accident.

- (b) Josetta Greene, Janice Guerriere
State Farm Mutual Automobile Insurance Company
11350 Johns Creek Parkway
Duluth, GA 30198

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JOSE L. LOCKLEY

ANSWER: State Farm has not communicated with the plaintiffs. Instead, State Farm has communicated with the attorney for the plaintiffs, Alan Lazenby. To the best of State Farm's knowledge it had the following communications with Alan Lazenby:

- (a) Lazenby letter to State Farm of June 28, 2011;
- (b) Lazenby fax to Josetta Greene of July 7, 2011;
- (c) Janice Guerriere letter to Lazenby of July 15, 2011;
- (d) Lazenby letter to Josetta Greene of July 20, 2011;
- (e) Lazenby letter to Josetta Greene of August 2, 2011;
- (f) Greene letter to Lazenby of August 3, 2011;
- (g) Letter of Lazenby to Josetta Greene of September 1, 2011;
- (h) Lazenby letter to Josetta Greene of September 6, 2011;
- (i) Carbon copy to Josetta Greene of letter from Lazenby on September 7, 2011;
- (j) Letter of October 4, 2011 from Lazenby to Josetta Greene. This letter references a telephone conversation.;
- (k) Letter of Lazenby to Mark McGarr of January 16, 2012;
- (l) Letter of Lazenby to Mark McGarr of January 24, 2012.

10. State the grounds upon which the defendant State Farm filed a 12(b)(6) motion in the case of 2011-CP-42-3867, the underlying liability case that predicates the current bad faith action.

ANSWER: State Farm objects to interrogatory 10 on the ground that it is not reasonably calculated to lead to the discovery of admissible evidence in this lawsuit. Interrogatory 10 concerns the basis for a motion filed in another case.

11. State the precise reasons for denial of coverage to plaintiffs under the policy.

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STATE OF NEW YORK
JUDGE J. J. COLE

- (c) Any recommendations and actions taken with respect to the setting of reserves for plaintiff's claims as a result.

ANSWER: The employees of State Farm involved in the plaintiff's claim communicated by activity Log Entries. There were no conferences or round-table discussions or meetings. State Farm objects to providing any information regarding the setting of reserves on the ground it is not reasonably calculated to lead to the discovery of admissible evidence.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: Charles R. Norris
Charles R. Norris
Federal Bar No. 2549
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Charleston, South Carolina

March 22, 2012

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M. HOPE BLACKLEY

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Mark Hayes, II, Circuit Court Judge

Case No. 7:12-CV-495-HMH

James Luther Plemmons and Wanda Sue Clark Plemmons, ... Appellants,

v.

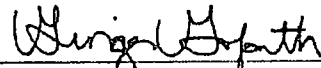
State Farm Mutual Automobile Insurance Company, Plaza Insurance Company, . . . Defendants.

Of whom,

State Farm Mutual Automobile Insurance Company is Respondent.

NOTICE OF APPEAL

James Luther Plemmons and Wanda Sue Clark Plemmons appeal the Order of the Honorable J. Mark Hayes, II dated May 22, 2013. Appellants received written notice of entry of this order on May 29, 2013.



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JUN 28 2013

SC Court of Appeals

ROA 000303
APP 000306

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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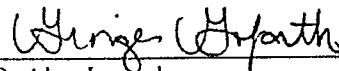
State Farm Mutual Automobile Insurance Company, Plaza Insurance Company, . . . Defendants,

Of whom,

State Farm Mutual Automobile Insurance Company is Respondent.

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify the Notice of Appeal in the above referenced matter was mailed, postage prepaid, to Respondent's Attorney, Charles Norris, by sending to Nelson Mullins Riley & Scarborough, LLP, PO Box 1806, Charleston, SC 29402, on June 25, 2013.



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June 25, 2013

RECEIVED

JUN 28 2013

SC Court of Appeals

**ROA 000305
APP 000308**

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COURT OF COMMON PLEAS
3
4 James Luther Plemmons and)
5 Wanda Sue Clark Plemmons,) TRANSCRIPT OF RECORD
6) 2012-CP-42-00346
7 Plaintiffs,)
8 -vs-)
9 State Farm Mutual Automobile)
10 Insurance Company, Plaza)
11 Insurance Company, The Stover)
12 Company, Inc., and Howard)
13 Newton, III,)
14 Defendants.) May 17, 2013
15 Spartanburg, South Carolina

16 B E F O R E:

17 HONORABLE J. MARK HAYES, II, JUDGE

18 A P P E A R A N C E S:

19 D. ALAN LAZENBY, ESQUIRE
20 Attorney for the Plaintiff

21 CHARLES R. NORRIS, ESQUIRE
22 Attorney for the Defendant State Farm

23 Margaret A. Woods
24 Circuit Court Reporter

25 ORIGINAL

ORIGINAL

ROA 000307
APP 000310

1 THE COURT: Alright, I believe that I've got that this is
2 Plemmons vs. State Farm and that we have a a motion for
3 summary judgment for thirty minutes. Yes, gentlemen.

4 MR. NORRIS: Thank you, Your Honor. I'm Charles Norris
5 and I represent the defendant State Farm. I have sent Your
6 Honor copies of the motion and the brief that was filed last
7 September and a supplemental motion and brief filed earlier
8 this week, if you do not have that I've got additional copies
9 for Your Honor.

10 THE COURT: You might want to give me the supplemental
11 because when you file things at this late date they usually
12 don't make it to the, ---

13 MR. NORRIS: Okay.

14 THE COURT: --- we pull the files earlier and so they
15 usually don't make it into the file that I have.

16 MR. NORRIS: Okay, and Mr. Lazenby of course has the
17 supplemental. I'm gonna give ya two copies, one for you and
18 one for your clerk.

19 THE COURT: Okay.

20 MR. NORRIS: And I, if you want I've got additional
21 copies of the first one just in case you don't have to look in
22 the court file if you ---

23 THE COURT: That be great.

24 MR. NORRIS: Okay. This (indicating) is the, this is two
25 copies of the original one, that's one for you and one for

1 your clerk, ---

2 (Whereupon, counsel handed the documents to the Court.)

3 MR. NORRIS: --- both of them had been filed. I'm
4 Charles Norris and as I stated I represent State Farm. What
5 we have this mornin', Judge Hayes, is cross motions for
6 summary judgment on the issue of coverage and I think if
7 there's one thing that Mr. Lazenby and I agree on there's no
8 factual dispute about the underlying facts that relate to
9 coverage and in regard to the issue of coverage, somebody's
10 entitled to summary judgment; in fact, when this case was in
11 federal court, the plaintiff made a filing, the answer to Rule
12 26 interrogatories, and said, quote, Plaintiffs' declaratory
13 judgment action against State Farm Mutual Automobile Insurance
14 Company does not have questions of material fact and should be
15 decided as a matter of law by a judge, unquote, we agree with
16 that. So we're in agreement with that, we got cross motions
17 for summary judgment on the issue of coverage.

18 The facts, I'll go over those briefly, Your Honor, those
19 are detailed in both briefs with citations to the record.
20 What happened is that Mr. Plemmons in July of 2010 operated a
21 repair garage and a tow service. On July 30th of 2010 he got
22 a call from a Ms. Carson to come pick up a 2005 Dodge Neon
23 because it was inoperable. He went, picked up the the Dodge
24 Neon from the Carson house but because he didn't his o -- his
25 garage was not open Friday evening and or or Saturday he took

1 it to his garage. Early that morning ---

2 MR. LAZENBY: House.

3 MR. NORRIS: Uh, I'm sorry, took -- you're right, uh, my
4 mistake. He actually he didn't take it to his garage, he took
5 it to his house thank you. Early the next morning
6 Mr. Plemmons got a call to come pick up another car, the
7 reason he got the call was he was on a rotating list of tow
8 services to get calls and and it was his turn, uh, he then
9 went to Highway 29 in Spartanburg to pick up a car that had
10 been stopped by the police, the car was owned by Ms. Queen
11 Mills. The tow truck that Mr. Plemmons had could carry two
12 cars, he already had the Carson car which was insured with
13 State Farm on the top, on the flatbed secured. He could tow
14 another car by pulling up the front end and attachin' it to
15 the back of the tow truck. When Mr. Plemmons got there, the
16 police were there, they had as I said stopped the other car
17 and he began the process of connecting the front of the Mills'
18 vehicle to the back of his tow truck so he could tow both
19 vehicles to his garage. While he was in the process of I
20 think operating the lever at the back of his tow truck, he was
21 standin' at the, at the right rear of the tow truck, from the
22 other direction came a Mr. Diaz traveling at 80 to 90 miles an
23 hour and the indications are although Mr. Diaz was killed in
24 the accident, nobody ever talked to him, he apparently had
25 cocaine and alcohol in his body. Mr. Diaz's car crossed the

1 center line or cr -- left his lane of traffic, hit the front
2 of the tow truck, knocked the tow truck back over
3 Mr. Plemmons's leg and as a result Mr. Plemmons had to have,
4 excuse me, his leg amputated. At the time of the accident,
5 the tow truck was stationary, the Dodge Neon was stationary, I
6 believe the Neon was knocked off the tow truck in the course
7 of the accident but it did not hit Mr. Plemmons, but at the
8 time of the accident the Carson car insured with State Farm
9 was was sitting there, it was stationary, and in fact
10 according to the plaintiffs' complaint it was inoperable so,
11 ya know, those are the basic facts and now what we have is a
12 difference of opinion on what the law is which of course is a
13 classic case for a decision on summary judgment.

14 State Farm has moved for summary judgment on a number of
15 grounds and those are listed of course in the motion for
16 summary judgment and in our 23-page memorandum in support of
17 the motion for summary judgment. The first issue is whether
18 the Carson car was in use at the time of the accident.

19 THE COURT: Now Carson its car is the one that's on the
20 flatbed.

21 MR. NORRIS: That's correct.

22 THE COURT: Okay.

23 MR. NORRIS: That's correct. And to be an insured under
24 the State Farm policy and and under the law, Mr. Plemmons had
25 to be, quote/unquote, using the Carson car at the time of the

1 accident. Now he wasn't driving the Carson car, he wasn't
2 inside the car, he wasn't touching the car, the car was
3 actually not being towed at that moment, it was just sitting
4 still. Now the plaintiffs' position is that the car under
5 these facts was in use and what they do is they cite to a 1993
6 Fourth Circuit case *Pinson vs. State Farm*. In *Pinson vs.*
7 *State Farm*, the State Farm insured a boat, a boat that was
8 being towed and the driver of the boat, I think a Mr. Rider,
9 ran a a stop sign or a a red light and coll -- and Mr. Pinson
10 hit the boat and the Fourth Circuit in that 1993 case held
11 that a boat which is being towed is in use and look at page 13
12 of our brief I quote from the Fourth Circuit, Fourth Circuit
13 stated that, Arguably a towed boat presents a stronger case
14 for coverage than a towed vehicle. Usually, a vehicle is
15 towed only when its owner is, in bold type, unable to put it
16 to its intended use. A boat, on the other hand, must,
17 emphasis by Fourth Circuit, be towed in order a landlocked
18 owner to derive any enjoyment from boat ownership, unquote, so
19 right there they made a distinction between a towed boat and
20 towing a vehicle because you have to, obviously part of the
21 use of a boat is to get it to water 'cuz you can't operate a
22 boat on land so you have to tow it to water which is logical,
23 that analysis does not apply to a towed vehicle.

24 Now the *Pinson* case cited to two other cases, one is a
25 1954 case, Fourth Circuit case, which involved a jeep that was

1 being towed but at the time of the accident the jeep was
2 actually being towed, it was being moved and the Court in that
3 case held that the jeep was moving on the road by means of its
4 own running gear, although and although it was not employing
5 its own power unit, it was subject to the vicissitudes of
6 dangers of travel on the public highway, that's from *American*
7 *Fire vs. Allstate*. Here the Carson car under which they seek
8 coverage wasn't moving at all, it was just sitting still. The
9 other case cited by *Pinson* is *Bray vs. Insurance Company of*
10 *Pennsylvania* but that didn't even involve a towed vehicle, it
11 involved a trailer on a tractor trailer which would be
12 analogous to Plemmons's own trailer and not the Neon so ---

13 THE COURT: Is someone feeding you that through your cell
14 phone?

15 MR. NORRIS: This is my BlackBerry.

16 THE COURT: It's a cell phone.

17 MR. NORRIS: Well, I don't, I got my cell phone
18 separately. Let me explain the reason I'm havin' to read this
19 is because I didn't get Mr. Lazenby's brief until eight last
20 night.

21 THE COURT: I just asked if someone was feeding that
22 through y -- through your phone.

23 MR. NORRIS: They are.

24 THE COURT: Okay.

25 MR. NORRIS: And if if I shouldn'ta brought it in here, I

1 apologize.

2 THE COURT: Well there's a sign on the outside of the
3 door that says you can't have those things in here.

4 MR. NORRIS: I understand. I, the only reason I could,
5 way I could get it, Your Honor, is is this way because I
6 didn't get it till eight o'clock last ---

7 THE COURT: I ---

8 MR. NORRIS: --- night.

9 THE COURT: --- just have to let you know that Chief
10 Justice has issued an Order and we have a sign outside the
11 door that that reads that way ---

12 MR. NORRIS: Okay.

13 THE COURT: --- and, I mean, that ---

14 MR. NORRIS: I apologize.

15 THE COURT: --- I would hate for it to go off.

16 MR. NORRIS: It will not.

17 THE COURT: And there have been people in here that feel
18 like that their electronic devices are secured, they're turned
19 off, they're put on silent and low and behold what happens?
20 they go off.

21 MR. NORRIS: Right. If it goes off, I will pay whatever
22 fine you tell me to pay. I'm I'm fine with that if it goes
23 off, uh, but that the ---

24 THE COURT: Next time just ask me because I I understand,
25 I didn't get his memo until this mornin', I have not looked at

1 it, I have not read it, it's difficult that when lawyers file
2 things at the last minute for these types of hearings to
3 proceed in an efficient manner, next time just ask me, ---

4 MR. NORRIS: I will.

5 THE COURT: --- make me aware it, ---

6 MR. NORRIS: I'm sorry, ---

7 THE COURT: Okay.

8 MR. NORRIS: --- I I apologize. Uh, ---

9 THE COURT: --- otherwise, I've got other people sitting
10 in the back of the courtroom, I have lay people that'll come
11 in and they'll see you sitting there using a cell phone and
12 they'll think, Oh, it's okay, I can get my cell phone out and
13 I can use it and they'll, and they'll start sittin' back in
14 the back texting, they'll start calling people and stuff and
15 it just disrupts everything, okay?

16 MR. NORRIS: Alright.

17 THE COURT: Go ahead.

18 MR. NORRIS: They have been so warned. Uh, the, uh, Your
19 Honor, the the case, there is actually a South Carolina case,
20 not a Fourth Circuit case, on the concept of use and that case
21 is a Court of Appeals decision *Hite vs. Hartford Accident*, 344
22 southeast second 173, it's cited in our, in our memorandum.
23 In in *Hite* what happened is that *Hite* drove, was operating a
24 car, he got out of the car, he walked fifty feet in the
25 parking lot of the car dealership and he was hit by a car with

1 uninsured, uh, that was an uninsured car and the issue and he,
2 then he tried to seek coverage under the car he had left and
3 had walked fifty feet away from. Now the Court of Appeals
4 held and I'm reading from *Hite*, Although, quote, use, unquote,
5 is unquestionably a broader term than, quote, operator, quote,
6 drive, unquote, difficult determination is whether this
7 situation of an injury sustained remote to the actual
8 operation of the vehicle is encompassed by the term, quote,
9 use, unquote, and the Court of Appeals held no, he was not
10 using it under those circumstances.

11 THE COURT: Was that the case outta Laurens County?

12 MR. NORRIS: I can look. It, no, it's Lexington County,
13 Judge Walter Bristow.

14 THE COURT: Okay. There was a case, did you find the
15 case that I had that came outta Laurens County that had a very
16 similar issue that has been addressed both by the Court of
17 Appeals and the Supreme Court?

18 MR. NORRIS: I -- it it -- do you know the name of it?

19 THE COURT: I cannot remember the name but it dealt with
20 this -- the same issue that ya'll are arguing whether or not
21 it fall, whether or not the accident fell within that
22 definition of the policy that you're referencing here and it
23 was a case where the actual Court of Appeals said that I was
24 incorrect, I had found there was coverage, Supreme Court
25 reversed the Court of Appeals and said there was coverage but

1 it was a very, it was a a split decision, I think it was three
2 to two at the Supreme Court level so I'm vaguely, have a vague
3 familiarity with the types of issues you're dealing with.

4 MR. NORRIS: Okay. Mr. Lazenby and I have cast a pretty
5 wide dragnet on the cases ---

6 THE COURT: Uh-huh.

7 MR. NORRIS: --- and and I would be surprised if the case
8 you're referring to is not in one of our briefs, uh, ---

9 THE COURT: Okay.

10 MR. NORRIS: --- but I -- that ---

11 THE COURT: --- and we're j -- and we're dealing with the
12 issue of liability coverage, not ---

13 MR. NORRIS: No, it's it's an issue of underinsurance ---

14 THE COURT: Underinsured ---

15 MR. NORRIS: --- motorist coverage ---

16 THE COURT: --- coverage, okay.

17 MR. NORRIS: --- because Mr. Diaz had minimum liability
18 limits.

19 THE COURT: Okay.

20 MR. NORRIS: Mr. Plemmons had underinsurance motorist
21 coverage on his tow truck which involved two vehicles, the tow
22 truck and another vehicle, and he stacked those to get
23 coverage from that, now he's seeking coverage from the
24 vehic -- underinsurance motorist coverage from the vehicle
25 sitting on top of the tow truck and again, the concept is to

1 be an insured entitled coverage under the Carson car he had to
2 be, quote/unquote, using that car at the time a the accident
3 and under the *Hite* case he was not.

4 The oth -- one of the other main arguments made by the
5 plaintiff in their brief is that a lot of the concepts that
6 had been announced in the cases dealing with coverage that
7 I'll get to in a second such as a causal connection between
8 the injury and the car and so forth and so on apply to, not to
9 the car with the underinsurance motorist coverage but to the
10 other car which in this case would be Diaz, Diaz's car. That
11 is not what happened in the *Hite* case because if you look at
12 the very last page of the *Hite* case they say he left the
13 insured automobile and then walked fifty feet and that that
14 was a independent and intervening cause disassociated from his
15 use of the insured vehicle. Now in this case "the insured
16 vehicle" that they're seeking coverage from is the Carson
17 vehicle. They go on to say or talk about concepts that, It
18 cannot be said that being struck fifty feet from the insured
19 vehicle by another vehicle while answering a call for
20 assistance is foreseeably identified with the normal
21 maintenance, use and ownership of the vehicle. It is
22 difficult to see where use of the insured automobile was
23 directly connected with or a cause of the ensuing accident, so
24 they're analyzing it in terms of the insured automobile. Now
25 admittedly that case involved uninsured as opposed to

1 underinsured coverage but that's a distinction without a
2 difference, the point is is that this causation analysis in
3 addition to to the concept of use. In *Hite* they looked at the
4 car with the uninsured motorist coverage. In that case it was
5 the car that he'd gotten out and walked fifty feet from, they
6 held both; number one, he wasn't using the car and; number
7 two, the car with the uninsured motorist coverage was not a
8 cause of the accident which segues to my next point, Judge
9 Hayes, is that completely aside from the concept of use there
10 are bunch of other factors that they would have to prove to
11 get coverage under the Carson car that do not exist here.
12 Number one, if you look at *Peagler vs. USAA*, the car must be
13 used for transportation at the time of the injury, the Carson
14 car was not being used for transportation at the time of the
15 injury, it's undisputed it was just sitting there still doing
16 nothing, it was just sitting there. Another thing they would
17 have to prove is that there was no causal connection between
18 the Carson car and the plaintiff's injury or actually they
19 would have to pr -- I'm sorry, they would have to prove there
20 was a causal connection. We don't believe there was any
21 causal connection between the Carson car and the plaintiff's
22 injury. Cases that talk about that are the *Carraway*, *Bookert*,
23 *Peagler* and *Aytes* cases that are all cited in our brief. They
24 would also, uh, if another thing is that if there is an act of
25 independent significance which breaks the causal link between

1 the Carson car and the plaintiff's injury then they're not
2 entitled to coverage and that is exactly what they looked at
3 in the *Hite* case, they said that there was an independent and
4 intervening cause disassociated from, independent of and
5 remote from the the use of the insured vehicle, which is
6 getting up and walking fifty feet away from the insured
7 vehicle.

8 The other thing that they have to prove that is not here
9 in this case is that the Carson car was an active accessory to
10 the injury and that's that's one of the factors in *Bookert*.
11 It was not only not an active accessory, it wasn't even an
12 accessory, it was just sitting there.

13 The last thing they have to prove which they can't prove
14 is that the plaintiff's injury must be foreseeably
15 identifiable with the normal use of a car. Well the normal
16 use of a car is taking people or goods from Point A to Point
17 B. Normal use of a car is not being loaded onto a flatbed and
18 just sitting there and then just happening to be at the site
19 of an accident so, you know, if you look at *Aytes* and the
20 *Bookert* cases, you know, it's basically a three part test, one
21 is a causal connection between the vehicle and the injury
22 which itself consists of three components; one, it must be an
23 active accessory to the injury; two, it must be more than just
24 being at the site of the injury and; three, the injury must be
25 foreseeable with the normal use of the automobile and again,

1 that's a factor that they talked about in the *Hite* case is
2 that, is that it was not connected with the the use of the
3 automobile.

4 The other thing beyond the causation test that they have
5 to prove is that there was no act of independent independent
6 significance which breaks the causal link and the act of
7 independent significance that broke the causal link, in fact,
8 the only cause of all this was Mr. Diaz drivin' at 90 miles an
9 hour goin' out of his lane while on cocaine and alcohol
10 apparently and hitting the tow truck and even Mr. Plemmons has
11 admitted in his deposition that Mr. Diaz was the, was the sole
12 cause of the accident.

13 The last thing they have to prove is that the vehicle was
14 being used for transportation at the time of the injury,
15 that's from *Peagler vs. USAA*, and it's obvious that the car of
16 of Mr. Carson insured with State Farm was not being used for
17 transportation at the time a the injury.

18 Now so that's I've counted six different reasons why
19 State Farm is entitled to summary judgment on the issue of
20 coverage, there's actually another reason completely separate
21 and distinct from all that which is the issue of stacking and
22 that goes to our supplemental memorandum and motion that we
23 filed this week. When the case was in federal court, one of
24 the filings by the plaintiff in federal court said that with
25 respect to the Carson car, and I'm looking at it here, it's

1 attached to our memoranda, quote, Plaintiffs filed a
2 declaratory judgment action against defendant State Farm to
3 determine coverage under a policy in effect between John
4 Carson and State Farm of which plaintiffs believed
5 Mr. Plemmons to be a Class II user of the vehicle, unquote.
6 Now the only time this Class I versus Class II distinction is
7 even relevant in the law involves stacking because a Class I
8 insured can stack coverages, a Class II insured cannot and
9 Mr. Plemmons with respect to the Carson car which they've
10 already admitted was a Class II insured. He's already stacked
11 coverages under his own policy with Plaza Insurance Company
12 and he would be a Class I insured with regard to the tow truck
13 and he has stacked coverage under that policy but with regard
14 to the Carson car he is a Class I insured and he can't stack
15 that underinsurance motorist coverage on top of the
16 underinsurance motorist coverage with his own policy that he's
17 already stacked. The law is pretty clear, it it defines
18 stacking as an insured's recovery of damages under more than
19 one insurance policy in succession until all damages are
20 satisfied or until the total limits of all policies are
21 exhausted and that's exactly what he's tryin' to do. The
22 right to stack coverages is available only to a Class I
23 insured and then we cite ex parte *USAA v. or In re Smith v.*
24 *Moore*, page 2 of our supplemental brief, One who is not the
25 named insured or the named insured's spouse or a resident

1 relative and is only using the vehicle with the named
2 insured's permission is a Class II insured and is not entitled
3 to stack coverage, so even if the Court was to find that he
4 was using the Carson car, he's not entitled to stack the
5 coverage on top of his own coverage, so that's seven reasons
6 independent of one another why State Farm is entitled to
7 summary judgment on the issue of coverage.

8 Finally, we've also moved for summary judgment on the
9 cause of action for bad faith. There plenty of cases that
10 we've cited in our brief that if an insurance company has a
11 reasonable basis for denying the claim, there is no bad faith.
12 Now that is what the plaintiff must prove. The plaintiff has
13 to prove there was no reasonable basis for State Farm's
14 contesting this claim and the law if -- is that if an insured
15 has a reasonable ground for contesting the claim, summary
16 judgment is properly granted as to the bad faith claim. Now
17 with all the undisputed facts and all the law I've cited it
18 nonetheless appears to be the plaintiffs' position that State
19 Farm didn't even have a reasonable basis to deny the claim and
20 the only allegation in this brief which I tried to read on my
21 BlackBerry last night, probly permanently ruining my eyes, is
22 that State Farm didn't respond to Mr. Lazenby's
23 correspondence. Now Mr. Plemmons never communicated with
24 State Farm, all the communications were between Mr. Lazenby
25 and State Farm and aside from the fact that Mr. Lazenby is is

1 injecting perhaps himself as a witness on that issue, there's
2 no deposition testimony, no affidavits, no nothing about that,
3 it's just, I wrote you a letter and you didn't respond. First
4 of all, that without more un -- certainly under the situation
5 of this case doesn't create even a scintilla of evidence on
6 bad faith and I think those are all the the issues because I
7 believe Mr. Lazenby conceded in his brief that they're, you
8 know, that they're not seeking attorney's fees and they're not
9 seeking PIP coverage, uh, so that's pretty much it.

10 MR. LAZENBY: We we are seeking attorney's fees for bad
11 faith.

12 MR. NORRIS: Oh, I'm sorry. Okay, so they are seeking
13 attorney's fees for bad faith, I stand corrected. Uh, ---

14 THE COURT: I mean, the only way I see that Mr. Lazenby
15 has any valid claim of bad faith would be if I find as a
16 matter of law that the facts that ya'll agree are undisputed
17 that as a matter of law he's entitled to recover, I think he's
18 gotta get over that hurdle before you ever get into bad faith.

19 MR. NORRIS: Well actually even if you were to find as a
20 matter of law that it's covered, that doesn't mean that State
21 Farm acted in bad faith in litigating this issue. I think
22 there's a, there's a a genuine dispute about the law here.
23 Just because ---

24 THE COURT: Well but ---

25 MR. NORRIS: --- you may find the la -- that doesn't mean

1 it's in bad faith for us to come in and and challenge this.

2 THE COURT: Well but I think it would and I think it
3 would leave a question of fact then to be decided at at some
4 other time if I decided the issues all in his favor as a
5 matter of law that he was entitled to coverage, he was
6 entitled to stacking, he was entitled to everything he's he's
7 asking for.

8 MR. NORRIS: Okay, well, Your Honor, ca -- that's all I
9 have to argue, I'll be glad to answer any questions you have
10 if you have any.

11 THE COURT: Well let me hear from Mr. Lazenby and for
12 those of you who are waiting, I know this hearing was only
13 scheduled for thirty minutes so if ya'll wanna take a break or
14 ya'll need to go do some work out in the lobby, go ahead, I
15 will not do your case without calling for you. Yes, sir.

16 MR. LAZENBY: Thank Your Honor and if I may hand up a
17 brief and I apologize for the lateness of this brief, I know
18 it hampers the Court in in making a decision, I've got another
19 copy for the -- your clerk.

20 (Whereupon, counsel handed the document to the Court.)

21 MR. LAZENBY: If if I can briefly address the issue of of
22 bad faith. Your Honor, I I purposefully did not conduct any
23 discovery on the, I didn't depose his insurance
24 representatives because my position was that I would not have
25 a bad faith claim if there was no coverage so I didn't feel

1 like it was a good use of time ---

2 THE COURT: That's probably a good conclusion 'cuz if
3 there's no coverage I don't think you can have bad faith
4 claims.

5 MR. LAZENBY: Your Honor, if if I may address the
6 coverage issues because as as I do believe that ---

7 THE COURT: Let me ask you one fact before you get
8 started on your argument. Do you agree with with defense
9 counsel that the, that the car, the Carson car did not cause
10 the injury to the, uh, to the plaintiff? And and and I say
11 didn't cause, I mean, didn't cause the physical injury, I know
12 you claim that there's some causation ---

13 MR. LAZENBY: It ---

14 THE COURT: --- issue on the policy but ---

15 MR. LAZENBY: --- it was, it was added weight on the
16 vehicle which ran over Mr. Plemmons' leg which had to be
17 amputated. I've got no expert to say that the added weight of
18 the Carson vehicle exacerbate damages but I, but I think that
19 there is some evidence that it did participate in the injury
20 to Mr. Plemmons.

21 THE COURT: Okay. Okay.

22 MR. LAZENBY: And, Your Honor, just briefly, I I do agree
23 with Mr. Norris that that the facts are are not in dispute, I
24 would probly cite some additional facts that Mr. Norris did
25 not but for the most part I I do not disagree with Mr. Norris

1 on the recitation of the facts. There's a brief point of law
2 that I would like to to point out that I do disagree with and
3 that is the distinction between UM coverage and UIM coverage.
4 Mr. Norris stated that that's a distinction without a
5 difference and I I completely disagree. UM insurance is
6 mandatory required insurance, UIM is not. UM insurance
7 follows the vehicle, UIM insurance does not and so when you're
8 talking about cases involving UM insurance coverage, you're
9 necessarily gonna have have to have some relation with the
10 vehicle to causing the injury so many of Mr. Norris's cases
11 that he cites involve UM coverage which I believe are just
12 completely inapplicable and first off, Your Honor, I I will
13 address the the concept of of use because I I think we both
14 agree that that the additional question for the Court to
15 decide is whether Mr. Plemmons was using the Carson vehicle at
16 the time of the accident and and, Your Honor, I was able to
17 look this up while Mr. Norris was arguing but the the case
18 that you had in Laurens County was the *Kennedy* case and
19 actually is cited by Mr. Norris in his brief and that was a
20 case I I believe where a a man was outside of the car and he,
21 the car was backed up on him and he pushed, he pushed himself
22 away from the car to get away from it and the issue in that
23 case was not use but it was interpreting the requirement that
24 the car be occupied and in fact the the State Farm policy, you
25 know, has similar language, in order to be insured means any

1 person while occupying or using your car and and the *Kennedy*
2 case which you reference involved occupying and and you held
3 or you determined that that because he had, the the the the
4 insured had contact with the car, was pushing himself a away
5 from the car that that was, that was sufficient contact,
6 physical contact to be held to be occupying the car and he,
7 and I I believe that case supports supports my position, Your
8 Honor, in that the the Court in determining who is an insured,
9 the the appellate courts, they give a broad definition to that
10 and literally construe occupying and literally construe the
11 term "using" in order to find coverage.

12 Now, Your Honor, as as far as the the use requirement is
13 concerned, Mr. Norris cites to *Pinson* and the *American Fire*
14 case and and those are Fourth Circuit Court of Appeals cases,
15 Your Honor, but those it's important to note that those cases
16 both arose out of district court in South Carolina and both
17 construe South Carolina law and, Your Honor, the the *Pinson*
18 case is is the case involving the boat but it's important to
19 know that in the, in the *Pinson* case the the Court made clear
20 after it said that a boat is different from a car because a
21 boat has to be transported to water in order to be used, the
22 court said in *Pinson*, well after that said, First and foremost
23 this court has already held that a towed vehicle is a used
24 vehicle, that's been clearly established in in South Carolina,
25 sure there's a distinction between a boat and a car and I

1 think that's that's addressed in the, uh, the *American Fire*
2 case which invol -- *American Cas* -- *American Fire and Casualty*
3 *vs. Allstate* which involved the the towing of a jeep and the
4 the Court said that that it's not outside the realm of of
5 possibility that that a car will become disabled and need to
6 be towed and need to be put in use in this such a manner. Uh,
7 think the Court said that it cannot be said that towing the
8 vehicle was so unusual to have not been in the contemplation
9 of the parties to the policy. Now Mr. Norris tries to
10 distinguish the *American Fire* case by saying in that case the
11 accident occurred while the the the tow truck and the jeep
12 were actually physically moving, whereas in this case the tow
13 truck was stationary and and, Your Honor, I I agree that the
14 tow truck was stationary, however, the tow truck was idol, it
15 was on, the engine was running, it was in the middle of the
16 roadway, it's a a 5-lane or, you know, two lanes in either
17 direction and the center median. The vehicle was in the
18 middle of the roadway running with the Carson vehicle on top,
19 that certainly is not outside the normal contemplation of of
20 of use of vehicles, it's contemplated that a vehicle could be
21 parked on an emergency shoulder or parked in a median while
22 being used. Your Honor, this is a case law that that goes
23 back fifty years saying that a towed vehicle is a used
24 vehicle. If State Farm wanted to exclude coverage for ve --
25 vehicles that were being towed, they could have clearly stated

1 so in their policy, instead State Farm said that an insured is
2 someone who is using a vehicle. Under existing South Carolina
3 case law a vehicle being towed is being used. So, Your Honor,
4 we would argue that first, the the use requirement is is being
5 met. If you look at the State Farm policy, Mr. Plemmons had
6 permission to use the or to tow the the Carson vehicle. He
7 had the vehicle on top of his tow truck, tow truck was
8 running, Mr. Plemmons was actively using the tow truck to load
9 another vehicle when this accident happened and as a result of
10 the accident the Neon, I'm sorry, the, uh, yeah, right, the
11 the the Carson vehicle was partially knocked off of the tow
12 truck and sustained damages in this accident and that's
13 significant, Your Honor, because as I'll talk about later in
14 stacking the the cases talk about a vehicle being involved in
15 an accident. We will -- I I concede that that this, that that
16 the Neon did not cause the accident, it was not being used for
17 transportation but it was involved in this accident.

18 Your Honor, turning to the the next argument that
19 Mr. Norris put forth: the several factors that have to do with
20 the vehicle must be used for transportation, there must be a
21 causal connection between the the the vehicle and the injury
22 and that that there were three or four must be an active
23 accessory, you know, there's one simple argument that I use to
24 distinguish all those cases: All those cases say that the
25 underinsured vehicle must be an active accessory to the

1 accident, the underinsured vehicle must cause the accident,
2 the underinsured vehicle must be used for transportation. In
3 this case Mr. Mr. Norris is saying that the underinsured
4 vehicle is the Carson vehicle but that's not true, the
5 underinsured vehicle for the purpose of this court's analysis
6 should be the Diaz vehicle, the the vehicle which struck the
7 tow truck, the vehicle that was, that was going a high rate of
8 speed, the vehicle that had minimum limits coverage in North
9 Carolina and the the coverage was insufficient to pay for
10 Mr. Plemmons' damage, that's the vehicle that is the
11 underinsured vehicle, not the Carson vehicle. The Carson
12 vehicle is a vehicle that is being used by Mr. Plemmons in the
13 accident so that whole section, all those cases that
14 Mr. Norris cites I believe that the fatal flaw in his argument
15 is that he's assessing those elements from the context of the
16 Carson vehicle, the State Farm vehicle, when he should be
17 assessing those elements with regard to the Diaz vehicle and
18 when you look at those elements from the point of view of the
19 Diaz vehicle all those are met.

20 Finally, Your Honor, with regard to stacking, first of
21 all, I I don't believe this is a a stacking issue because
22 we're talking about Mr. Plemmons actively using the Carson
23 vehicle. I think stacking is involved when you're trying to
24 get to policies and vehicles that are not involved in the
25 accident so and and in one a the cases I cited the *Pinson*

1 case, the Court noted that it sometimes been said that both
2 vehicles in a towing operation are being used by the owner or
3 operator of the tow truck and so I would take the position
4 that that really what this is is Mr. Plemmons is using both
5 the tow truck and the Carson vehicle, as such this isn't even
6 a stacking situation but even even turning to to stacking,
7 Your Honor, we we read the cases cited by Mr. Norris and it is
8 true that traditionally a Class I insured is a named insured
9 or a resident relative but the the *Horne* case that was cited
10 by Mr. Norris is a UIM case and when it discusses the the
11 actual holding of the case, the Court says that, With regard
12 to UIM coverage, a Class I insured is an insured or named
13 insured who has a vehicle involved in the accident and that in
14 order to have a vehicle involved in the accident as a
15 prerequisite to stacking means only that the person be a
16 Class I insured with respect to a vehicle in the accident, so
17 in this case, uh, think Mr. Norris admitted or conceded that
18 Mr. Plemmons is a Class I insured in the traditional sense
19 with regard to the tow truck and the tow truck was involved in
20 the accident. If this court finds that Mr. Plemmons is an
21 insured under the State Farm policy because he was using the
22 Carson vehicle then the requirements of stacking are met even
23 if the Court finds that that the stacking requirements must be
24 met under the the definition cited in *Horne*.

25 And, Your Honor, just a, you know, UIM coverage follows

1 the person, doesn't doesn't follow the vehicle, and if if this
2 requirement that that the vehicle that you're seeking coverage
3 on must be involved in the accident, it would, it would run
4 contrary to, you know, hundreds of cases or or tens of cases
5 in South Carolina discussing UIM coverage. In fact, in this
6 case Mr. Plemmons his wife had a policy, a personal policy at
7 home in -- insured by Allstate and he was able to collect
8 twenty-five thousand dollars (\$25,000.00) on an Allstate
9 policy because he was an insured under that policy and there
10 was UIM coverage under that policy. That Allstate vehicle was
11 nowhere near this accident but there was still coverage for
12 Mr. Plemmons because he was an insured so, Your Honor, if
13 Mr. Plemmons is an insured under the State Farm policy then
14 he's entitled to coverage. Now I I think it be a different
15 question if if the the Carson policy with State Farm had five
16 vehicles on it and he was trying to stack all five of those
17 vehicles, that would be a separate question but in this case
18 Mr. Plemmons is only trying to get the insurance on the
19 vehicle, the Carson vehicle involved in the accident which is
20 a hundred thousand dollar policy (\$100,000.00). That's my
21 argument, Your Honor.

22 MR. NORRIS: Your Honor, may I reply to a few things?

23 THE COURT: Give me just ---

24 MR. NORRIS: Sure.

25 THE COURT: --- one minute take a look at my notes 'cuz I

1 might have some questions ---

2 MR. NORRIS: Okay.

3 THE COURT: --- but yes you can reply.

4 MR. NORRIS: Alright. Uh, a few points, first of all,
5 *Kennedy* I think it, can't remember if it was *Kennedy vs. USAA*
6 or or but that case involved an issue of whether Kennedy was
7 occupying the car and in a three to two decision the Court of
8 Appe -- the Supreme Court held that he was occupying the car,
9 what had happened is he had his hand on the car then he took
10 his hand off for a brief moment in order to avoid another car
11 but they held that he was occupying, that's not an issue here
12 so the *Kennedy* case is in apposite.

13 Now you asked did the Carson car cause the injury and
14 Mr. Lazenby talked about the added weight of the vehicle,
15 there is absolutely no evidence of that. I specifically asked
16 Mr. Plemmons in his deposition what or how the the Carson car
17 sitting on top of a truck whether it had anything to do with
18 causing the accident and he said it did not and that is quoted
19 in our brief and the police officer, Amanda Barnes, whom we
20 deposed said the same thing so there's no evidence before the
21 Court that the Carson car is sitting on top of the tow truck
22 in a stationary position which was inoperable caused this
23 injury. The, again, I get back to the *Hite* case, Mr. Lazenby
24 says well there's a distinction between analyzing UM coverage
25 and analyzing UIM coverage, we're talking about these various

1 factors why? I mean, why should there be any difference
2 between the analysis of UM versus the analysis of UIM in this
3 context? I think *Hite* is is right on point. The analysis in
4 *Hite* did involve UM but they were looking at the car from
5 which the coverage was being sought and that's the situation
6 here, the coverage which is being sought is the Carson vehicle
7 insured with State Farm. Additionally, they held in *Hite* that
8 walking fifty feet away from a car that you're not using the
9 car and I don't see what the difference is is here between
10 standing beside the car at the time of the accident. The only
11 difference is I guess he was closer to the car in this case
12 than Mr. Hite was to the car in his case.

13 With regard to the the stacking issue, if you accept the
14 plaintiffs' argument, that completely abrogates the
15 distinction between a Class I and a Class II insured. Under
16 their argument if you have a car involved in the accident then
17 you are by that factor alone a Class I insured. That's not
18 the law. I mean, the 2005 USAA case *En re Smith v. Moore* said
19 one who is not the named insured of a named insured spouse or
20 resident relative and is only using the vehicle with the named
21 insured's permission is a Class II insured and is not entitled
22 to stack coverage. I don't know how clearer you can get and,
23 you know, Mr. Lazenby said this is not a stacking situation,
24 I -- it sure falls within the Court's definition of stacking.
25 I'm quoting cases from 2010 and 2012, Stacking refers to an

1 insured's recovery of damages under more than one insurance
2 policy in succession until all damages are satisfied or until
3 the total limits of all policies are exhausted, that's exactly
4 what they're trying to do here, so it it it inherently
5 involves stacking and finally, I guess it's their position
6 that there were two vehicles, quote/unquote, involved in the
7 accident, the tow truck for which they sought and obtained and
8 stacked UIM coverage and the Carson car sitting on top of it,
9 so I guess it's their position that we -- there were two pe --
10 vehicles with UIM coverage that were, quote/unquote, involved
11 in the accident, so I I just, I think there there are a number
12 of reasons to grant State Farm's motion for summary judgment
13 on a issue of coverage, the the last one simply being
14 stacking.

15 MR. LAZENBY: Your Honor, if I can briefly reply. I
16 neglected to hand the Court this case which is a case that's
17 as close on point as I could find to this situation, ---

18 THE COURT: Um-hum.

19 MR. LAZENBY: --- *Merck vs. Nationwide*.

20 (Whereupon, counsel handed the document to the Court.)

21 MR. LAZENBY: In this case the, uh, Mr. Merck's vehicle
22 insured by Nationwide had broken down, a tow truck came, put
23 the the vehicle on the tow truck, Mr. Merck and the tow truck
24 driver were away from the vehicle walking around the accident
25 site and then were walking back to the the vehicle when they

1 were struck by a a a speeding motorist. The tow truck driver
2 was killed, Mr. Merck was severely injured, the the vehicle
3 hit the tow truck and caused damage to Mr. Merck's vehicle and
4 the the Court was clear and it found that Mr. Merck was
5 entitled to UIM insurance coverage on the vehicle that he had
6 sitting on top of the tow truck and the Court specifically
7 found that, you know, under 38-77-160, the statute dealing
8 with UIM coverage, the insured's entitled to receive coverage
9 on the vehicle involved in the accident. "The Court of
10 Appeals defined the term, the term "involved" as to relate to
11 or have an effect on...to draw in as a participant...to
12 implicate, include affect." Finding that Merck's vehicle was
13 present at the scene on top of the tow truck and the accident
14 had an effect on the vehicle, that as it was, it sustained
15 property damage, the Court held that the Merck vehicle was
16 involved in the accident and, Your Honor, that's exactly what
17 we have here. The Carson vehicle was on top of the tow truck,
18 it was kno -- partially knocked off the tow truck, it
19 sustained property damage, that vehicle was involved. Thank
20 Your Honor.

21 MR. NORRIS: Your Honor, one last thing, Merck was a
22 Class I insured, this was his policy with Nationwide. The
23 issue is whether he could stack coverages on his policy, he
24 was the named insured. The point is is that Mr. Plemmons is
25 not a Class I insured with regard to the State Farm policy,

1 that's the distinction. They've admitted he's not, he, that
2 he's a Class II insured with regard to the State Farm policy.

3 (Pause.)

4 THE COURT: So in regards to Mr. Lazenby's position that
5 your arguments are flawed because the underinsured vehicle as
6 according to Mr. Lazenby's position has to start with Diaz and
7 he believes that your analysis is fatally flawed because we're
8 supposed to look at the Diaz vehicle.

9 MR. NORRIS: Well my response to that is that's not the
10 vehicle they looked at in the *Hite* case and I guess
11 Mr. Lazenby's counter to that is, Oh, *Hite* involved uninsured
12 motorist coverage instead of underinsured motorist coverage,
13 that's a distinction without a difference. It it -- in *Hite*
14 they were tryin' to get coverage on, uninsured motorist
15 coverage on the car that he had gotten out and walked fifty
16 feet away from and in addition to holding that in in that
17 context *Hite* was not using the car he was fifty feet away
18 from, they also said they looked at that they talked about his
19 walking away was an independent or intervening cause wholly
20 disassociated from the use of the insured automobile and it
21 went on to say that, It cannot be said that being hit fifty
22 feet away from the insured automobile by another vehicle, you
23 apply that to this case, the other vehicle would be Diaz, the
24 insured automobile would be the Carson car, while answering a
25 call for assistance by the night watchman is foreseeably

1 identifiable with normal use, maintenance and ownership of the
2 vehicle. The vehicle they're talkin' about is the vehicle
3 with the uninsured motorist coverage. It is difficult to see
4 where use of the insured automobile, in this case the Carson
5 car, was directly connected with or a cause of the accident,
6 so that they are looking at in this context the Carson car.
7 Now the o -- again, the only difference is that it involves
8 uninsured as opposed to underinsured motorist coverage, I
9 don't know why there should be any any any difference. All
10 that again, all of those elements in that context are
11 additional reasons completely beyond the use issue. The
12 number one issue that we're or the first issue we said is he
13 wasn't using it. If he wasn't using it then he's not an
14 insured, period, but then you get into all these other issues
15 even if he is an insured and finally you get to the stacking
16 issue.

17 MR. LAZENBY: And, Your Honor, if if these other issues
18 did apply to UIM cases, Mr. Merck would not be able to recover
19 UIM damages for the accident where his car was not an active
20 accessory, his car was not being used for transportation but
21 the underinsured vehicle was and we believe that's a proper
22 analysis.

23 MR. NORRIS: None of those issues are even discussed in
24 Merck. Merck is a pure stacking case, that's all the Merck
25 decision deals with is whether you can or cannot stack and he

1 could stack because he was a Class I insured.

2 THE COURT: Alright, I will take a look at it. I've not
3 had the benefit of reviewing everything so I will let you
4 know. Is this on a trial docket?

5 MR. NORRIS: I think they have told us, uh, ---

6 MR. LAZENBY: We haven't been statussed yet. We we we
7 pushed the status to allow this motion to be heard.

8 MR. NORRIS: Yeah, I -- what I've been told by is it Pat
9 Gotautis?

10 MR. LAZENBY: Gatautas (phonetic).

11 MR. NORRIS: Gatautas that she would not put this case on
12 a roster until we got a decision on these motions and I I, and
13 I filed a motion for summary judgment in September so it's
14 been hangin' around for a while.

15 THE COURT: Okay. Alright, thank you very much.

16 MR. NORRIS: Thank you, ---

17 MR. LAZENBY: Thank ---

18 MR. NORRIS: --- Judge.

19 MR. LAZENBY: --- Your Honor.

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CERTIFICATE OF REPORTER

I, Margaret A. Woods, Court Reporter in and for the State of South Carolina at Large, hereby certify that I reported the preceding case on May 17, 2013 at the time and place heretofore set forth; and that the foregoing pages numbered from 2 through 34, inclusive, constitute a true and accurate transcription of my stenographic notes of the said proceeding.

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

August 21, 2013

Margaret A. Woods

Margaret A. Woods, Court Reporter
in and for the State of South Carolina at Large.

1 he was using what I refer to as the scissor
2 grips to tow the vehicle that we had.

3 Q. Let me ask you this. It's my understanding
4 that this tow truck can tow two vehicles?

5 A. Yes, that's correct.

6 Q. One vehicle would be mounted on the flatbed of
7 the tow truck and secured?

8 A. Correct.

9 Q. And there is some kind of a metal bar at the
10 back of the tow truck and you operate that with
11 levers on the back side of the tow truck?

12 A. Hydraulic.

13 Q. And you could attach that lever to the front of
14 another car and lift it up and tow the second
15 car that way?

16 A. That's correct.

17 Q. And that was what James Plemmons was in the
18 process of doing when the accident happened?

19 A. That's correct.

20 Q. And the vehicle he was trying to attach with
21 the lever at the back of the tow truck was the
22 vehicle of the driver that Officer Weaver had
23 stopped and had taken away?

24 A. That's correct.

25 Q. And this was on Highway 29 in Spartanburg

1 County?

2 A. That's correct.

3 Q. And I think the time of the accident was around
4 four a.m.?

5 A. Yes.

6 Q. Now, would you continue your narrative?

7 A. Yes. I walked up there to talk to James. He
8 let down the scissor grips or the bar that you
9 referred to and was using the hydraulics to get
10 it into place. He had to crawl under the front
11 end of the vehicle that he was going to tow for
12 us I believe it was two or three times. He had
13 to get underneath there to make sure his
14 placement was correct. The whole time that
15 we're talking his rig was still running, along
16 with hydraulics and everything. It was fairly
17 loud. So I maintained a small distance from
18 him whenever we were talking and able to be
19 heard.

20 A couple of times he came back to the levers to
21 -- you know, the hydraulic controls and was
22 moving those around. I cannot remember if the
23 vehicle had already been lifted off the ground
24 and he was going for the straps to strap onto
25 the tires. I can't remember if that had been

1 done. From this point is kind of when
2 everything kind of went chaotic.

3 We were standing at the hydraulic controls; he
4 was standing there, we weren't crouched down,
5 within about I'd say a foot and a half from
6 each other. It was a very small distance.

7 Q. You were kind of right behind him?

8 A. Yeah, I was right next to him kind of at an
9 angle. I caught something out of the corner of
10 my eye and looked to the left, and coming from
11 the Greenville side heading southbound on 29,
12 or I guess eastbound, I saw lights, and I could
13 tell it was at a high rate of speed. I
14 honestly didn't know at that point, but it was
15 coming so quick. The vehicle was in the lane I
16 was actually standing in. I was just off the
17 median into that lane.

18 Q. Let me ask you this. This part of 29 is a
19 four-lane highway?

20 A. That's correct, with an open median.

21 Q. Now, an open median?

22 A. No grass, an unprotected median. Basically the
23 only thing that differentiates it from the road
24 is lines that open it up. Right next to where
25 this occurred there was a grassed median with

1 trees, but we were right in front of that and
2 it was an open median. We weren't in grass.
3 We were on asphalt.

4 Q. And the median itself is about how wide?

5 A. wide enough for a rig, and I couldn't estimate
6 in feet. I'd say his rig is a diesel rig, and
7 you probably had one or two feet on either
8 side. It's fairly wide.

9 Q. The tow truck is in the median?

10 A. Yes.

11 Q. And the vehicle driven by the person arrested
12 for DUI is right behind it?

13 A. That's correct.

14 Q. In the process of being secured?

15 A. That's correct.

16 Q. Okay. So you look to your left and you see
17 lights approaching at a fast rate of speed?

18 A. Correct.

19 Q. And I guess one thing that got your attention
20 is there is not a lot of traffic at four a.m.?

21 A. The traffic was dead. This is the first car I
22 had seen since we had been out there.

23 Q. That in and of itself attracted your attention
24 because there just wasn't any traffic, period?

25 A. Correct.

1 Q. What happens next?

2 A. At this point, like I said, it was very loud
3 with the rig running, and the controls and this
4 -- when I tell it, it sounds a lot longer, but
5 it happened instantaneously. I thought that
6 the vehicle was going to hit me in the lane of
7 travel, which I would consider the fast lane,
8 which is closest to the median, so I jumped
9 towards the rig. When I did, I hollered at
10 James. I knew there was no way that Shawn, or
11 Deputy Plount, could hear me, and I glanced --
12 I don't think I took my eyes off the car
13 coming, and I saw it start to veer. I grabbed
14 James' shirt and yelled. I couldn't -- he's a
15 big guy. I couldn't get a good grip on him,
16 and I'm stepping back and yelling at the same
17 time. Like I said, it sounds longer, but it
18 was really quick. Couldn't get a grip on him,
19 and the next thing I heard was the explosion.

20 Q. All right. Now, first of all, you didn't know
21 it at that time but you know it now that the
22 car travelling at a high rate of speed that hit
23 the front of the tow truck was operated by Mr.
24 Diaz?

25 A. Correct.

1 go down. That's when I had my eyes crossed --
2 not crossed, closed, and was running backwards.

3 Q. The vehicle that was on the top of the tow
4 truck, do you know what kind of car that was?

5 A. It was a black vehicle. I would say it looks
6 something similar to like a Nissan or Honda
7 sedan.

8 Q. Do you know who owned that car?

9 A. I have no clue.

10 Q. And that vehicle was being towed?

11 A. Yes.

12 Q. Was that vehicle on top of the tow truck being
13 used at the time of the accident?

14 A. No.

15 Q. Now, you said that vehicle, the vehicle on top
16 of the tow truck, when you saw it, it was
17 airborne?

18 A. Uh-huh.

19 Q. You have to say yes or no.

20 A. Yes. Sorry.

21 Q. Did it come off of the tow truck?

22 A. Yes, it did.

23 Q. Did it hit Mr. Plemmons?

24 A. No.

25 Q. Did it come off the back of the tow truck or

1 the side of the tow truck?

2 A. It came off the back of the tow truck, and I
3 believe from what I remember the only thing
4 that was holding it at an angle was the bumper
5 was laid on the end of the flatbed.

6 Q. All right.

7 A. It snapped the chains when it hit.

8 Q. Okay. And the vehicle on top of the tow truck
9 itself was not being used for transportation at
10 the time of the accident?

11 MR. JOHNSTON:

12 Object to the form.

13 THE DEPONENT:

14 No.

15 EXAMINATION RESUMED BY MR. NORRIS:

16 Q. Let me repeat the question subject to his
17 objection.

18 The vehicle on top of the tow truck was not
19 being used for transportation at the time of
20 the accident?

21 A. No, it was not.

22 Q. Nobody was driving it obviously?

23 A. No.

24 Q. Because it was being towed?

25 A. Right.

1 Q. His left leg either at or about the knee was
2 literally crushed?

3 A. From the femur, mid femur all the way down. It
4 was --

5 Q. Is the femur the thigh or the shin?

6 A. The femur would be the thigh. It was mid femur
7 was the first break, and I tell you this
8 because I witnessed it myself, his leg was
9 literally split from inner thigh to ankle wide
10 open. I could see the bone all the way down.
11 The bone was so clean from being drug across
12 the asphalt that it was bright white.

13 Q. And at this point you and Officer Plount get on
14 your radios and call whatever the highest level
15 they call?

16 A. The calvary.

17 Q. Get here now, we've got a serious injury?

18 A. Yes. I believe Officer Plount yelled over the
19 radio, officer down, at one point, so we had
20 all of highway patrol, Duncan, Lyman, Wellford,
21 everybody was there.

22 Q. They were there within five minutes?

23 A. My crew was there within about 30 to 45
24 seconds, my first unit on scene.

25 Another thing I forgot to mention, the vehicle

1 something else?

2 A. I know nothing.

3 Q. So you take your tow truck, go over to
4 Ms. Carson's house, and you load her car onto
5 your tow truck; right?

6 A. Correct.

7 Q. And about what time of the day was this?

8 A. In the evening.

9 Q. Do you remember what -- 6, 7, 8, 8 o'clock?

10 A. I don't remember specifics.

11 Q. All right. And what did Ms. Carson want you to
12 do? In other words, did she want you to take it
13 back to your shop and fix it?

14 A. Yes.

15 Q. Is that a yes?

16 A. I'm sorry. Yes.

17 Q. What day of the week was this that you recall?

18 A. It was a Friday.

19 Q. Now, once you loaded the Carson vehicle -- which
20 I understand was a 2005 Dodge Neon -- did you
21 take it back to your shop or did you take it to
22 your house?

23 A. Took it to my house.

24 Q. And is this because it was a Friday evening and
25 you're not open on Saturdays?

- 1 A. Correct.
- 2 Q. And you took it back to your house and parked
3 the Carson car on top of your tow truck in front
4 of your house and went in for the evening;
5 right?
- 6 A. Correct.
- 7 Q. Okay. Now, at some point the next morning, do
8 you get a call to come pick up another car?
- 9 A. Correct.
- 10 Q. And I'm going to show you the wrecker log which
11 I'll mark as Exhibit 2. I think you're on a
12 rotating list of tow truck operators to come
13 pick up vehicles. Is that how it works?
14 (Exhibit No. 2 marked: Attached.)
- 15 A. Correct.
- 16 Q. So you were next on the list?
- 17 A. Correct.
- 18 Q. Let me show you Exhibit 2 which is a document
19 that your attorneys have produced to us. Is
20 that the wrecker log for your picking up the
21 vehicle owned by Queen Mills?
- 22 A. Appears to be.
- 23 Q. And it's the fifth one down, isn't it, on
24 Exhibit 2?
- 25 A. I count six. It's the JLP entry.

1 Q. Okay. All right. And it has, on date and time,
2 7/31/10 and it has 4:21. would that be 4:21
3 a.m.?

4 A. Yes.

5 Q. So you're at home asleep and you get this call
6 at home to come pick up a car; right?

7 A. Correct.

8 Q. And the number on there, the phone number for
9 JLP, is that your home number or your cell phone
10 number?

11 A. That would be my business cell phone.

12 Q. which obviously had you at home.

13 A. Yes.

14 Q. And did the call come from the Greer Police
15 Department?

16 A. From Greer dispatch.

17 Q. So you hop out of bed, throw your clothes on, go
18 to the tow truck with the Carson car already on
19 top of it, and drive to where they've told you
20 the car owned by Ms. Mills is; right?

21 A. Correct.

22 Q. And how long does it take you to get there? 10,
23 15 minutes, something like that?

24 A. Possibly ten minutes.

25 Q. When you get there -- well, first of all, let me

1 don't know mechanically what happened during the
2 accident?

3 A. Correct.

4 Q. You've had other people tell you what happened
5 but you don't know.

6 A. Correct.

7 Q. You have an idea from other sources what
8 happened; right?

9 A. I hear physics of the way things operate. Yes.
10 Correct.

11 Q. Now, at the time of the accident, were you using
12 Queen Mills's car?

13 A. I was moving it. Correct.

14 Q. All right. So the use that you were -- you say
15 you were putting to Queen Mills's car is that
16 you were trying to attach it to your tow truck?

17 A. Correct.

18 Q. But you weren't in it, were you?

19 A. No.

20 Q. And you weren't driving it obviously; right?

21 A. No.

22 Q. And would the same thing go with the Carson car,
23 you weren't in the Carson car?

24 A. I was not in the Carson car.

25 Q. And, in fact, the Carson car couldn't be driven

1 because it was inoperable.

2 A. Correct.

3 Q. Was the Carson car in motion at the time of the
4 accident or was it stationary?

5 A. Can you rephrase?

6 Q. Well, the Carson car, at the time you were
7 loading the Mills car, was on top of the
8 flatbed; right?

9 A. Correct.

10 Q. And it was secured; right?

11 A. Correct.

12 Q. The reason it was secured is you don't want it
13 moving; right?

14 A. Correct.

15 Q. So, to your knowledge, was the Carson car moving
16 in any respect at the time of the accident?

17 A. At the beginning of the accident, no. It did
18 move during the accident.

19 Q. That's because it was hit?

20 A. It was not directly hit.

21 Q. Your understanding -- and I'll get to -- show
22 you maybe some diagrams in a few minutes -- is
23 that Mr. Diaz came from your back; right? The
24 car operated by Mr. Diaz.

25 A. He came from the way I was knelt, my back. Yes.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

C.A. No.: 2012-CP-42-00346

AFFIDAVIT OF KIM CARSON

AFFIDAVIT OF KIM CARSON

AFFIDAVIT OF KIM CARSON

AFFIDAVIT OF KIM CARSON

AFFIDAVIT OF KIM CARSON

- ## AFFIDAVIT OF KIM CARSON

9. The stop at the home of James Plemmons did not exceed the scope of my permission related to the use of the Dodge Neon by James Plemmons.

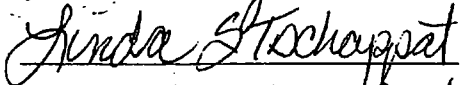
AFFIANT FURTHER SAYETH NAUGHT.



Kim Carson

SWORN to before me this

16th day of May, 2013



Notary Public for South Carolina
My Commission Expires: 9-12-16

State Farm Insurance Companies



South Carolina Operation Center
P. O. Box 10003
Duluth, GA 30096-9403
Fax: (888) 870-0317

August 3, 2011

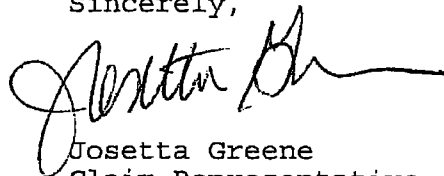
D. Alan Lazenby
Lazenby Law Firm, LLC
PO Box 6099
Spartanburg, SC 29304

RE: Claim Number: 40-8676-404
Date of Loss: July 31, 2010
Our Insured: John R Carson
Your Client: James Plemmons

Dear Mr. Lazenby:

We enclose a certified copy of the 2005 Dodge Neon automobile insurance policy as requested.

Sincerely,



Josetta Greene
Claim Representative
(770) 418-3917

State Farm Mutual Automobile Insurance Company

Enclosure:

HOME OFFICES: BLOOMINGTON, ILLINOIS 61710-0001

ROA 000357
APP 000360

CARSON, JOHN RAYMOND
301 BIRCHWOOD DR
UNION SC 29379-1869

AGENT

MARC MEEKER
408 N DUNCAN BYP STE C
UNION, SC 29379-8640



PHONE: (864)427-5634

DO NOT PAY PREMIUMS SHOWN ON THIS PAGE.
SEPARATE STATEMENT ENCLOSED IF AMOUNT DUE.

YEAR	MAKE	MODEL	BODY STYLE	VEHICLE ID NUMBER	CLASS
2005	DODGE	NEON	4DR	1B3ES56C35D211659	1D3050H000

SYMBOLS	COVERAGES	PREMIUMS
	See policy for coverage details.	2005 DODGE
A	Bodily Injury/Property Damage Liability Limits of Liability-Coverage A-Bodily Injury Each Person, Each Accident \$100,000 \$300,000 Limits of Liability-Coverage A-Property Damage Each Accident \$100,000	\$126.26
P5	Personal Injury Protection (See Policy Schedule for Limits.)	\$26.91
D250	\$250 Deductible Comprehensive	\$69.44
G250	\$250 Deductible Collision	\$117.74
H	Emergency Road Service	\$2.30
U	Uninsured Motor Vehicle Limits of Liability-U Each Person, Each Accident \$100,000 \$300,000 Limits of Liability-U-Property Damage Each Accident \$50,000	\$15.01
W	Underinsured Motor Vehicle Limits of Liability-W Each Person, Each Accident \$100,000 \$300,000 Limits of Liability-W-Property Damage Each Accident \$50,000	\$53.69
Total premium for this policy period FEB 26 2008 to SEP 02 2008.		\$411.35 * This is not a bill.

IMPORTANT MESSAGES

Your policy consists of this declarations page, the policy booklet - form 9840.3, and any endorsements that apply, including those issued to you with any subsequent renewal notice.

Replaced policy number 1486207-40.

* The total premium for the policy period listed above reflects a recent change to your policy plus the 6 month renewal premium.

Your total current 6 month premium for MAR 02 2008 to SEP 02 2008 is \$402.05.

EXCEPTIONS AND ENDORSEMENTS (See individual endorsement for details.)

FINANCED- BANK OF AMERICA, PO BOX 45227, JACKSONVILLE FL 32232-5227.
6091 CERTIFICATE OF GUARANTEED RENEWAL.
6127YY AMENDATORY ENDORSEMENT.
6940.2 AMENDATORY ENDORSEMENT.

CERTIFICATE OF GUARANTEED RENEWAL
6091 Amendment of Cancellation and Renewal Conditions

ment is a part of *your* policy. Except for the changes it makes, all other terms of the policy remain and apply to this endorsement. It is effective at the same time as *your* policy unless a different date is shown for the endorsement on the Declarations Page.

ment is issued by the **STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY**
ington, Illinois.

that we will not cancel or non-renew this policy as long as:

is policy insures a *private passenger car*;

premiums are paid when due;

If drivers of *your car* maintain valid drivers licenses;

you continue to reside in an area in which State Farm Mutual Automobile Insurance Company sells automobile insurance and has the Certificate of Guaranteed Renewal available for use; and

no *person* other than the current named insured or that *person's spouse* becomes a named insured on this policy.

able to select from those coverages which continue to be available from State Farm Mutual Insurance Company. Coverage will be provided by our car policy, including any revisions that we make to it.

Edward J. Runtz Jr.

Chief Executive Officer

6127YY AMENDATORY ENDORSEMENT

This endorsement is a part of *your* policy. Except for the changes it makes, all other terms of the policy remain the same and apply to this endorsement. It is effective at the same time as *your* policy unless a different effective date is specified by us in writing.

In consideration of the premium charged, it is agreed that *your* policy is changed as follows:

1. DEFINED WORDS

a. The definition of *Newly Acquired Car* is changed to read:

Newly Acquired Car means a car newly owned by or newly leased to *you* or *your spouse*. A car ceases to be a *newly acquired car* on the earlier of:

1. the effective date and time of a policy, including any binder, issued by us or any other company that describes the car as an insured vehicle; or

2. the end of the 14th calendar day immediately following the date the car is delivered to *you* or *your spouse*.

If *you* or *your spouse* want coverage for a car newly owned by or newly leased to *you* or *your spouse* and it:

1. replaces *your car*, then *you* or *your spouse* must ask us to insure that car within 14 days after it is delivered to *you* or *your spouse* and pay us any added amount due. The added amount due will be calculated based on the date the replacement car is delivered to *you* or *your spouse*.

2. does not replace *your car*, then *you* or *your spouse* must apply to us for a separate policy to insure that added car. Such policy will be issued only if both the applicant and the vehicle are eligible for coverage at the time of the application.

If a *newly acquired car* is not otherwise afforded comprehensive coverage or collision coverage by this or any other policy, then this policy will provide Comprehensive Coverage or Collision Coverage for that *newly acquired car*, subject to a deductible of \$500. Any coverage provided as a result of this paragraph will apply only until the end of the 5th calendar day immediately following the date the *newly acquired car* is delivered to *you* or *your spouse*.

b. The definition of *Your Car* is changed to read:

Your Car means the vehicle described on the Declarations Page. *Your Car* does not include a vehicle that *you* no longer own or lease.

If *you* or *your spouse* ask us to replace the car shown on the Declarations Page with a car newly owned by or newly leased to *you* or *your spouse*, the car being replaced will continue to be considered *your car* until the earliest of:

1. the end of the 30th calendar day immediately following the date such newly owned or newly leased car is delivered to *you* or *your spouse*;

2. the date this policy is no longer in force; or

3. the date *you* no longer own or lease the car being replaced.

NOTING A CLAIM — INSURED'S

IES

following is added:

person or organization making claim under this policy must, when we ask, give us proof of loss on forms we furnish.

person making claim under Personal Injury Protection Coverage, Medical Payments Coverage, Uninsured Motor Vehicle Coverage, Underinsured Motor Vehicle Coverage, and Death, Disability, and Loss of Sight Coverage must provide written authorization for us to obtain:

- medical bills;
 - medical records;
 - wage, salary, and employment information; and
 - any other information we deem necessary to substantiate the claim.
- If an injured *person* is a minor, unable to act, or dead, then his or her legal representative must provide us with written authorization.

If the holder of the information refuses to provide it to us despite the authorization, then at our request the *person* making claim or his or her legal representative must obtain the information and promptly provide it to us.

SECTION II — PERSONAL INJURY PROTECTION — COVERAGE AND MEDICAL PAYMENTS — COVERAGE

The following paragraph under both Personal Injury Protection Coverage and Medical Payments Coverage:

Expenses are reasonable only if they are consistent with the usual fees charged by the majority of similar medical providers in the geographical area in which the expenses were incurred for the specific medical service.

is changed to read:

Expenses are reasonable only if they are the lowest of any one of the following charges:

1. the usual and customary fees charged by a majority of health-care providers who provide similar medical services in the geographical area in which the charges were incurred;
2. the fees agreed to by both the injured *person's* health-care provider and us; or
3. the fees agreed upon between the injured *person's* health-care provider and a third party when we have a contract with such third party.

b. The following is added to both Personal Injury Protection Coverage and Medical Payments Coverage:

We have the right to:

1. obtain and use:
 - a. peer reviews; and
 - b. medical bill reviewsof the medical expenses and services to determine if they are reasonable and necessary for the *bodily injury* sustained;
2. use a medical examination of the injured *person* to determine if:

- a. the *bodily injury* was caused by a motor vehicle accident; and
- b. the medical expenses and services are reasonable and necessary for the *bodily injury* sustained; and
3. enter into a contract with a third party that has an agreement with the injured *person's*

healthcare provider to charge fees as determined by that agreement.

c. The following is added to **Deciding Amount** under both Personal Injury Protection Coverage and Medical Payments Coverage:

Arbitrators shall have no authority to decide any questions of law or conduct arbitration on a class-wide or class-representative basis.

4. SECTION IV — PHYSICAL DAMAGE COVERAGES

COMPREHENSIVE — COVERAGE D and COLLISION — COVERAGE G

a. The following is added:

You agree that replacement glass need not have any insignia, logo, trademark, etching, or other marking that was on the replaced glass.

b. The following is added to **Settlement of Loss — Comprehensive and Collision Coverages**:

Appraisers shall have no authority to decide any questions of law or conduct appraisal on a class-wide or class-representative basis.

5. MOTORCYCLE COVERAGE ENDORSEMENT and TRAILER ENDORSEMENT

The definition of *newly acquired car* in the above item 1. replaces the definition of *newly acquired car* in both the **MOTORCYCLE COVERAGE** endorsement and the **TRAILER ENDORSEMENT** if either endorsement is a part of *your* policy. In addition, under the **TRAILER ENDORSEMENT**, the definition of *car* as found in the definition of *newly acquired car* is changed to include a trailer newly owned by or newly leased to *you* if it is of the same type as the trailer described on the declarations page.

State Farm Insurance Companies®



Atlanta Operations Center
11350 Johns Creek Parkway
Duluth, Georgia 30098-0001

CERTIFICATE

I, the undersigned, do hereby certify that I am custodian of the records pertaining to the issuance of policies issued by the South Carolina Division of State Farm Mutual Automobile Insurance Company of Bloomington, Illinois.

I further certify that the attached policy number 148 6207-C02-40A is a copy of the policy issued to John Raymond Carson, 301 Birchwood Dr., Union, SC 29379-1869, based on our available records:

The policy was in effect on the loss date of July 31, 2010.

Brenda Holmes

Brenda Holmes
Underwriting Operations Team Manager

Dated this 27 day of July, 2011.

[Signature]
Notary Public

Joni Stowe
Notary Public
Forsyth County, Georgia
My Commission Expires
April 22, 2014

6940.2 AMENDATORY ENDORSEMENT

This endorsement is a part of *your* policy. Except for the changes it makes, all other terms of the policy remain the same and apply to this endorsement. It is effective at the same time as *your* policy unless a different effective date is specified by us in writing.

In consideration of the premium charged, it is agreed that *your* policy is changed as follows:

1. DEFINED WORDS

- a. The following definition is added:

Fungi — means any type or form of fungus or fungi and includes:

1. mold;
2. mildew; and
3. any of the following that are produced or released by fungi:
 - a. mycotoxins;
 - b. spores;
 - c. scents; or
 - d. byproducts.

- b. **Non-Owned Car** — The provision which reads:

Non-owned car does not include a rented *car* while it is used in connection with the *insured's* employment or business.

is deleted.

2. SECTION 1 — LIABILITY — COVERAGE A

Under the paragraph that reads "In addition to the limits of liability, we will pay for an *insured* any costs listed below resulting from such accident":

- a. item 3.c. is deleted.
- b. item 4 is changed to read:
 4. The following costs and expenses if related to and incurred after a civil lawsuit has been filed against an *insured* for damages for which liability coverage is provided by this policy:

Page 1 of 8

6940.2

2. the following trailers only if they are described on the declarations page and extra premium is paid:

- a. trailers designed to be pulled by a *private passenger car* or a *utility vehicle*:

- (1) if designed to carry *persons*; or

- (2) while used with a motor vehicle whose use is shown as "commercial" on the declarations page (trailers used only for pleasure use are covered even if not described and no extra premium paid); or

- (3) while used as premises for office, store or display purposes; or

- b. trailers not designed to be pulled by a *private passenger car* or a *utility vehicle*.

When we refer to trailer coverage, *insured* means:

1. *you*;
2. *your spouse*;
3. the *relatives* of the first *person* named in the declarations;
4. any other *person* while using *your car*, a *newly acquired car* or a *temporary substitute car*, if its use is within the scope of consent of *you* or *your spouse*; and

Page 2 of 8

5. any other *person* organization liable use of a covered one of the above;

- d. The first paragraph under **LIABILITY** is changed to read:

Limits of Liability

1. The amount of bodily liability coverage is the declarations page "Limits of Liability — Age A — Bodily Injury Person, Each Accident — Each Person" amount of coverage damages due to *bodily injury* and damages to *persons* resulting from *injury*, and all emotional distress resulting from *injury* sustained by *persons* who do not sustain *injury*. Under "Each Accident" is the total amount of coverage, subject amount shown under "Person", for all damages to *bodily injury* to two *persons* in the same a

3. MEDICAL PAYMENTS — AGE C

The following is added to **What Covered Under Coverage C**:

- a. THERE IS NO COVERAGE *BODILY INJURY* THAT RESULTS FROM EXPOSURE TO *FU*
- b. THERE IS NO COVERAGE *BODILY INJURY* THAT RESULTS FROM:
 - (1) NUCLEAR REACTION;
 - (2) RADIATION OR RADIOACTIVE CONTAMINATION;
 - ANY SOURCE; OR

(3) THE ACCIDENTAL OR INTENTIONAL DETONATION OF, OR RELEASE OF RADIATION FROM, ANY NUCLEAR OR RADIOACTIVE DEVICE.

4. SECTION III — UNINSURED MOTOR VEHICLE — COVERAGE U AND UNDERINSURED MOTOR VEHICLE — COVERAGE W

a. The following wording under the definition of "Uninsured Motor Vehicle" is deleted:

An *uninsured motor vehicle* does not include any motor vehicle owned by the *insured* who sustains *bodily injury* or *property damage*.

b. Who Is an Insured is changed to read:

Who Is an Insured

Insured — means:

1. *you, your spouse and relatives*;
2. any other *person* while *occupying* or using *your car*, a *newly acquired car* or a trailer attached to either, if that *person* is *occupying* or using the vehicle with *your* consent; and
3. any *person* to the extent he or she may recover damages under a state wrongful death statute because of the death of an *insured* under 1. or 2. above.

c. Item 1. Bodily Injury, under **Limits of Liability Coverage U** is changed to read:

1. Bodily Injury

The amount of coverage is shown on the declarations page under "Limits of Liability — U — Each Person, Each Accident". Under "Each Person" is the amount of coverage for all damages due to *bodily injury* to one *person*. "*Bodily injury* to one

person" includes all injury and damages to others resulting from this *bodily injury*, and all emotional distress resulting from this *bodily injury* sustained by other *persons* who do not sustain *bodily injury*. Under "Each Accident" is the total amount of coverage, subject to the amount shown under "Each Person", for all damages due to *bodily injury* to two or more *persons* in the same accident.

d. Item 1. Bodily Injury, under **Limits of Liability Coverage W** is changed to read:

1. Bodily Injury

The amount of coverage is shown on the declarations page under "Limits of Liability — W — Each Person, Each Accident". Under "Each Person" is the amount of coverage for all damages due to *bodily injury* to one *person*. "*Bodily injury* to one *person*" includes all injury and damages to others resulting from this *bodily injury*, and all emotional distress resulting from this *bodily injury* sustained by other *persons* who do not sustain *bodily injury*. Under "Each Accident" is the total amount of coverage, subject to the amount shown under "Each Person", for all damages due to *bodily injury* to two or more *persons* in the same accident.

e. Item 4. under **When Coverages U and W Do Not Apply** is replaced with the following:

THERE IS NO COVERAGE TO THE EXTENT THE COVERAGE LIMITS UNDER THIS SECTION OF THIS POLICY EXCEED THE

LIMITS REQUIRED BY THE FINANCIAL RESPONSIBILITY ACT:

a. WHILE ANY **INSURED** IS **OCCUPYING** A **MOTOR VEHICLE** OWNED BY OR LEASED TO **YOU, YOUR SPOUSE**, OR ANY **RELATIVE** IF:

(1) IT IS NOT **YOUR CAR** OR A **NEWLY ACQUIRED CAR**; AND

(2) IT IS NOT **INSURED** FOR THE COVERAGE SOUGHT UNDER THIS SECTION OF THIS POLICY;

b. IF THE **UNINSURED MOTOR VEHICLE** OR **UNDERINSURED MOTOR VEHICLE** IS OWNED BY OR LEASED TO **YOU, YOUR SPOUSE**, OR ANY **RELATIVE**.

f. Item 5. under **When Coverages U and W Do Not Apply** is deleted.

g. The following is added to **When Coverages U and W Do Not Apply**

THERE IS NO COVERAGE FOR **PROPERTY DAMAGE** THAT WAS PROXIMATELY CAUSED BY THE DRIVER OF **YOUR CAR** OR A **NEWLY ACQUIRED CAR**.

h. The provision titled **If There Is Other Uninsured Motor Vehicle Coverage** is replaced with the following:

If There Is Other Uninsured Motor Vehicle Coverage

1. If uninsured motor vehicle coverage for *bodily injury* or *property damage* is available to *you, your spouse* or a *relative* from more than one policy provided by us or any other insurer, then the uninsured motor vehicle

coverage provided by *you* shall apply:

a. on a primary basis *your spouse* or a *relative* sustains *bodily injury* or *property damage* while not *occupying* the vehicle or trailer

b. on an excess basis *your spouse* or a *relative* sustains *bodily injury* or *property damage* while *occupying* a motor vehicle other than *your*

2. IF:

a. *you, your spouse or your relative* sustains *bodily injury* or *property damage* while not *occupying* the vehicle or trailer

b. uninsured motor coverage from one of our policies *you, your spouse or your relative* applies to the then:

(1) only one policy the highest motor vehicle age limit shall that limit; and

(2) the uninsured vehicle coverage of the policies we issue apply only amount equal minimum limit required by the *Responsibility* *bodily injury* or *property damage* liability

3. If *you, your spouse or your relative* sustains *bodily injury* or *property damage* while not *occupying* the vehicle or trailer

property damage while *occupying* a motor vehicle or trailer other than *your car* that is owned by or leased to *you*, *your spouse* or a *relative*, then this coverage applies only to the extent of:

- a. the uninsured motor vehicle coverage applicable to the occupied motor vehicle or trailer; or
- b. the minimum limits required by the *Financial Responsibility Act* for bodily injury and property damage, whichever is higher.

4. If *you*, *your spouse* or a *relative* sustains *bodily injury* or *property damage* while *occupying* a motor vehicle or trailer not owned by or leased to *you*, *your spouse* or a *relative*, then only one policy issued by us to *you*, *your spouse* or any *relative* with the highest uninsured motor vehicle coverage limit shall apply.

5. Subject to items 1, 2, 3 and 4 above, if this policy and one or more other policies provide uninsured motor vehicle coverage for *bodily injury* or *property damage*:

- a. on a primary basis, then we are liable only for our share. Our share is that percent of the damages payable on a primary basis that the limit of liability that applies from this policy bears to the total of all applicable uninsured motor vehicle coverage provided on a primary basis.
- b. on an excess basis, then we are liable only for our

share. Our share is that percent of the damages payable on an excess basis that the limit of liability that applies from this policy bears to the total of all applicable uninsured motor vehicle coverage provided on an excess basis.

i. The provision titled **If There Is Other Underinsured Motor Vehicle Coverage** is replaced with the following:

If There Is Other Underinsured Motor Vehicle Coverage

1. If underinsured motor vehicle coverage for *bodily injury* or *property damage* is available to *you*, *your spouse* or a *relative* from more than one policy provided by us or any other insurer, then the underinsured motor vehicle coverage provided by this policy shall apply:

- a. on a primary basis if *you*, *your spouse* or a *relative* sustains *bodily injury* or *property damage* while *occupying your car*, or while not *occupying* a motor vehicle or trailer.

- b. on an excess basis if *you*, *your spouse* or a *relative* sustains *bodily injury* or *property damage* while *occupying* a motor vehicle or trailer other than *your car*.

2. If:

- a. *you*, *your spouse* or a *relative* sustains *bodily injury* or *property damage* while not *occupying* a motor vehicle or trailer; and
- b. underinsured motor vehicle coverage from more than one of our policies issued to *you*, *your spouse*

or a *relative* applies to the accident, then:

- (1) only one policy with the highest underinsured motor vehicle coverage limit shall apply in that limit; and
- (2) the underinsured motor vehicle coverage from each of the other policies we issued shall apply only in an amount equal to the minimum limits required by the *Financial Responsibility Act* for bodily injury and property damage liability.

3. If *you*, *your spouse* or a *relative* sustains *bodily injury* or *property damage* while *occupying* a motor vehicle or trailer other than *your car* that is owned by or leased to *you*, *your spouse* or a *relative*, then this coverage applies only to the extent of:

- a. the underinsured motor vehicle coverage applicable to the occupied motor vehicle or trailer; or

- b. the minimum limits required by the *Financial Responsibility Act*, for bodily injury and property damage,

whichever is higher.

4. If *you*, *your spouse* or a *relative* sustains *bodily injury* or *property damage* while *occupying* a motor vehicle or trailer not owned by or leased to *you*, *your spouse* or a *relative*, then only the one policy issued by us to *you*, *your spouse* or any *relative* with

the highest underinsured motor vehicle coverage I apply.

5. Subject to items 1, 2 above, if this policy and more other policies underinsured motor coverage for *bodily property damage*:

- a. on a primary basis: we are liable only for Our share is that the damages payable on a primary basis that the limit of liability that applies from this policy bears to the total of all applicable uninsured motor vehicle coverage provided on a primary basis.

- b. on an excess basis: we are liable only for Our share is that the damages payable on an excess basis that the limit of liability that applies from this policy bears to the total of all applicable uninsured motor vehicle coverage provided on an excess basis.

5. SECTION IV — PHYSICAL D COVERAGES

- a. The following is added to the definition of *Loss*:

Loss does not include an action in the value of any detachable living quarter has been repaired, as compared to its value before it was damaged.

- b. Item 2 under **COMPREHENSIVE COVERAGE D** is changed to

2. We will pay *you* for transportation costs incurred if *your car* is stolen. We will pay up to \$25 per day beginning when *you* tell us of the theft and ending when we offer to pay for the *loss*.

If the daily incurred transportation costs are payable under both Comprehensive Coverage and Car Rental and Travel Expenses Coverage, we will pay only under the one coverage where *you* collect the most. If payments have been made under Car Rental and Travel Expenses Coverage and such payments have either exhausted the total amount payable under Car Rental Expense or reduced the total amount payable under Car Rental Expense to less than \$25, then we will pay under Comprehensive Coverage.

c. The following is added to **COLLISION - COVERAGE G**:

Loss caused by *collision* does not include *loss* due to:

1. missiles or falling objects;
2. windstorm or hail;
3. earthquake, water or flood;
4. theft or larceny;
5. malicious mischief or vandalism; or
6. riot or civil commotion.

d. The first paragraph of **Limit of Liability - Comprehensive and Collision Coverages** is changed to read:

The limit of our liability for *loss* to property or any part of it is the lower of:

1. the actual cash value; or

2. the cost of repair or replacement. The cost of repair or replacement does not include any reduction in the value of the property after it has been repaired, as compared to its value before it was damaged.

e. The paragraph under **CAR RENTAL AND TRAVEL EXPENSES - COVERAGE R1** in *your* policy booklet that reads:

Any car rent payable under this coverage is **REDUCED TO THE EXTENT IT IS PAYABLE UNDER COMPREHENSIVE.**

is changed to read:

If the incurred daily rental charge is payable under both Comprehensive Coverage and Car Rental and Travel Expenses Coverage, we will pay only under the one coverage where *you* collect the most.

f. The provision titled **Total Amount of Expenses Payable - Coverage R1** in *your* policy booklet is changed to read:

Total Amount of Expenses Payable - Coverage R1

1. The most we will pay for **Car Rental Expense** incurred in any one occurrence is \$400.
2. The most we will pay for **Travel Expenses** incurred by all *persons* in any one occurrence is \$400.
3. The most we will pay for **Rental Car - Repayment of Deductible Amount Expense** incurred in any one occurrence is \$400.

g. **Trailer Coverage**

The paragraph which reads:

The most we will pay under the comprehensive or collision coverage for a *loss* to such non-owned trailer or unit is \$500.

is changed to read:

The most we will pay under the comprehensive or collision coverage for a *loss* to such non-owned trailer or unit is \$2500.

h. Item 2.c. of **Trailer Coverage** is deleted.

i. The following is added to **When The Physical Damage Coverages Do Not Apply**:

a. THERE IS NO COVERAGE FOR *LOSS* TO ANY VEHICLE DUE TO *FUNGI*. THIS APPLIES REGARDLESS OF WHETHER OR NOT THE *FUNGI* RESULT FROM A *LOSS* THAT IS PAYABLE UNDER ANY OF THE PHYSICAL DAMAGE COVERAGES. WE WILL ALSO NOT PAY FOR ANY TESTING OR REMEDIATION OF *FUNGI*, OR ANY ADDITIONAL COSTS REQUIRED TO REPAIR *YOUR CAR* THAT ARE DUE TO THE EXISTENCE OF *FUNGI*.

b. THERE IS NO COVERAGE FOR *LOSS* TO ANY VEHICLE THAT RESULTS FROM:

- (1) NUCLEAR REACTOR
- (2) RADIATION OR RADIATION-INDUCED CONTAMINATION FROM ANY SOURCE
- (3) THE ACCIDENTAL INTENTIONAL DETENTION OF, OR RELEASE OF, RADIATION FROM, A CLEAR OR RADIC DEVICE.

6. CONDITIONS

The following is added to **1. Policy**:

e. **Change of Policy Address**:

We may change the insured's policy address as the Declarations Page at records to the most recent provided to us by:

1. *you*; or
2. the United States Postal Service.

7. The following is added to **your** policy:

Your purchase of this policy requires *you* to purchase certain coverage options; coverage at other policies from State Farm Automobile Insurance Company, Farm Fire and Casualty Company, subsidiaries or affiliates of either to their applicable eligibility requirements.

PLEASE READ YOUR POLICY CAREFULLY. IF YOU HAVE AN ACCIDENT, CONTACT YOUR STATE FARM AGENT OR ONE OF OUR CLAIM OFFICES AT ONCE. (SEE "REPORTING A CLAIM-INSURED'S DUTIES" IN THIS POLICY.)

Authorized Representative



State Farm Mutual Automobile Insurance Company, Home Office, Bloomington, Illinois

Georgia-South Carolina Office • 11350 Johns Creek Parkway • Duluth, GA 30098-0001 • Ph (770) 418-5413

YOUR
STATE FARM
CAR
POLICY

South Carolina
Policy Form 9840.3

ROA 000366
APP 000369

2
8403

ROA 000367
APP 000370

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY
BLOOMINGTON, ILLINOIS
A MUTUAL COMPANY

DEFINED WORDS
WHICH ARE USED IN SEVERAL PARTS OF THE POLICY

We define some words to shorten the policy. This makes it easier to read and understand. Defined words are printed in boldface italics. *You* can pick them out easily.

Bodily Injury – means bodily injury to a *person* and sickness, disease or death which results from it.

Car – means a land motor vehicle with four or more wheels, which is designed for use mainly on public roads. It does not include:

1. any vehicle while located for use as a dwelling or other premises; or
2. a truck-tractor designed to pull a trailer or semi-trailer.

Car Business – means a business or job where the purpose is to sell, lease, repair, service, transport, store or park land motor vehicles or trailers.

Insured – means the *person, persons* or organization defined as *insureds* in the specific coverage. If the information *you* have provided State Farm is incorrect or incomplete, or changes during the policy period, State Farm may decrease or increase the premium during the policy period as set out in the provision titled **Premium** of the Conditions section of this policy.

Loss – defined in Sections IV and V.

Motor Vehicle – defined in Sections II and III.

Newly Acquired Car – means a *replacement car* or an *additional car*.

Replacement Car – means a *car* purchased by or leased to *you* or *your spouse* to replace *your car*. This policy will only provide coverage for the *replacement car* if *you* or *your spouse*:

1. tell us about it within 30 days after its delivery to *you* or *your spouse*; and
2. pay us any added amount due.

Additional Car – means an added *car* purchased by or leased to *you* or *your spouse*. This policy will only provide coverage for the *additional car* if:

1. it is a *private passenger car* and we insure all other *private passenger cars*; or
2. it is other than a *private passenger car* and we insure all *cars*

owned by or leased to *you* or *your spouse* on the date of its delivery to *you* or *your spouse*.

This policy provides coverage for the *additional car* only until the earlier of:

1. 12:01 A.M. Standard Time at the address shown on the declarations page on the 31st day after the delivery of the *car* to *you* or *your spouse*; or
2. the effective date and time of a policy issued by us or any other company that describes the *car* on its declarations page.

You or *your spouse* may apply for a policy that will provide coverage beyond the 30th day for the *additional car*. Such policy will be issued only if both the applicant and the vehicle are eligible for coverage at the time of application.

If a *newly acquired car* is not otherwise afforded comprehensive or collision coverage by this or any other policy, this policy will provide the comprehensive or collision coverage not otherwise provided for the *newly acquired car*. If

coverage is provided by this paragraph, it shall apply only until 12:01 A.M. Standard Time. The address shown on the declarations page on the sixth day after the delivery of the car to you or your spouse. Any comprehensive or collision coverage provided by this paragraph is subject to a deductible of \$500.

Non-Owned Car - means a car not owned by, leased to or leased to:

1. you, your spouse;
2. any relative, unless at the time of the accident or loss:
 - a. the car currently is or has within the last 30 days been insured for liability coverage; and
 - b. the driver is an insured who does not own or lease the car.

3. any other person residing in the same household as you, your spouse or any relative; or

4. an employer of you, your spouse or any relative.

Non-owned car does not include a:

1. rented car while it is used in connection with the insured's employment or business; or
2. car which has been operated or rented by or in the possession of an insured during any part of each of the last 21 or more consecutive days. If the insured is an insured under one or more other car policies issued by us, the 21 day limit is increased by an additional 21 days for each such additional policy.

A **non-owned car** must be a car in the lawful possession of the person operating it.

Occupying - means in, on, entering or alighting from.

Person - means a human being.

Private Passenger Car - means a car:

1. with four wheels;
2. of the private passenger or station wagon type; and
3. designed solely to carry persons and their luggage.

Relative - means a person related to you or your spouse by blood, marriage or adoption who resides primarily with you. It includes your unmarried and unemancipated child away at school.

Spouse - means your husband or wife who resides primarily with you.

Temporary Substitute Car - means a car not owned by or leased to you or your spouse, if it replaces your car for a short time. Its use has to be with the consent of the owner. Your car has to be out of use due to its breakdown, repair, servicing, damage or loss. A temporary substitute car is not considered a non-owned car.

Utility Vehicle - means a motor vehicle with:

1. a pickup, panel or van body; and
2. a Gross Vehicle Weight of 10,000 pounds or less.

You or Your - means the named insured or named insureds shown on the declarations page.

Your Car - means the car or the vehicle described on the declarations page.

DECLARATIONS CONTINUED

We, the State Farm Mutual Automobile Insurance Company, agree to insure you according to the terms of this policy based:

1. on your payment of premium for the coverages you chose; and
2. in reliance on your statements in these declarations.

You agree, by acceptance of this policy that:

1. the statements in these declarations are your statements and are true; and
2. we insure you on the basis your statements are true; and
3. this policy contains all of the agreements between you and us or any of our agents.

Unless otherwise stated in the exceptions on the declarations page, your statements:

1. Ownership. You are the sole owner of your car.
2. Insurance and License History. Neither you nor any member of your household within the past three years has had:
 - a. vehicle insurance canceled by a surety; or
 - b. a license to drive or vehicle registration suspended, revoked or refused.
3. Use. Your car is used for pleasure business.

WHEN AND WHERE COVERAGE APPLIES

When Coverage Applies

The coverages you chose apply to accidents and losses that take place during the policy period.

The policy period is shown under "Policy Period" on the declarations page and is for successive periods of six months each for which you pay the renewal premium. Payments must be made on or before the end of the current policy period. The policy period begins and ends at 12:01 A.M. Standard Time at the address shown on the declarations page.

Where Coverage Applies

The coverages you chose apply:

1. in the United States of America, its territories and possessions or Canada; or
2. while the insured vehicle is being shown between their ports.

The liability, personal injury protection, medical payments and physical damage coverage apply in Mexico within 50 miles of the United States border. A physical damage coverage in Mexico is determined on the basis of the nearest United States point.

Death, dismemberment and loss of sight coverage applies anywhere in the world.

FINANCED VEHICLES

a creditor is shown in the declarations; we may by any comprehensive or collision *loss* to:

1. *you* and, if unpaid, the repairer; or
2. *you* and such creditor, as its interest may appear, when we find it is not practical to repair *your car*; or
3. the creditor, as to its interest, if *your car* has been repossessed.

When we pay the creditor for *loss* for which *you* are not covered, we are entitled to the creditor's right of recovery against *you* to the extent of our payment. Our right of recovery shall not impair the creditor's right to recover the full amount of claim.

The coverage for the creditor's interest only is valid until we terminate it. We will not terminate such coverage because of:

1. any act or negligence of the owner or borrower; or
2. a change in the ownership or interest unknown to us, unless the creditor knew of it and failed to tell us within 10 days; or
3. an error in the description of the vehicle.

The date of termination of the creditor's interest will be at least 10 days after the date we mail or electronically transmit the termination notice.

REPORTING A CLAIM — INSURED'S DUTIES

Notice to Us of an Accident or Loss

The *insured* must give us or one of our agents written notice of the accident or *loss* as soon as reasonably possible. The notice must give us:

- a. *your* name;
- b. the names and addresses of all *persons* involved;
- c. the hour, date, place and facts of the accident or *loss*; and
- d. the names and addresses of witnesses.

Notice to Us of Claim or Suit

If a claim or suit is made against an *insured*, that *insured* must at once send us every demand, notice or claim made and every summons or legal process received.

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4. Other Duties Under Personal Injury Protection, Medical Payments, Uninsured Motor Vehicle, Underinsured Motor Vehicle and Death, Dismemberment and Loss of Sight Coverages

Any *person* who suffers a *bodily injury* which results in a personal injury protection or medical payments coverage claim must notify us of the claim in writing as soon as reasonably possible after the *person's* first examination or treatment resulting from the *bodily injury*. Another *person* may give us the required notice on behalf of the injured *person*.

The *person* making claim also shall:

- a. under personal injury protection, medical payments, uninsured motor vehicle, underinsured motor vehicle, and death, dismemberment and loss of sight coverages:

- (1) give us all the details about the death, injury, treatment and other information we need to determine the amount payable.

- (2) be examined by physicians chosen and paid by us as often as we reasonably may require. A copy of the report will be sent to the *person* upon written request. The *person*, or his or her legal representative if the *person* is dead or unable to act, shall authorize us to obtain all medical reports and records.

- (3) answer questions under oath when asked by anyone we name, as often as we reasonably ask, and sign copies of the answers.

- b. under the uninsured motor vehicle coverage:

- (1) report a "hit-and-run" accident to the police within a reasonable time and to us within 30 days.

- (2) let us see the insured *car* the *person* occupied in the accident.

- (3) send us at once a copy of a papers if the *person* sues the liable for the accident for damages.

- c. under the uninsured motor vehicle, underinsured motor vehicle coverage making claim for damage to *person* giving us a sworn proof of loss within days of the accident. This proof state as to the property:

- (1) who owns it and how much they own;
- (2) the amount of any claims, or liability;
- (3) its value at the time of the accident; and

- (4) details of the accident and any insurance on it.

If we ask, the *insured* shall show property.

- d. under the death, dismemberment or loss of sight coverage, give us proof of on forms we furnish.

5. Insured's Duty to Cooperate With Us

The *insured* shall cooperate with us when asked, assist us in:

- a. making settlements;
- b. securing and giving evidence;
- c. attending, and getting witnesses to attend, hearings and trials; and
- d. preserving his or her right to recover damages from others.

The *insured* shall not, except at his own cost, voluntarily:

- a. make any payment or assume any obligation to others; or
- b. incur any expense, other than for litigation, to others.

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SECTION I — LIABILITY — COVERAGE A

You have this coverage if "A" appears in the "Coverages" space on the declarations page.

We will:

1. pay damages which an *insured* becomes legally liable to pay because of:

- bodily injury* to others, and
- damage to or destruction of property including loss of its use, caused by accident resulting from the ownership, maintenance or use of *your car*; and

2. defend any suit against an *insured* for such damages with attorneys hired and paid by us. We will not defend any suit after we have paid the applicable limit of our liability for the accident which is the basis of the lawsuit.

In addition to the limits of liability, we will pay for an *insured* any costs listed below resulting from such accident.

- Court costs of any suit for damages that we defend.
- Interest on damages owed by the *insured* due to a judgment and accruing:
 - after the judgment, and until we pay, offer or deposit in court, the amount due under this coverage; or
 - before the judgment, where owed by law, and until we pay, offer or deposit in court the amount due under this coverage, but only on that part of the judgment we pay.
- Premiums or costs of bonds:
 - to secure the release of an *insured's* property attached under a court order;
 - required to appeal a decision in a suit for damages if we have not paid our

limit of liability that applies to the suit; and

- up to \$250 for each bail bond needed because of an accident or related traffic law violation.

We have no duty to furnish or apply for any bonds. The amount of any bond we pay for shall not be more than our limit of liability.

4. Expenses incurred by an *insured*:

- for loss of wages or salary up to \$100 per day if we ask the *insured* to attend the trial of a civil suit.
- for first aid to others at the time of the accident.
- at our request.

We have the right to investigate, negotiate and settle any claim or suit.

Coverage for the Use of Other Cars

The liability coverage extends to the use, by an *insured*, of a *newly acquired car*, a *temporary substitute car* or a *non-owned car*.

Who Is an Insured

When we refer to *your car*, a *newly acquired car* or a *temporary substitute car*, *insured* means:

- you*;
- your spouse*;
- the *relatives* of the first *person* named in the declarations;
- any other *person* while using such a *car* if its use is within the scope of consent of *you* or *your spouse*; and

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5. any other *person* or organization liable for the use of such a *car* by one of the above *insurees*.

When we refer to a *non-owned car*, *insured* means:

- the first *person* named in the declarations;
- his or her *spouse*;
- their *relatives*; and
- any *person* or organization which does not own or hire the *car* but is liable for its use by one of the above *persons*.

THERE IS NO COVERAGE FOR *NON-OWNED CARS*:

- IF THE DECLARATIONS STATE THE "USE" OF *YOUR CAR* IS OTHER THAN "PLEASURE AND BUSINESS" OR
- WHILE:

- BEING REPAIRED, SERVICED OR USED BY ANY *PERSON* WHILE THAT *PERSON* IS WORKING IN ANY *CAR BUSINESS*; OR
- USED IN ANY OTHER BUSINESS OR OCCUPATION. This does not apply to a *private passenger car* driven or occupied by the first *person* named in the declarations, his or her *spouse* or their *relatives*.

Trailer Coverage

- Trailers designed to be pulled by a *private passenger car* or a *utility vehicle*, except those trailers in 2.a. below, are covered while owned or used by an *insured*.

Farm implements and farm wagons are considered trailers while pulled on public roads by a *car* we insure for liability.

These trailers are not described in the declarations, and no extra premium is charged.

2. The following trailers are covered described on the declarations page a premium is paid:

- those trailers designed to be pulled by a *private passenger car* or a *utility*
 - if designed to carry *persons*;
 - while used with a motor whose use is shown as "commercial" on the declarations page (trail only for pleasure use are covered if not described and no extra premium is paid); or
 - while used as premises for store or display purposes; or
 - any trailer not designed for use by a *private passenger car* or a *utility*.
- THERE IS NO COVERAGE WHEN A TRAILER IS USED WITH A MOTOR VEHICLE OWNED OR HIRED BY YOU. WE DO NOT INSURE FOR LIABILITY DAMAGE.

Limits of Liability

The amount of bodily injury liability coverage is shown on the declarations page under Liability - Coverage A - Bodily Injury Person, Each Accident. Under "Each" is the amount of coverage for all damages resulting from this *bodily injury* to one *person*. "Bodily injury" includes all injury and damages resulting from this *bodily injury* to others resulting from this *bodily injury*. "Each Accident" is the total amount of coverage, subject to the amount shown under "Person", for all damages due to *bodily injury* to two or more *persons* in the same accident. The amount of property damage liability coverage is shown on the declarations page under "Limits of Liability - Coverage A - Damage, Each Accident."

We will pay damages for which an *insured* is legally liable up to these amounts.

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The limits of liability are not increased because more than one *person* or organization may be an *insured*.

A motor vehicle and attached trailer are one vehicle. Therefore, the limits are not increased. The liability coverage shall be excess over and shall not pay again any expenses paid under the personal injury protection or medical payments coverages.

When Coverage A Does Not Apply

In addition to the limitations of coverage in **Who is an Insured and Trailer Coverage**:

THERE IS NO COVERAGE:

1. WHILE ANY VEHICLE INSURED UNDER THIS SECTION IS:

a. RENTED OR LEASED TO OTHERS.

b. USED TO CARRY *PERSONS* FOR A CHARGE. This does not apply to the use on a share expense basis of:

- (1) a *private passenger car*; or
- (2) a *utility vehicle*, if all passengers are riding in that area of the vehicle designed by the manufacturer of the vehicle for carrying passengers.

c. BEING REPAIRED, SERVICED OR USED BY ANY *PERSON* EMPLOYED OR ENGAGED IN ANY WAY IN A *CAR BUSINESS* TO THE EXTENT THE LIMITS OF LIABILITY OF THIS POLICY EXCEED THE LIMITS OF LIABILITY REQUIRED BY LAW. This does not apply to:

- (1) *you* or *your spouse*;
- (2) any *relative*;
- (3) any resident of *your* household; or

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(4) any agent, employee or partner of *you*, *your spouse*, any *relative* or such resident.

This coverage is excess for (3) and (4) above.

2. FOR ANY **BODILY INJURY** TO:

a. A FELLOW EMPLOYEE WHILE ON THE JOB AND ARISING FROM THE MAINTENANCE OR USE OF A VEHICLE BY ANOTHER EMPLOYEE IN THE EMPLOYER'S BUSINESS. *You* and *your spouse* are covered for such injury to a fellow employee.

b. ANY EMPLOYEE OF AN *INSURED* ARISING OUT OF HIS OR HER EMPLOYMENT. This does not apply to a household employee who is not covered or required to be covered under any workers' compensation insurance.

3. FOR:

a. THE UNITED STATES OF AMERICA; OR

b. ANY *PERSON* WHO IS AN EMPLOYEE OF THE UNITED STATES OF AMERICA OR ANY OF ITS AGENCIES, IF THE PROVISIONS OF THE FEDERAL TORT CLAIMS ACT APPLY.

4. FOR ANY DAMAGES TO PROPERTY OWNED BY, RENTED TO, IN THE CHARGE OF OR TRANSPORTED BY AN *INSURED*. But coverage applies to a rented:

- a. residence; or
- b. private garage damaged by a *car* we insure.

5. FOR ANY OBLIGATION OF AN *INSURED*, OR HIS OR HER INSURER, UNDER ANY TYPE OF WORKERS' COMPENSATION OR DISABILITY OR SIMILAR LAW.

6. FOR LIABILITY ASSUMED BY THE *INSURED* UNDER ANY CONTRACT OR AGREEMENT.

If There Is Other Liability Coverage

1. Policies Issued by Us to You, Your Spouse or Any Relative

If two or more vehicle liability policies issued by us to *you*, *your spouse*, or any *relative* apply to the same accident, the total limits of liability under all such policies shall not exceed that of the policy with the highest limit of liability.

2. Other Liability Coverage Available From Other Sources

Subject to item 1, if other vehicle liability coverage applies, we are liable only for our share of the damages. Our share is the percent that the limit of liability of this policy bears to the total of all vehicle liability coverage applicable to the accident.

3. Temporary Substitute Car, Non-Owned Car, Trailer

Subject to items 1 and 2, if a *temporary substitute car*, a *non-owned car* or a trailer designed for use with a *private passenger car* or *utility vehicle*:

- a. has other vehicle liability coverage on it; or
- b. is self-insured under any motor vehicle financial responsibility law, a motor carrier law or any similar law.

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then this coverage is excess over such insurance or self-insurance.

4. Newly Acquired Car

THIS COVERAGE DOES NOT APPLY THERE IS OTHER VEHICLE LIABILITY COVERAGE ON A *NEWLY ACQUIRED CAR*.

Motor Vehicle Compulsory Insurance or Financial Responsibility Law

1. Out-of-State Coverage

If an *insured* under the liability coverage is in another state or Canada and, nonresident, becomes subject to its motor vehicle compulsory insurance, financial responsibility or similar law:

- a. the policy will be interpreted to give coverage required by the law; and
- b. the coverage so given replaces any coverage in this policy to the extent required by the law for the *insured's* operation, maintenance or use of a *car* insured under this policy.

Any coverage so extended shall be reduced to the extent other coverage applies to the accident. In no event shall a *person* be covered more than once.

2. Financial Responsibility Law

When certified under any law as providing future financial responsibility, and when required during the policy period, this coverage shall comply with such law to the extent required. The *insured* agrees to repay any payment we would not have had to make under the terms of this policy except for agreement.

SECTION II — PERSONAL INJURY PROTECTION — COVERAGE P AND MEDICAL PAYMENTS — COVERAGE C

PERSONAL INJURY PROTECTION — COVERAGE P

You have this coverage if "P" with a number beside it appears in the "Coverages" space on the declarations page. "P" with a number beside it is your coverage symbol.

Check your coverage symbol with the Schedule in the **Limits of Liability** for the choice of coverage you made.

What We Pay

We will pay for **bodily injury** to an **insured**, caused by accident, resulting from the maintenance or use of a **motor vehicle** as a vehicle:

- Medical Expenses.** These are reasonable expenses incurred, for services furnished within three years of the date of the accident, for necessary medical, surgical, X-ray, dental, ambulance, hospital, professional nursing services, eyeglasses, hearing aids and prosthetic devices.

REASONABLE MEDICAL EXPENSES DO NOT INCLUDE EXPENSES:

- FOR TREATMENT, SERVICES, PRODUCTS OR PROCEDURES THAT ARE:
 - (1) EXPERIMENTAL IN NATURE, FOR RESEARCH, OR NOT PRIMARILY DESIGNED TO SERVE A MEDICAL PURPOSE; OR
 - (2) NOT COMMONLY AND CUSTOMARILY RECOGNIZED THROUGHOUT THE MEDICAL PROFESSION AND WITHIN THE

UNITED STATES AS APPROPRIATE FOR THE TREATMENT OF THE **BODILY INJURY**; OR

b. INCURRED FOR:

- (1) THE USE OF THERMOGRAPHY OR OTHER RELATED PROCEDURES OF A SIMILAR NATURE; OR
- (2) THE PURCHASE OR RENTAL OF EQUIPMENT NOT PRIMARILY DESIGNED TO SERVE A MEDICAL PURPOSE.

Expenses are reasonable only if they are consistent with the usual fees charged by the majority of similar medical providers in the geographical area in which the expenses were incurred for the specific medical service.

Services are necessary only if the services are rendered by a medical provider within the legally authorized scope of the provider's practice and are essential in achieving maximum medical improvement for the **bodily injury** sustained in the accident.

We have the right to make or obtain a utilization review of the medical expenses and services to determine if they are reasonable and necessary for the **bodily injury** sustained.

The **bodily injury** must be discovered and treated within one year of the date of the accident.

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- Funeral Expenses.** These are funeral, burial or cremation expenses. Subject to the Aggregate Limit shown for your coverage symbol in the Schedule in **Limits of Liability**, the most we pay for Funeral Expenses is \$3,000 per **person**.

If your coverage symbol is P1, P2, P3, P4, P5, P6 or P7, we will also pay for the following for **bodily injury** to an **insured**, caused by accident, resulting from the maintenance or use of a **motor vehicle** as a vehicle:

- Loss of Income.** This is 85% of an **insured's** actual loss of earnings from work due to **bodily injury** to the **insured**. This applies only if the **insured** was receiving earnings from work at the time of the accident. The loss must be incurred within three years of the date of the accident and while the **insured** is living.
- Essential Services Expenses.** These are reasonable expenses incurred for needed services the **insured** would have done for his or her family. This benefit applies only if the **insured** was not receiving earnings from work at the time of the accident. The expense must be incurred within three years of the date of the accident and while the **insured** is living.

Definitions

Insured — means:

- you, your spouse and any relative:
 - while occupying a **motor vehicle** other than a motorcycle; or
 - when struck as a **pedestrian** by a **motor vehicle**; or
- any other person while occupying your car, a non-owned car, a newly acquired car or a temporary substitute car, if Coverage P is carried on your car.

The vehicle must be used by or with the permission of you or your spouse.

Motor Vehicle — means a vehicle or trailer kind required to be registered under South Carolina law.

Pedestrian — means a **person** not occupying land motor vehicle.

Deciding Amount

The amount due under this coverage shall be decided by agreement between the **insured** and us. If there is no agreement, the amount shall be decided by arbitration upon written request of the **insured** or us. Each party shall select a competent and impartial arbitrator. These two shall select a third one. If unable to agree on the third one, within 30 days, either party may request a judge of a court of record in the county in which the arbitration is pending to select a third one. The written decision of two arbitrators shall be binding on us, if **insured**, any assignee of the **insured** and any person or organization with whom the **insured** expressly or impliedly contracts for the rendering of medical, essential or funeral services. Arbitrators shall not award punitive damages or other noncompensatory damages.

The cost of the arbitrator and any expert witness shall be paid by the party who hired them. The cost of the third arbitrator and other expenses of arbitration shall be shared equally by both parties.

The arbitration shall take place in the county in which the **insured** resides unless the parties agree to another place. State court rules governing procedure and admission of evidence shall be used.

If There Is Other Coverage

- No Duplication of Benefits
No **insured** shall recover more than on the same expense or loss under this or any other vehicle insurance or self-insurance.
- If an **insured** sustains **bodily injury** occupying your car, and your car is described on the declarations page of a policy providing personal injury protection coverage:

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a. the total limits of liability under all such coverages shall not exceed that of the coverage with the highest limit of liability; and

b. we are liable only for our share. Our share is that percent of the damages that the limit of liability of this coverage bears to the total of all such personal injury protection coverage applicable to the accident.

3. If an *insured* sustains *bodily injury* while occupying a *motor vehicle* which is not *your car* or a *newly acquired car*, and:

a. such vehicle is described on the declarations page of another policy providing personal injury protection coverage; or

b. its driver, other than *you*, *your spouse* or any *relative*, is an *insured* under another policy.

coverage under this policy applies:

a. as excess to any similar coverage that applies to the vehicle or driver as primary coverage; but

b. only in the amount by which the limits of this coverage exceed the primary coverage.

If coverage from more than one policy applies as excess:

a. the total limit of liability shall not exceed the difference between the limit of liability of the coverage that applies as primary and the highest limit of liability of any one of the coverages that apply as excess; and

b. we will pay our share. Our share is that percent of the expense or loss that the excess coverage provided by this policy bears to the total of all applicable limits of liability of all personal injury protection coverages that apply as excess.

4. If an *insured* sustains *bodily injury*:

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a. as a *pedestrian*; or

b. while occupying a *motor vehicle* which is not *your car* or a *newly acquired car*; and:

(1) such vehicle is not described on the declarations page of another policy providing personal injury protection coverage; and

(2) its driver is:

(i) *you* or *your spouse*; or

(ii) any other *person* who does not have personal injury protection coverage that covers the occupants of such vehicle.

then:

a. the total limits of liability under all policies issued by us shall not exceed that of the policy with the highest limit of liability; and

b. we will pay our share. Our share is that percent of the expense or loss that the applicable limit of liability of this policy bears to the total applicable limit of liability.

5. Coverage under this policy applies as excess over any benefits recovered under any workers' compensation law.

6. THIS COVERAGE DOES NOT APPLY IF THERE IS OTHER PERSONAL INJURY PROTECTION COVERAGE ON A *NEWLY ACQUIRED CAR*.

What Is Not Covered Under Coverage P

1. THERE IS NO COVERAGE FOR *BODILY INJURY* TO ANY *PERSON*:

a. WHO INTENTIONALLY CAUSES AN ACCIDENT;

b. VOLUNTARILY OCCUPYING A *MOTOR VEHICLE* KNOWN BY THAT *PERSON* TO BE STOLEN;

c. WHILE COMMITTING A FELONY;

d. WHILE ATTEMPTING TO ELUDE A POLICE OFFICER; OR

e. OCCUPYING, USING OR MAINTAINING A MOTORCYCLE.

2. THERE IS NO COVERAGE:

a. WHILE A *NON-OWNED CAR* IS USED:

(1) BY ANY *PERSON* EMPLOYED OR ENGAGED IN ANY WAY IN A *CAR BUSINESS*; OR

(2) IN ANY OTHER BUSINESS OR JOB. This does not apply when the first *person* named in the declarations, his or her *spouse* or any *relative* is operating or occupying a *private passenger car*.

b. WHILE OCCUPYING OR THROUGH BEING STRUCK BY ANY *MOTOR VEHICLE* OR TRAILER:

(1) DESIGNED MAINLY FOR USE OFF PUBLIC ROADS WHILE OFF PUBLIC ROADS; OR

(2) LOCATED FOR USE AS A RESIDENCE OR PREMISES; OR

(3) THAT RUNS ON RAILS OR CRAWLER-TREADS.

c. FOR *BODILY INJURY* DUE TO WAR OF ANY KIND.

d. FOR *BODILY INJURY*:

(1) SUSTAINED WHILE OCCUPYING OR THROUGH BEING STRUCK BY A VEHICLE OWNED BY OR LEASED TO *YOU*, *YOUR SPOUSE* OR ANY *RELATIVE*, WHICH IS NOT INSURED FOR THIS COVERAGE UNDER THIS POLICY; OR

(2) SUSTAINED BY ANY *PERSON*, other than the first *person* named in the declarations, his or her *spouse* or

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their *relatives*, WHILE OCCUPYING A VEHICLE.

(i) RENTED OR LEASED OTHERS; OR

(ii) USED TO CARRY *PERSONS* FOR A CHARGE. This does not apply to a *private passenger* used on a share expense basis.

Limits of Liability

1. The Most We Pay

The most we pay for all loss and expense to *bodily injury* to one *insured* is the amount shown under "Aggregate Limit" in Schedule for *your* coverage symbol.

A *motor vehicle* and attached trailer as vehicle as respects limits.

2. Schedule

Coverage Symbol	Aggregate Limit
P1	\$ 1,000
P2	1,500
P3	2,000
P4	2,500
P5	5,000
P6	10,000
P7	25,000
P8*	1,000
P9*	1,500
P10*	2,000
P11*	2,500
P12*	5,000
P13*	10,000
P14*	25,000

* Coverages P8 through P14 do not include loss of income and essential expenses coverages.

MEDICAL PAYMENTS - COVERAGE C
You have this coverage if "C" appears in the "Coverages" space on the declarations page.

MEDICAL EXPENSES

We will pay reasonable medical expenses incurred, for *bodily injury* caused by accident, for services furnished within three years of the date of the accident. These expenses are for necessary medical, surgical, X-ray, dental, ambulance, hospital, professional nursing and funeral services, eyeglasses, hearing aids and prosthetic devices.

REASONABLE MEDICAL EXPENSES DO NOT INCLUDE EXPENSES:

1. FOR TREATMENT, SERVICES, PRODUCTS OR PROCEDURES THAT ARE:

- EXPERIMENTAL IN NATURE, FOR RESEARCH, OR NOT PRIMARILY DESIGNED TO SERVE A MEDICAL PURPOSE; OR
- NOT COMMONLY AND CUSTOMARILY RECOGNIZED THROUGHOUT THE MEDICAL PROFESSION AND WITHIN THE UNITED STATES AS APPROPRIATE FOR THE TREATMENT OF THE *BODILY INJURY*; OR

2. INCURRED FOR:

- THE USE OF THERMOGRAPHY OR OTHER RELATED PROCEDURES OF A SIMILAR NATURE; OR
- THE PURCHASE OR RENTAL OF EQUIPMENT NOT PRIMARILY DESIGNED TO SERVE A MEDICAL PURPOSE.

Expenses are reasonable only if they are consistent with the usual fees charged by the majority of similar medical providers in the geographical area in which the expenses were incurred for the specific medical service.

Services are necessary only if the services are rendered by a medical provider within the legally authorized scope of the provider's practice and are essential in achieving maximum medical improvement for the *bodily injury* sustained in the accident.

We have the right to make or obtain a utilization review of the medical expenses and services to determine if they are reasonable and necessary for the *bodily injury* sustained.

The *bodily injury* must be discovered and treated within one year of the date of the accident.

Persons for Whom Medical Expenses Are Payable

We will pay medical expenses for *bodily injury* sustained by:

- the first *person* named in the declarations;
- his or her *spouse*; and
- their *relatives*.

These *persons* have to sustain the *bodily injury*:

- while they operate or *occupy* a vehicle covered under the liability section; or
- through being struck as a *pedestrian* by a motor vehicle or trailer.

A *pedestrian* means a *person* not an occupant of a motor vehicle or trailer.

2. any other *person* while *occupying*:

- a vehicle covered under the liability coverage, except a *non-owned car*. Such vehicle has to be used by a *person* who is insured under the liability coverage; or
- a *non-owned car*. The *bodily injury* has to result from such *car's* operation or occupancy by the first *person* named in the declarations, his or her *spouse* or their *relatives*.

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Deciding Amount

The amount due under this coverage shall be decided by agreement between the *person* making claim and us. If there is no agreement, the amount due shall be decided by arbitration upon written request of the *person* making claim or us. Each party shall select a competent and impartial arbitrator. These two shall select a third one. If unable to agree on the third one within 30 days, either party may request a judge of a court of record in the county in which the arbitration is pending to select a third one. The written decision of any two arbitrators shall be binding on us, the *person* making claim, any assignee of the *person* making claim and any *person* or organization with whom the *person* making claim expressly or impliedly contracts for the rendition of medical services. The arbitrators shall not award punitive damages or other noncompensatory damages.

The cost of the arbitrator and any expert witness shall be paid by the party who hired them. The cost of the third arbitrator and other expenses of arbitration shall be shared equally by both parties.

The arbitration shall take place in the county in which the *person* making claim resides unless the parties agree to another place. State court rules governing procedure and admission of evidence shall be used.

Payment of Medical Expenses

We may pay the injured *person* or any *person* or organization performing the services.

Limit of Liability

Medical Expenses. The amount of coverage for medical expenses, including funeral services, is shown on the declarations page under "Limit of Liability - Coverage C - Each Person". If the amount shown is \$3,000 or more, the most we pay for funeral services is \$3,000 per *person*.

A motor vehicle and attached trailer are one vehicle as respects limits.

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If There Are Other Medical Payments Coverages

1. Non-Duplication

No *person* for whom medical expenses payable under this coverage shall receive more than once for the same medical expense under this or similar vehicle insurance coverage.

2. Policies Issued by Us to You, Your *Spouse* or *Relatives*

If two or more policies issued by us to your *spouse* or your *relatives* provide medical payments coverage and apply the same *bodily injury* sustained:

- while *occupying* a *non-owned car*, or *temporary substitute car*, or
- as a *pedestrian*

the total limits of liability under all policies shall not exceed that of the policy with the highest limit of liability.

3. Subject to items 1 and 2 above, if vehicle medical payments, personal protection or similar coverage apply *bodily injury*, this coverage is excess.

4. THIS COVERAGE DOES NOT APPLY THERE IS OTHER VEHICLE MEDICAL PAYMENTS COVERAGE OR NEWLY ACQUIRED CAR.

What Is Not Covered Under Coverage C
THERE IS NO COVERAGE:

- WHILE A *NON-OWNED CAR* IS USED:
 - BY ANY *PERSON* EMPLOYED OR ENGAGED IN ANY WAY IN A *CAR BUSINESS*; OR
 - IN ANY OTHER BUSINESS; OR
- JOB. This does not apply when the first *person* named in the declarations, his or her *spouse* or any *relative* is operating or occupying a *passenger car*.

2. WHILE OCCUPYING OR THROUGH BEING STRUCK BY ANY MOTOR VEHICLE OR TRAILER:

- DESIGNED MAINLY FOR USE OFF PUBLIC ROADS WHILE OFF PUBLIC ROADS; OR
- LOCATED FOR USE AS A RESIDENCE OR PREMISES; OR
- THAT RUNS ON RAILS OR CRAWLER-TREADS.

3. FOR BODILY INJURY DUE TO WAR OF ANY KIND.

4. FOR MEDICAL EXPENSES FOR BODILY INJURY:

- SUSTAINED WHILE OCCUPYING OR THROUGH BEING STRUCK BY A VEHICLE OWNED

BY OR LEASED TO YOU, YOUR SPOUSE, OR ANY RELATIVE WHICH IS NOT INSURED UNDER THIS COVERAGE; OR

- TO THE EXTENT WORKERS' COMPENSATION BENEFITS ARE REQUIRED TO BE PAYABLE; OR
- SUSTAINED BY ANY PERSON other than the first person named in the declarations, his or her spouse or their relatives, WHILE OCCUPYING A VEHICLE.

(1) RENTED OR LEASED TO OTHERS; OR

(2) USED TO CARRY PERSONS FOR A CHARGE. This does not apply to a private passenger car used on a share expense basis.

SECTION III — UNINSURED MOTOR VEHICLE — COVERAGE U AND UNDERINSURED MOTOR VEHICLE — COVERAGE W

UNINSURED MOTOR VEHICLE — COVERAGE U

You have this coverage if "U" appears in the "Coverages" space on the declarations page.

We will pay damages for bodily injury or property damage an insured is legally entitled to collect from the owner or driver of an uninsured motor vehicle. The bodily injury or property damage must be caused by accident arising out of the operation or ownership of the uninsured

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motor vehicle. The bodily injury must be sustained by an insured.

Uninsured Motor Vehicle — means:

- a motor vehicle, the ownership, maintenance or use of which is:
 - not insured or bonded for bodily injury and property damage liability at the time of the accident; or

b. insured or bonded for bodily injury and property damage liability at the time of the accident, but:

(1) the limits of liability are less than required by the Financial Responsibility Act;

(2) the insuring company denies coverage or is, or becomes, insolvent; or

(3) a cause of action for the bodily injury or property damage is barred by the South Carolina Tort Claims Act; or

2. a "hit-and-run" motor vehicle whose owner or operator remains unknown, but only if:

a. the bodily injury or property damage was caused by physical contact with the unknown vehicle, or the accident was witnessed by someone other than the owner or operator of the insured vehicle. The witness must sign an affidavit attesting to the truth of the facts of the accident contained in the affidavit; and

b. the insured was not negligent in failing to determine the identity of the other vehicle and the driver of the other vehicle at the time of the accident.

An uninsured motor vehicle does not include any motor vehicle owned by:

1. the insured who sustains bodily injury or property damage;

2. a self-insurer in accordance with the applicable provisions of law; or

3. the State or any of its political subdivisions when the vehicle is operated by a person with proper authorization.

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UNDERINSURED MOTOR VEHICLE COVERAGE W

You have this coverage if "W" appears in the "Coverages" space on the declarations page. We will pay damages for bodily injury or property damage an insured:

1. is legally entitled to collect from the owner or driver of an underinsured motor vehicle; or

2. would have been legally entitled to collect except for the existence of any ages cap or limitation imposed by the

The bodily injury or property damage is caused by accident arising out of the operation or ownership of the underinsured motor vehicle. The bodily injury must be sustained insured.

THERE IS NO COVERAGE UNTIL LIMITS OF LIABILITY OF ALL APPLICABLE BODILY INJURY LIABILITY PROPERTY DAMAGE LIABILITY IN ANCE POLICIES OR BONDS APPLY TO THE BODILY INJURY PROPERTY DAMAGE HAVE BEEN UP BY PAYMENT OF JUDGMENT SETTLEMENTS, OR PAYMENT BEEN MADE UNDER SUCH POLICIES BONDS UP TO ANY DAMAGES CA LIMITATION IMPOSED BY STATUTE

Underinsured Motor Vehicle — means a vehicle, as to which there is bodily injury or insurance or a bond applicable at the time of the accident in an amount of at least that fixed in the Financial Responsibility Act:

1. the amount of the insurance or b less than the amount of the insured damages; or

2. the insured's damages exceed any ages cap or limitation imposed by the

An underinsured motor vehicle does include any motor vehicle while located for premises:

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Our Right to Defend

If the *insured* files suit against the owner or driver of the *underinsured motor vehicle*, we have the right to defend on the issues of the legal liability of and the damages owed by such owner or driver.

Definitions

Financial Responsibility Act – means the Motor Vehicle Financial Responsibility Act of South Carolina.

Motor Vehicle – means a self-propelled vehicle or trailer designed for use on public roads.

A *motor vehicle* does not include:

1. traction engines;
2. road rollers;
3. farm tractors;
4. tractor cranes;
5. power shovels;
6. well drillers; or
7. electric trolleys.

Property Damage – means damage to property of the *insured*.

Who Is an Insured

Insured – means:

1. you, your spouse and relatives;
2. any other person while occupying or using your car, a newly acquired car or a trailer attached to either, if such vehicle is:
 - a. insured under the liability coverage; and
 - b. being used with your consent; and
3. any person to the extent he or she may recover damages under a state wrongful death statute because of the death of an insured under 1. or 2. above.

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Payment of Any Amount Due

We will pay any amount due to the *insured* or the *insured's* representative.

Limits of Liability

Coverage U

1. Bodily Injury

The amount of coverage is shown on the declarations page under "Limits of Liability – U – Each Person, Each Accident". Under "Each Person" is the amount of coverage for all damages due to *bodily injury* to one *person*. "*Bodily injury to one person*" includes all injury and damages to others resulting from this *bodily injury*. Under "Each Accident" is the total amount of coverage, subject to the amount shown under "Each Person", for all damages due to *bodily injury* to two or more *persons* in the same accident.

2. Property Damage

The amount of coverage is shown on the declarations page under "Limits of Liability – U – Property Damage, Each Accident". This is the amount of coverage for all *property damage* as the result of one accident.

The most we pay will be the lesser of:

- a. the difference between:
 - (1) the amount of the *insured's* damages; and
 - (2) the amount paid to the *insured* by or for any *person* or organization who is or may be held legally liable for the *bodily injury* or *property damage*; or
- b. the limit of liability of this coverage.

Coverage W

1. Bodily Injury

The amount of coverage is shown on the declarations page under "Limits of Liability – W – Each Person, Each Accident". Under "Each Person" is the amount of coverage for all damages due to *bodily injury* to one *person*. "*Bodily injury to one person*" includes

all injury and damages to others resulting from this *bodily injury*. Under "Each Accident" is the total amount of coverage, subject to the amount shown under "Each Person", for all damages due to *bodily injury* to two or more *persons* in the same accident.

2. Property Damage

The amount of coverage is shown on the declarations page under "Limits of Liability – W – Property Damage, Each Accident". This is the amount of coverage for all *property damage* as the result of the accident.

Any amount payable under this coverage shall be reduced by any amount paid or payable under any:

- a. workers' compensation;
- b. disability benefits;
- c. or similar law.

This does not reduce the limits of liability of this coverage.

The most we pay will be the lesser of:

- a. the difference between:
 - (1) the amount of the *insured's* damages; and
 - (2) the amount paid to the *insured* by or for any *person* or organization who is or may be held legally liable for the *bodily injury* or *property damage*; or
- b. the limit of liability of this coverage.

Coverages U and W

1. The limits of liability are not increased because more than one vehicle or *person* is insured under this policy.
2. Any amount paid under these coverages shall reduce any amount paid or payable to or for the *insured* under the liability coverage of this policy.

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When Coverages U and W Do Not Apply THERE IS NO COVERAGE:

1. UNDER COVERAGE U FOR A *SURED* WHO, WITHOUT WRITTEN CONSENT:
 - a. SETTLES WITH ANY *PERSON* OR ORGANIZATION WHO BE LIABLE FOR THE *BODILY INJURY* OR *PROPERTY DAMAGE* AND
 - b. THEREBY IMPAIRS OUR RIGHT TO RECOVER OUR PAYMENT TO THE EXTENT IT BENEFITS
2. TO THE EXTENT IT BENEFITS:
 - a. ANY WORKERS' COMPENSATION OR DISABILITY BENEFIT INSURANCE COMPANY.
 - b. A SELF-INSURER UNDER WORKERS' COMPENSATION OR DISABILITY BENEFIT SIMILAR LAW.
3. FOR *PROPERTY DAMAGE* WHICH THE *INSURED* HAS PAID.
4. FOR *BODILY INJURY* OR *PROPERTY DAMAGE* TO THE EXTENT THE LIMITS OF LIABILITY OF COVERAGES U AND W UNDER POLICY EXCEED THE LIMIT REQUIRED BY THE *FINANCIAL RESPONSIBILITY ACT* WHILE:
 - a. *YOU*,
 - b. *YOUR SPOUSE*, OR
 - c. ANY *RELATIVE* IS OCCUPYING A MOTOR VEHICLE OWNED BY OR LEASED TO:
 - a. *YOU*,
 - b. *YOUR SPOUSE*, OR
 - c. ANY *RELATIVE* IF IT IS NOT YOUR CAR NEWLY ACQUIRED CAR.

5. FOR BODILY INJURY OR PROPERTY DAMAGE:

a. WHILE AN INSURED, OTHER THAN:

- (1) YOU;
- (2) YOUR SPOUSE; OR
- (3) ANY RELATIVE.

IS OCCUPYING A MOTOR VEHICLE OTHER THAN YOUR CAR, A NEWLY ACQUIRED CAR OR A TRAILER ATTACHED TO EITHER

b. IF ANY INSURED IS STRUCK AS A PEDESTRIAN BY A MOTOR VEHICLE OWNED BY OR LEASED TO:

- (1) YOU;
- (2) YOUR SPOUSE; OR
- (3) ANY RELATIVE.

6. UNDER COVERAGE U, FOR THE FIRST \$200 OF PROPERTY DAMAGE SUSTAINED BY EACH INSURED IN EACH ACCIDENT.

If There Is Other Uninsured Motor Vehicle Coverage

1. If:

- a. you, your spouse or a relative sustains bodily injury or property damage as a pedestrian; and
- b. coverage from more than one of our policies issued to you, your spouse or a relative applies to the accident:

(1) the one policy with the highest limit shall apply in that limit; and

(2) each of the other policies we issued shall apply only in an amount equal to the minimum limits required by the Financial Responsibility Act for bodily injury and property damage liability.

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Subject to the above, if policies issued by other insurers apply, we are liable only for our share. Our share is that percent of the damages that the amount of the limit of liability that applies from this policy bears to the total of all such uninsured motor vehicle coverage that applies to the accident.

2. If:

a. the insured sustains bodily injury or property damage while occupying your car; and

b. your car is described on the declarations page of another policy providing uninsured motor vehicle coverage:

(1) the total limits of liability, under all such coverages shall not exceed that of the coverage with the highest limits of liability; and

(2) we are liable only for our share. Our share is that percent of the damages that the limits of liability of this coverage bear to the total of all such uninsured motor vehicle coverage that applies.

3. If you, your spouse or a relative sustains bodily injury or property damage while occupying a motor vehicle owned by or leased to you, your spouse or relative which is not your car or a newly acquired car, this policy shall:

- a. be excess; and
- b. apply only in an amount equal to the minimum limits required by the Financial Responsibility Act for bodily injury and property damage liability.

Subject to the above, if other policies apply as excess, we are liable only for our share. Our share is that percent of the damages in excess of the limits of the primary coverage that the minimum amount required by the Financial Responsibility Act for bodily injury and property damage liability bear to the total of all uninsured motor vehicle coverage that applies as excess to the accident.

4. If you, your spouse or a relative sustains bodily injury or property damage while occupying a vehicle not owned by or leased to you, your spouse or any relative, this coverage applies as excess to any uninsured motor vehicle coverage which applies to the vehicle as primary coverage.

If coverage from more than one of our policies issued to you, your spouse or a relative applies to the accident:

- a. the one policy with the highest limit shall apply in that limit; and
- b. each of the other policies we issued shall apply only in an amount equal to the minimum limits required by the Financial Responsibility Act for bodily injury and property damage liability.

Subject to the above, if policies issued by other insurers apply, we are liable only for our share. Our share is that percent of the damages that the amount of the limit of liability that applies from this policy bears to the total of all uninsured motor vehicle coverage that applies as excess to the accident.

If There Is Other Uninsured Motor Vehicle Coverage

1. If:

- a. you, your spouse or a relative sustains bodily injury or property damage as a pedestrian; and
- b. coverage from more than one of our policies issued to you, your spouse, or a relative applies to the accident:

(1) the one policy with the highest limit shall apply in that limit; and

(2) each of the other policies we issued shall apply only in an amount equal to the minimum limits required by the Financial Responsibility Act for bodily injury and property damage liability.

Subject to the above, if policies issued by other insurers apply, we are liable only for

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our share. Our share is that percent of the damages that the amount of the limit of liability that applies from this policy bears to the total of all uninsured motor vehicle coverage that applies to the accident.

2. If:

a. the insured sustains bodily injury or property damage while occupying your car; and

b. your car is described on the declarations page of another policy providing uninsured motor vehicle coverage:

(1) the total limits of liability under all such coverages shall not exceed that of the coverage with the highest limits of liability; and

(2) we are liable only for our share. Our share is that percent of the damages that the limits of liability of this coverage bear to the total of all such uninsured motor vehicle coverage that applies.

3. If you, your spouse or a relative sustains bodily injury or property damage while occupying a motor vehicle owned by or leased to you, your spouse or relative which is not your car or a newly acquired car, this policy shall:

- a. be excess; and
- b. apply only in an amount equal to the minimum limits required by the Financial Responsibility Act for bodily injury and property damage liability.

Subject to the above, if other policies apply as excess, we are liable only for our share. Our share is that percent of the damages in excess of the limits of the primary coverage that the minimum amount required by the Financial Responsibility Act for bodily injury and property damage liability bear to the total of all uninsured motor vehicle coverage that applies as excess to the accident.

4. If you, your spouse or a relative sustains bodily injury or property damage while occupying a vehicle not owned by or leased to you, your spouse or any relative, this coverage applies as excess to any underinsured motor vehicle coverage which applies to the vehicle as primary coverage.

If coverage from more than one of our policies issued to you, your spouse or a relative applies to the accident:

- a. the one policy with the highest limit shall apply in that limit; and

- b. each of the other policies we issued shall apply only in an amount equal to the minimum limits required by the Financial Responsibility Act for bodily injury and property damage liability.

Subject to the above, if policies issued by other insurers apply, we are liable only for our share. Our share is that percent of the damages that the amount of the limit of liability that applies from this policy bears to the total of all underinsured motor vehicle coverage that applies to the accident.

SECTION IV — PHYSICAL DAMAGE COVERAGES

Loss — means, when used in this section, each direct and accidental loss of or damage to:

1. your car;
2. its equipment which is common to the use of your car as a vehicle;
3. clothes and luggage insured; and
4. a detachable living quarters attached or removed from your car for storage. Detachable living quarters includes its body and items securely fixed in place as a permanent part of the body. You must have told us about the living quarters

before the loss and paid any extra premium needed.

COMPREHENSIVE — COVERAGED. You have this coverage if "D" appears in the "Coverages" space on the declarations page. If a deductible applies the amount is shown by the number beside "D".

1. Loss to Your Car. We will pay for loss to your car EXCEPT LOSS BY COLLISION but only for the amount of each such loss in excess of the deductible amount, if any. The deductible amount does not apply to loss to safety glass.

Breakage of glass, or loss caused by missiles, falling objects, fire, theft, larceny, explosion, earthquake, windstorm, hail, water, flood, malicious mischief or vandalism, riot or civil commotion, is payable under this coverage. Loss due to hitting or being hit by a bird or an animal is payable under this coverage.

2. We will repay you for transportation costs if your car is stolen. We will pay up to \$16 per day for the period that begins 48 hours after you tell us of the theft. The period ends when we offer to pay for loss.

COLLISION — COVERAGED. You have this coverage if "G" appears in the "Coverages" space on the declarations page. The deductible amount is shown by the number beside "G".

We will pay for loss to your car caused by collision but only for the amount of each such loss in excess of the deductible amount. The deductible amount does not apply to loss to safety glass. If the collision is with another motor vehicle insured with us, you do not pay your deductible if it is \$100 or less as we pay it.

Collision — means your car upset or hit or was hit by a vehicle or other object.

Clothes and Luggage — Comprehensive and Collision Coverages

We will pay for loss to clothes and luggage owned by the first person named in the declarations, his or her spouse, and their relatives. These items have to be in or on your car. Your car has to be covered under this policy for:

1. Comprehensive, and the loss caused by fire, lightning, flood, falling objects, explosion, earthquake, or theft. If the loss is due to theft YOUR ENTIRE CAR MUST HAVE BEEN STOLEN; or
2. Collision, and the loss caused by collision.

We will pay up to \$200 for loss to clothes and luggage in excess of any deductible shown for comprehensive or collision. The most we will pay in any one occurrence though more than one person has a loss coverage is excess over any other coverage.

Limit of Liability — Comprehensive Collision Coverages

The limit of our liability for loss to property is the lower of:

1. the actual cash value; or
2. the cost of repair or replacement

Actual cash value is determined by the value, age and condition at the time occurred. Any deductible amount that is then subtracted.

The cost of repair or replacement is based on one of the following:

1. the cost of repair or replacement upon by you and us;
2. a competitive bid approved by us;
3. an estimate written based upon prevailing competitive price. The prevailing competitive price means prices by a majority of the repair market area where the car is to be repaired determined by a survey made by you ask, we will identify some of that will perform the repairs at prevailing competitive price. We include in the estimate parts sufficient to restore the vehicle to its pre-loss condition. You agree with us that such may include either parts furnished by vehicle's manufacturer or parts from other sources including non-equipment manufacturers.

Any deductible amount that applies is then subtracted.

Settlement of Loss – Comprehensive and Collision Coverages

We have the right to settle a *loss* with *you* or the owner of the property in one of the following ways:

1. pay the agreed upon actual cash value of the property at the time of the *loss* in exchange for the damaged property. If the owner keeps the damaged property, we will deduct its value after the *loss* from our payment. The damaged property cannot be abandoned to us;
2. pay to:
 - a. repair the damaged property or part, or
 - b. replace the property or part.If the repair or replacement results in betterment, *you* must pay for the amount of betterment; or
3. return the stolen property and pay for any damage due to the theft.

If we can pay the *loss* under either comprehensive or collision, we will pay under the coverage where *you* collect the most.

When there is *loss to your car*, clothes and luggage in the same occurrence, any deductible will be applied first to the *loss to your car*. *You* pay only one deductible.

If the owner of the property and we cannot agree on the amount due, it shall be decided by an appraisal of the *loss* upon written request by either party. Each party shall select a competent appraiser. These two shall select a third appraiser. The written decision of any two appraisers shall be binding on each party. The cost of the appraisal shall be paid by the party who hired him or her. The cost of the third appraiser and other appraisal expenses shall be shared equally by both parties. We do not waive any of our rights by any act relating to appraisal. The terms of the provision titled **Limit of Liability – Comprehensive and Collision Coverages** are not

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subject to appraisal. If *you* give us *your* consent, we may move the damaged property, at our expense, to reduce storage costs during the appraisal process. If *you* do not give us *your* consent, we will pay only the storage costs which would have resulted if we had moved the damaged property.

The Settlement of Loss provision for comprehensive and collision coverages incorporates the Limit of Liability provision of those coverages.

EMERGENCY ROAD SERVICE - COVERAGE H: *You* have this coverage if "H" appears in the "Coverages" space on the declarations page.

We will pay the fair cost *you* incur for *your* car for:

1. mechanical labor up to one hour at the place of its breakdown;
2. towing to the nearest place where the necessary repairs can be made during regular business hours if it will not run;
3. towing it out if it is stuck on or immediately next to a public highway;
4. delivery of gas, oil, loaned battery, or tire. **WE DO NOT PAY THE COST OF THE GAS, OIL, BATTERY OR TIRE.**
5. locksmith services, up to one hour, to open *your car* if *your* key is lost, stolen or locked inside *your car*. We will only pay the cost of labor.

CAR RENTAL EXPENSE – COVERAGE
R. *You* have this coverage if “R” appears in the
 “Coverages” space on the declarations page.

We will repay *you* up to \$10 per day when *you* rent a *car* from a car rental agency or garage due to a *loss* to *your car* which would be payable under coverage D or G, starting:

1. when it cannot run due to the *loss*; or
 2. if it can run, when *you* leave it at the shop for agreed repairs;
- depending when:

1. it has been repaired or replaced, or
2. we offer to pay for the *loss*, or
3. *you* incur 30 days rent, whichever comes first.

Any car rent payable under Coverage R is REDUCED TO THE EXTENT IT IS PAYABLE UNDER COMPREHENSIVE.

CAR RENTAL AND TRAVEL EXPENSES
- **COVERAGE R1:** *You have this coverage if "R1" appears in the "Coverages" space on the declarations page.*

1. **Car Rental Expense.** We will:
 - a. pay *you* up to \$16 of the daily rental charge when *you* rent a *car* from a car rental agency or garage; or
 - b. pay *you* \$10 for each complete 24 hour period that *your car* is not drivable if *you* choose to not rent a *car*. *You* must report to us the period of time that *your car* was not drivable.

We will pay only if *your car* is not drivable because of a *loss* which would be payable under coverage D or G.

This applies during a period starting:

- a. when *your car* cannot run due to the loss; or
- b. if *your car* can run, when *you* leave it at the shop for agreed repairs; and ending:

- a. when it has been repaired or replaced, or
- b. (1) when we offer to pay for the *loss*, if *your car* is repairable, or
(2) five days after we offer to pay for the *loss*, if *your car* was stolen and not recovered or we declared it a total loss,

- Any car rent payable under this cov
is REDUCED TO THE EXTENT
PAYABLE UNDER COMPREH
SIVE.

2. **Travel Expenses.** If *your car* cannot be used to a *loss* which would be paid under coverage D or G more than 100 miles from home, we will repay *you* the expenses incurred by *you, your spouse, and any relative* for:
 - a. Commercial transportation fares which continue to *your* destination or last place of residence.
 - b. Extra meals and lodging needed to get to *your car* causes a *loss* enroute. The expenses must be incurred between the time of the *loss* and *your* arrival at *your* destination or by the end of the fifth day after which repair occurs first.
 - c. Meals, lodging and commercial transportation fares incurred by *you* or *any relative* who choose to drive *you* or *any relative* from the place of repair to *your* home or home.

- 3. Rental Car – Repayment of Deductible Amount Expense.** We will repay expense of any deductible amount are required to pay the owner under comprehensive or collision coverage in on a substitute car rented from a car agency or garage.

Total Amount of Expenses Payable – C
age R1

1. The most we will pay for the total of the "Rental Expense" and "Rental Car – Rental Expense" is \$400. The amount of Deductible Amount Expense incurred in any one occurrence is \$400.
2. The most we will pay for "Travel Expense" incurred by all *persons* in any one occurrence is \$400.

CAR RENTAL AND TRAVEL EXPENSES - COVERAGE R2. *You* have this coverage if "R2" appears in the "Coverages" space on the declarations page.

1. Car Rental Expense.

- a. We will:
 - (1) pay 80% of the rental charge when *you* rent a *car* from a car rental agency or garage. "Rental charge" means the daily rental rate plus charges for mileage and related taxes; or
 - (2) pay *you* \$10 for each complete 24 hour period that *your car* is not drivable if *you* choose to not rent a *car*. *You* must report to us the period of time that *your car* was not drivable.

We will pay only if *your car* is not drivable because of a *loss* which would be payable under coverage D or G.

- b. Payment will be made for a period that:

- (1) starts:
 - (a) when *your car* is not drivable due to the *loss*; or
 - (b) if *your car* is drivable, when *you* leave it at the shop for agreed repairs; and
- (2) ends:

- (a) when *your car* has been repaired or replaced; or
- (b) when we offer to pay for the *loss*, if *your car* is repairable but *you* choose to delay repairs; or
- (c) five days after we offer to pay for the *loss* if:

- (i) *your car* was stolen and not recovered; or
- (ii) we declare that *your car* is a total loss; whichever comes first.

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Any car rent payable under this coverage is REDUCED TO THE EXTENT IT IS PAYABLE UNDER COMPREHENSIVE.

2. Travel Expenses. If *your car* is not drivable due to a *loss* which occurs more than 50 miles from home and which would be payable under coverage D or G, we will pay *you* for expenses incurred by *you*, *your spouse* and any *relative* for:

- a. commercial transportation fares to continue to *your* destination or home;
- b. extra meals and lodging needed when the *loss* to *your car* causes a delay enroute. The expenses must be incurred between the time of the *loss* and *your* arrival at *your* destination or home or by the end of the fifth day, whichever occurs first; and
- c. meals, lodging and commercial transportation fares incurred by *you* or a *person* *you* choose to drive *your car* from the place of repair to *your* destination or home.

3. Rental Car - Repayment of Deductible Amount Expense. We will pay the expense of any deductible amount *you* are required to pay the owner under comprehensive or collision coverage in effect on a substitute *car* rented from a car rental agency or garage.

Total Amount of Expenses Payable - Coverage R2

1. The most we will pay for "Car Rental Expense" incurred in any one occurrence is \$500.
2. The most we will pay for "Travel Expenses" incurred by all *persons* in any one occurrence is \$400.
3. The most we will pay for "Rental Car - Repayment of Deductible Amount Expense" incurred in any one occurrence is \$400.

Trailer Coverage

1. Owned Trailer

Your trailer is covered:

- a. when it is described on the declarations page of the policy; and
- b. for the coverages shown as applying to it.

2. Non-Owned Trailer or Detachable Living Quarters

Any physical damage coverage in force on *your car* applies to a non-owned:

- a. trailer, if it is designed for use with a *private passenger car*, or
- b. detachable living quarters unit used by the first *person* named in the declarations, his or her *spouse* or their *relatives*.

The most we will pay under the comprehensive or collision coverage for a *loss* to such non-owned trailer or unit is \$500.

A non-owned trailer or detachable living quarters unit is one that:

- a. is not owned by or registered in the name of:
 - (1) *you*, *your spouse*, any *relative*;
 - (2) any other *person* residing in the same household as *you*, *your spouse* or any *relative*; or
 - (3) an employer of *you*, *your spouse* or any *relative*; and

- b. has not been used or rented by or in the possession of *you*, *your spouse* or any *relative* during any part of each of the last 21 or more consecutive days. If *you* are insured by one or more other car policies issued by us, the 21 day limit is increased by an additional 21 days for each such additional policy; and

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- c. is not rented and used in connection with the employment or business of *you*, *your spouse* or any *relative*.

Coverage for the Use of Other Cars

The coverages in this section *you* have or *car* extend to a *loss* to a *newly acquired temporary substitute car* or a *non-owned*. These coverages extend to a *non-owned* while it is driven by or in the custody of *insured*.

Insured - as used in this provision means:

1. the first *person* named in the declarations;
2. his or her *spouse*; or
3. their *relatives*.

When the Physical Damage Coverage Not Apply:

THERE IS NO COVERAGE FOR:

1. A **NON-OWNED CAR**:
 - a. IF THE DECLARATIONS SHOW THE "USE" OF *YOUR CAR* OTHER THAN PLEASURE BUSINESS;
 - b. WHILE BEING REPAIRED, REPAIRED OR USED BY ANY *PERSON* WHILE THAT *PERSON* IS WORKING IN ANY *CAR BUSINESS*;
 - c. WHILE USED IN ANY OTHER BUSINESS OR OCCUPATION. This does not apply to a *private passenger car* driven or occupied by first *person* named in the declarations, his or her *spouse* or their *relatives*.
2. ANY VEHICLE WHILE:
 - a. RENTED OR LEASED TO OTHERS; OR

b. USED TO CARRY PERSONS FOR A CHARGE. This does not apply to the use on a share expense basis.

3. LOSS TO ANY VEHICLE DUE TO:

- TAKING BY ANY GOVERNMENTAL AUTHORITY;
- WAR OF ANY KIND;
- AND LIMITED TO WEAR AND TEAR, FREEZING, MECHANICAL OR ELECTRICAL BREAKDOWN OR FAILURE. This does not apply when the loss is the result of a theft covered by this policy. Nor does it apply to emergency road service; OR
- CONVERSION, EMBEZZLEMENT OR SECRETION BY ANY PERSON WHO HAS THE VEHICLE DUE TO ANY LIEN, RENTAL, LEASE OR SALES AGREEMENT.

4. TIRES unless:

- stolen, or damaged by fire or vandalism; or
- other loss covered by this section happens at the same time.

5. TAPES OR DISCS FOR RECORDING OR REPRODUCING SOUND.

6. ANY LASER OR RADAR DETECTOR.

7. YOUR CAR WHILE SUBJECT TO ANY LIEN, LEASE OR SALES AGREEMENT NOT SHOWN IN THE DECLARATIONS.

If There Is Other Coverage

1. Policies Issued by Us to You, Your Spouse, or Any Relative

If two or more vehicle policies issued by us to you, your spouse, or any relative apply to the same loss or occurrence, we will pay under the policy with the highest limit.

2. Coverage Available From Other Sources

Subject to item 1, if other coverage applies to the loss or expenses, we will pay only our share. Our share is the percent the limit of liability of this policy bears to the total of all coverage that applies.

3. Temporary Substitute Car, Non-Owned Car or Trailer

Subject to items 1 and 2, if a temporary substitute car, a non-owned car or trailer designed for use with a private passenger car has other coverage on it, then this coverage is excess.

No Benefit to Bailee

These coverages shall not benefit any carrier or other bailee for hire liable for loss.

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SECTION V — DEATH, DISMEMBERMENT AND LOSS OF SIGHT — COVERAGE S

SCHEDULE

	If amount under the declaration
Death	\$5,000
Loss of:	\$5,000

hands; feet; sight of eyes; one hand & one foot; or one hand or one foot & sight of one eye

one hand or one foot; or sight of one eye 5,000
thumb & finger on one hand; or three fingers 2,500
any two fingers 1,500
any two fingers 1,000

Payment of Any Amount Due

We will pay any amount due:

- to the insured;
- to a parent or guardian if the insured is a minor or an incompetent person;
- to the surviving spouse; or
- at our option, to any person or organization authorized by law to receive payment.

Any payment made is to its extent a discharge of our obligations. We are not responsible for the way the money is used.

Autopsy

We have the right to have an autopsy where it is not forbidden by law.

If "S" is shown in the "Coverages" space on the declarations page each insured has the coverage.

We will pay the amount shown in the schedule that applies for death, or loss, caused by accident. The insured has to be occupying or be struck by a land motor vehicle or trailer. The death or loss must be the direct result of the accident and not due to any other cause. The death or loss must occur within 90 days of the accident.

Insured — means a person listed under "Persons Insured — Coverage S" on the declarations page.

Loss — means the loss of:

- the foot or hand, cut off through or above the ankle or wrist; or
- the whole thumb or finger; or
- all sight.

The Most We Pay

The most we will pay because of the death of, or loss to, the insured, except as provided below, is shown under "Amount" next to his or her name on the declarations page.

The amount shown in the schedule for death or loss is doubled for an insured who, at the time of the accident, is using the vehicle's complete restraint system as recommended by the vehicle's manufacturer.

If the insured dies as a result of this accident, any payment made or due for loss reduces the amount of the death payment.

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When Coverage S Does Not Apply

THIS COVERAGE DOES NOT APPLY TO:

1. AN **INSURED** WHILE ON THE JOB, OPERATING, **OCCUPYING**, **LOADING** OR **UNLOADING**:
 - a. AN EMERGENCY VEHICLE; OR
 - b. A VEHICLE USED IN THE **INSURED'S** BUSINESS OR JOB.
But 1.b. does not apply if the vehicle is:
 - (1) a *private passenger car* or school bus; or
 - (2) of the pickup or van type, with a Gross Vehicle Weight of 10,000 pounds or less, while not used for delivery.
2. AN **INSURED** WHILE:
 - a. ON THE JOB IN ANY **CAR BUSINESS**, OR
 - b. **OCCUPYING** ANY:
 - (1) VEHICLE WHILE BEING USED IN A RACE; OR

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(2) MILITARY VEHICLE.

3. AN **INSURED** WHILE **OCCUPYING** OR **THROUGH BEING STRUCK** BY A MOTOR VEHICLE OR TRAILER:

- a. THAT RUNS ON RAILS OR CRAWLER-TREADS;
 - b. DESIGNED FOR USE MAINLY OFF PUBLIC ROADS WHILE OFF PUBLIC ROADS; OR
 - c. LOCATED FOR USE AS PREMISES.
4. THE DEATH OF OR **LOSS** TO AN **INSURED** DUE TO:
- a. DISEASE except pus forming infection due to **bodily injury** received in the accident; or
 - b. SUICIDE OR ATTEMPTED SUICIDE WHILE SANE OR INSANE; OR
 - c. WAR OF ANY KIND.

CONDITIONS

1. Policy Changes

a. **Policy Terms.** The terms of this policy may be changed or waived only by:

- (1) an endorsement issued by us; or
- (2) the revision of this policy form to give broader coverage, without an extra charge. If any coverage *you* carry is changed to give broader coverage, we will give *you* the broader coverage without the issuance of a new policy as of the date we make the change effective.

b. **Change of Interest.** No change of interest in this policy is effective unless we consent in writing. However, if *you* die, we will protect as named insured, except under death, dismemberment and loss of sight coverage:

- (1) *your surviving spouse*;
- (2) any *person* with proper custody of *your car*, a *newly acquired car* or a *temporary substitute car* until a legal representative is qualified; and then
- (3) the legal representative while acting within the scope of his or her duties.

Policy notice requirements are met by mailing the notice to the deceased named insured's last known address.

c. **Consent of Beneficiary.** Consent of the beneficiary under death, dismemberment and loss of sight coverage is not needed to cancel or change the policy.

d. **Joint and Individual Interests.** When there are two or more named insureds, each acts for all to cancel or change the policy.

2. Suit Against Us

There is no right of action against us:

- a. until all the terms of this policy have been met; and

- b. under the liability coverage, until amount of damages an **insured** is liable to pay has been finally determined by:

- (1) judgment after actual trial; and a if any; or
- (2) agreement between the **insured**, claimant and us.

Bankruptcy or insolvency of the *in* or his or her estate shall not relieve our obligations.

- c. under personal injury protection, medical payments, any physical damage, death, dismemberment and loss of coverages, until 30 days after we give **insured's** notice of accident or loss

- d. under the underinsured motor vehicle coverage, unless copies of the plea in the action establishing liability served upon us in the manner provided by law.

3. Our Right to Recover Our Payment

- a. Underinsured motor vehicle and dismemberment and loss of sight coverage payments are not recoverable to
- b. Under personal injury protection medical payments coverages:

- (1) we are subrogated to the extent payment to the right of recovery injured *person* has against any liable for the **bodily injury**.

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4. Cancellation

How You May Cancel. *You* may cancel *your* policy by notifying us in writing of the date to cancel, which must be later than the date *you* mail or deliver it to us. We may waive these requirements by confirming the date and time of cancellation to *you* in writing.

How and When We May Cancel. We may cancel *your* policy by written notice, mailed or delivered to *your* last known address. The notice shall give the date cancellation is effective.

If we cancel *your* policy effective during the first 90 days that the policy is in force, the cancellation notice will be mailed or delivered to *you* at least 15 days before the cancellation effective date.

If we cancel *your* policy effective after it has been in force for more than 90 days, any notice of cancellation will be mailed or delivered to *you* at least:

- a. 15 days before the cancellation effective date if the cancellation is because *you* did not pay the premium; or
- b. 20 days before the cancellation effective date if the cancellation is because of any other reason.

The mailing of the notice shall be sufficient proof of notice.

Unless we cancel *your* policy effective during the first 90 days that the policy is in force, we will not cancel *your* policy before the end of the current policy period unless:

- a. *you* fail to pay the premium when due; or
- b. *you*, *your* spouse, any relative or any other person who usually drives *your* car has had his or her driver's license suspended or revoked.

(1) during the policy period or,

- (2) if the *person* to or for whom we have made payment has not recovered from any party liable for the *bodily injury*, he or she shall:

- (a) not hurt our rights to recover;
- (b) keep these rights in trust for us;
- (c) execute any legal papers we need; and
- (d) when we ask, take action through our representative to recover our payments.

- (3) if the *person* to or for whom we make payment recovers from any party liable for the *bodily injury*, that *person* shall hold in trust for us the proceeds of the recovery, and reimburse us to the extent of our payment.

- d. To the extent allowed by law, under uninsured motor vehicle coverage:

- (1) the right of recovery of the *insured* passes to us, to the extent of our payments.

- (2) we shall pay our share of the reasonable costs of any recovery. Our share is the percent that our recovery bears to the total recovery. We reserve the right to select an attorney to handle the recovery.

- (3) an *insured* making claim for *property damage* shall assign to us, to the extent of our payments, the right to any other compensation for it. We do not have to make any payment until the *insured* has done this.

- d. Under all other coverages, the right of recovery of any party we pay passes to us. Such party shall:

- (1) not hurt our rights to recover; and
- (2) help us get our money back.

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7. Premium

The premium for this policy may vary upon the purchase of other insurance one of the State Farm affiliated companies.

The premium for this policy is based on information State Farm has received from *you* or other sources. If the information is incorrect or incomplete, or changes during the policy period, *you* must inform State Farm of any changes regarding the financing.

- a. *your* car, or its use, including a mileage;
- b. the *persons* who regularly drive *your* car including newly licensed family members;
- c. *your* marital status; or
- d. the location where *your* car is principally garaged.

You agree that if this information or other information used to determine the premium is incorrect or incomplete, or changes during the policy period, we may decrease the premium during the policy period based upon the corrected, complete information. *You* agree that the premium is decreased or increased during the policy period, State Farm will refund credit to *you* any decrease in premium *you* will pay for any increase in premium.

8. Concealment or Fraud

There is no coverage under this policy if any other *person* insured under this policy has made false statements with the intent to conceal or misrepresent any material fact or circumstance in connection with any coverage under this policy.

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- (2) if the policy is a renewal, during its policy period or the 90 days immediately preceding the last anniversary of the effective date of the policy.

Return of Unearned Premium. If *you* cancel, premium may be earned on a short rate basis. If we cancel, premium will be earned on a pro-rata basis. Any unearned premium may be returned at the time we cancel or within a reasonable time thereafter. Delay in the return of unearned premium does not affect the cancellation.

5. Renewal

Unless we mail or deliver to *you* a notice of cancellation or a notice of our intention not to renew the policy, we agree to renew the policy for the next policy period upon *your* payment of the renewal premium when due. It is agreed that the renewal premium will be based upon the rates in effect, the coverages carried, the applicable limits of liability, deductibles and other elements that affect the premium that apply at the time of renewal.

Other elements that may affect *your* premium include, but are not limited to:

- a. drivers of *your* car and their ages and marital status;
- b. *your* car and its use;
- c. eligibility for discounts or other premium credits;
- d. applicability of a surcharge based either on accident history, or on other factors.

A notice of our intention to not renew will be mailed or delivered to *your* last known address at least 30 days before the end of the current policy period. The mailing of it shall be sufficient proof of notice.

6. Conformity With State Statutes

If any terms of this policy are in conflict with the statutes of South Carolina, they are amended to conform to those statutes.

MUTUAL CONDITIONS

1. **Membership.** While this policy is in force, the first insured named in the declarations is entitled to vote at all meetings of members and to receive dividends the Board of Directors in its discretion may declare in accordance with reasonable classifications and groupings of policyholders established by such Board.
2. **No Contingent Liability.** This policy is non-assessable.
3. **Annual Meeting.** The annual meeting of the members of the company shall be held at its home office at Bloomington, Illinois, on the second Monday of June at the hour of 10:00 A.M., unless the Board of Directors shall elect to change the time and place of such meeting, in which case, but not otherwise, due notice shall be mailed each member at the address disclosed in this policy at least 10 days prior thereto.

In Witness Whereof, the State Farm Mutual Automobile Insurance Company has caused this policy to be signed by its President and Secretary at Bloomington, Illinois, and countersigned on the declarations page by a duly authorized representative of the Company.

Tim M. Brunner

SECRETARY

Edward B. Runtz Jr.

PRESIDENT

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ROA 000385
APP 000388

ge No. WHAT IT IS AND WHERE YOU CAN FIND IT — THE INDEX

Reporting a Claim — Insured's Duties — What to do if *you* have an accident, claim or are sued.
Defined Words

Declarations Continued

When and Where Coverage Applies

Financed Vehicles — Coverage for Creditor

Coverages

A — Liability — When there is damage to others.

P — Personal Injury Protection — When there are medical expenses, loss of income, essential services expenses or funeral expenses.

C — Medical Payments — When there are medical and funeral expenses.

U — Uninsured Motor Vehicle — When the other *car* or driver is not insured.

W — Underinsured Motor Vehicle — When the other *car* or driver is underinsured.

D — Comprehensive — When *your car* is damaged except by collision or upset. Any deductible amount is shown by the number beside "D" on the declarations page.

G — Collision — When *your car* is damaged by collision or upset. The deductible is shown by the number beside "G" on the declarations page.

H — Emergency Road Service — When *your car* breaks down or needs a tow.

R — Car Rental Expense — When *you* need to rent a *car* because of damage to *your car*.

R1 — Car Rental and Travel Expenses — When *you* need to rent a *car* and pay extra travel expenses because of damage to *your car*.

R2 — Car Rental and Travel Expenses — When *you* need to rent a *car* and pay extra travel expenses because of damage to *your car*.

S — Death, Dismemberment and Loss of Sight — Pays for death of or certain injuries to *persons* named.

Conditions

1. Policy Changes
2. Suit Against Us
3. Our Right To Recover Our Payments
4. Cancellation
5. Renewal
6. Conformity With State Statutes
7. Premium
8. Concealment or Fraud

Mutual Conditions

Policy Form 9840.3

PLEASE READ YOUR POLICY CAREFULLY. IF YOU HAVE AN ACCIDENT, CONTACT YOUR STATE FARM AGENT OR ONE OF OUR CLAIM OFFICES AT ONCE. (SEE "REPORTING A CLAIM-INSURED'S DUTIES" IN THIS POLICY.)

Authorized Representative

State Farm Mutual Automobile Insurance Company, Home Office, Bloomington, Illinois
Georgia-South Carolina Office • 11350 Johns Creek Parkway • Duluth, GA 30098-0001 • Ph (770) 418-5413



YOUR
STATE FARM
CAR
POLICY

ROA 000386
APP 000389

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Mark Hayes, II, Circuit Court Judge

Case No. 2012-CP-42-00346

James Luther Plemmons and Wanda Sue Clark Plemmons, ... Appellants,

v.

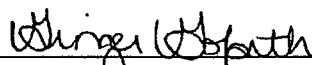
State Farm Mutual Automobile Insurance Company, Plaza Insurance Company,
The Stover Company, Inc., and Howard E. Newton, III..... Defendants,

Of whom,

State Farm Mutual Automobile Insurance Company is Respondent.

CERTIFICATE OF COUNSEL

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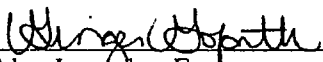
State Farm Mutual Automobile Insurance Company is Respondent.

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FINAL BRIEF OF APPELLANTS

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STATEMENT OF ISSUES ON APPEAL

- I. The trial court erred in holding that State Farm UIM coverage did not apply because it improperly held that the insured vehicle must be causally related to Appellant's injuries.
- II. The trial court erred in holding that State Farm UIM coverage did not apply because Appellant was using the Carson vehicle as a matter of law and was therefore an "insured".
- III. The trial court erred in holding that Appellant impermissibly sought to stack UIM insurance coverage.

STATEMENT OF THE CASE

James Luther Plemmons and Wanda Sue Clark Plemmons ("Appellant") brought this action on January 25, 2012 against State Farm Mutual Automobile Insurance Company, John Carson, and Plaza Insurance Company seeking, among other relief, a declaratory judgment that Appellant was entitled to recover underinsured ("UIM") motorist benefits under the State Farm policy. (R. p. 15). Appellant filed an Amended Summons and Complaint on October 12, 2012 deleting John Carson as a defendant, and adding The Stover Company, Inc. and Howard E. Newton, III. (R. p. 29). Defendants timely answered. (R. p. 40). This appeal arises from the Cross Motions for Summary Judgment of Appellant and State Farm Mutual Automobile Insurance Company ("Respondent"). (R. pp. 58, 208). These motions were heard on May 17, 2013 before the Honorable J. Mark Hayes II. (R. p. 306). Judge Hayes ruled in favor of Respondent. (R. p. 1). This appeal followed.

FACTS

On or about July 31, 2010, at approximately 5:00 a.m., Appellant was standing alongside his tow truck, which was legally parked and idling on the paved median headed south on U.S. Highway 29 in Spartanburg County, South Carolina. Appellant was operating the lever on his truck and was in the process of loading a vehicle. The tow truck was capable of towing two vehicles at the same time. Appellant had already loaded a 2005 Dodge Neon belonging to John Carson and insured by Respondent ("Carson vehicle"). This car was atop the tow truck. Appellant was in sole control of the vehicle while it was atop the tow truck. Appellant had picked up the Carson vehicle at the specific request of the owner for the purpose of transporting the vehicle his shop.

Tereso Garcia Diaz, now deceased, was driving a 1999 Volkswagen headed north on U.S. Highway 29, under the influence of alcohol and cocaine. Diaz was traveling approximately thirty miles per hour over the posted speed limit. Diaz crossed over the median and crashed into the front of the tow truck. The impact of the Diaz vehicle caused the tow truck, which was legally parked and under the supervision of the Greer Police Department, to roll backwards, running over Appellant. The crash instantly severed his leg above the knee and caused extraordinary blood loss and injury. The Carson vehicle was partially thrown from the tow truck and was damaged by the crash. Appellant sustained significant injuries in excess of Diaz's liability coverage and in excess of his own UIM policy. Appellant's injuries caused a loss of consortium for his wife. At the time of the incident, Appellant was a user of the Carson vehicle, and therefore sought recovery under the State Farm UIM policy. (R. pp. 40, 309-311, 326-331, 342, 350, 355).

STANDARD OF REVIEW

A determination of whether coverage exists under an insurance policy is an action at law. The Court of Appeals can make its own determinations on questions of law, and need not defer to the lower court's findings of fact if there no evidence that reasonably supports them. South Carolina Farm Bureau Mutual Ins. Co. v. Kennedy, 398 S.C. 604, 730 S.E.2d 862 (2012). Further, the Underinsured Motorists Statute is remedial in nature, and enacted for the benefit of injured persons. Therefore, it should be liberally construed to effect this legislative intent. Floyd v. Nationwide Mutual Ins. Co., 367 S.C. 253, 626 S.E.2d 6 (2005).

ARGUMENT

- I. The trial court erred in holding that State Farm UIM coverage did not apply because it improperly held that the insured vehicle must be causally related to Appellant's injuries.**

The trial court's Order denying coverage is based on the premise that there must be a causal connection between the Carson vehicle (the State Farm insured vehicle) and Appellant's injuries. This premise is unfounded and based on the trial court's misapplication of the existing law. There is no decision from this Court or the Supreme Court requiring a causal connection between the insured vehicle and the claimant's injuries to apply UIM coverage.

Initially, this holding does not comport with many decisions of this Court which have determined that UIM coverage, unlike liability coverage, follows the insured – not the vehicle. Given the purpose and application of UIM coverage, it would be illogical to require that the insured vehicle be involved in the accident. This is made clear by the

UIM statute which provides for a method of determining UIM coverage limits “[i]f none of the insured’s or named insured’s vehicles is involved in the accident....” S.C. Code Ann. § 38-77-160.

The State Farm Policy ("Policy") does require a “causal connection” in order for UIM coverage to apply; however, the “causal connection” must be between the underinsured vehicle and the claimant’s injuries. The Policy provides:

We will pay damages for *bodily injury* or *property damage* an *insured*:

1. Is legally entitled to collect from the owner or driver of an *underinsured motor vehicle*;
2.

The *bodily injury* or *property damage* must be caused by accident arising out of the operation or ownership of the *underinsured motor vehicle*. The *bodily injury* must be sustained by an *insured*.

(R. p. 376)

The Policy also defines underinsured motor vehicle as:

Underinsured Motor Vehicle – means a *motor vehicle*, as to which there is bodily injury liability insurance or a bond applicable at the time of the accident in an amount of at least that specified in the *Financial Responsibility Act* and:

1. The amount of the insurance or bond is less than the amount of the *insured’s* damages; or
2. The *insured’s* damages exceed any damages cap or limitation imposed by statute.

(R. p. 376)

Here, all of the requirements for UIM coverage to exist are met. Appellant sustained bodily injury arising out of the operation of an underinsured vehicle; to wit, the Diaz vehicle.

The trial court found that the case of Hite v. Hartford Accident and Indemnity Co., 288 S.C. 616, 344 S.E.2d 173 (Ct. App. 1986) is dispositive of the issue against Appellant. The lower court erred as a matter of law.

In Hite, Hite borrowed his employer's car. He stopped by the employer's car lot, got out of the borrowed vehicle, and walked fifty feet across the parking lot to yell to another man, Martin, to stop his vehicle. Martin sped toward Hite, knocked him down, and ran over his legs. The court held that Hite was not "using" the employer's car at the time of the accident because there was no causal relation between the insured vehicle and Hite's injuries. Despite the fact that Hite left the vehicle running, Hite's injury had nothing to do with the insured vehicle. The Court in Hite used the "causal connection" test to determine whether Hite was "using" the insured vehicle; the Court in Hite never held that there must be a "causal connection" between the injury and the insured vehicle. The requirement imposed by the trial court is made from judicial whole cloth.

Hite is easily distinguished. No court has found that "use" encompasses leaving a vehicle to engage a person in another car. Under South Carolina law, as noted below, a towed vehicle is in use by the person towing the vehicle. The Carson vehicle was indisputably in use as a towed vehicle while Appellant was engaged in a towing operation. Appellant was injured while engaged in the towing operation. To the extent, as the lower court insisted, a "causal connection" is somehow necessary; there is clearly a causal connection between Appellant's engagement in the towing operation while using his tow truck and the towed vehicles thereon.

The Court's decision in State Farm Mutual Automobile Ins. Co. v. Bookert, 337 S.C. 291, 523 S.E.2d 181 (2000) affirms the requirement that there must be a "causal

connection" between the underinsured vehicle and the claimant's injury. Bookert was insured under a State Farm policy which insured a vehicle belonging to Bookert's mother. This policy included UIM coverage. Bookert was not driving the insured vehicle at the time of the accident. Instead, Bookert was simply walking into a McDonald's when a passenger of a car riding in the parking lot fired a shotgun, striking Bookert. Bookert sought UIM coverage from State Farm. The Court denied coverage because Bookert's injury did not arise out of the ownership, maintenance, or use of the underinsured vehicle. Although the underinsured vehicle was used for transportation and there was a causal connection between the underinsured vehicle and the injury, the Court nonetheless held that there was no coverage because the injury Bookert sustained "was not foreseeably identifiable with the normal use of an automobile." Id. at 293, 523 S.E.2d at 182.

Again, Bookert is easily distinguished. Appellant's injury was directly caused by the use of the underinsured vehicle – the Diaz vehicle. Furthermore, Appellant's injury is reasonably foreseeable with the normal use of an automobile. It is foreseeable that a vehicle which is being operated carelessly and recklessly can cross over its marked lane of travel and strike other vehicles on the road.

Because there is no requirement that the insured vehicle be causally related to Appellant's injuries and because the Diaz vehicle did directly cause Appellant's injuries, the Policy provides UIM coverage to Appellant so long as he was "using" the Carson vehicle.

- II. **The trial court erred in holding that State Farm UIM coverage did not apply because Appellant was using the Carson vehicle as a matter of law and was therefore an "insured".**

The threshold question is whether Plemmons was "using" the Carson vehicle as a matter of law at the time of the accident. If so, he is entitled to coverage under the State Farm policy.

Appellant was an insured under the plain language of the Policy, which defines an "insured" as follows:

Insured- means:

1. *you, your spouse, and relatives;*
2. Any other *person* while *occupying* or using *your car*, a *newly acquired car*, or a trailer attached to either, if such vehicle is:
 - a. Insured under the liability coverage; and
 - b. Being used with *your* consent; . . .

(R. p. 377).

The Policy also defines underinsured motor vehicle as:

Underinsured Motor Vehicle – means a *motor vehicle*, as to which there is bodily injury liability insurance or a bond applicable at the time of the accident in an amount of at least that specified in the *Financial Responsibility Act* and:

3. The amount of the insurance or bond is less than the amount of the *insured's* damages; or
4. The *insured's* damages exceed any damages cap or limitation imposed by statute.

(R. p. 376).

Respondent does not dispute that the State Farm policy provides for UIM coverage. The record is clear that Appellant was using the Carson vehicle with the owner's consent at the time of the accident. "In South Carolina, the term 'use' has been broadly, not narrowly, construed." State Farm Fire and Casualty v. Pinson, 984 F.2d 610, 612 (4th Cir. 1993). As noted by the Fourth Circuit Court of Appeals, South Carolina state courts have approved an expansive definition of "use." Id. at 612-23. The Court in

Pinson reached the conclusion that a boat being towed by a vehicle is in "use." Id. at 613 (recognizing that the Fourth Circuit, applying South Carolina law, had already recognized that a towed car was in use).

In American Fire & Cas. Co. v. Allstate Ins. Co., 214 F.2d 523 (1954), the Fourth Circuit held that a towed vehicle is also in "use." Specifically, the Court rejected the contention of the appellant that "the bodily injuries suffered . . . did not arise 'out of the ownership, maintenance or use' of the jeep within the meaning of the quoted phrase of the policy, since the jeep was an automotive vehicle capable of self propulsion and designed to be so used." The Court held that the towing of the vehicle was not so unusual as to not have been in the contemplation of the parties to the policy and that "it would violate the usual rule of liberal interpretation of such an agreement in favor of the insured, if it should be held that a car being transported under the circumstances was not actually in use." Id. at 524-525.

"The vehicle which is being towed is also considered as being 'used' during the towing operation, and it has sometimes been said that both vehicles in a towing operation are being 'used' by the owners or operators of each other's vehicles." 7 Am. Jur. 2d Automobile Insurance § 95, citing 8 Couch on Ins. § 111:36, which reads:

Generally, when a vehicle is being towed, pulled, or pushed by another independent vehicle, the operator of the towing vehicle is found to be "using" the towed vehicle. This broader concept of "use" is based on the operator of the towing vehicle exercising supervisory control or guidance of the towed vehicle's movements. This concept of use has also been extended to encompass the preparation for towing a disabled vehicle. Since it is not uncommon for vehicles to require towing, pulling or pushing, these activities are found to fall within the contemplation of "use" in an omnibus clause.

8 Couch on Ins. § 111:36.

Appellant was towing the Carson vehicle at the time of the accident with Carson's consent. He was exercising supervisory control and guidance of its movements, and he was without question using the Carson vehicle as a matter of law. Appellant was therefore an "insured" under the Policy, and entitled to UIM coverage benefits.

Further, the State Farm policy must be strictly construed against the insurer. If State Farm had wanted to exclude coverage for towed vehicles, it could have provided for this in its policy. It did not.

Because Appellant was an insured under the State Farm policy and sustained injuries caused by an underinsured motorist, he is entitled to recover benefits under the policy as a matter of law.

III. The trial court erred in holding that Appellant impermissibly sought to stack UIM insurance coverage.

First, any potential rules relating to stacking do not apply in this case because Appellant is not attempting to stack coverage. Rather, as discussed more fully above, Appellant was using the Carson vehicle and was therefore an insured under the State Farm policy. Whether he is a Class I insured or a Class II insured is irrelevant, because he is not attempting to stack coverage. Rather, Appellant is directly seeking UIM benefits under the State Farm policy as an insured. Stacking becomes an issue only when a party seeks to recover under policies for vehicles that were not involved in the accident. Appellant is not trying to recover successive UIM benefits on any other vehicles owned by Carson that were not involved in the accident. He is only seeking such benefits on the vehicle involved in the accident. See, e.g., Merck v. Nationwide Mut. Ins. Co., 318 S.C. 22, 455 S.E.2d 697 (1995) (holding that a vehicle loaded onto a tow truck while it was stopped was "involved in the accident" for purposes of underinsured motorist coverage).

Second, and in the alternative, Appellant qualifies as a Class I Insured for purposes of UIM coverage. A Class I insured is an insured or named insured that has a vehicle involved in the accident. Mangum v. Maryland Cas. Co., 330 S.C. 573, 500 S.E.2d 125 (Ct. App. 1988). A Class II Insured is an insured whose vehicle was not involved in the accident. Id. The Court further recognized that UM and UIM benefits are mutually exclusive. If one applies, the other does not. Therefore, it is not appropriate to analyze the applicability of UIM coverage using cases in which UM coverage was at stake.

There are four ways in the instant case that Appellant can qualify as a Class I insured: (1) he can be a named insured in the State Farm policy; (2) he can be a spouse of the named insured in the State Farm policy; (3) he can be a relative residing in the household of the named insured in the State Farm policy; or (4) he can own a vehicle involved in the accident. Appellant is a Class I Insured for purposes of UIM insurance because he owned a vehicle involved in the accident.

There is no dispute that Appellant owned the tow truck, which was indisputably involved in the accident. As such, Appellant is allowed to stack available underinsured coverage, including coverage under the Carson vehicle. Even if Appellant is a Class II insured for purpose of liability coverage under the definitions of the State Farm policy, he is clearly a Class I insured under the terms of the Underinsured Motorist Statute, which is to be broadly construed to provide coverage. Floyd v. Nationwide Mutual Ins. Co., 367 S.C. 253, 626 S.E.2d 6 (2005).

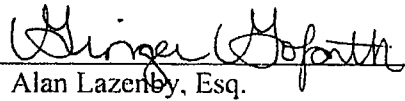
Finally, the trial court held that there was no bad faith claim because no coverage existed. This holding must be reversed and remanded for a decision on the merits of the

bad faith issue in light of the fact that coverage did exist. Appellant's claim for attorney's fees under S.C. Code Ann. § 38-59-40 must be reversed and remanded on the same grounds.

CONCLUSION

For the reasons set forth herein, Appellant respectfully submits that the Court of Appeals must reverse the trial court's decision.

February 19, 2014


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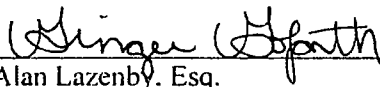
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Insurance Company, The Stover Company, Inc. and
Howard E. Newton, III.....
Of Which State Farm Mutual Automobile Insurance Respondent
Company is the

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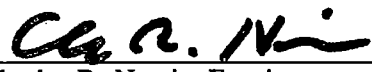
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Of Which State Farm Mutual Automobile Insurance Company is the	Respondent

CERTIFICATION

I, the undersigned Attorney of the law offices of Nelson Mullins Riley & Scarborough LLP, counsel for State Farm Mutual Automobile Insurance Company, do hereby certify that the Final Brief of Respondent complies with Rule 211(b) and have mailed a copy of the same to counsel of record listed below:

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ARGUMENT

- I. The order of the trial court should be affirmed because James Plemmons was not an insured for purposes of underinsurance motorist (UIM) coverage.
- II. The order of the trial court should be affirmed because, even if the plaintiffs are insureds under the State Farm Mutual Automobile Insurance Company (State Farm) policy, they are Class II insureds and are not entitled to stack UIM coverage from a State Farm policy on UIM coverage from a policy with Plaza Insurance Company.
- III. The order of the trial court should be affirmed because the vehicle insured by State Farm was outside the chain of causation for the accident which resulted in James Plemmons' injuries.
- IV. The order of trial court granting State Farm's motion for summary judgment on the plaintiffs' claim of bad faith and claim for statutory attorney's fees should be affirmed because State Farm had a reasonable basis for denying the plaintiffs' claim.

STATEMENT OF ISSUES ON APPEAL

- I. Should the order of the trial court be affirmed because the plaintiff was not an insured for purposes of UIM coverage under the State Farm policy?
- II. Should the order of the trial court be affirmed because, even if the plaintiffs are insureds under the State Farm policy, they are Class II insureds and are not entitled to stack UIM coverage from the State Farm policy on UIM coverage from the policy with Plaza Insurance Company?
- III. Should the order of the trial court be affirmed because the vehicle State Farm insured was outside the chain of causation for the accident which resulted in the plaintiff's injuries?
- IV. Should the order of the trial court granting State Farm's motion for summary judgment on the plaintiffs' claim of bad faith and claim for statutory attorney's fees be affirmed because State Farm had a reasonable basis for denying the plaintiff's claim?

STATEMENT OF THE CASE

This lawsuit was commenced on January 25, 2012 when the plaintiffs filed suit in the Court of Common Pleas in Spartanburg County. (R. pp. 15-28) On February 22, 2012, the defendant Plaza Insurance Company removed the case to Federal Court based on diversity jurisdiction. In May 2012 the plaintiffs moved to amend their complaint to join two non-diverse defendants – Howard Newton and the Stover Company, Inc. The U.S. District Court granted the plaintiffs' motion to amend the complaint to include the two non-diverse defendants. Because the addition of two non-diverse defendants ended the basis for diversity jurisdiction, the U.S. District Court issued an order on August 24, 2012 remanding the case to State Court. (R. pp. 7-14; August 24, 2013 Order of Judge Mary G. Lewis, Entry No. 46) During the approximate six months the case was in Federal Court the parties filed FRCP 26(f) reports stating their positions. (R. pp. 48-56; Plaintiffs' Rule 26(f) Report filed March 28, 2012) After the case was remanded to State Court the plaintiffs submitted a second amended complaint dated October 11, 2012. (R. pp. 29-39) On October 18, 2012 State Farm filed an answer to the plaintiffs' second amended complaint. (R. pp. 40-47)

On September 21, 2012 State Farm filed a motion for summary judgment on all of the plaintiffs' claims.¹ (R. pp. 60-62; State Farm Motion for Summary Judgment dated September 18, 2012, Filed September 21, 2012) State Farm submitted a 23 page memorandum and attachments in support of this motion. (R. pp. 63-185; State Farm Memorandum in Support of Motion for Summary Judgment and attachments dated September 18, 2012, filed September 21, 2012) This motion set forth a number of separate, independent grounds for the motion. On May 7, 2013 the plaintiffs submitted a motion for partial summary judgment on the basis

¹ The second amended complaint did not necessitate any changes in State Farm's motion for summary judgment.

that "the undisputed facts show that plaintiff James Plemmons is a State Farm insured and entitled to UIM coverage." (R. pp. 209, 210; Plaintiffs' Motion for Partial Summary Judgment submitted May 7, 2013)

On May 13, 2013 State Farm filed a supplemental motion for summary judgment. (R. pp. 188, 189; State Farm Supplemental Motion for Summary Judgment dated May 13, 2013, filed May 16, 2013) State Farm's supplemental motion for summary judgment was supported by a supplemental memorandum with attachments dated May 13, 2013 and filed May 16, 2013. (R. pp. 190-207; State Farm's Memorandum in Support of its Supplemental Motion for Summary Judgment dated May 13, 2013, filed May 16, 2013)

On May 17, 2013 State Farm's motion for summary judgment, its supplemental motion for summary judgment and the plaintiffs' motion for partial summary judgment were heard before Judge J. Mark Hayes, II. (R. pp. 306-341) On May 22, 2013 Judge Hayes issued an order granting State Farm's motion for summary judgment on all of the plaintiffs' causes of action and denying the plaintiffs' motion for summary judgment. (R. pp. 1-7; Order of Judge J. Mark Hayes, II dated May 22, 2013, filed May 23, 2013) The plaintiffs then filed a Notice of Appeal from Judge Hayes' order. (R. pp. 303-305)

STATEMENT OF THE FACTS

In July 2010 James Plemmons operated a tow truck service in addition to being a mechanic with his own garage in Spartanburg. (R. pp. 141, 142; Plemmons Depo., pp. 6, 7) On July 30, 2010 Plemmons was contacted by Kim Carson to come to her house and pick up her car because it would not operate. Plemmons then went to Carson's house and loaded Carson's car on Plemmons' tow truck. The tow truck was insured under Plemmons' policy with Plaza Insurance Company with \$100,000 of UIM coverage. (R. p. 33; Plaintiffs' Second

Amended Complaint, ¶¶ 26, 32; R. p. 52; Plaintiffs' Rule 26(f) Report, p. 3) The Carson car was insured with State Farm. (R. p. 30; Plaintiffs' Second Amended Complaint, ¶ 3) Once Plemmons loaded the Carson vehicle on his tow truck he took it to his house rather than his garage because his garage was not open Friday evenings nor was it open on Saturdays. (R. pp. 143-145; Plemmons Depo., pp. 10-12)

Early the next morning Plemmons received a call to pick up another car. Plemmons received this call because he was on a rotating list of tow truck operators to pick up vehicles. Plemmons then drove his tow truck with the Carson car already on top to Highway 29 in Spartanburg County to pick up a car owned by a Ms. Mills. (R. pp. 144-147; Plemmons Depo., pp. 11-14) The Mills car had been pulled over because the driver of that car had been stopped by the police. At this time it was around 4:00 or 5:00 in the morning and there was very little traffic. (R. pp. 147, 148; Plemmons Depo., pp. 14, 15)

When Plemmons arrived to pick up Mills' car on Highway 29 the 2005 Dodge Neon owned by Kim Carson's father, John Carson, and insured with State Farm was on the flatbed secured in a stationary position. (R. p. 149; Plemmons Depo., p. 18) Other than being "atop the wrecker for towing" (R. p. 31; Plaintiffs' Second Amended Complaint, ¶ 12), "the Neon was otherwise inoperable." (R. p. 32; Plaintiffs' Second Amended Complaint, ¶ 16) No one was driving the Dodge Neon at the time of the accident, nor was it being used for transportation at the time of the accident. In fact, the Dodge Neon could not be used for transportation because it was inoperable. (R. pp. 151, 152; Plemmons Depo., pp. 25, 26) According to Plemmons, the only "use" he was making of the Dodge Neon at the time of the accident was transporting it back to his shop. (R. p. 153; Plemmons Depo., p. 27) The Dodge Neon neither caused the accident nor contributed to it (R. p. 156; Plemmons Depo., p.

32) and there is no one to blame for Plemmons' injury other than Tereso Diaz whose car hit Plemmons' tow truck. (R. pp. 154, 157; Plemmons Depo., pp. 30; 48) There is no evidence the Dodge Neon insured by State Farm touched Plemmons or otherwise caused his injuries, nor is there evidence that the at fault car operated by Diaz touched the Carson car on top of the tow truck bed. (R. p. 2; May 22, 2013 Order of Judge Hayes, p. 2)²

Plemmons did not see the accident because at the time of the accident he was looking at the car owned by Ms. Mills which Plemmons was securing to his tow truck. (R. p. 150; Plemmons Depo., p. 20) However, police officer Amanda Barnes did observe the accident as she was standing next to Plemmons when the car operated by Diaz struck Plemmons' tow truck. While Barnes was standing a foot and a half from Plemmons she observed out of the corner of her eye a vehicle southbound on Highway 29 traveling at a high rate of speed. The car traveling at the high rate of speed was operated by Diaz and hit the front of the tow truck. (R. pp. 159-168; Barnes Depo., pp. 9-18) The impact knocked the tow truck back and it skidded over Plemmons' left leg. (R. pp. 168, 169; Barnes Depo., pp. 18, 19)

The Carson vehicle atop the tow truck was not being used at the time of the accident (R. p. 170; Barnes Depo., p. 20), it did not hit Plemmons (R. p. 170; Barnes Depo., p. 20; R. p. 2; Order of Judge Hayes, p. 2), it was not being used for transportation at the time of the accident and it did not contribute to the accident. (R. pp. 171-173; Barnes Depo., pp. 21, 22; 26; R. p. 2; Order of Judge Hayes, p. 2) Instead, Diaz's car was the sole cause of the accident as every other vehicle was standing still out of the way and doing nothing. (R. p. 174; Barnes Depo., p. 28) In fact, none of the diagrams of the collision scene even reference the Carson car secured on top of the tow truck. (R. pp. 175-184; Barnes Depo., pp. 39-43; Exhibits 2-6)

² The Plaintiffs' brief does not contest the factual findings in Judge Hayes' order.

The plaintiffs stacked UIM coverages under the Plaza policy. (R. p. 54; Plaintiffs' Rule 26(f) report, p. 5) In addition to these funds, the plaintiffs received another \$100,000 from Plaza to resolve the plaintiffs' claim to reform the Plaza policy insuring the tow truck. (R. pp. 203-206; State Farm Memorandum in Support of Supplemental Motion for Summary Judgment, Exhibit B)

STANDARD OF REVIEW

The plaintiffs' Brief does not challenge any of the factual conclusions in the trial court's order. This is consistent with the plaintiffs' answer to Rule 26.01 Interrogatories when this case was pending in Federal Court. Page two of the plaintiffs' interrogatory answer stated that:

Plaintiffs' declaratory judgment action against State Farm Mutual Automobile Insurance Company does not have questions of material fact and should be decided as a matter of law by a judge. (R. p. 137; State Farm Memorandum in Support of Motion for Summary Judgment - Exhibit B)

Accordingly, this appeal presents only questions of law. An appellate court reviews questions of law *de novo*. Smith v. Regional Medical Center, 713 S.E.2d 656, 658 (S.C. App. 2011); Crystal Pines Home Owners Association v. Phillips, 716 S.E.2d 682, 685 (S.C. App. 2011) When an appeal involves stipulated or undisputed facts, an appellate court is free to review whether the trial court properly applied the law to those facts. GEICO v. Draine, 698 S.E.2d 866, 868 (S.C. App. 2010)

Although State Farm moved for summary judgment on a number of grounds, the trial court did not address all of these grounds in its order. (R. p. 3; Judge Hayes, May 22, 2013 Order, p. 3) However, an appellate court may affirm a trial court order for any reason appearing in the Record on Appeal. I'on v. Town of Mount Pleasant, 526 S.E.2d 716, 723

(S.C. 2000) Accordingly, every reason in the Record on Appeal for granting State Farm's motion for summary judgment - even reasons not ruled upon by Judge Hayes - may justify an affirmance. I'on v. Town of Mount Pleasant, 526 S.E.2d 716, 723 (S.C. 2000)

ARGUMENT

I. The order of the trial court should be affirmed because the plaintiffs were not insureds under the State Farm policy.

Page 7 of the plaintiffs' Brief states "the threshold question is whether Plemmons was 'using' the Carson vehicle as a matter of law at the time of the accident." State Farm agrees this is a threshold question. The disagreement is whether under the undisputed facts Plemmons was "using" the Carson vehicle at the time of the accident.

Page 20 of Form 8403 (R. 117) of the State Farm policy insuring the Carson vehicle defines an insured for purposes of UIM coverage as either you (p. 4 of this Form defines you as the named insured or named insureds on the declarations page), **your spouse and relatives.** (emphasis in policy) (R. pp. 86-135; Exhibit A to State Farm's Memorandum in Support of Motion for Summary Judgment) It is undisputed that James Plemmons was not a named insured nor a spouse or relative of a named insured under the State Farm policy. However, the definition of insured for UIM coverage also includes any other person "using your car . . ." (emphasis in policy) (R. p. 117; Exhibit A attached to State Farm's Memorandum in Support of Motion for Summary Judgment; p. 20 of Form 8403) Therefore, unless James Plemmons was "using" the Carson car at the time of the accident Plemmons was not an insured entitled to claim UIM coverage under the Carson vehicle.

Page 7 of the plaintiffs' Brief simply declares that "the record is clear that appellant was using the Carson vehicle . . ." Left unexplained is exactly what use the plaintiff was

making of the Carson vehicle at the time of the accident. It is undisputed that at the time of the accident:

- The Carson vehicle was not being driven;
- The Carson car was not being repaired;
- The Carson car was not occupied;
- The Carson car was simply sitting in a fixed, stationary position.

In fact, the plaintiffs' second amended complaint even alleges in paragraph 16 that "the Neon was otherwise inoperable." (R. p. 32; Plaintiffs' Second Amended Complaint, ¶ 16) It is inconsistent and contradictory for the plaintiff to claim that he was "using" a car which he alleges was "inoperable."

The plaintiff does not cite a single South Carolina case for the proposition that under the facts of this case the Carson vehicle was being used by the plaintiff at the time of the accident. Instead, the plaintiff relies on federal case law. However, as State Farm explained in its memorandum in support of its motion for summary judgment, the case of State Farm Fire and Casualty Company v. Pinson, 984 F.2d 610 (4th Circuit 1993) is distinguishable. (R. pp. 74-76; State Farm Memorandum in Support of Motion for Summary Judgment, pp. 12 - 14) In Pinson, Donald Rider was towing a pontoon boat behind his pickup truck. Rider entered an intersection without stopping and his truck and boat were struck by a vehicle driven by Pinson. Rider's boat was insured by State Farm under a boat owners policy. Pinson made a claim of coverage under the State Farm boat owners liability policy arguing that his injuries arose in part from the boat's "use." The 4th Circuit held that a towed boat is in "use." The 4th Circuit stated that:

Arguably a towed boat presents a stronger case for coverage than a towed vehicle. Usually, a vehicle is towed only when its owner is **unable** to put it to its intended purpose. A boat, on the other hand, **must** be towed in order for a landlocked owner to derive any enjoyment from boat ownership. 984 F.2d at 612 (Emphasis in original)

In concluding that the policy intended a towed boat to be in "use" the majority noted that "unless a boat is permanently moored, it must be frequently transported to and from water to be put to its intended purpose." 984 F.2d at 613 The 4th Circuit concluded that "we believe that South Carolina would continue to construe 'use' broadly and find that a towed boat is in "use." 984 F.2d at 613 The court further noted that there was no question that the towing of a boat caused or contributed to Pinson's injuries and that "the causal connection is particularly strong" because Pinson actually struck the boat as well as Rider's truck during the accident. 984 F.2d at 614 Here, in contrast, Plemmons never came in contact with the Carson vehicle. (R. pp. 151, 155; Plemmons Depo., pp. 25; 31)

It is logical to consider a boat that is not permanently moored to be in use while it is being transported to water as otherwise the boat cannot be used for its intended purpose. In contrast, an inoperable car being transported to a repair shop is not in "use."³ Additionally, unlike the facts in Pinson, there is no causal connection between Plemmons' towing of the Carson car and Plemmons' injuries. Plemmons has admitted there is no one to blame for his injury other than Diaz, that the Dodge Neon itself did not hit Plemmons and that the Dodge Neon did not cause the accident nor contribute to the accident. (R. pp. 154-156; Plemmons Depo., pp. 30-32) Similarly, Amanda Barnes testified the towed vehicle was not being used at

³ The concept of a towed vehicle being "involved" in an accident should not be confused with the issue of whether the towed vehicle was being "used" at the time of the accident. Merck vs. Nationwide, 455 S.E.2d 697 (S.C. 1995), considered whether a towed vehicle was "involved" in an accident. That case did not consider whether the towed vehicle was in use. This distinction is referenced in footnote 2 of State Farm's Memorandum in Support of its Motion for Summary Judgment. (R. p. 76)

the time of the accident and that the towed vehicle did not contribute to the accident. (R. pp. 170-173; Barnes Depo., pp. 20-22; 26) Instead, Diaz's car was the sole cause of the accident and every other vehicle was simply standing still out of the way and doing nothing. (R. p. 174; Barnes Depo., p. 28)

The plaintiffs' reference to Couch on Insurance is also distinguishable. (Plaintiffs' Brief, pp. 8, 9) The citation from Couch references when a vehicle "is being towed, pulled or pushed . . ." (Emphasis added) In contrast, the Carson vehicle was not actually being towed at the time of the accident. Instead, it was purely stationary.

Page 9 of the plaintiffs' Brief claims the plaintiff was using the Carson vehicle at the time of the accident because he was exercising "supervisory control and guidance of its movements . . ." (Plaintiffs' Brief, p. 9) This argument conflates having custody or control over a vehicle with use of the vehicle. Under this theory, any vehicle in the plaintiffs' repair shop would be constantly "used" by the plaintiff. Additionally, at the time of the accident the plaintiff was not guiding the movements of the Carson vehicle. Instead, the Dodge Neon was "atop the wrecker for towing" (R. p. 31; Plaintiffs' Amended Complaint, ¶ 12) while the plaintiff was guiding the movement of another car - the vehicle owned by Mills. (R. p. 31; Plaintiffs' Amended Complaint, ¶ 11)

Another federal case relied upon by the plaintiff is American Fire and Casualty v. Allstate, 214 F.2d 523 (4th Cir. 1954). (Plaintiffs' Brief, p. 8) There, unlike the present case, the vehicle being towed "was moving on the road by means of its own running gear..." at the time of the accident. Additionally, that decision cites no South Carolina case in support of its decision.

The plaintiff also argues he is entitled to coverage because the State Farm policy "must be strictly construed against the insurer." (Plaintiffs' Brief, p. 9) Aside from the fact that this argument was neither raised to nor ruled upon by the trial court, this statement is incorrect because the concept of strict construction against the drafter of a contract only applies where the court first finds an ambiguity in the policy. Judge Hayes did not find, nor was he asked to find, an ambiguity in the policy. In the absence of ambiguity the terms of a policy are to be taken in their plain, ordinary and popular sense. Smith v. Liberty Mutual Insurance Company, 437 S.E.2d 142 (S.C. App. 1993); Nationwide Insurance Company v. Commercial Bank, 479 S.E.2d 524, 526 (S.C. App. 1996); Holmes v. McKay, 513 S.E.2d 851, 853 (S.C. App. 1999)

The plaintiff further argues that if State Farm had wanted to exclude coverage for towed vehicles it could have included such an exclusion in the policy. (Plaintiffs' Brief, p. 9) No exclusion is necessary, however, because no South Carolina case holds that under the facts of this case a towed vehicle is in use. The Federal cases cited by the plaintiffs are distinguishable.

Page 5 of the plaintiffs' Brief cites Hite v. Hartford Accident and Indemnity Company, 344 S.E.2d 173 (S.C. App. 1986), for the proposition that a causal connection test is used to determine if the party seeking insurance was "using" the insured vehicle. Hite therefore supports State Farm's position that Plemmons was not "using" the Carson car at the time of the accident because here, as in Hite, there was no causal relation between the insured vehicle and the plaintiff's injuries. As stated at page 5 of the plaintiffs' Brief, "Hite's [or Plemmons'] injury had nothing to do with the insured vehicle." The factual finding at page 2 of Judge Hayes' order that "there is no evidence that the Dodge Neon insured by State Farm touched Plemmons or otherwise caused his injuries..." is not contested by the plaintiffs. Accordingly,

under the plaintiffs' own analysis James Plemmons was not "using" the Carson car at the time of the accident and, therefore, was not an insured under the State Farm policy.

- II. The order of the trial court should be affirmed because, even if the plaintiffs were insureds under the State Farm policy insuring the Carson vehicle, the plaintiffs are Class II insureds and, as such, are not entitled to stack UIM coverage from a State Farm policy on UIM coverage from a policy with Plaza Insurance Company.**

Page 9 of the Plaintiffs' Brief asserts that whether the plaintiffs are a Class I insured or a Class II insured is irrelevant as the plaintiffs are not attempting to stack coverage. The plaintiffs are correct that the Class I versus Class II distinction is only relevant to the issue of whether coverages can be stacked. However, page 5 of the Plaintiffs' Rule 26(f) Report filed when the case was in Federal Court stated that:

Plaintiffs filed a Declaratory Judgment action against the Defendant State Farm to determine coverage under a policy in effect between John Carson and State Farm, of which plaintiffs believe Mr. Plemmons to be a Class II user of the vehicle. (R. p. 54; Plaintiffs' Rule 26(f) Report, p.5)

The only reason for the plaintiffs to have made that statement in a report to a court is to concede that they could not stack coverages under a State Farm policy with other coverages.

The plaintiffs have already recovered UIM benefits under multiple policies of Plaza Insurance Company based upon one Plaza policy insuring the tow truck involved in the accident. The plaintiffs are now trying to claim additional UIM benefits under a State Farm policy insuring another vehicle – the Carson vehicle – also involved in the accident. The attempt to recover multiple UIM coverages on multiple vehicles involved in an accident constitutes stacking because stacking refers to an insureds recovery of damages under more than one insurance policy in succession until all damages are satisfied or until the total limits of all policies are exhausted. Nakatsu v. Encompass Indemnity Company, 700 S.E.2d 283, 286

(S.C. App. 2010); Nationwide Mutual Insurance Company v. Rhoden, 728 S.E.2d 477, 481 (S.C. 2012); Carter v. Standard Fire Company, 2013 WL 6492397 filed December 11, 2013

After arguing they are not attempting to stack coverages (Plaintiffs' Brief, p. 9), the plaintiffs alternatively argue they qualify as a Class I insured for purposes of UIM coverage and are allowed to stack UIM coverage on the Carson vehicle. (Plaintiffs' Brief, p. 10) This argument is incorrect for several reasons. First, the plaintiffs never explain why they initially stated in their Rule 26(f) Report that they believed Plemmons was a Class II user of the Carson vehicle. (R. p. 54; Plaintiffs' Rule 26(f) Report, p. 5) Second, a Class I insured is a named insured, his spouse and relatives residing in his household. Richardson v. South Carolina Farm Bureau, 519 S.E.2d 120, 121 (S.C. App. 1999); Carter v. Standard Fire Company, 2013 WL 6492397 filed December 11, 2013. One who is not a resident relative of the named insured's household is not a Class I insured entitled to stack UIM benefits. Auto Owner's Insurance v. Horne, 586 S.E.2d 865, 874 (S.C. 2003) A person is entitled to pursue stacking **only** if he is a Class I insured under the at-home policy. Carter, supra, footnote 5 Plemmons had no "at-home" policy with State Farm.

Even if James Plemmons is somehow deemed to have been "using" the Carson vehicle at the time of the accident, one who is not the named insured or the named insured's spouse or a resident relative and is only using the vehicle with the named insureds' permission is a Class II insured and is not entitled to stack coverage. Ex-parte: United Services Automobile Association; In Re: Smith v. Moore, 614 S.E.2d 652 (S.C. App. 2005) Plemmons was not a named insured under the State Farm policy, he was not a spouse of the named insured under the State Farm policy, nor was he a resident relative of the named insured under the State Farm policy.

Page 10 of the Plaintiffs' Brief argues that in the context of analyzing a claim of who can stack UIM benefits it is not appropriate to consider cases in which uninsured (UM) coverage was at stake. (Plaintiffs' Brief, p. 10) However, the same rules of stacking coverages apply to both UIM and UM coverage. S.C. Farm Bureau v. Mooneyham, 405 S.E.2d 396, 397 (Footnote 2) (S.C. 1991) Accordingly, cases involving stacking of UM coverages are appropriate to consider on questions involving stacking of UIM coverages.

The plaintiffs' final argument is that even if he is a Class II insured for purposes of liability coverage, he is a Class I insured under the UIM statute. (Plaintiffs' Brief, pp. 10, 11) However, the Class I versus Class II distinction is only relevant in the context of stacking UM or UIM coverage because liability coverages are limited to the particular vehicle insured. Ruppe v. Auto-Owners Insurance Company, 496 S.E.2d 631 (S.C. 1998) There is therefore no such thing as a Class II insured for the purpose of liability coverage.

III. The order of the trial court should be affirmed because the vehicle State Farm insured was outside the chain of causation for the accident which resulted in the plaintiff's injuries.

State Farm's memorandum in support of its motion for summary judgment cited to the trial court a number of cases which require that for insurance coverage to exist a vehicle must be an active accessory to the injury, it must be used for transportation purposes at the time of the injury, the injury must be foreseeably identifiable with the normal use of the vehicle and no act of independent significance breaks the causal link between the vehicle and the injury. (R. pp. 66-80; State Farm's memorandum in support of motion for summary judgment, p. 4 - 18) The crux of the plaintiffs' argument is that in the context of this case these requirements apply to the vehicle operated by Diaz and not to the Carson vehicle insured by State Farm. This

argument is summarized at Page 6 of the Plaintiffs' Brief which states that "there is no requirement that the insured vehicle be causally related to Appellant's injuries..."

Both State Farm and the trial court relied upon Hite v. Hartford Accident and Indemnity Company, 344 S.E.2d 173 (S.C. App. 1986). Hite is not distinguishable and acceptance of the plaintiffs' argument would effectively overrule Hite.

In Hite, Hite sought coverage under a vehicle owned by his employer and which was insured by Hartford. Hite was struck by an automobile driven by Martin but at the time of the accident Hite was not in, on or touching the vehicle insured by Hartford and under which Hite sought coverage. In analyzing Hite's claim for coverage under the vehicle insured by Hartford the Court of Appeals stated that what appears to be crucial is the existence of a causal connection between an accident or injury and the use of the vehicle. 344 S.E.2d at 176 The Court of Appeals held that Hite's injury was directly caused by Martin and that this was an independent or intervening cause wholly disassociated from, independent of, and remote from the use of the insured automobile. The Court of Appeals concluded that "it is difficult to see where use of the insured automobile was directly connected with or a cause of the ensuing accident." 344 S.E.2d at 177 The Court of Appeals affirmed the trial court's directed verdict for Hartford.

Here, as in Hite, "it is difficult to see where use of the insured automobile [the Carson vehicle insured with State Farm] was directly connected with or a cause of the ensuing accident." The trial court correctly held that here, as in Hite, the injuries are the direct result of an intervening cause wholly disassociated from, independent of, and remote from the use of the insured automobile and, therefore, no coverage is provided. (R. p. 3; Order of Judge Hayes, p. 3)

IV. The order of the trial court granting State Farm's motion for summary judgment on the plaintiffs' claim of bad faith and the plaintiffs' claim for statutory attorneys' fees should be affirmed because State Farm had a reasonable basis for denying the plaintiffs' claim.

One of the grounds for State Farm's motion for summary judgment on the plaintiffs' third cause of action alleging insurance bad faith was that as a matter of law State Farm had a reasonable basis for denying the claim. (R. p. 61; State Farm's Motion for Summary Judgment, p. 2; R. pp. 80-82; Memorandum in Support of Motion for Summary Judgment, pp. 18 - 20) In granting summary judgment to State Farm Judge Hayes did not rule on this basis for State Farm's motion for summary judgment. Instead, Judge Hayes granted summary judgment on the plaintiffs' claim for bad faith "as no insurance coverage existed for the plaintiffs' claim against State Farm." (R. p. 5) Judge Hayes also granted State Farm's motion for summary judgment on the plaintiffs' claim for attorneys' fees. (R. p. 5) This ruling was also based upon Judge Hayes' conclusion that the plaintiffs' claim against State Farm was not covered. (R. p. 5; Judge Hayes' order, p. 5)

Although these grounds for summary judgment are in the Record on Appeal the plaintiffs' Brief fails to address this issue. Instead, the plaintiffs' Brief only argues that the ruling on bad faith should be reversed "in light of the fact that coverage did exist." (Plaintiffs' Brief, p. 11)

It is not necessary for the Respondent as the winning party in the lower court to present issues and arguments to the lower court and obtain a ruling on them in order to preserve an issue for appellate review. The Respondent may on appeal raise additional reasons the appellate court should affirm the lower court's ruling, regardless of whether those reasons have been presented to or ruled on by the lower court. I'on v. Town of Mount Pleasant, 526

S.E.2d 716, 723 (S.C. 2000) Whether State Farm was entitled to summary judgment because it had a reasonable basis for denying the claim was raised to the trial judge and, although not ruled upon by the trial judge, this issue can serve as an independent basis for affirming the grant of summary judgment on the plaintiffs' claims. However, this issue is not addressed in the plaintiffs' Brief. This omission cannot be addressed in a Reply Brief because an Appellant is precluded from asserting an argument for the first time in a Reply Brief. Jones Ex. Rel. Jones v. Enterprise Leasing Company, 678 S.E.2d 819, 824, Footnote 6 (S.C. App. 2009) Additionally, the failure to argue an issue in an appellate brief is an abandonment of that issue. Richland County v. Carolina Chloride, 677 S.E.2d 892, 903 (S.C. App. 2009)

The law cited to the trial court as the basis for State Farm's motion for summary judgment on the plaintiffs' claim of bad faith and for statutory attorneys' fees is that where an insurer's decision is reasonable an appellate court will reverse a trial court's determination that the insurer breached the covenant of good faith and fair dealing. Doe v. South Carolina Medical Malpractice Association, 557 S.E.2d 670 (S.C. 2001) Bad faith is a knowing failure on the part of an insurer to exercise an honest and informed judgment in processing a claim. An insurer acts in bad faith only where there is no reasonable basis to support the insurer's decision. Where the only reasonable inference is that an insurer did not act in bad faith or unreasonably in handling the claim, there is no error in the lower court's decision to direct a verdict in favor of the insurance company. American Fire & Casualty v. Johnson, 504 S.E.2d 356, 359 (S.C. 1998)

If there is a reasonable ground for contesting a claim there is no bad faith. Crossley v. State Farm Mutual Automobile Insurance Company, 415 S.E.2d 393, 397 (S.C. 1992) If an insurer has a reasonable ground for contesting a claim summary judgment is properly granted

as to the bad faith claim. Helena Chemical Company v. Lexington Insurance Company, 594 S.E.2d 455, 462 (S.C. 2004); BMW of North America v. Complete Auto Recon Services, 731 S.E.2d 902 (S.C. App. 2012)

As stated to the trial court, "State Farm had numerous, reasonable grounds for denying the plaintiffs' claim for UIM coverage." (R. pp. 81-83; State Farm's Memorandum in Support of Motion for Summary Judgment, pp. 19 – 21) These reasons are set forth in State Farm's motion for summary judgment, in its memorandum in support of that motion and in sections I, II and III of this brief. Although the trial judge never ruled on this issue, under I'on v. Town of Mount Pleasant, 526 S.E.2d 716, 723 (S.C. 2000), the Court of Appeals may rely upon these reasons to affirm the grant of summary judgment to State Farm. Again, the plaintiffs' Brief fails to argue this point and the plaintiffs cannot now raise this point for the first time in a Reply Brief.

CONCLUSION

This appeal does not challenge the factual findings of the lower court. Instead, only legal issues are presented. The plaintiffs are not entitled to UIM coverage for several reasons. First, James Plemmons was not an insured under the State Farm policy insuring the Carson vehicle because Plemmons was not "using" the Carson vehicle at the time of the accident. Second, the Carson vehicle was outside the chain of causation for the accident which resulted in the plaintiff's injuries. Third, even if the plaintiffs could somehow claim to be insureds under the State Farm policy, they cannot stack UIM coverages under the State Farm policy for which the plaintiffs are Class II insureds on UIM coverages already recovered by the plaintiffs from Plaza Insurance Company which insured the plaintiffs' tow truck. Finally, one of the grounds for State Farm's motion for summary judgment on the plaintiffs' claims of bad faith

and attorneys' fees was that State Farm had a reasonable basis for denying the plaintiffs' claim. (R. p. 61) This issue was raised to but not ruled upon by the trial judge and appears in the Record on Appeal. The plaintiffs' Brief fails to address that issue. Accordingly, the trial court's order granting State Farm's motion for summary judgment on the claims of bad faith and attorneys' fees should be affirmed.

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February 12, 2014

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Mark Hayes, II, Circuit Court Judge

Case No. 2012-CP-42-00346

James Luther Plemmons and Wanda Sue Clark Plemmons, ... Appellants,

v.

State Farm Mutual Automobile Insurance Company, Plaza Insurance Company,
The Stover Company, Inc., and Howard E. Newton, III..... Defendants,

Of whom,

State Farm Mutual Automobile Insurance Company is Respondent.

REPLY BRIEF OF APPELLANTS

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REPLY ARGUMENT

I. Whether the Carson vehicle was within the chain of causation for the accident is irrelevant to the issue of State Farm's coverage and the trial court erred in granting summary judgment to State Farm on this basis.

The trial court's Order must be reversed because it is based on a faulty premise. The Order leads with the following finding: "The first reason State Farm is entitled to summary judgment is that the vehicle it insured was completely outside the chain of causation for the plaintiff's injuries and outside the chain of causation for the accident which resulted in the plaintiff's injuries." (May 23, 2013 Order). The trial court denied coverage based on the misreading and misapplication of Hite v. Hartford Accident and Indemnity Co., 288 S.C. 616, 344 S.E.2d 173 (Ct. App. 1986), from which it took the erroneous premise that there must be a causal connection between the Carson vehicle and Appellant's injuries. No South Carolina case law holds that the insured vehicle must be within the chain of causation for the accident in order for underinsured coverage to apply.

The trial court relied on this erroneous finding to grant summary judgment. Appellant in its brief led with this dispositive argument. Respondent, seeking to avoid the argument, buried its response on little more than a single page toward the end of its brief. Even then, Respondent cites no case law supporting this premise. Respondent can make no such cite because there is no South Carolina case that requires the insured vehicle in an underinsured coverage case to be within the chain of causation for the accident.

Taking the Hite analysis step-by-step, this becomes clear.

Hite was driving his employer's car, with permission. The car was insured by Hartford. Hite drove onto the employer's car lot. He was hailed by a security guard, who wanted him to

stop another man, Martin, from leaving the parking lot. Hite walked 50 feet from his employer's borrowed vehicle and tried to stop Martin. Martin ran over Hite. Grange, which insured the vehicle Martin was driving, denied coverage because Martin did not have permission to drive the car. Martin was therefore uninsured.

Hite sought to recover uninsured benefits from his employer under the Hartford policy. The Court applied the language of the Hartford policy to determine if Hite was an insured. The Hartford policy language provided that Hite was an insured if (among other options) he was "using a covered automobile."

The Court then analyzed the question of whether Hite was using the Hartford-insured vehicle. There was no South Carolina law establishing "use" when a person walked 50 feet away from a vehicle and engaged in an independent purpose.

The Court found that there was no situation in Hite "that would put the fact situation within the parameters of 'use' as defined in South Carolina." Id. at 177. There being no South Carolina law on point, the Court resorted to the law of other jurisdictions in order to determine whether Hite's specific situation should come within "use." The Court thereafter discussed law from other jurisdictions, which applied a "causal connection" test to determine whether a person was "using" an insured vehicle. The Court found, under the specific facts of the Hite's case, that he was not using his employer's vehicle, and therefore was not an insured entitled to recover benefits under the Hartford policy.

In sum, Hite only applied the causal connection test to determine whether the insured vehicle was in use because it was not clear under South Carolina law. Here, there is no need to resort to any "causal connection" test to determine whether Appellant was "using" the Carson

vehicle under South Carolina law. South Carolina law, as discussed below, has established that a towed vehicle is in use.

Further, there is no case law or other authority to support any requirement that the insured vehicle be involved in or contribute in any way to the accident or injuries in order to recover under a UIM provision. S.C. Code Ann. § 38-77-160. Respondent completely ignores this key issue in the substance of its brief. The only causal connection required by law or by the State Farm policy is between the **underinsured vehicle** and the injury. There is no question that Appellant's injuries were caused by the Diaz vehicle.

II. State Farm UIM coverage applies because Appellant was using the Carson vehicle with permission and is an Insured under the Policy.

Appellant was an insured under the Policy as a matter of law because he was "using" the Carson vehicle with the owner's consent at the time of the accident. (Policy, p. 20). The Policy does not define use. However, case law defining the parameters of "use" encompass Appellant's use of the Carson vehicle. Further, Respondent's attempts to distinguish plain South Carolina law strains reason and often borders on the absurd.

First and foremost, South Carolina courts have sanctioned a broad definition of the term "use." State Farm Fire and Casualty v. Pinson, 984 F.2d 610, 612-613 (4th Cir. 1993). The Court in Pinson reached the conclusion that a boat being towed by a vehicle is in "use." Id. at 613. Also applying South Carolina law, the Court in American Fire & Cas. Co. v. Allstate Ins. Co., 214 F.2d 523 (1954) held that a towed car is also in "use." Specifically, the Court noted that "it would violate the usual rule of liberal interpretation of such an agreement in favor of the insured, if it should be held that a car being transported under the circumstances was not actually in use." Id. at 524-525.

Even standard legal reference books acknowledge that a towed vehicle is "used" during towing. 7 Am. Jur. 2d Automobile Insurance § 95, citing 8 Couch on Ins. § 111:36.

Appellant was towing the Carson vehicle at the time of the accident with Carson's consent. Appellant, and Appellant alone, was exercising supervisory control and guidance over the Carson vehicle during the towing operation. The tow truck was running, and Appellant was standing right next to the tow truck while engaged in the towing operation. Because Appellant was using the Carson vehicle as a matter of law, he was Insured under the Policy, and entitled to UIM coverage benefits.

III. State Farm UIM coverage applies because Appellant is a Class I insured.

The Underinsured Motorist ("UIM") Statute is remedial in nature, and was enacted for the benefit of injured persons. The Court has held that it should be liberally construed to effect its legislative purpose. Floyd v. Nationwide Mut. Ins. Co., 367 S.C. 253, 626 S.E.2d 6 (2005).

Appellant maintains the position that this is not a stacking case. Appellant was using the Carson vehicle at the time of the accident, and is seeking UIM benefits under the State Farm policy as an insured. Appellant is not seeking successive UIM benefits on any other vehicles owned by Carson. He is only seeking such benefits on the vehicle involved in the accident. See, e.g., Merck v. Nationwide Mut. Ins. Co., 318 S.C. 22, 455 S.E.2d 697 (1995) (holding that a vehicle loaded onto a tow truck while it was stopped was "involved in the accident" for purposes of underinsured motorist coverage).

Even if stacking were an issue, Appellant submits that he is entitled to recover UIM benefits as a Class I insured.

Under South Carolina law, a Class I insured is an insured or a named insured that has a vehicle involved in the accident. Mangum v. Maryland Cas. Co., 330 S.C. 573, 500 S.E.2d 125 (Ct. App. 1988). In contrast, a Class II Insured is an insured without a vehicle involved in the accident. Id. Class I Insureds can stack available UIM coverage.

Appellant qualifies as a Class I Insured for purposes of the UIM coverage available under the State Farm Policy because he owned the tow truck, and the tow truck was involved in the accident. There is no dispute about either of these facts. Appellant can therefore stack all available UIM coverage, including coverage on the Carson vehicle.

Respondent insists that Appellant is a Class II Insured based upon the Policy language. Respondent also points to Appellant's Rule 26(f) Report, in which Plaintiffs stated that they "believe Mr. Plemmons to be a Class II user of the vehicle." This initial reading of the 26(f) Report does not bind Appellant, and also does not change the fact that Appellant is a Class I Insured under the UIM statute because he had a vehicle involved in the accident.¹ South Carolina courts have repeatedly held that freedom of contract is subordinate to public policy. While insurers have the right to limit their liability and impose conditions upon an insured, they cannot contravene a statutory provision or public policy. See, e.g., Nationwide Mut. Ins. Co. v. Rhoden, 398 S.C. 393, 728 S.E.2d 477 (2012).

Respondent cites a number of cases purporting to support its position that Plaintiff is only a Class II insured for purposes of underinsured coverage, including the recent case of Carter v. Standard Fire Company, South Carolina Supreme Court Op. No. 27340, which was filed on

¹ The conference and report required by Rule 26, FRCP constitute initial disclosures based upon information reasonably available to the parties at the time that they are made. The case has not been fully investigated, and the parties have not engaged in expanded discovery. Discovery is ongoing, and investigation can reveal information that can change both the facts and theory of the case.

December 11, 2013. Carter, far from dispositive, merely upheld a specific exclusion in Standard Fire's policy that does not exist in this case. The question on appeal was whether the UIM statute allowed the exclusion of coverage to a Class I Insured when he is occupying a vehicle that he owns, but does not insure under the subject policy. This question is completely irrelevant, as Appellant is seeking UIM benefits on the Carson vehicle, which is without dispute a covered vehicle under the Policy.

IV. The trial court erred in granting summary judgment on Appellant's bad faith claim based on its erroneous decision that no coverage existed.

Appellant has not waived its right to argue this point on appeal or abandoned any issue. Appellant raised the issue of bad faith to the trial court and fully argued its grounds. (Plaintiff's Memorandum Opposing Motion for Summary Judgment). Appellant also raised and addressed this issue in its Initial Brief.

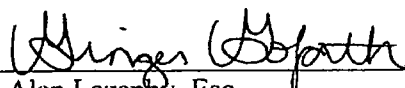
The trial court plainly stated its position on the bad faith issue at the hearing and in the Order. Specifically, the trial court found that the issue of bad faith would only become ripe for decision if the trial court found that Appellant was entitled to recover benefits as a matter of law. (Hearing Transcript pp. 18-19). Because the trial court found in favor of Respondent below, it simply did not reach the substance of the issue of bad faith. The trial court dismissed the bad faith claim only because it found no coverage existed. (May 23, 2013 Order). The trial court stated that if it had found coverage to exist, then there would be a question of fact as to the bad faith issue. (Hearing Transcript pp. 18-19). Appellant could not have obtained a ruling on the bad faith issue unless the trial court found in Appellant's favor on the coverage issue. The bad faith issue has not become ripe for a substantive ruling from the Court of Appeals simply by virtue of the fact that the order was appealed.

Rule 220(c), SCACR provides that an appellate court may affirm a lower court decision on based upon a ground appearing in the record on appeal. However, it is completely within the appellate court's discretion whether to address any additional grounds. I'On, LLC v. Town of Mt. Pleasant, 338 S.C. 406, 526 S.E.2d 716 (2000). While Respondent argued below that its denial was "reasonable" as a matter of law, the record reflects that the trial court rejected this argument, stating "I think it would leave a question of fact then to be decided at some other time if I decided the issues all in [Appellant's] favor. . . ." Appellant submits that the Court of Appeals should decline to rule on the arguments made by Respondent with respect to the bad faith issue.

CONCLUSION

James Plemmons was using the Carson vehicle in a towing operation as a matter of law when an undersinsured car crashed into his tow truck, grievously injured him, and permanently maimed him. The underinsured vehicle bore a direct causal connection to Appellant's injuries. Appellant, an insured with a vehicle involved in the accident, is entitled to recover UIM benefits from the Policy. Appellant therefore respectfully submits that the Court of Appeals must reverse the trial court's decision and direct the trial court to enter partial summary judgment in Appellant's favor.

January 3, 2013


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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Mark Hayes, II, Circuit Court Judge

Case No. 2012-CP-42-00346

James Luther Plemmons and Wanda Sue Clark Plemmons, ... Appellants,

v.

State Farm Mutual Automobile Insurance Company, Plaza Insurance Company,
The Stover Company, Inc., and Howard E. Newton, III..... Defendants,

Of whom,

State Farm Mutual Automobile Insurance Company is Respondent.

**SUPPLEMENTAL DESIGNATION OF MATTER TO BE INCLUDED IN
RECORD ON APPEAL**

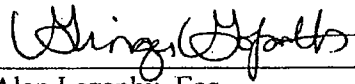
Appellant designates the following material to be included in the Record on Appeal:

1. Order of May 23, 2013 .
2. January 25, 2012 Complaint

3. Amended Complaint
4. Answers of Defendants
5. Motion for Summary Judgment of State Farm
6. Motion for Summary Judgment of Plemmons
7. Transcript of May 17, 2013 hearing
8. Deposition of Amanda Barnes, pp. 12--13, 14-16, 20-21, 25 and Exhibit F thereto
9. Deposition of James Plemmons, pp. 11, 13, 22-23
10. Affidavit of Kim Carson and Exhibit E thereto
11. State Farm policy
12. Memo in Opposition to Motion for Summary Judgment filed May 17, 2013

I certify that no information is included in this Designation that is irrelevant.

January 3, 2014



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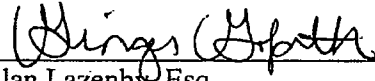
Of whom,

State Farm Mutual Automobile Insurance Company is Respondent.

PROOF OF SERVICE

I, the undersigned, hereby certify the Reply Brief of Appellant in the above referenced matter was mailed, postage prepaid, to Respondent's Attorney, Charles Norris, by sending to Nelson Mullins Riley & Scarborough, LLP, PO Box 1806, Charleston, SC 29402, on January 3, 2014.

SIGNATURE PAGE TO FOLLOW



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January 3, 2014

ATTORNEYS FOR APPELLANTS

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

James Luther Plemmons and Wanda Sue Clark
Plemmons, Appellants,

v.

State Farm Mutual Automobile Insurance Company,
Plaza Insurance Company, The Stover Company, Inc.,
and Howard E. Newton, III, Defendants,

Of Whom State Farm Mutual Automobile Insurance
Company is the Respondent.

Appellate Case No. 2013-001454

Appeal From Spartanburg County
J. Mark Hayes, II, Circuit Court Judge

Unpublished Opinion No. 2014-UP-389
Heard October 14, 2014 – Filed November 12, 2014

AFFIRMED

Duane Alan Lazenby and Ginger D. Goforth, both of
Lazenby Law Firm, LLC, and Andrew J. Johnston, of
Johnston Law Firm, LLC, all of Spartanburg, for
Appellants.

Charles R. Norris, of Nelson Mullins Riley &
Scarborough, LLP, of Charleston, for Respondent.

PER CURIAM: James Luther Plemmons and Wanda Sue Clark Plemmons appeal the circuit court's grant of State Farm Automobile Insurance Company's motion for summary judgment. We affirm pursuant to Rule 220(b), SCACR, and the following authorities: Rule 56(c), SCRCP (instructing that summary judgment should be granted when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law); *Hite v. Hartford Acc. & Indem. Co.*, 288 S.C. 616, 619, 344 S.E.2d 173, 175 (Ct. App. 1986) ("Although 'use' is unquestionably a broader term than 'operate' or 'drive,' the difficult determination is whether [the] situation of an injury sustained remote to the actual operation of the vehicle is encompassed by the term 'use.'"); *id.* at 621, 344 S.E.2d at 176 ("If the injury was directly caused by some independent or intervening cause wholly disassociated from, independent of or remote from the use of the automobile, the injury cannot be said to arise out of its 'use.'"); *id.* at 621, 344 S.E.2d at 177 ("[T]he key to determining whether injuries remote to the operation of an automobile occur during a 'use' of the vehicle is the existence of a causal connection between the injury and the use.").

AFFIRMED.

HUFF, SHORT, and KONDUROS, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Mark Hayes, II, Circuit Court Judge

Case No. 2012-CP-42-00346
Appellate Case No. 2013-001454

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v.

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The Stover Company, Inc., and Howard E. Newton, III, ... Defendants,

Of whom,

State Farm Mutual Automobile Insurance Company is Respondent.

PETITION FOR REHEARING

The Court of Appeals filed its opinion in this matter on November 12, 2014. Appellants now petition the Court pursuant Rule 221, SCACR, for rehearing on the grounds that the Court overlooked or misapprehended the following points:

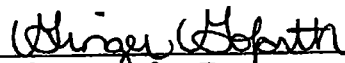
- (1) The case of Hite v. Hartford Accident & Indemnity Co., 288 S.C. 616, 344 S.E.2d 173 (Ct. App. 1986) is not controlling under the facts of this case because James Plemmons's injuries were not directly caused by some independent or intervening cause wholly disassociated from, independent of, or remote to the

operation of his tow truck, which encompassed the use of the vehicles being towed by his tow truck, including the Carson vehicle;

(2) In other words, the Court misapprehended the application of Hite, which involved a driver's actions and behavior that occurred at quite some distance from the insured vehicle and did not involve the insured vehicle at all. James Plemmons was not injured remotely from the Carson vehicle, but was injured while performing a towing operation that directly involved the Carson vehicle that was being towed by his tow truck at the time of the accident. The tow truck was idling, Mr. Plemmons was performing a towing operation, and the Carson vehicle was involved in and damaged by the accident. A towed vehicle is a vehicle being used. American Fire & Cas. Co. v. Allstate, (4th Cir. 1954) (it would violate the rule of liberal interpretation of insurance contracts in favor of insureds to hold that a car being towed is not actually in use); Hartford Acc. & Indem. Co. v. Travelers Ins. Co., 400 A.2d 862 (N.J. 1979) (the act of towing a vehicle is use of the vehicle, even when the towed vehicle did not contribute to, nor was involved in, the actual impact); Dairyland Ins. Co. v. Drum, 568 P.2d 459 (Colo. 1977) (the towing of a vehicle is neither rare nor unforeseeable);

(3) If the causal connection test applies, then a causal connection existed between the Carson vehicle and Mr. Plemmons's injuries because the Carson vehicle was involved in the towing operation and was therefore being used by Mr. Plemmons as the tow truck operator;

(4) Mr. Plemmons therefore qualifies as an insured under the State Farm policy covering the Carson vehicle and is entitled to coverage under the State Farm policy.


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In The Court of Appeals

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J. Mark Hayes, II, Circuit Court Judge

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Of whom,

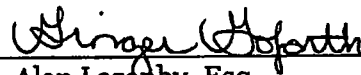
State Farm Mutual Automobile Insurance Company is Respondent.

PROOF OF SERVICE

I, the undersigned, hereby certify that the Petition for Rehearing in the above referenced matter was mailed, postage prepaid, to Respondent's Attorney, Charles Norris, by sending to Nelson Mullins Riley & Scarborough, LLP, PO Box 1806, Charleston, SC 29402, on November 26, 2014.

SIGNATURE PAGE TO FOLLOW

APP 000456



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APPEAL FROM SPARTANBURG COUNTY

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Plemmons,..... Appellants

v.

State Farm Mutual Automobile Insurance Company,
Plaza Insurance Company, The Stover Company, Inc.
and Howard E. Newton, III Defendants

Of Which State Farm Mutual Automobile Insurance
Company is the Respondent

RETURN OF RESPONDENT TO APPELLANTS'
PETITION FOR REHEARING

Pursuant to SCACR 240(e) State Farm Mutual Automobile Insurance Company (State Farm) files this Return to the Appellants' Petition for Rehearing. The Petition for Rehearing is based upon SCACR 221(a) which requires that a petition state with particularity the points overlooked or misapprehended by the Court. The Petition for Rehearing should be denied because it merely reargues cases and arguments in the Appellants' Final Brief and which were discussed at oral argument on October 14, 2014. Additionally, the Petition attempts to argue a point – whether James Plemmons'

injury was caused by the car insured with State Farm – not preserved for appellate review.

I. **The Appellants' Petition for Rehearing misstates the application of Hite v. Hartford Accident & Indemnity Company, 344 S.E.2d 173 (S.C. App. 1986), to this case.**

Page seven of the Appellants' Final Brief stated that "the threshold question is whether Plemmons was "using" the Carson vehicle as a matter of law at the time of the accident." This was indeed the threshold question because if Plemmons was not using the Carson vehicle at the time of the accident, Plemmons was not an insured entitled to claim underinsurance motorist (UIM) coverage under the Carson vehicle. (State Farm's Final Brief, p. 8)

Page five of the Appellants' Final Brief even cited the Hite decision for the proposition that a causal connection test is used to determine if the party seeking insurance was "using" the insured vehicle. For coverage to exist, Hite requires a connection between the injury and the insured vehicle. Here, as in Hite, there was none. As explained at page 12 of State Farm's Final Brief, the Hite decision supports State Farm's position that Plemmons was not "using" the Carson vehicle at the time of the accident because in the present case, as in Hite, there was no causal connection between the insured vehicle and the plaintiff's injuries. Accordingly, as explained at pages 12 and 13 of State Farm's Final Brief, even under the Appellants' own analysis Plemmons was not "using" the Carson vehicle at the time of the accident. Therefore, Plemmons was not an insured under the State Farm policy and was not entitled to collect UIM coverage.

In essence, the Appellants seek to have this Court either implicitly overrule Hite, or simply ignore it. At oral argument counsel for the Appellants even referred to Hite as an "anomaly." Whether Hite is an "anomaly" is beside the point. The point is that Hite requires a causal connection between the insured vehicle and the plaintiff's injuries for Plemmons to qualify as an insured entitled to UIM coverage.

At the time of the accident the insured vehicle was not being driven, it was not being repaired, it was not occupied and it was simply sitting in a fixed, stationary position on the bed of the tow truck owned by the plaintiff. Under these facts the insured vehicle could not possibly have caused James Plemmons' injuries.

II. The Appellants have not preserved for appellate review the argument that the Carson vehicle caused James Plemmons' injuries.

The Appellants' argument in paragraph 3 of their Petition that "a causal connection existed between the Carson vehicle and Mr. Plemmons's injuries" is not preserved for appellate review. This is because the Appellants never contested Judge Hayes' factual finding that "there is no evidence that the Dodge Neon insured by State Farm touched Plemmons or otherwise caused his injuries . . ."

The Appellants' Petition attempts to claim for the first time some connection between James Plemmons' injuries and the Carson vehicle. Page two of the Petition states that:

James Plemmons was not injured remotely from the Carson vehicle, but was injured while performing a towing operation that directly involved the Carson vehicle that was being towed by his tow truck at the time of the accident.

Aside from not preserving this argument for appellate review, the Record on Appeal contained no evidence of a causal connection between James

Plemmons' injuries and the Carson vehicle. Additionally, as explained in State Farm's Final Brief (p. 11) and in oral argument on October 14, 2014, the 4th Circuit case of American Fire & Casualty v. Allstate, 214 F.2d 523 (4th Circuit 1954), is inapposite.

CONCLUSION

It is too late for the Appellants to now claim for the first time on appeal a causal connection between the Carson vehicle and James Plemmons' injuries. In any event, even if the Appellants had preserved this argument for appellate review, there was no evidence in the record that the Dodge Neon caused James Plemmons' injuries. The Hite case is directly on point and is dispositive. The purpose of a Petition for Rehearing is not to present points which lawyers for the losing party have overlooked or misapprehended. Kennedy v. S.C. Retirement System, 564 S.E.2d 322 (S.C. 2001); Herron v. BMW, 719 S.E.2d 640 (S.C. 2011) The Appellants' Petition for Rehearing should be denied.

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Charleston, South Carolina

December 3, 2014

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas
J. Mark Hayes, II, Circuit Court Judge
Case No. 2012-CP-42-00346

James Luther Plemmons and Wanda Sue Clark Plemmons,.. Appellants
v.
State Farm Mutual Automobile Insurance Company, Plaza Defendants
Insurance Company, The Stover Company, Inc. and
Howard E. Newton, III.....
Of Which State Farm Mutual Automobile Insurance Respondent
Company is the

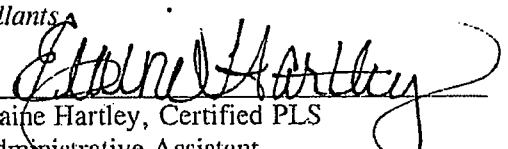
PROOF OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, counsel for State Farm Mutual Automobile Insurance Company, do hereby certify that I have served counsel in this action with a copy of the pleading(s) hereinbelow specified mailing a copy of the same via U.S. Mail, postage paid, and via electronic mail to the following addresses:

Pleadings: RETURN OF RESPONDENT TO APPELLANTS'
PETITION FOR REHEARING

Counsel Served: D. Alan Lazenby Esquire
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Counsel for Appellants


Elaine Hartley, Certified PLS
Administrative Assistant

December 3, 2014

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Mark Hayes, II, Circuit Court Judge

Case No. 2012-CP-42-00346
Appellate Case No. 2013-001454

RECEIVED

DEC 12 2014

SC Court of Appeals

James Luther Plemmons and Wanda Sue Clark Plemmons, ... Appellants,

v.

State Farm Mutual Automobile Insurance Company, Plaza Insurance Company,
The Stover Company, Inc., and Howard E. Newton, III, ... Defendants,

Of whom,

State Farm Mutual Automobile Insurance Company is Respondent.

**APPELLANTS' REPLY TO RESPONDENT'S RETURN TO PETITION FOR
REHEARING**

Appellants have identified with particularity in their Petition for Rehearing the points that the Court of Appeals overlooked or misapprehended, and which are summarized and stated thoroughly therein. In particular, Appellants have pointed out that the case of Hite v. Hartford Accident & Indemnity Co., 288 S.C. 616, 344 S.E.2d 173 (Ct. App. 1986), upon which the Court of Appeals has rested its decision, does not control the outcome of this case because the fact pattern in Hite is completely different from the fact pattern in this case.

Respondent wrongfully claims that Appellants have raised a new issue not preserved for appeal. This is not true, and the record bears this out.

At the hearing on the motion for summary judgment, Respondent argued that James Plemmons responded to a tow call and "began the process of connecting the front of the Mills' vehicle to the back of his tow truck so he could tow both vehicles to his garage," and that he was injured "[w]hile he was in the process of I think operating the lever at the back of his tow truck, he was standin' at the, at the right rear of the tow truck." Respondent also admitted that the Diaz vehicle crashed into the tow truck, amputating Mr. Plemmons's leg, and that the Carson (insured) vehicle was also on the tow truck, and was knocked off the tow truck during the accident, sustaining damage. (R. pp. 310-311). These are facts of record that were raised to and relied upon by the trial judge in rendering the summary judgment order in this case.

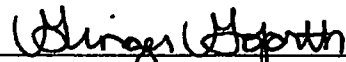
The summary judgment order itself states that "[t]his lawsuit arises out of an accident on July 31, 2010 in which James Plemmons was injured while operating a tow truck." (R. p. 1).

Appellants also raised and preserved for appeal the issue that a towed vehicle is a vehicle in use. Therefore, the issue of whether Mr. Plemmons was using the Carson vehicle at the time of the accident is very much a live issue in this case.

Further, Respondent's admitted version of the facts presented to and relied upon by the trial judge clearly differentiate this case from the Hite decision, where the injured party was dealing with a situation completely remote from the insured vehicle, which Hite had parked and walked away from across a parking lot, and was subsequently injured by another vehicle. Here, Mr. Plemmons was actively involved in the towing operation – which is reflected in the trial court's order – and Appellants' position has been throughout this case and continues to be that Mr. Plemmons's use of the tow truck

constituted use of the towed vehicles as well. This is not a newly raised issue, but an issue that is on point in this case and misapprehended or overlooked by the Court of Appeals.

Respectfully submitted,



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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DEC 12 2014

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

SC Court of Appeals

J. Mark Hayes, II, Circuit Court Judge

Case No. 2012-CP-42-00346
Appellate Case No. 2013-001454

James Luther Plemmons and Wanda Sue Clark Plemmons, ... Appellants,

v.

State Farm Mutual Automobile Insurance Company, Plaza Insurance Company,
The Stover Company, Inc., and Howard E. Newton, III, ... Defendants,

Of whom,

State Farm Mutual Automobile Insurance Company is Respondent.

PROOF OF SERVICE

I, the undersigned, hereby certify that the Reply to Respondent's Return to
Petition for Rehearing in the above referenced matter was mailed, postage prepaid, to
Respondent's Attorney, Charles Norris, by sending to Nelson Mullins Riley &
Scarborough, LLP, PO Box 1806, Charleston, SC 29402, on December 10, 2014.

SIGNATURE PAGE TO FOLLOW

APP 000466

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ATTORNEYS FOR APPELLANTS

The South Carolina Court of Appeals

James Luther Plemmons and Wanda Sue Clark
Plemmons, Appellants,

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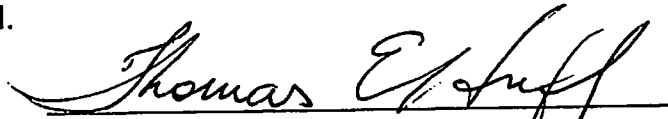
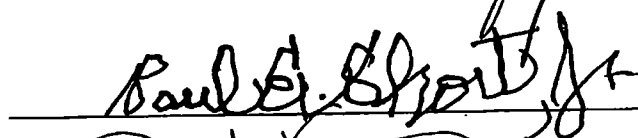
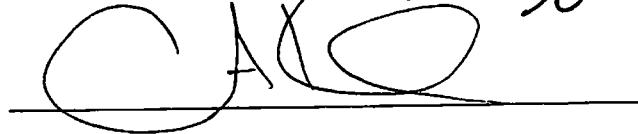
State Farm Mutual Automobile Insurance Company,
Plaza Insurance Company, The Stover Company, Inc.,
and Howard E. Newton, III, Defendants,

Of Which State Farm Mutual Automobile Insurance
Company is the Respondent.

Appellate Case No. 2013-001454

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

 J.
 J.
 J.

Columbia, South Carolina

FILED

December 17, 2014

cc:

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Ginger D. Goforth, Esquire

Charles R. Norris, Esquire

Andrew J. Johnston, Esquire

The Honorable J. Mark Hayes, II