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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM HORRY COUNTY

Court of Common Pleas

The Hon. Paul M. Burch, Circuit Court Judge

Case No. 14-CP-26-6382

Appellate Case No. 2015-001827

Erie Insurance Exchange,.....Respondent

v.

Government Employees Insurance Company, Mark Allison Scoggins, and Angela Bennett Hill, Defendants,

Of which Government Employees Insurance Company is.....Appellant

RECORD ON APPEAL

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INDEX

ORDERS

Amended Order Denying Defendant's Motion to Reconsider filed July 6, 2015	1
Order filed June 18, 2015.....	4
Order filed May 7, 2015.....	5

PLEADINGS

Notice of Appeal filed August 26, 2015	18
Complaint filed September 26, 2014	36
Answer of Defendant GEICO filed October 31, 2014.....	81

TRANSCRIPTS

Deposition of Mark Allison Scoggin p. 11-14.....	87
Transcript of Submission and Stipulation conducted March 17, 2015	91

OTHER MATERIALS OR DOCUMENTS

Stipulation of Facts with Exhibits A-F	114
Plaintiff's Memorandum.....	193
Memorandum of Law of GEICO	218
Respondent's Affidavit of Attorney's fees filed May 18, 2015.....	225
Defendant GEICO's Motion to Alter or Amend Judgement filed June 2, 2015.....	258
Respondent's Return to GEICO's Motion to Alter or Amend	262
Correspondence of May 27, 2015 from Attorney Maguire regarding settlement of excess liability coverage with GEICO.....	274
Email of 11:28 a.m. on May 28, 2015 from Attorney Maguire to Judge Steve John's Law Clerk advising of settlement of excess coverage with GEICO	275
Written confirmation of settlement referenced in the May 28, 2015 email listed above	276

CERTIFICATION

Certificate of Counsel	277
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STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT
Case No: 2014-CP-26- 06382

Erie Insurance Exchange,
Plaintiff,

vs.

Government Employees Insurance
Company, Mark Allison Scoggin and
Angela Bennett Hill,
Defendants.

**AMENDED
ORDER DENYING DEFENDANT'S
MOTION TO RECONSIDER**

2015 JUL -6 PM 1:26
LANE HIGGINS-WARD
CLERK OF COURT
HORRY COUNTY

This matter is before the Court on Defendant Government Employees Insurance Company's Motion to Reconsider the Order of the Court. Previously, the Court issued an Order which inadvertently referenced Plaintiff's Motion when the Motion at issue was that of a Defendant. Therefore, this AMENDED Order is issued.

In accordance with Rule 59(f), SCRCP, the Court finds that it is not necessary to hear oral arguments on this matter. After reviewing the Court's file and Defendant's motion, and based upon careful reconsideration, the Court hereby finds that Defendant's Motion should be denied.

THEREFORE, Defendant's Motion to Reconsider is hereby DENIED.

AND IT IS SO ORDERED.



Honorable Paul M. Burch
Judge, Fourth Judicial Circuit

June 30, 2015
Chesterfield, South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) THIRD JUDICIAL CIRCUIT
 COUNTY OF HORRY) Case No: 2014-CP-26- 06382

Erie Insurance Exchange,)

Plaintiff,)

vs.)

PROOF OF SERVICE

Government Employees Insurance)
 Company, Mark Allison Scoggin and)
 Angela Bennett Hill,)

Defendants.)

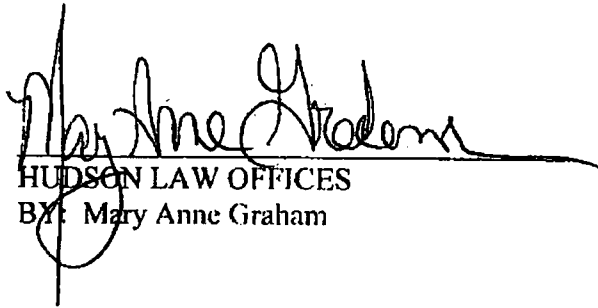
This is to certify that the attached and incorporated AMENDED ORDER DENYING DEFENDANT'S MOTION TO RECONSIDER, signed by the Honorable Paul Michael Burch on June 30, 2015 and recorded on July 6, 2015 was received by HUDSON LAW OFFICES via US Mail from the Horry County Clerk of Court's Office on or about July 17, 2015 and is HEREBY served by HUDSON LAW OFFICES by and through its undersigned agents, servant and employees to the attorneys noted below on July 25, 2015 by

- (XX) Placing the same in the United States mail, postage prepaid to the addresses noted below;
- () Transmitting the same by facsimile to the numbers noted below;
- () Forwarding the same by e-mail to the addresses noted below:

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HUDSON LAW OFFICES
BY: Mary Anne Graham

Dated: July 25, 2015

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Erie Insurance Exchange,

Plaintiff,

v.

Government Employees Insurance Company,
Mark Allison Scoggin and Angela Bennett
Hill,

Defendants.

) IN THE COURT OF COMMON PLEAS

) OF THE FIFTHTEENTH JUDICIAL
) CIRCUIT

) C/A No.: 2014-CP-26-06382

**ORDER DENYING PLAINTIFF'S
MOTION TO RECONSIDER**

This matter is before the Court on Plaintiff's Motion to Reconsider the Order of the Court. In accordance with Rule 59 (f), SCRCP, the Court finds that it is not necessary to hear oral arguments on this matter. After reviewing the Court's file and Plaintiff's Motion, and upon careful reconsideration, the Court hereby finds that Plaintiff's Motion should be denied.

THEREFORE, Plaintiff's Motion to Reconsider is hereby DENIED.

AND IT IS SO ORDERED.

Chesterfield, South Carolina
June 16, 2015


Honorable Paul Michael Burch
Judge, Fourth Judicial Circuit

2015 JUN 18 PM 2:26
CLERK OF COURT
COUNTY

000004

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT
Case No: 2014-CP-26- 6382

Erie Insurance Exchange,)
Plaintiff,)
vs.)
Government Employees Insurance)
Company, Mark Allison Scoggin and)
Angela Bennett Hill,)
Defendants.)

ORDER

HORRY COUNTY
2015 MAY -7 PM 1:03
MELANIE HUGGINS-WARD
CLERK OF COURT

This action is for Declaratory Judgment by Erie Insurance Exchange ("Erie") seeking to have this Court declare the rights of the parties relative to a policy issued by Government Employees Insurance Company ("GEICO"). Specifically at issue is whether the GEICO policy provides excess liability coverage in the underlying action filed by Plaintiff and Erie Insured, Angela Bennett Hill, against GEICO insured Mark Allison Scoggin. Based upon my consideration of the parties' Stipulation of Facts, the pleadings, the policies, counsels' arguments, submitted memoranda and South Carolina law, I find that the GEICO policy does provide excess coverage for the underlying motor vehicle accident ("MVA").

The underlying MVA occurred on September 5, 2012 in Horry County involving a 2011 Hyundai owned by Mauren Craig but operated by Hill and a 2002 Ford Taurus operated by Scoggin. The Hill vehicle was headed East on 11th Avenue North when she alleges that Scoggin made a left turn across her lane of travel, causing the subject accident and the injuries she complains of in the underlying liability lawsuit, which is pending in this Court. The Taurus

operated by Scoggin was owned by his mother, the late Mildred Scoggin, and insured by GEICO under Policy Number 0929-32-50-09 with liability coverage of \$50,000.00 per person and \$100,000.00 per accident. After an investigation, GEICO paid the \$50,000.00 liability coverage to Hill in exchange for a Covenant Not to Execute protecting Mark Scoggin. Hill claims that her injuries exceeded the liability coverage.

GEICO carried a separate policy for Mark Scoggin on a 2005 Chevrolet Colorado under Policy Number 4085-57-17-45 which provided liability coverage of \$25,000.00 per person and \$50,000.00 per accident. The Craig vehicle operated by Hill was insured by Erie under Policy Number Q05 1107128 which provided stated underinsured/underinsured motorist coverage of \$100,000.00 per person and \$300,000.00 per accident. The Hills are residents of North Carolina and their Erie policy is a North Carolina contract and under the contract and North Carolina law, the amount of available UM/UI coverage for a given accident is reduced by the amount of liability and excess liability coverage and is reduced by any PIP or medical bills coverage paid. In this case, Erie paid Hill the \$1,000.00 medical benefits/PIP coverage available under the policy.

Erie claims that excess liability coverage of \$25,000.00 is available under the GEICO policy for the subject accident. However, GEICO denied the excess liability coverage claim under the Mark Scoggin policy based upon its determination that under its Mark Scoggin policy, the Mildred Scoggin vehicle Mr. Scoggin was operating was neither an "owned" or a "non-owned" vehicle. Erie contends that under the terms of the Mark Scoggin GEICO policy, and under South Carolina law, that excess coverage does apply to the underlying liability action.

All parties agree that Mildred and Mark Scoggin were mother and son, that they resided together, and that Mark Scoggin did not own his mother's car. Further, all parties agree that the

terms and conditions of both GEICO policies covering the Mark and Mildred Scoggin vehicles were identical. Therefore, the issues in this case center around the term “non-owned”, which appears in the Omnibus or “insuring” clause of the GEICO policy and is defined in the policy but does not appear on the declarations page of the policy. According to GEICO’s definition of “non-owned,” a car owned by a household member furnished for the regular use of another household member would be “non-owned.”

APPLICABLE PROVISIONS OF THE GEICO POLICY:

(1) THE EXCESS CLAUSE:

This case concerns *GEICO’s Excess Liability Clause* and it provides as follows:

"Any insurance we provide for losses arising out of the ownership, maintenance or use of a vehicle you do not own shall be excess over any other valid and collectible insurance. (GEICO Policy; "Other Insurance")

Other provisions of the GEICO Policy relevant to this matter are as follows:

(2) THE OMNIBUS CLAUSE:

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

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

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

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

(GEICO Policy: p. 4 of 15)

(3) CERTAIN POLICY DEFINITIONS:

- (a) **"Insured** means a person or organization described under PERSONS INSURED."
(GEICO Policy; "Definitions" - #4)
- (b) **"Relative** means a person who continuously lives in your household, and is related to you by blood, marriage, or adoption (including a ward or foster child.)"
GEICO Policy Amendment; "Definitions" - #8)
- (c) **"Non-owned auto** means a private passenger, farm, or utility auto or trailer not owned by or furnished for the regular use of either you or your relatives, except a temporary substitute auto. You or your relatives must be using the non-owned auto or trailer within the scope of permission given by its owner. A non-owned auto rented or leased for more than 30 days will be considered as furnished for regular use. (GEICO Policy Amendment; "Definitions" - #5)
- (d) **"Owned auto** means: (a) a vehicle described in this policy for which a premium charge is shown for these coverages; (b) a **trailer** owned by you; (c) a **private passenger, farm or utility auto**, ownership of which you acquire during the policy period or for which you enter into a lease during the policy period for a term of six months or more, if: (i) it replaces an **owned auto** as defined in (a) above; or (ii) we insure all **private passenger, farm and utility autos** owned or leased by you on the date of the acquisition, and you ask us to add it to the policy no more than 30 days later; (GEICO Policy; "Definitions" - #6)
- (e) **"Temporary substitute auto** means an automobile or **trailer**, not owned by you, temporarily used with the permission of the owner. This vehicle must be used as a substitute for the **owned auto** or **trailer** when withdrawn from normal use because of its breakdown, repair, servicing, loss or destruction. (GEICO Policy; "Definitions" - #9)

II. ISSUES AS TO COVERAGE AND GEICO'S DENIAL OF COVERAGE:

A. *GEICO'S PAYMENT OF THE LIABILITY COVERAGE UNDER THE MILDRED SCOGGIN POLICY:*

The Mildred Scoggin coverage determination by GEICO applied the definitions of the Omnibus Clause to find that Mark Scoggin had liability coverage under the Mildred Scoggin policy for the subject MVA. If the Mildred Scoggin vehicle were neither an owned nor a non-owned vehicle as to her son's use of it on the day of this accident, then liability coverage wouldn't have applied under the Omnibus clause, because as a vehicle that was not owned or non-owned, it wouldn't fall within the coverage provisions of the Policy. Under GEICO's policy, a car is NOT "non-owned" if it is owned by a resident relative and furnished for regular use.

Yet, GEICO paid liability coverage in exchange for a Covenant Not To Execute. Because Mark Scoggin did not own his mother's car, and he paid no premium for it, the liability coverage had to have been paid under the Mildred Scoggin policy for Mark Scoggin's use of that car as a "non-owned" auto. That car would still be a "Non-owned" vehicle for purposes of considering the excess liability coverage under the Mark Scoggin policy. GEICO stipulated that the Mildred Scoggin vehicle was a non-owned vehicle as to Mark Scoggin under the present facts by paying the liability coverage in exchange for a Covenant and in so doing, it stipulated that the Mildred Scoggin car was not available for Mark Scoggin's regular use. That car retains the same status when considering the Excess Coverage under the Mark Scoggin policy because the terms and conditions of the two policies have been stipulated to be identical.

Hence, GEICO denied excess coverage under the Mark Scoggin policy on the grounds that the Mildred Scoggin vehicle was not a "non-owned" vehicle as to Mark Scoggin, despite the fact that it had reached the opposite conclusion in paying the liability coverage under the same

facts and based upon the same policy terms and conditions. The Court finds that for purposes of Excess coverage under the Mark Scoggin policy, GEICO is bound by its determinations under the Mildred Scoggin policy.

B. *LANGUAGE OF THE EXCESS CLAUSE:*

The Excess Clause does not use the "owned" and "non-owned" criteria, but rather, uses common, ordinary language that is not defined in the policy; to wit, in pertinent part, it says that "Insurance for losses arising out of the use of a vehicle you do not own shall be excess." (GEICO Policy; "Other Insurance") It uses the undefined phrase "use of a vehicle you do not own" rather than employing the policy's "owned" and "non-owned" terminology which is defined.

South Carolina law holds that when terms are not defined in a policy, an interpreting Court should define them "according to the usual understanding of the term's significance to the ordinary person." S.C. Farm Bureau Mut. Ins. Co. v. Durham, 380 S.C. 506, 671 S.E.2d 610, 2009 S.C. LEXIS 6 (S.C. 2009). Mark Scoggin did not own his mother's vehicle and he was using it by driving it at the time of the subject accident. Thus, the Court finds that the Excess Liability Cause would provide coverage for the subject accident.

C. *THE LACK OF AN APPLICABLE EXCLUSION:*

The GEICO policy includes a definition for "non-owned" auto but that is not part of the exclusions for using a vehicle provided for your regular use owned by a family member so there is no exclusion that takes away coverage; GEICO's reliance on the definition for non-owned autos has no applicability in this case because that exclusion applies only while carrying persons employed or otherwise engaged in auto business; Regular use is not noted in the exclusions or

the Amendment and it doesn't refer to regular use or using another vehicle owned by a family member. The Court finds that there is no applicable exclusion supporting GEICO's denial of excess coverage in this case.

D. THE POLICY DECLARATIONS:

The Policy's Declarations Page declares that Mark Scoggin is insured for bodily injury liability coverage of \$25,000.00/\$50,000.00. §38-77-142 of the SC Code requires that "insurers must provide liability coverage to insureds "within the coverage of the policy" and may not limit or reduce liability coverage in the policy below the declared or "face amount" of the coverage. Williams v. Gov't Employees Ins. Co (GEICO) Opinion No. 27435, 2014 S.C. LEXIS 361 (S.C. Aug. 20, 2014);

The GEICO policy uses the Omnibus Clause, rather than a listed exclusion, to exclude coverage based on an insured's "regular use" of a resident relative's vehicle. An insured would not look to an Omnibus clause for an exclusion, but would look to the listed exclusions to review his coverage. Using the Omnibus Clause in this fashion is confusing and misleading. The Policy also contains conflicting provisions that eliminate or reduce coverage. Specifically at issue in this case, the Omnibus Clause uses the defined terms "owned" and "non-owned" and then the Excess liability Clause conditions coverage on driving a car he does not own. This is contrary to South Carolina law as interpreted by our State's Supreme Court; to wit - "Once the face amount of coverage is agreed upon, it may not be arbitrarily reduced or limited by conflicting policy provisions that effectively retract this stated coverage." Williams v. GEICO, supra.

The GEICO policy's declaration page for the Mark Scoggin policy at issue contained no warning of the reduced or eliminated coverage. Although the company provided separate policies covering separate vehicles owned by resident relatives of the same household, GEICO's

declarations pages did not warn either insured that the coverage for which they paid might be reduced, or as with the Mark Scoggin Excess coverage, eliminated altogether, by their act of driving their resident relative's vehicle.

This Court finds that under South Carolina law, GEICO can not declare that it provides Mark Scoggin with coverage of \$25,000.00/\$50,000.00 and then withdraw that coverage or define it out of existence. Williams v. GEICO, *supra*.

E. THE POLICY DEFINITIONS:

GEICO is limiting the coverage declared on its declarations page by way of carefully crafted definitions. In the present case, GEICO's application of these definitions excluded excess coverage for an insured because, at the time of the MVA, he was operating a vehicle owned by a resident relative. Had GEICO's insured, Mr. Scoggin, been driving a neighbor's car, it would qualify as a "non-owned vehicle" and be covered.

The key to invoking a vehicle as being NOT "non-owned" under the definitions is whether the resident relative's vehicle is available for the "regular use" of a GEICO insured. "Under a liability policy excluding coverage where an automobile involved in an accident was "furnished for regular use" to the insured, the term may be used in the sense of time, steady as opposed to occasional; or in the sense of type of use, usual as against unusual. Hartford Acc. & Indem Co. v. Hiland, 7 Cir., 349 F. (2d) 376." Aetna Casualty & Surety Co. v. Sessions, 260 SC 150, 194 SE2d 844 (1973). In the present case, Mr. Scoggin was using his mother's vehicle to transport a pet to a veterinary appointment, and was using the vehicle because his mother's car was better suited and equipped to transport the animal. Nothing in these facts or in the record indicates that Mark Scoggin drove his mother's car steadily as opposed to occasionally, or that

his use of the car was usual rather than unusual. Further, the purpose of the "regular use" exclusion is to prevent an insured from purchasing one policy as to one automobile and be covered without qualification for all vehicles available for his use. Aetna Casualty & Surety Co. v. Sessions, supra. In this case, there were two vehicles in the household of Mildred and Mark Scoggin and both were insured by GEICO such that GEICO regularly collected a premium for both vehicles.

The Court, therefore, finds that the Mildred Scoggin vehicle was not available for the regular use of Mark Scoggin within the meaning of that term in South Carolina and it further finds that application of the "regular use" doctrine serves no valid purpose where two vehicles in a household are covered by the same insurer and that insurer is regularly paid a premium for the coverage of both vehicles.

E. AMBIGUOUS PROVISIONS OF THE POLICY:

"Ambiguous or conflicting terms in an insurance policy must be construed liberally in favor of the insured and strictly against the insurer." Diamond State Ins. Co. v. Homestead Indus., Inc., 318 S.C. 231, 236, 456 S.E.2d 912, 915 (1995). "A contract is ambiguous when it is capable of more than one meaning when viewed objectively by a reasonably intelligent person who has examined the context of the entire integrated agreement and who is cognizant of the customs, practices, usages and terminology as generally understood in the particular trade or business." Hawkins, 328 S.C. at 592, 493 S.E.2d at 878 (quoting 17A Am. Jur. 2d Contracts § 338, at 345 (1991)). Williams v. GEICO, supra.

After review, the Court finds that the provisions of the GEICO policy are ambiguous. The relevant ambiguities are:

1. The Declarations Page for the Mark Scoggin policy states as follows: "This is a description of your coverage." It also states that Coverage applies where a premium or \$0.00 is shown for a vehicle." Despite the fact that the described coverage included \$25,000.00/\$50,000.00 in bodily injury and UM coverage, and included comprehensive and collision coverages, provisions of the policy, and the policy definitions of "owned," "non-owned," and "relative", are such that GEICO has determined the policy provides no coverage to Mark Scoggin for the present loss; and;

2. The policy definition of "owned" auto conflicts with the Declarations Page certifying coverage of \$25,000.00/\$50,000.00 to Mark Scoggin for this loss; and

3. The policy provision as to "Losses We Will Pay For You Under Section I" provides that the Policy covers on bodily injury liability arising out of the "ownership, maintenance or use" of an owned or non-owned auto. The "Other Insurance" provision does not use the defined terms of owned or non-owned but instead provides that bodily injury coverage for a vehicle "you do not own" shall be excess. Given this ambiguity, as to this accident, the more liberal provision should control and - in the alternative - the policy declares that bodily injury coverage for an accident that occurred while Mark Scoggin operated a vehicle that he did not own would be excess; and

4. The policy defines a "temporary substitute auto" as an "owned" vehicle but it would be a vehicle "you do not own" for purposes of the excess clause; and

5. The policy defines a "non-owned auto" as one not owned by or furnished for the regular use of either you (Mark Scoggin) or a relative (Mildred Scoggin) other than a "temporary substitute auto" but the "Other Insurance"/Excess provision references a "non-owned auto" as "a vehicle you do not own; and

Because the GEICO policy is ambiguous in the pertinent particulars noted above, this Court finds that it must be construed against GEICO and in favor of the insured to find that excess liability coverage for the subject MVA exists.

F. STATE LAW, PUBLIC POLICY & WILLIAMS V. GEICO:

Excess Coverage is not subject to the provisions of the "Motor Vehicle Financial Responsibility Act" (Chapter 9, Title 56, SC Code Ann.) or its public policy considerations but it is subject to the state's insurance laws, specifically including the requirements of §38-77-142 that policy provisions cannot reduce the face amount of coverage stated in the Declarations and the GEICO policy at issue, or GEICO's interpretation of the policy, violates South Carolina law and public policy. Williams v. GEICO, supra.

Further, the Policy's Declarations Page declares that Mark Scoggins is insured for bodily injury liability coverage of \$25,000.00/\$50,000.00. §38-77-142 of the SC Code requires that "insurers must provide liability coverage to insureds "within the coverage of the policy" and may not limit or reduce liability coverage in the policy below the declared or "face amount" of the coverage. Williams v. GEICO, supra. "Once the face amount of coverage is agreed upon, it (the insurer) may not be arbitrarily reduced or limited by conflicting policy provisions that effectively retract this stated coverage," Williams v. GEICO, supra.

Despite the foregoing, after agreeing to provide Mark Scoggin with coverage of \$25,000.00/\$50,000.00, GEICO uses carefully crafted policy definitions and the Omnibus Clause of its policy, together with the familial relationship between Mark and Mildred Scoggin to limit the policy coverage available to Mark Scoggin. This violates South Carolina law and public policy; to wit - "To allow an insurer to determine the extent to which an injured party can recover within the insured's policy coverage based solely on a familial relationship is arbitrary and capricious and violative of public policy." Williams v. GEICO, supra.

Based upon the foregoing, this Court finds that GEICO's use of its Omnibus Clause and definitions provisions, the latter of which clearly conflicted with the language of the excess

clause as was specifically addressed above. improperly and arbitrarily reduced or limited by conflicting policy provisions which retracted, limited or withdrew the coverage stated on the declarations page of the Mark Scoggin Policy. This is contrary to both public policy and the law of the State of South Carolina.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

A. That GEICO's Policy 4085-57-17-45, covering named insured Mark Scoggin, provides excess liability coverage of \$25,000.00 potentially available to the Plaintiff Hill, for her claim and lawsuit arising out of the motor vehicle accident of September 5, 2012; and

B. In terms of priority, the excess liability coverage under the Mark Scoggin policy would be payable before the underinsured coverage under Hill's policy;

C. The policy of Erie Insurance Exchange is a North Carolina policy and under the policy and North Carolina law, coverage limits of underinsured/uninsured coverage are reduced by the amount of the payment of the liability coverage and by Erie's prior payment to the Plaintiff of its medical payments coverage such that after GEICO's payment to the Plaintiff of its \$75,000.00 in available coverage, 24,000.00 in UI/UM coverage would be available under Erie's policy; and

D. GEICO's policy provisions referenced above, including those which purport to limit or withdraw excess liability coverage from the Mark Scoggin policy, violate public policy and are therefore void *ab initio* and incapable of being enforced; and

E. The Court awards the Plaintiff the attorney's fees and costs necessitated by GEICO's denial of coverage under the Mark Scoggin Policy. The Court gives the Plaintiff ten (10) days to file an Affidavit documenting the attorney's fees and costs paid pertaining to the DJ action only. The Defendants will have ten (10) days to file an Affidavit opposing the amounts claimed. This Court will then issue a ruling as to the amount of the Attorney's Fee and Cost award.

AND IT IS SO ORDERED.


The Honorable PAUL M. BURCH
Presiding Judge, Fifteenth Judicial Circuit

Dated: April 29th, 2015

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) THIRD JUDICIAL CIRCUIT
Case No: 2014-CP-26- 6382

Erie Insurance Exchange,)
Plaintiff.)
vs.)
Government Employees Insurance)
Company, Mark Allison Scoggin and)
Angela Bennett Hill.)
Defendants.)

Certification Of Service

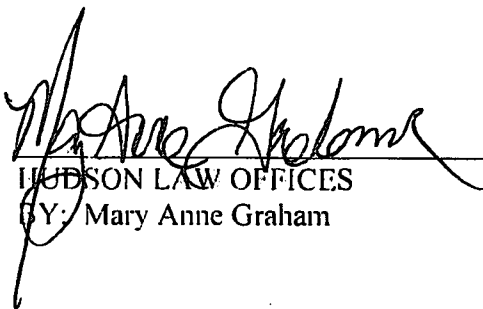
HORRY COUNTY
2015 MAY -7 PM 1:03
MELANIE HUGGINS-WARD
CLERK OF COURT

This is to certify that the **ORDER signed by Judge Paul M. Burch on 4/29/2005.** was served by HUDSON LAW OFFICES by and through its undersigned agent, servant and employee on May 5, 2015 by

- (XX) Placing the same in the United States mail, postage prepaid to the addresses noted below;
- () Transmitting the same by facsimile to the numbers noted below;
- () Forwarding the same by e-mail to the addresses noted below;

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PO Box 1764
Florence, SC 29503-1764


HUDSON LAW OFFICES
BY: Mary Anne Graham

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas
Paul M. Burch, Circuit Court Judge

Case No.: 2014-CP-26-06382

HORRY COUNTY
2015 AUG 26 PM 1:38
COURT OF COMMON PLEAS

Erie Insurance Exchange.....Respondent.

v.

Government Employees Insurance Company, Mark Allison Scoggin and Angela Bennett Hill

Of whom Government Employees Insurance Company is.....Appellant.

NOTICE OF APPEAL

GEICO Insurance Company appeals the Order Granting Plaintiff's Motion for Summary Judgment of the Honorable Paul M. Burch, filed May 7, 2014, and Amended Order Denying Appellant's Motion for Reconsideration filed July 6, 2015. Appellant received written notice of the entry of the Amended Order Denying Motion for Reconsideration on July 26, 2015.

August 24, 2015



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000018

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Attorney for Angela Bennett Hill**

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT
Case No: 2014-CP-26-06382

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Plaintiff,

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Angela Bennett Hill,

Defendants.

AMENDED
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MOTION TO RECONSIDER

2015 JUL -6 PM 1:26
LANE HIGGINS-WARD
CLERK OF COURT
COUNTY

This matter is before the Court on Defendant Government Employees Insurance Company's Motion to Reconsider the Order of the Court. Previously, the Court issued an Order which inadvertently referenced Plaintiff's Motion when the Motion at issue was that of a Defendant. Therefore, this AMENDED Order is issued.

In accordance with Rule 59(f), SCRCPP, the Court finds that it is not necessary to hear oral arguments on this matter. After reviewing the Court's file and Defendant's motion, and based upon careful reconsideration, the Court hereby finds that Defendant's Motion should be denied.

THEREFORE, Defendant's Motion to Reconsider is hereby DENIED.

AND IT IS SO ORDERED.



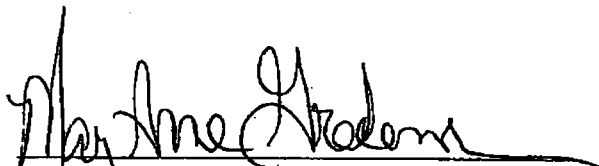
Honorable Paul M. Burch
Judge, Fourth Judicial Circuit

June 30, 2015
Chesterfield, South Carolina

000020

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HUDSON LAW OFFICES
BY: Mary Anne Graham

Dated: July 25, 2015

COPIES
MAILEDSTATE OF SOUTH CAROLINA)
COUNTY OF HORRY)IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT
Case No: 2014-CP-26- 6382

Erie Insurance Exchange,)

Plaintiff,)

vs.)

Government Employees Insurance
Company, Mark Allison Scoggin and
Angela Bennett Hill.)

Defendants.)

ORDER

HORRY COUNTY
2015 MAY -7 PM 1:02
JULIE HARRIS-CLERK
CLERK OF COURT

This action is for Declaratory Judgment by Erie Insurance Exchange ("Erie") seeking to have this Court declare the rights of the parties relative to a policy issued by Government Employees Insurance Company ("GEICO"). Specifically at issue is whether the GEICO policy provides excess liability coverage in the underlying action filed by Plaintiff and Erie Insured, Angela Bennett Hill, against GEICO insured Mark Allison Scoggin. Based upon my consideration of the parties' Stipulation of Facts, the pleadings, the policies, counsels' arguments, submitted memoranda and South Carolina law, I find that the GEICO policy does provide excess coverage for the underlying motor vehicle accident ("MVA").

The underlying MVA occurred on September 5, 2012 in Horry County involving a 2011 Hyundai owned by Mauren Craig but operated by Hill and a 2002 Ford Taurus operated by Scoggin. The Hill vehicle was headed East on 11th Avenue North when she alleges that Scoggin made a left turn across her lane of travel, causing the subject accident and the injuries she complains of in the underlying liability lawsuit, which is pending in this Court. The Taurus

operated by Scoggin was owned by his mother, the late Mildred Scoggin, and insured by GEICO under Policy Number 0929-32-50-09 with liability coverage of \$50,000.00 per person and \$100,000.00 per accident. After an investigation, GEICO paid the \$50,000.00 liability coverage to Hill in exchange for a Covenant Not to Execute protecting Mark Scoggin. Hill claims that her injuries exceeded the liability coverage.

GEICO carried a separate policy for Mark Scoggin on a 2005 Chevrolet Colorado under Policy Number 4085-57-17-45 which provided liability coverage of \$25,000.00 per person and \$50,000.00 per accident. The Craig vehicle operated by Hill was insured by Erie under Policy Number Q05 1107128 which provided stated underinsured/underinsured motorist coverage of \$100,000.00 per person and \$300,000.00 per accident. The Hills are residents of North Carolina and their Erie policy is a North Carolina contract and under the contract and North Carolina law, the amount of available UM/UI coverage for a given accident is reduced by the amount of liability and excess liability coverage and is reduced by any PIP or medical bills coverage paid. In this case, Erie paid Hill the \$1,000.00 medical benefits/PIP coverage available under the policy.

Erie claims that excess liability coverage of \$25,000.00 is available under the GEICO policy for the subject accident. However, GEICO denied the excess liability coverage claim under the Mark Scoggin policy based upon its determination that under its Mark Scoggin policy, the Mildred Scoggin vehicle Mr. Scoggin was operating was neither an "owned" or a "non-owned" vehicle. Erie contends that under the terms of the Mark Scoggin GEICO policy, and under South Carolina law, that excess coverage does apply to the underlying liability action.

All parties agree that Mildred and Mark Scoggin were mother and son, that they resided together, and that Mark Scoggin did not own his mother's car. Further, all parties agree that the

terms and conditions of both GEICO policies covering the Mark and Mildred Scoggin vehicles were identical. Therefore, the issues in this case center around the term "non-owned", which appears in the Omnibus or "insuring" clause of the GEICO policy and is defined in the policy but does not appear on the declarations page of the policy. According to GEICO's definition of "non-owned," a car owned by a household member furnished for the regular use of another household member would be "non-owned."

APPLICABLE PROVISIONS OF THE GEICO POLICY:

(1) THE EXCESS CLAUSE:

This case concerns *GEICO's Excess Liability Clause* and it provides as follows:

"Any insurance we provide for losses arising out of the ownership, maintenance or use of a vehicle you do not own shall be excess over any other valid and collectible insurance. (GEICO Policy; "Other Insurance")

Other provisions of the GEICO Policy relevant to this matter are as follows:

(2) THE OMNIBUS CLAUSE:

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

- 1. bodily injury, sustained by a person; and*
 - 2. damage to or destruction of property;*
- arising out of the ownership, maintenance or use of the owned auto or a non-owned auto.*

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

(GEICO Policy: p. 4 of 15)

(3) CERTAIN POLICY DEFINITIONS:

- (a) **"Insured** means a person or organization described under PERSONS INSURED."
(GEICO Policy; "Definitions" - #4)
- (b) **"Relative** means a person who continuously lives in your household, and is related to you by blood, marriage, or adoption (including a ward or foster child.)"
GEICO Policy Amendment; "Definitions" - #8)
- (c) **"Non-owned auto** means a private passenger, farm, or utility auto or trailer not owned by or furnished for the regular use of either you or your relatives, except a temporary substitute auto. You or your relatives must be using the non-owned auto or trailer within the scope of permission given by its owner. A non-owned auto rented or leased for more than 30 days will be considered as furnished for regular use. (GEICO Policy Amendment; "Definitions" - #5)
- (d) **"Owned auto** means: (a) a vehicle described in this policy for which a premium charge is shown for these coverages: (b) a trailer owned by you; (c) a private passenger, farm or utility auto, ownership of which you acquire during the policy period or for which you enter into a lease during the policy period for a term of six months or more, if: (i) it replaces an owned auto as defined in (a) above; or (ii) we insure all private passenger, farm and utility autos owned or leased by you on the date of the acquisition, and you ask us to add it to the policy no more than 30 days later; (GEICO Policy; "Definitions" - #6)
- (e) **"Temporary substitute auto** means an automobile or trailer, not owned by you, temporarily used with the permission of the owner. This vehicle must be used as a substitute for the owned auto or trailer when withdrawn from normal use because of its breakdown, repair, servicing, loss or destruction. (GEICO Policy; "Definitions" - #9)

II. ISSUES AS TO COVERAGE AND GEICO'S DENIAL OF COVERAGE:

A. *GEICO'S PAYMENT OF THE LIABILITY COVERAGE UNDER THE MILDRED SCOGGIN POLICY:*

The Mildred Scoggin coverage determination by GEICO applied the definitions of the Omnibus Clause to find that Mark Scoggin had liability coverage under the Mildred Scoggin policy for the subject MVA. If the Mildred Scoggin vehicle were neither an owned nor a non-owned vehicle as to her son's use of it on the day of this accident, then liability coverage wouldn't have applied under the Omnibus clause, because as a vehicle that was not owned or non-owned, it wouldn't fall within the coverage provisions of the Policy. Under GEICO's policy, a car is NOT "non-owned" if it is owned by a resident relative and furnished for regular use.

Yet, GEICO paid liability coverage in exchange for a Covenant Not To Execute. Because Mark Scoggin did not own his mother's car, and he paid no premium for it, the liability coverage had to have been paid under the Mildred Scoggin policy for Mark Scoggin's use of that car as a "non-owned" auto. That car would still be a "Non-owned" vehicle for purposes of considering the excess liability coverage under the Mark Scoggin policy. GEICO stipulated that the Mildred Scoggin vehicle was a non-owned vehicle as to Mark Scoggin under the present facts by paying the liability coverage in exchange for a Covenant and in so doing, it stipulated that the Mildred Scoggin car was not available for Mark Scoggin's regular use. That car retains the same status when considering the Excess Coverage under the Mark Scoggin policy because the terms and conditions of the two policies have been stipulated to be identical.

Hence, GEICO denied excess coverage under the Mark Scoggin policy on the grounds that the Mildred Scoggin vehicle was not a "non-owned" vehicle as to Mark Scoggin, despite the fact that it had reached the opposite conclusion in paying the liability coverage under the same

facts and based upon the same policy terms and conditions. The Court finds that for purposes of Excess coverage under the Mark Scoggin policy, GEICO is bound by its determinations under the Mildred Scoggin policy.

B. *LANGUAGE OF THE EXCESS CLAUSE:*

The Excess Clause does not use the "owned" and "non-owned" criteria, but rather, uses common, ordinary language that is not defined in the policy; to wit, in pertinent part, it says that "Insurance for losses arising out of the use of a vehicle you do not own shall be excess." (GEICO Policy; "Other Insurance") It uses the undefined phrase "use of a vehicle you do not own" rather than employing the policy's "owned" and "non-owned" terminology which is defined.

South Carolina law holds that when terms are not defined in a policy, an interpreting Court should define them "according to the usual understanding of the term's significance to the ordinary person." S.C. Farm Bureau Mut. Ins. Co. v. Durham, 380 S.C. 506, 671 S.E.2d 610, 2009 S.C. LEXIS 6 (S.C. 2009). Mark Scoggin did not own his mother's vehicle and he was using it by driving it at the time of the subject accident. Thus, the Court finds that the Excess Liability Cause would provide coverage for the subject accident.

C. *THE LACK OF AN APPLICABLE EXCLUSION:*

The GEICO policy includes a definition for "non-owned" auto but that is not part of the exclusions for using a vehicle provided for your regular use owned by a family member so there is no exclusion that takes away coverage; GEICO's reliance on the definition for non-owned autos has no applicability in this case because that exclusion applies only while carrying persons employed or otherwise engaged in auto business. Regular use is not noted in the exclusions or

the Amendment and it doesn't refer to regular use or using another vehicle owned by a family member. The Court finds that there is no applicable exclusion supporting GEICO's denial of excess coverage in this case.

D. THE POLICY DECLARATIONS:

The Policy's Declarations Page declares that Mark Scoggin is insured for bodily injury liability coverage of \$25,000.00/\$50,000.00. §38-77-142 of the SC Code requires that "insurers must provide liability coverage to insureds "within the coverage of the policy" and may not limit or reduce liability coverage in the policy below the declared or "face amount" of the coverage. Williams v. Gov't Employees Ins. Co (GEICO) Opinion No. 27435, 2014 S.C. LEXIS 361 (S.C. Aug. 20, 2014);

The GEICO policy uses the Omnibus Clause, rather than a listed exclusion, to exclude coverage based on an insured's "regular use" of a resident relative's vehicle. An insured would not look to an Omnibus clause for an exclusion, but would look to the listed exclusions to review his coverage. Using the Omnibus Clause in this fashion is confusing and misleading. The Policy also contains conflicting provisions that eliminate or reduce coverage. Specifically at issue in this case, the Omnibus Clause uses the defined terms "owned" and "non-owned" and then the Excess liability Clause conditions coverage on driving a car he does not own. This is contrary to South Carolina law as interpreted by our State's Supreme Court; to wit - "Once the face amount of coverage is agreed upon, it may not be arbitrarily reduced or limited by conflicting policy provisions that effectively retract this stated coverage." Williams v. GEICO, supra.

The GEICO policy's declaration page for the Mark Scoggin policy at issue contained no warning of the reduced or eliminated coverage. Although the company provided separate policies covering separate vehicles owned by resident relatives of the same household, GEICO's

declarations pages did not warn either insured that the coverage for which they paid might be reduced, or as with the Mark Scoggin Excess coverage, eliminated altogether, by their act of driving their resident relative's vehicle.

This Court finds that under South Carolina law. GEICO can not declare that it provides Mark Scoggin with coverage of \$25,000.00/\$50,000.00 and then withdraw that coverage or define it out of existence. Williams v. GEICO, supra.

E. THE POLICY DEFINITIONS:

GEICO is limiting the coverage declared on its declarations page by way of carefully crafted definitions. In the present case, GEICO's application of these definitions excluded excess coverage for an insured because, at the time of the MVA, he was operating a vehicle owned by a resident relative. Had GEICO's insured, Mr. Scoggin, been driving a neighbor's car, it would qualify as a "non-owned vehicle" and be covered.

The key to invoking a vehicle as being NOT "non-owned" under the definitions is whether the resident relative's vehicle is available for the "regular use" of a GEICO insured. "Under a liability policy excluding coverage where an automobile involved in an accident was "furnished for regular use" to the insured, the term may be used in the sense of time, steady as opposed to occasional; or in the sense of type of use, usual as against unusual. Hartford Acc. & Indem Co. v. Hiland, 7 Cir., 349 F. (2d) 376." Aetna Casualty & Surety Co. v. Sessions, 260 SC 150, 194 SE2d 844 (1973). In the present case, Mr. Scoggin was using his mother's vehicle to transport a pet to a veterinary appointment, and was using the vehicle because his mother's car was better suited and equipped to transport the animal. Nothing in these facts or in the record indicates that Mark Scoggin drove his mother's car steadily as opposed to occasionally, or that

his use of the car was usual rather than unusual. Further, the purpose of the "regular use" exclusion is to prevent an insured from purchasing one policy as to one automobile and be covered without qualification for all vehicles available for his use. Aetna Casualty & Surety Co. v. Sessions, supra. In this case, there were two vehicles in the household of Mildred and Mark Scoggin and both were insured by GEICO such that GEICO regularly collected a premium for both vehicles.

The Court, therefore, finds that the Mildred Scoggin vehicle was not available for the regular use of Mark Scoggin within the meaning of that term in South Carolina and it further finds that application of the "regular use" doctrine serves no valid purpose where two vehicles in a household are covered by the same insurer and that insurer is regularly paid a premium for the coverage of both vehicles.

E. AMBIGUOUS PROVISIONS OF THE POLICY:

"Ambiguous or conflicting terms in an insurance policy must be construed liberally in favor of the insured and strictly against the insurer." Diamond State Ins. Co. v. Homestead Indus., Inc., 318 S.C. 231, 236, 456 S.E.2d 912, 915 (1995). "A contract is ambiguous when it is capable of more than one meaning when viewed objectively by a reasonably intelligent person who has examined the context of the entire integrated agreement and who is cognizant of the customs, practices, usages and terminology as generally understood in the particular trade or business." Hawkins, 328 S.C. at 592, 493 S.E.2d at 878 (quoting 17A Am. Jur. 2d Contracts § 338, at 345 (1991)). Williams v. GEICO, supra.

After review, the Court finds that the provisions of the GEICO policy are ambiguous. The relevant ambiguities are:

1. The Declarations Page for the Mark Scoggin policy states as follows: "This is a description of your coverage." It also states that Coverage applies where a premium or \$0.00 is shown for a vehicle." Despite the fact that the described coverage included \$25,000.00/\$50,000.00 in bodily injury and UM coverage, and included comprehensive and collision coverages, provisions of the policy, and the policy definitions of "owned," "non-owned," and "relative", are such that GEICO has determined the policy provides no coverage to Mark Scoggin for the present loss; and;

2. The policy definition of "owned" auto conflicts with the Declarations Page certifying coverage of \$25,000.00/\$50,000.00 to Mark Scoggin for this loss; and

3. The policy provision as to "Losses We Will Pay For You Under Section I" provides that the Policy covers on bodily injury liability arising out of the "ownership, maintenance or use" of an owned or non-owned auto. The "Other Insurance" provision does not use the defined terms of owned or non-owned but instead provides that bodily injury coverage for a vehicle "you do not own" shall be excess. Given this ambiguity, as to this accident, the more liberal provision should control and - in the alternative - the policy declares that bodily injury coverage for an accident that occurred while Mark Scoggin operated a vehicle that he did not own would be excess; and

4. The policy defines a "temporary substitute auto" as an "owned" vehicle but it would be a vehicle "you do not own" for purposes of the excess clause; and

5. The policy defines a "non-owned auto" as one not owned by or furnished for the regular use of either you (Mark Scoggin) or a relative (Mildred Scoggin) other than a "temporary substitute auto" but the "Other Insurance"/Excess provision references a "non-owned auto" as "a vehicle you do not own; and

Because the GEICO policy is ambiguous in the pertinent particulars noted above, this Court finds that it must be construed against GEICO and in favor of the insured to find that excess liability coverage for the subject MVA exists.

F. STATE LAW, PUBLIC POLICY & WILLIAMS V. GEICO:

Excess Coverage is not subject to the provisions of the "Motor Vehicle Financial Responsibility Act" (Chapter 9, Title 56, SC Code Ann.) or its public policy considerations but it is subject to the state's insurance laws, specifically including the requirements of §38-77-142 that policy provisions cannot reduce the face amount of coverage stated in the Declarations and the GEICO policy at issue, or GEICO's interpretation of the policy, violates South Carolina law and public policy. Williams v. GEICO, supra.

Further, the Policy's Declarations Page declares that Mark Scoggins is insured for bodily injury liability coverage of \$25,000.00/\$50,000.00. §38-77-142 of the SC Code requires that "insurers must provide liability coverage to insureds "within the coverage of the policy" and may not limit or reduce liability coverage in the policy below the declared or "face amount" of the coverage. Williams v. GEICO, supra. "Once the face amount of coverage is agreed upon, it (the insurer) may not be arbitrarily reduced or limited by conflicting policy provisions that effectively retract this stated coverage." Williams v. GEICO, supra.

Despite the foregoing, after agreeing to provide Mark Scoggin with coverage of \$25,000.00/\$50,000.00, GEICO uses carefully crafted policy definitions and the Omnibus Clause of its policy, together with the familial relationship between Mark and Mildred Scoggin to limit the policy coverage available to Mark Scoggin. This violates South Carolina law and public policy; to wit - "To allow an insurer to determine the extent to which an injured party can recover within the insured's policy coverage based solely on a familial relationship is arbitrary and capricious and violative of public policy." Williams v. GEICO, supra.

Based upon the foregoing, this Court finds that GEICO's use of its Omnibus Clause and definitions provisions, the latter of which clearly conflicted with the language of the excess

clause as was specifically addressed above, improperly and arbitrarily reduced or limited by conflicting policy provisions which retracted, limited or withdrew the coverage stated on the declarations page of the Mark Scoggin Policy. This is contrary to both public policy and the law of the State of South Carolina.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

A. That GEICO's Policy 4085-57-17-45, covering named insured Mark Scoggin, provides excess liability coverage of \$25,000.00 potentially available to the Plaintiff Hill, for her claim and lawsuit arising out of the motor vehicle accident of September 5, 2012; and

B. In terms of priority, the excess liability coverage under the Mark Scoggin policy would be payable before the underinsured coverage under Hill's policy;

C. The policy of Erie Insurance Exchange is a North Carolina policy and under the policy and North Carolina law, coverage limits of underinsured/uninsured coverage are reduced by the amount of the payment of the liability coverage and by Erie's prior payment to the Plaintiff of its medical payments coverage such that after GEICO's payment to the Plaintiff of its \$75,000.00 in available coverage, 24,000.00 in UI/UM coverage would be available under Erie's policy; and

D. GEICO's policy provisions referenced above, including those which purport to limit or withdraw excess liability coverage from the Mark Scoggin policy, violate public policy and are therefore void *ab initio* and incapable of being enforced; and

E. The Court awards the Plaintiff the attorney's fees and costs necessitated by GEICO's denial of coverage under the Mark Scoggin Policy. The Court gives the Plaintiff ten (10) days to file an Affidavit documenting the attorney's fees and costs paid pertaining to the DJ action only. The Defendants will have ten (10) days to file an Affidavit opposing the amounts claimed. This Court will then issue a ruling as to the amount of the Attorney's Fee and Cost award.

AND IT IS SO ORDERED.


The Honorable PAUL M. BURCH
Presiding Judge, Fifteenth Judicial Circuit

Dated: April 29th, 2015

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas
Paul M. Burch, Circuit Court Judge

Case No.: 2014-CP-26-06382

HORRY COUNTY
2015 AUG 26 PM 1:38
CLERK OF COURT

Erie Insurance Exchange.....Respondent.

v.

Government Employees Insurance Company, Mark Allison Scoggin and Angela Bennett Hill

Of whom Government Employees Insurance Company is.....Appellant.

PROOF OF SERVICE

I, the undersigned, as an attorney for Appellant, do hereby certify that I have served the *Notice of Appeal* this 24th day of August, 2015 upon counsel of record by depositing the same in a U.S. Postal Box in an envelope, sufficient postage prepaid, properly addressed as follows:

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000035

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT
Case No: 2014-CP-26-

Erie Insurance Exchange,)
)
Plaintiff,)
)
vs.)
)
Government Employees Insurance)
Company, Mark Allison Scoggin and)
Angela Bennett Hill,)
)
Defendants.)
)

COMPLAINT
(For Declaratory Judgment)

The Plaintiff, Erie Insurance Exchange, complaining of the Defendants herein,
would show unto this Honorable Court as follows:

1. The Plaintiff, Erie Insurance Exchange (Hereinafter "Erie"), is a corporation organized and existing pursuant to the laws of some State of the United States of America, and is engaged in the insurance business and conducts business in the County of Horry, State of South Carolina.
2. Upon information and belief, the Defendant, Government Employees Insurance Company (Hereinafter "GEICO"), is a corporation organized and existing pursuant to the laws of some State of the United States of America, and is engaged in the insurance business and conducts business in the County of Horry, State of South Carolina.
3. Upon information and belief, the Defendant, Mark Allison Scoggin, is a citizen and resident of the County of Horry, State of South Carolina.

4. Upon information and belief, the Defendant, Angela Bennett Hill, is a citizen and resident of Wake County, North Carolina.

5. On September 5, 2012, at or around 6:10 p.m. Defendant Hill was operating a 2011 Hyundai eastbound on 11th Avenue North when Hill alleges that a 2002 Ford Taurus SEL operated by Defendant Scoggin made a left turn across her lane of travel, colliding with her vehicle.

10. Defendant Hill alleges that she suffered injuries in this accident and she filed suit in Horry County, which action bears case number 13-CP-26-2592 and is captioned as follows: "Angela Bennett Hill vs. Mark Allison Scoggin."

11. On the date of the subject accident, the 2002 Ford Taurus SEL operated by Defendant Scoggin was owned by his Mother, Mildred Scoggin, with whom Defendant Scoggin resided. The vehicle, bearing VIN 1FAHP59SO2A211430, was insured by GEICO for coverage period 06/03/12-12/03/12 under Policy Number 0929-32-50-09 and providing liability coverage of \$50,000.00 per person and \$100,000.00 per accident. **See: Declarations Pages - EXHIBIT A.**

12. On the date of the subject accident, Defendant Scoggin owned a 2005 Chevrolet Colorado VIN 1GCDT136458245763, which was insured by GEICO for coverage period 07/27/12-01/27/13 under Policy Number 4085-57-17-45 and providing liability coverage of \$25,000.00 per person and \$50,000.00 per accident. **See: Declarations Pages - and GEICO POLICY - EXHIBIT B.**

13. On the date of the subject accident, the 2011 Hyundai Elantra operated by Plaintiff Hill was owned by Mauren Craig. The vehicle, bearing VIN KMHDH4AE8BU149209, was insured by Erie Insurance Exchange for named insureds

Robert Hill and Angela Hill for coverage period 05/11/12-05/11/13 under Policy Number Q05 1107128 and providing uninsured/underinsured motorist coverage of \$100,000.00 per person and \$300,000.00 per accident.

13. Thereafter, Hill made claim(s) under the aforementioned policies and subsequently filed the lawsuit referenced above.

14. GEICO has defended Hill's lawsuit under the Mildred Scoggin policy covering the vehicle being operated by Mark Scoggin on the date of the accident and it has now paid the liability coverage of \$50,000.00 available under that policy, 0929-32-50-09.

15. GEICO denies that the Mark Scoggin policy, 4085-57-17-45, provides excess coverage of \$25,000.00 for the subject accident and it issued the denial letter which is attached hereto as **Exhibit C** and which is incorporated herein by reference. In pertinent part, GEICO states that it denied coverage for the policy issued to its policyholder, Mark Scoggin, because: "The Ford Taurus that Mr. Scoggin was driving is not considered as an owned or non-owned vehicle as described in the policy. "

16. The GEICO policy provisions for both Mr. and Ms. Scoggin include the following definitions:

- (a) "**Insured** means a person or organization described under PERSONS INSURED." (GEICO Policy; p. 3 of 15; "Definitions" - #4)
- (b) "**Relative** means a person related to **you** who resides in **your** household." (GEICO Policy; p. 3 of 15; "Definitions" - #8)
- (c) "**Non-owned auto** means an automobile or **trailer** not owned by or furnished for the regular use of either **you** or a **relative**, other than a **temporary substitute auto**. An auto rented or leased for more than 30 days will be considered as furnished for regular use. (GEICO Policy; p. 3 of 15; "Definitions" - #5)
- (d) "**Owned auto** means: (a) a vehicle described in this policy for which a premium charge is shown for these coverages; (b) a **trailer** owned by you; (c) a **private**

passenger, farm or utility auto, ownership of which **you** acquire during the policy period or for which **you** enter into a lease during the policy period for a term of six months or more, if: (i) it replaces an **owned auto** as defined in (a) above; or (ii) we insure all **private passenger, farm and utility autos** owned or leased by **you** on the date of the acquisition, and **you ask** us to add it to the policy no more than 30 days later; (GEICO Policy; p. 3 of 15; "Definitions" - #6)

- (e) **"Temporary substitute auto** means an automobile or **trailer**, not owned by **you**, temporarily used with the permission of the owner. This vehicle must be used as a substitute for the **owned auto** or **trailer** when withdrawn from normal use because of its breakdown, repair, servicing, loss or destruction. (GEICO Policy; p. 3 of 15; "Definitions" - #9)

17. The omnibus clause of the GEICO policy states as follows:

LOSSES WE WILL PAY FOR YOU UNDER SECTION I

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

1. **bodily injury**, sustained by a person; and
 2. **damage to or destruction of property**;
- arising out of the ownership, maintenance or use of the **owned auto** or a **non-owned auto**.

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

(GEICO Policy; p. 4 of 15)

18. As to excess coverage, the GEICO policy states as follows: "Any insurance we provide for losses arising out of the ownership, maintenance or use of a vehicle **you** do

not own shall be excess over any other valid and collectible insurance. (GEICO Policy; p. 5 of 15; "Other Insurance")

19. The Plaintiff alleges that GEICO's denial erred and/or that liability coverage or excess liability coverage exists for the subject accident under the Mark Scoggin policy, 0929-32-50-09, for a number of reasons, including, but not limited to, the following:

- (a) GEICO denied coverage under the Mark Scoggin policy based upon its analysis of coverage under the Mildred Scoggin policy; and/or
- (b) GEICO erroneously denied coverage pertaining to Mark Scoggin's policy because the Ford Taurus operated by him at the time of the accident was not considered an "owned or a non-owned vehicle" under the terms of the policy. Coverage under Mr. Scoggin's policy should be evaluated based on the company's separate and distinct obligations to Mr. Scoggin's as to coverage written for him; and/or
- (c) GEICO is impermissibly limiting coverage ostensibly offered by its policy by way of carefully crafted definitions which, in particular, results in excluding excess coverage for an insured under the insured's own policy if, at the time of a loss the insured is operating a vehicle owned by a resident relative. This results in an insured having excess coverage if he is driving a neighbor's car but in denying it to him if he is driving his wife or his mother's car; and/or
- (c) Given the policy's definitions of the terms, in limiting the provision of coverage to "owned" and "non-owned" vehicles, GEICO's omnibus clause conflicts with the excess insurance clause such that the policy should be construed to provide excess coverage for this loss; and/or
- (d) Excess coverage under the Mark Scoggin's policy would cover this loss, even by the strained and impermissible terms of the policy, if he was driving his mother's

car on the date of the accident because his vehicle was "withdrawn from normal use" under the terms of the policy; and/or

- (e) As to liability coverage and excess liability coverage, the provisions of the GEICO policy are ambiguous as to other policy provisions and particularly, as to the coverage declared to exist and on the Declarations Page. Those ambiguities include but are not limited to the following;

1. The Declarations Page for the Mark Scoggin policy states as follows: "This is a description of your coverage." It also states that Coverage applies where a premium or \$0.00 is shown for a vehicle." Despite the fact that the described coverage included \$25,000.00/\$50,000.00 in bodily injury and UM coverage, and included comprehensive and collision coverages, provisions of the policy, and the policy definitions of "owned," "non-owned," and "relative", are such that GEICO has determined the policy provides no coverage to Mark Scoggin for the present loss; and;

2. The policy definition of "owned" auto conflicts with the Declarations Page certifying coverage of \$25,000.00/\$50,000.00 to Mark Scoggin for this loss; and

3. The policy provision as to "Losses We Will Pay For You Under Section I" provides that the Policy covers on bodily injury liability arising out of the "ownership, maintenance or use" of an owned or non-owned auto. The "Other Insurance" provision does not use the defined terms of owned or non-owned but instead provides that bodily injury coverage for a vehicle "you do not own" shall be excess. Given this ambiguity, as to this accident, the more liberal provision should control and - in the alternative - the policy declares that bodily injury coverage for an accident that occurred while Mark Scoggin operated a vehicle that he did not own would be excess; and

4. The policy defines a "temporary substitute auto" as an "owned" vehicle but it would be a vehicle "you do not own" for purposes of the excess clause; and

5. The policy defines a "non-owned auto" as one not owned by or furnished for the regular use of either you (Mark Scoggin) or a relative (Mildred Scoggin) other than a "temporary substitute auto"

but the "Other Insurance"/Excess provision references a "non-owned auto" as "a vehicle you do not own; and

6. The policy provides that "you and your relatives" are insureds with regard to "an owned auto" but the policy definitions do not define a resident relatives' car as an "owned" or a "non-owned" auto and then it restricts bodily injury liability coverage to losses arising out of the use, maintenance or ownership of an "owned" or "non-owned" vehicle.

- (e) The Policy's Declarations Page declares that Mark Scoggins is insured for bodily injury liability coverage of \$25,000.00/\$50,000.00 and §38-77-142, SC Code Ann. "provides insurers must provide liability coverage to insureds "within the coverage of the policy" and may not limit or reduce liability coverage in the policy below the declared or "face amount" of the coverage. Williams v. Gov't Employees Ins. Co (GEICO) Opinion No. 27435, 2014 S.C. LEXIS 361 (S.C. Aug. 20, 2014); and/or
- (f) The GEICO policy provisions cited above seek to arbitrarily reduce, limit or eliminate the face amount of the coverage purchased, agreed upon and declared. This violates South Carolina law; to wit - "Once the face amount of coverage is agreed upon, it may not be arbitrarily reduced or limited by conflicting policy provisions that effectively retract this stated coverage," Williams v. GEICO, supra; and/or
- (g) After agreeing to provide Mark Scoggin with coverage of \$25,000.00/\$50,000.00, GEICO is not permitted to withdraw it or to define it out of existence. *Id.*
- (h) In the present case, GEICO uses the familial relationship between Mark and Mildred Scoggin to limit the policy coverage available to Mark Scoggin. This violates South Carolina law and public policy; to wit - "To allow an insurer to determine the extent to which an injured party can recover within the insured's policy coverage based solely on a familial relationship is arbitrary and capricious and violative of public policy." Williams v. GEICO, supra, and/or

- (i) Excess Coverage is not subject to the provisions of the "Motor Vehicle Financial Responsibility Act" (Chapter 9, Title 56, *SC Code Ann.*) or its public policy considerations but it is subject to the state's insurance laws, specifically including the requirements of §38-77-142 that policy provisions cannot reduce the face amount of coverage stated in the Declarations and the GEICO policy at issue, or GEICO's interpretation of the policy, violates South Carolina law and public policy. See: Williams v. GEICO; and/or
- (j) GEICO's policy issued to Mark Scoggin is ambiguous, violates South Carolina law and public policy; and/or
- (k) By the terms of its policy, GEICO's "Other Insurance" provision does not condition excess coverage on "owned" or "non-owned" vehicle definitions which are therefore inapplicable and the policy should be construed according to South Carolina law to provide excess coverage for this loss;
- (l) GEICO's policy provisions referenced above violate public policy and are therefore void *ab initio* and are deemed legally never to have come into existence and are therefore incapable of being enforced by the courts.

20. The policy of Erie Insurance Exchange is a North Carolina policy and under the terms of the policy and pursuant to North Carolina law, Erie's coverage is offset by the liability coverage and, in addition, Erie has paid the Plaintiff its medical payments coverage of \$1,000.00 which it is also entitled to offset.

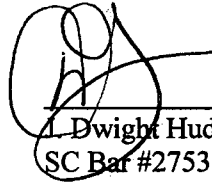
21. This action is brought pursuant to §15-53-10, et. seq. *SC Code Ann.* The Plaintiffs ask that this Court inquire into the matter and declare the rights, status and legal relations as between the parties including those relative to insurance coverage, the duty to defend, and the rights of the parties under the subject policies pursuant to South Carolina law and the public policy of this state.

21. Plaintiff seeks an award of attorney's fees and costs from GEICO based upon its improper denial of coverage which necessitated this action.

WHEREFORE, the Plaintiff respectfully requests an Order of this Court as follows:

- A. GEICO's Policy 4085-57-17-45 covering named insured Mark Scoggin provides excess liability coverage of \$25,000.00 potentially available to the Plaintiff Hill, for her claim and lawsuit arising out of the motor vehicle accident of September 5, 2012; and
- B. In terms of priority, the excess liability coverage under the Mark Scoggin policy would be payable before the underinsured coverage under Hill's policy;
- C. The policy of Erie Insurance Exchange is a North Carolina policy and under the policy and North Carolina law, underinsured/uninsured coverage is offset by the liability coverage and by Erie's prior payment to the Plaintiff of its medical payments coverage such that after GEICO's payment to the Plaintiff of its \$75,000.00 in available coverage, \$24,000.00 in UI/UM coverage would be available under Erie's policy; and
- D. GEICO's policy provisions referenced above, including those purporting to limit or withdraw excess liability coverage from the Mark Scoggin policy, violate public policy and are therefore void *ab initio* and incapable of being enforced; and
- E. Awarding the Plaintiff attorney's fees and costs necessitated by GEICO's improper denial of coverage under the Mark Scoggin Policy.
- F. For such other and further relief as this Court may deem just and proper.

s/ J. Dwight Hudson, Esq.

A handwritten signature in black ink, appearing to be 'JDH', is written over a horizontal line.

J. Dwight Hudson, Esquire
SC Bar #2753

Hudson Law Offices
1203 48th Avenue North
Suite 111
Myrtle Beach, SC 29577
(843) 692-9889

Attorney for Plaintiff

Dated: September 24, 2014

EXHIBIT A



Tel: 1-800-841-3000

GOVERNMENT EMPLOYEES INSURANCE COMPANY
One GEICO Center
Macon, GA 31295-0001

Date Issued: April 20, 2012

MILDRED ALLISON SCOGGIN
PO BOX 438
NORTH MYRTLE BEACH SC
29597-0438

Email Address: Log in to geico.com to update

Declarations Page

This is a description of your coverage.
Please retain for your records.

Policy Number: 0929-32-50-09

Coverage Period:

06-03-12 through 12-03-12

12:01 a.m. local time at the address of the named insured.

Named Insured

Mildred A Scoggin

Additional Drivers

None

Vehicle

VIN

Vehicle Location

Finance Company/ Lienholder

1 2002 Ford Taurus SEL 1FAHP59S02A211430 Little River SC 29566

Coverages*

Limits and/or Deductibles

Vehicle 1

Bodily Injury Liability		
Each Person/Each Occurrence	\$50,000/\$100,000	\$446.50
Property Damage Liability	\$25,000	\$263.80
Medical Payments	\$1,000	\$38.20
Uninsured Motorists Bodily Injury		
Each Person/Each Occurrence	\$50,000/\$100,000	\$37.60
Property Damage	\$25,000	\$6.80
Underinsured Motorist Bodily Injury	\$50,000/\$100,000	\$65.80
Each Person/Each Occurrence		
Property Damage	\$25,000	\$2.80
Comprehensive	\$500 Ded	\$179.20
Collision	\$500 Ded	\$296.00
Emergency Road Service	Full	\$10.40
Rental Reimbursement	\$30 Per Day	\$18.30
	\$900 Max	-
Total Six Month Premium		\$1,365.40

*Coverage applies where a premium or \$0.00 is shown for a vehicle.

If you elect to pay your premium in installments, you may be subject to an additional fee for each installment. The fee amount will be shown on your billing statements and is subject to change.

Discounts

The total value of your discounts is	\$47.70
Seatbelt (All Vehicles)	\$6.70
Anti-Lock Brakes (All Vehicles)	\$15.60
Passive Restraint/Air Bag (All Vehicles).....	\$25.40

Contract Type: A70SC

Contract Amendments: ALL VEHICLES - A54SC A70SC

Unit Endorsements: A115A (VEH 1); A347 (VEH 1); A431 (VEH 1); M700ERS2 (VEH 1);
M700RR (VEH 1)

Important Policy Information

- Please review the front and/or back of this page for your coverage and discount information.
- Active Duty, Guard, Reserve or Retired Military: Call 1-800-MILITARY to see if you qualify for the Military Discount.
- Special 50+ rating applies.
- Congratulations! Your policy has been issued with our Prime Time Contract that contains a lifetime renewal guarantee provision. Please review your policy contract for specific exceptions to this guarantee.
- The following fees are applicable to South Carolina policies and failure to pay any fee when due could result in us commencing collection proceedings against you: Installment Fees-\$5.00, Electronic Fund Transfer Fee-\$1.00, Returned Check Fee-\$20.00 and Certificate of Financial Security/SR22 Filing Fee-\$25.00.
- Reminder - Physical damage coverage will not cover loss for custom options on an owned automobile, including equipment, furnishings or finishings including paint, if the existence of those options has not been previously reported to us. This reminder does NOT apply in VIRGINIA and NORTH CAROLINA. Please call us at 1-800-841-3000 or visit us at geico.com if you have any questions.
- The GEICO group of companies includes three automobile insurance companies presently writing insurance coverage in South Carolina. You are not receiving the lowest rate in the GEICO group because of the driving convictions. Being a good driver will help improve your rates.
- The GEICO group of companies includes three automobile insurance companies presently writing insurance coverage in South Carolina. You are not receiving the lowest rate in the GEICO group because of the accident(s) on the driving record. Being a good driver will help improve your rates.



Tel: 1-800-841-3000

One GEICO Center
Macon, GA 31295-0001

Policy Number: 4085-57-17-45

GEICO Use: 39 A70SC

**GOVERNMENT EMPLOYEES INSURANCE
COMPANY**

June 23, 2012

MARK SCOGGIN
PO BOX 438
N MYRTLE BCH SC 29597-0438



Dear Mark Scoggin,

Thank you for continuing to be part of the GEICO family and trusting us to meet your insurance needs. We appreciate the opportunity to provide you this valuable coverage. We're here for you 24/7, 365 days a year.

Enclosed in your packet you will find the following important insurance documents:

Identification (ID) Cards (Pages 3 - 4) - Please review and retain your Identification (ID) Cards. On the back is the phone number for Customer Service and Claims.

Billing Statement (Pages 5 - 6) - Please review your payment schedule and learn about money saving opportunities through our automatic payment options.

Declarations Page (Pages 7 - 8) - Here you will find your coverages, drivers, vehicles, discounts and other policy information. Please retain for your records.

Additional Insurance Documents (Pages 9 - 14) - Includes additional policy documents.

We value you as our policyholder and look forward to serving your insurance needs for many years to come. For additional insurance services, please review the "Insuring what's important to you" section. If you have any questions, please contact GEICO at geico.com or 1-800-841-3000. We'll be happy to help you!

Sincerely,

O. M. Nicely
Chairman

COVER_LTR

(over, please)

200821408557174539012006570

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Insuring what's important to you



Sure GEICO insures cars ...but did you know we can help you insure your home? It's true! Whether you rent or own, the GEICO Insurance Agency has something for you, so get a free quote today on geico.com. If you buy, it may qualify you for our multi-policy discount (and we know you like to save).



Got a motorcycle? We've got insurance to protect your ride. Get a free quote today to see how much you could be saving (to spend on gear, of course).



Think of a Personal Umbrella Policy like a safety net for your everyday life. It protects your assets in the event of a significant incident. It's surprisingly affordable, so call for a free quote today.



Own a boat? If so, we hope you know we can help with personal watercraft coverage for folks that love time on the water. Get a quote on geico.com and set sail for some savings.



Expand your horizons with an RV insurance quote. Our coverage fits your needs whether you're a weekender or a year-round traveler. Visit geico.com/getaquote/rv for a free RV quote today.

Putting you in control and saving you time



With our paperless bill, paperless policy and automatic billing options like electronic funds transfer (EFT) or recurring card payments (RCP), you can help save a tree or two while having 24/7 access to your account and peace of mind knowing your policy is paid for.

Please visit geico.com or call 1-800-841-3000 to get a quote, make a policy change or to file a claim.

Homeowners, Renters and Boat are written through non-affiliated insurance companies and are secured through the GEICO Insurance Agency, Inc. GEICO Motorcycle insurance is written by GEICO Indemnity Company.



South Carolina Insurance
Identification Card 1-800-841-3000

GOVERNMENT EMPLOYEES INSURANCE COMPANY
One GEICO Center • Macon, GA 31295-0001
The liability coverage provided by this policy meets the minimum financial responsibility requirements of South Carolina law.

Policy Number	Effective Date	Expiration Date	
4085-57-17-45	07-27-12	01-27-13	
Year	Make	Model	Vehicle ID No.
2005	CHEV	COLORADO	1GCDT136458245763

Insured:
Mark Scoggin

PLEASE KEEP THIS CARD IN YOUR VEHICLE AT ALL TIMES



South Carolina Insurance
Identification Card 1-800-841-3000

GOVERNMENT EMPLOYEES INSURANCE COMPANY
One GEICO Center • Macon, GA 31295-0001
The liability coverage provided by this policy meets the minimum financial responsibility requirements of South Carolina law.

Policy Number	Effective Date	Expiration Date	
4085-57-17-45	07-27-12	01-27-13	
Year	Make	Model	Vehicle ID No.
2005	CHEV	COLORADO	1GCDT136458245763

Insured:
Mark Scoggin

PLEASE KEEP THIS CARD IN YOUR VEHICLE AT ALL TIMES

Important Information

Here are your Insurance Identification Cards. Two cards have been provided for each vehicle insured. Please destroy your old cards when the new cards become effective. A law enforcement officer may ask you to prove that you have liability insurance meeting the basic requirements of South Carolina law. The Insurance Identification cards provide this proof.

Due to space limitations on the ID Card, only the Named Insured and the Co-Insured are listed. For a full list of Drivers covered under this policy, please reference the Driver's Section on your Declarations Page (Page 7).

Please notify us promptly of any change in your address to be sure you receive all important policy documents.

If you would like additional ID Cards, you can log into your policy online at geico.com or call us at 1-800-841-3000.

MARK SCOGGIN
PO BOX 438
N MYRTLE BCH SC 29597-0438

VOID

VOID

VOID

VOID

200821408557174539012006571

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What to do at the time of an accident.

- Do not admit fault.
- Do not reveal the limits of your liability coverage to anyone.
- Exchange contact information; get year, make, model, plate number, insurance carrier and policy number of all involved. Also, identify witnesses and collect contact information.
- Contact the police or 911 if applicable.
- Contact GEICO by calling **1-800-841-3000** or visit **geico.com** to report the accident.

U-4-SC (01-10)

What to do at the time of an accident.

- Do not admit fault.
- Do not reveal the limits of your liability coverage to anyone.
- Exchange contact information; get year, make, model, plate number, insurance carrier and policy number of all involved. Also, identify witnesses and collect contact information.
- Contact the police or 911 if applicable.
- Contact GEICO by calling **1-800-841-3000** or visit **geico.com** to report the accident.

U-4-SC (01-10)



BILL

Government Employees Insurance Company

Policy Number & Period

Auto

Policy # 4085-57-17-45

Jul-27-12 to Jan-27-13

GEICO CUSTOMER SERVICE CONTACTS

Billing Payment Options:

Mail

Internet: Visit geico.com

EFT: To enroll, see below.

Phone Pay: To pay with a check over the phone, call 1-800-932-8872.

Policy Changes: Visit geico.com or call

1-800-841-3000

Billing Activity**Activity Date & Description****Amount**

BALANCE FROM PREVIOUS POLICY TERM	\$	385.20
Jan-16-Policy Change	\$	-1.68
Jan-16-Policy Change	\$	-30.80
Jan-19-Payment Received - Thank You	\$	-352.72
Jun-22-Policy Renewal	\$	357.70
CURRENT BALANCE AS OF Jun-25-12	\$	357.70

Payment Schedule

Due	Amount
Jul-27-12	\$ 357.70

It's easy to pay your future bill(s) with our Electronic Funds Transfer (EFT) program. To enroll in Electronic Funds Transfer (which automatically debits your checking account), please read and sign the Authorization Agreement on the stub portion below. (Your Signature is required to enroll in EFT.) ONLY SIGN BELOW IF YOU WANT TO ENROLL IN ELECTRONIC FUNDS TRANSFER (EFT).

The banking information on your enclosed check will be used to process your request. Your next scheduled payment will be the first payment to be automatically withdrawn.

When enrolling in Electronic Funds Transfer (EFT), you authorize GEICO to initiate automatic debits for future premium payments to the checking account used to make this payment, and you authorize your financial institution to debit your account for these payments. You acknowledge that changes to your policy or rate structure may change the amount debited. Three (3) business days are required to deactivate the EFT program.

MESSAGES:

-Your current insurance expires as of 12:01 a.m. on Jul-27-12. If your payment of \$357.70 is not received prior to Jul-27-12, this renewal policy will be void.

Please detach and return the portion below with your payment made payable to GEICO in the enclosed envelope.

AUTHORIZATION AGREEMENT FOR ELECTRONIC FUNDS

TRANSFER (EFT): I hereby authorize GEICO to initiate automatic debits for future premium payments to the checking account used to make this payment, and I authorize my financial institution to debit my account for these payments. I acknowledge that changes to my policy or rate structure may change the amount debited.

To Enroll in EFT - Sign Here _____

Policy Number: 4085-57-17-45

Issue Date: Jun-25-12

CURRENT BALANCE \$ 357.70

Due Date: Jul-27-12

Minimum Amount Due**\$357.70**

MARK SCOGGIN
PO BOX 438
N MYRTLE BCH SC 29597-0438

ONE GEICO PLAZA
Bethesda, MD 20810-0001

4085571745 1220999100236 00357707 00357707

U-31-DPB (1) (08-09)

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Payment Plans

A premium installment charge will be included in the bill for each installment, excluding the One Payment Plan.

One Payment	100% due on the policy effective date
Two Payment	50% due on the policy effective date 50% due two months after the policy effective date
Three Payment	40% due on the policy effective date 30% due one month after the policy effective date 30% due two months after the policy effective date
Four Payment	25% due on the policy effective date 25% due one, two, and three months after the policy effective date
Six Payment	16.66% due one month prior to the policy effective date 16.66% due on the policy effective date 16.66% due one, two, three and four months after the policy effective date

Payment Options	
Automatic Payments	Pay your bills automatically. (1) Enroll in Electronic Funds Transfer (EFT) by enclosing your check and signing the Authorization Agreement on your bill stub. You may also enroll in EFT by visiting geico.com or calling us at 1-800-932-8872; or (2) Enroll in recurring card payment by visiting us at geico.com or calling us at 1-800-932-8872.
Internet	Pay your bill online by visiting our website at geico.com .
Phone Pay	Make payments using your checking account or debit or credit card. Call 1-800-932-8872.
Mail	Use the enclosed envelope to mail your payment.

Payment Address: GEICO Remittance Center
One GEICO Plaza
Bethesda, MD 20810-0001

Policy Number: 4085-57-17-45

EXCPP4 (11-07)

Paying by check authorizes GEICO to send your check information electronically to your bank. Your account may be debited the same day we receive your payment. You will not receive your cancelled check, however the transaction will appear on your bank statement. If we cannot post the transaction electronically, we may present a copy of your check for payment.



Tel: 1-800-841-3000

GOVERNMENT EMPLOYEES INSURANCE COMPANY
One GEICO Center
Macon, GA 31295-0001

Date Issued: June 23, 2012

MARK SCOGGIN
PO BOX 438
N MYRTLE BCH SC 29597-0438

Email Address: scogginmark@yahoo.com

Declarations Page

This is a description of your coverage.
Please retain for your records.

Policy Number: 4085-57-17-45

Coverage Period:

07-27-12 through 01-27-13

12:01 a.m. local time at the address of the named insured.

Named Insured

Mark Scoggin

Additional Drivers

None

<u>Vehicle</u>	<u>VIN</u>	<u>Vehicle Location</u>	<u>Finance Company/ Lienholder</u>
1 2005 Chev Colorado	1GCDDT136458245763	Little River SC 29566	Bb&T Sales Finance

<u>Coverages*</u>	<u>Limits and/or Deductibles</u>	<u>Vehicle 1</u>
Bodily Injury Liability		
Each Person/Each Occurrence	\$25,000/\$50,000	\$80.80
Property Damage Liability	\$25,000	\$81.60
Uninsured Motorists Bodily Injury		
Each Person/Each Occurrence	\$25,000/\$50,000	\$19.00
Property Damage	\$25,000	\$3.70
Underinsured Motorist Bodily Injury	Insured-Rejects	-
Each Person/Each Occurrence		
Property Damage	Insured-Rejects	-
Comprehensive	\$500 Ded	\$97.90
Collision	\$500 Ded	\$94.70
Total Six Month Premium		\$357.70

*Coverage applies where a premium or \$0.00 is shown for a vehicle.

If you elect to pay your premium in installments, you may be subject to an additional fee for each installment. The fee amount will be shown on your billing statements and is subject to change.

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T-K

DEC_PAGE (11-11) (Page 1 of 2)

Continued on Back
Renewal Policy Page 7 of 14

000055

Discounts

The total value of your discounts is	\$63.50
Anti-Lock Brakes (All Vehicles)	\$5.00
Anti-Theft Device (All Vehicles)	\$5.10
5 Year Good Driving (All Vehicles)	\$53.40

Contract Type: A70SC

Contract Amendments: ALL VEHICLES - A54SC A70SC

Unit Endorsements: UE316 (VEH 1)

Important Policy Information

-Please review the front and/or back of this page for your coverage and discount information.

-Special 50+ rating applies.

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

-The following fees are applicable to South Carolina policies and failure to pay any fee when due could result in us commencing collection proceedings against you: Installment Fees-\$5.00, Electronic Fund Transfer Fee-\$1.00, Returned Check Fee-\$20.00 and Certificate of Financial Security/SR22 Filing Fee-\$25.00.

-Reminder - Physical damage coverage will not cover loss for custom options on an owned automobile, including equipment, furnishings or finishings including paint, if the existence of those options has not been previously reported to us. This reminder does NOT apply in VIRGINIA and NORTH CAROLINA. Please call us at 1-800-841-3000 or visit us at geico.com if you have any questions.

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

GOVERNMENT EMPLOYEES INSURANCE COMPANY

Service and Installment Fees

The following Service and or Payment installment fees are applicable to South Carolina policies:

Installment Fees:	\$5.00 (\$3.00 for GEICO umbrella policies)
Electronic Fund Transfer Fee:	\$1.00 (in lieu of installment fee)
Returned Check Fee:	\$20.00
Certificate of Financial Security/SR22 Filing Fee:	\$25.00

Failure to pay any of the above applicable service fees could result in us commencing collection proceedings against you.

200801 40855717 4539012006574

M-211 (05-10)

Policy Number: 4085-57-17-45

Renewal Policy Page 9 of 14

000057

GEICO

GOVERNMENT EMPLOYEES INSURANCE COMPANY

Policy Number: 4085-57-17-45

Notice of Change in Policy Terms

Your Loss Payable Clause Endorsement has been revised. These changes can be found in the enclosed policy documents. Please read the endorsement for the specific language added to your policy.

200801408557174539012008575

M700LPC (07-11)

Renewal Policy Page 11 of 14

000059

GOVERNMENT EMPLOYEES INSURANCE COMPANY

ENDORSEMENT

LOSS PAYABLE CLAUSE

The Policy Number and Effective Date need be completed only when this endorsement is issued subsequent to preparation of the policy.

Policy Number: 4085-57-17-45

Effective Date: 07-27-12

Any covered **loss** under the Physical Damage Coverages of the policy will be paid jointly to the **insured** and the Lienholder in the Declarations. We may settle a claim at our option by separate payment to the **insured** and the Lienholder. The Lienholder's interest will not be protected:

1. When fraud, misrepresentation, material omission, or intentional damage has knowingly been committed by or at the direction of any **insured**; or
2. In any case of conversion, embezzlement, secretion, or intentional damage to the vehicle(s) by or at the direction of any **insured**, or any owner of the vehicle(s); or
3. For any **loss** or damage caused by, or reasonably expected to result from, a criminal act or omission of any **insured** or any owner of the vehicle(s). This applies regardless of whether any **insured**, or any owner of the vehicle(s) is actually charged with, or convicted of a crime. For the purpose of this clause, criminal acts or omissions do not include traffic violations.

The Lienholder has no greater rights under the provisions of the policy than any **insured**.

The Lienholder must notify us if they become aware of any increased hazard or change of ownership of the vehicle(s) or they will lose all rights under this policy.

If any **insured** fails to file with us a Proof of Loss within 91 days after the **loss**, the Lienholder must do so within the following 60 days.

Whenever we pay the Lienholder, we shall be subrogated to the Lienholder's rights of recovery to the extent of our payment to the Lienholder. If the policy is in effect as to the Lienholder but has been canceled as to any **insured**, the Lienholder must assign the loan to us to the extent of our payment, if we ask.

We will notify the Lienholder at least 10 days and not less than the notice period required by law before we cancel their interest in the policy.

This endorsement forms a part of **your** policy. It is effective at 12:01 A.M. local time at **your** address on the effective date shown above.

200801408557174539012006576

EXHIBIT B

GEICO

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

**South Carolina
Family
Automobile
Insurance
Policy**

- Government Employees Insurance Company

A-70-SC (12-98)

000064

POLICY INDEX

	Page	Page
SECTION I		
Liability Coverages		
Your Protection Against Claims From Others		
Definitions.....	3	
Losses We Will Pay For You.....	4	
Additional Payments We Will Make Under The		
Liability Coverages.....	4	
Legal Expenses And Court Costs		
Bail And Appeal Bonds		
First Aid Expenses		
Exclusions: When Section I Does Not Apply.....	4	
Persons Insured: Who Is Covered	5	
Financial Responsibility Laws	5	
Out Of State Insurance	5	
Limits Of Liability	5	
Other Insurance	5	
Conditions.....	6	
Notice		
Two Or More Autos		
Assistance And Cooperation Of The Insured		
Action Against Us		
Subrogation		
SECTION II		
Auto Medical Payments		
Definitions.....	6	
Payments We Will Make	6	
Exclusions: When Section II Does Not Apply.....	7	
Limit Of Liability	7	
Other Insurance	7	
Conditions.....	7	
Notice		
Two Or More Autos		
Action Against Us		
Medical Reports - Proof And Payment Of Claims		
Subrogation		
SECTION III		
Physical Damage Coverages		
Your Protection For Loss Of Or Damage To Your Car		
Definitions.....	7	
Losses We Will Pay	8	
Comprehensive Coverage	8	
Collision Coverage	9	
Additional Payments We Will Make Under The		
Physical Damage Coverages.....	9	
Car Rental If Your Car Is Stolen		
Exclusions: When The Physical Damage		
Coverages Do Not Apply.....	9	
Limit Of Liability	9	
Other Insurance	9	
Conditions.....		10
Notice		
Two Or More Autos		
Assistance And Cooperation Of The Insured		
Action Against Us		
Insured's Duties In Event Of Loss		
Appraisal		
Payment Of Loss		
No Benefit To Bailee		
Subrogation		
SECTION IV		
Uninsured Motorists Coverage		
Your Protection For Injuries Caused By Uninsured Motorists		
Definitions	11	
Losses We Pay	11	
Exclusions: When Section IV Does Not Apply	11	
Limits Of Liability	12	
Other Insurance	12	
Trust Agreement.....	12	
Conditions.....	12	
Proof Of Claim		
Assistance And Cooperation Of The Insured		
Notice Of Legal Action		
Payment Of Loss		
Action Against Us		
SECTION V		
General Conditions		
The Following Apply To All Coverages In This Policy		
Territory	13	
Premium.....	13	
Changes	13	
Assignment	13	
Policy Period.....	13	
Cancellation By The Insured	14	
Cancellation By Us	14	
Cancellation By Us Is Limited.....	14	
Renewal.....	14	
Other Insurance	14	
Dividend Provision.....	14	
Declarations	14	
Fraud And Misrepresentation	15	
Examination Under Oath.....	15	
Terms Of Policy Conformed To Statutes	15	
SECTION VI		
Amendments And Endorsements		
Special Endorsement - United States Government		
Employees.....		15

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

AGREEMENT

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

SECTION I

Liability Coverages

Your Protection Against Claims From Others

Bodily Injury Liability
Property Damage Liability

DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) a **temporary substitute auto**.

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

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

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

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

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

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

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

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

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

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

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

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

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

LOSSES WE WILL PAY FOR YOU UNDER SECTION I

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

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

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

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

ADDITIONAL PAYMENTS WE WILL MAKE UNDER THE LIABILITY COVERAGES

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

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

EXCLUSIONS

When Section I Does Not Apply

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

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

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

7. We do not cover **bodily injury** to a fellow employee of an *insured* if the fellow employee's **bodily injury** arises from the use of an auto while in the course of employment and if workers' compensation or other similar coverage is available. We will defend *you* if suit is brought by a fellow employee against *you* alleging use, ownership or maintenance of an auto by *you*.
8. We do not cover an **owned auto** while used by a person (other than *you* or a *relative*) when he is employed or otherwise engaged in the **auto business**.
9. A **non-owned auto** while maintained or used by any person is not covered while such person is employed or otherwise engaged in (1) any **auto business** if the accident arises out of that business; (2) any other business or occupation of any *insured* if the accident arises out of that business or occupation, except a **private passenger auto** used by *you* or *your* chauffeur or domestic servant while engaged in such other business.

10. We do not cover damage to:

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

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

12. We do not cover:

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

PERSONS INSURED **Who Is Covered**

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

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

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

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

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

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

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

FINANCIAL RESPONSIBILITY LAWS

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

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

OUT OF STATE INSURANCE

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

LIMITS OF LIABILITY

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

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

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

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

OTHER INSURANCE

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

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

CONDITIONS

The following conditions apply to Section I:

1. NOTICE

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

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

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

2. TWO OR MORE AUTOS

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

3. ASSISTANCE AND COOPERATION OF THE INSURED

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

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

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

4. ACTION AGAINST US

No suit will lie against us:

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

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

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

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

5. SUBROGATION

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

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

SECTION II

Auto Medical Payments

Protection For You And Your Passengers For Medical Expenses

DEFINITIONS

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

PAYMENTS WE WILL MAKE

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

This Coverage applies to:

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

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

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

EXCLUSIONS

When Section II Does Not Apply

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

LIMIT OF LIABILITY

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

OTHER INSURANCE

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

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

CONDITIONS

The following conditions apply to this Coverage:

1. NOTICE

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

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

2. TWO OR MORE AUTOS

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

3. ACTION AGAINST US

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

4. MEDICAL REPORTS - PROOF AND PAYMENT OF CLAIMS

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

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

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

5. SUBROGATION

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

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

SECTION III

Physical Damage Coverages

Your Protection For Loss Or Damage To Your Car

DEFINITIONS

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

1. "**Actual cash value**" is the replacement cost of the auto or property less **depreciation** or **betterment**.
2. "**Betterment**" is improvement of the auto or property to a value greater than its pre-loss condition.
3. "**Collision**" means **loss** caused by upset of the covered auto or its collision with another object, including an attached vehicle.

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

5. **"Insured"** means:

(a) regarding the **owned auto**:

(i) **you and your relatives**;

(ii) a person or organization maintaining, using or having custody of the auto with **your** permission, if his use is within the scope of that permission.

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

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

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

7. **"Non-owned auto"** means a **private passenger auto**, **farm auto** or **utility auto** or **trailer** not owned by or furnished for the regular use of either **you** or **your relatives**, except a **temporary substitute auto**. **You** or **your relative** must be using the auto or trailer within the scope of permission given by its owner. An auto rented or leased for more than 30 days will be considered as furnished for regular use.

8. **"Owned auto"** means:

(a) any vehicle described in this policy for which a specific premium charge indicates there is coverage;

(b) a **private passenger**, **farm** or **utility auto** or a **trailer**, ownership of which is acquired by **you** during the policy period or for which **you** enter into a lease during the policy period for a term of six months or more; if

(i) it replaces an **owned auto** as described in (a) above, or

(ii) we insure all **private passenger**, **farm**, **utility autos** and **trailers** owned or leased by **you** on the date of such acquisition and **you** request us to add it to the policy within 30 days afterward;

(c) a **temporary substitute auto**.

9. **"Trailer"** means a trailer designed for use with a **private passenger auto** and not used as a home, office, store, display or passenger trailer.

LOSSES WE WILL PAY FOR YOU Comprehensive (Excluding Collision)

1. We will pay for each **loss**, less the applicable deductible, caused other than by **collision**, to the **owned** or **non-owned auto**. This includes breakage of glass and **loss** caused by:

- | | |
|--------------------------------------|-------------------------|
| (a) missiles; | (j) windstorm; |
| (b) falling objects; | (k) hail; |
| (c) fire; | (l) water; |
| (d) lightning; | (m) flood; |
| (e) theft; | (n) malicious mischief; |
| (f) larceny; | (o) vandalism; |
| (g) explosion; | (p) riot; or |
| (h) earthquake; | (q) civil commotion. |
| (i) colliding with a bird or animal; | |

No deductible will apply to **loss** caused by fire, lightning, smoke, smudge or damage sustained while the vehicle is being transported on any conveyance.

At the option of the **insured**, breakage of glass caused by **collision** may be paid under the Collision coverage, if included in the policy. No deductible will apply to **loss** to the safety glass of an **owned** or **non-owned auto**.

2. We will pay, up to \$200 per occurrence, less any deductible shown in the declarations, for **loss** to personal effects due to:

- | | |
|-------------------------------------|----------------------|
| (a) fire; | (e) falling objects; |
| (b) lightning; | (f) earthquake; or |
| (c) flood; | (g) explosion. |
| (d) theft of the entire automobile; | |

The property must be owned by **you** or a **relative**, and must be in or upon an **owned auto**.

No deductible will apply due to **loss** by fire or lightning.

3. **Losses** arising out of a single occurrence shall be subject to no more than one deductible.

Collision

1. We will pay for **collision loss** to the **owned** or **non-owned auto** for the amount of each **loss** less the applicable deductible. No deductible will apply to **loss** to the safety glass of an **owned** or **non-owned auto**.

2. We will pay up to \$200 per occurrence, less the applicable deductible, for **loss** to personal effects due to a **collision**. The property must be owned by **you** or a **relative**, and must be in or upon an **owned auto**.

3. **Losses** arising out of a single occurrence shall be subject to no more than one deductible.

ADDITIONAL PAYMENTS WE WILL MAKE UNDER THE PHYSICAL DAMAGE COVERAGES

1. We will reimburse the *insured* for transportation expenses incurred during the period beginning 48 hours after a theft of the entire auto covered by Comprehensive coverage under this policy has been reported to us and the police. Reimbursement ends when the auto is returned to use or we pay for the *loss*.

Reimbursement will not exceed \$15 per day nor \$450 per *loss*.

2. We will pay general average and salvage charges for which the *insured* becomes legally liable when the auto is being transported.

3. We will pay for *loss* to any of the following equipment (including *loss* to accessories and antennas):

- (a) car phone;
- (b) citizen's band radio;
- (c) two-way mobile radio;
- (d) scanning monitor receiver; or
- (e) device designed for the recording and/or reproduction of sound.

We will pay only if the equipment at the time of *loss*:

- (a) is permanently installed in or upon an *owned auto*; and
- (b) that auto is insured under the appropriate coverage.

EXCLUSIONS

When The Physical Damage Coverages Do Not Apply

1. An auto used to carry passengers or goods for hire is not covered. However, a vehicle used in an ordinary car pool on a ride sharing or cost sharing basis is covered.

2. *Loss* due to *war* is not covered.

3. We do not cover *loss* to a *non-owned auto* when used by the *insured* in the *auto business*.

4. There is no coverage for *loss* caused by and limited to wear and tear, freezing, mechanical or electrical breakdown or failure, unless that damage results from a covered theft.

5. Tires, when they alone are damaged by *collision*, are not covered.

6. *Loss* due to radioactivity is not covered.

7. *Loss* to any tape, wire, record disc or other medium for use with a device designed for the recording and/or reproduction of sound is not covered.

8. We do not cover *loss* to any radar or laser detector.

9. We do not cover *trailers* when used for business or commercial purposes with vehicles other than *private passenger, farm or utility autos*.

LIMIT OF LIABILITY

The limit of our liability for *loss*:

1. is the *actual cash value* of the property at the time of the *loss*;

2. will not exceed the cost to repair or replace the property, or any of its parts, with other of like kind and quality and will not include compensation for any diminution in the property's value that is claimed to result from the *loss*;

3. to personal effects arising out of one occurrence is \$200;

4. to a *trailer* not owned by *you* is \$500;

5. for custom options is limited to the *actual cash value* of equipment, furnishings or finishings (including paint) installed in or upon the vehicle only by the auto factory or an authorized auto dealer and included in the purchase price of the vehicle.

Actual cash value of property will be determined at the time of the *loss* and will include an adjustment for *depreciation/betterment* and for the physical condition of the property.

OTHER INSURANCE

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

Any insurance we provide for a vehicle *you* do not own shall be excess over any other valid and collectible insurance.

CONDITIONS

The following conditions apply only to the Physical Damage Coverages:

1. NOTICE

As soon as possible after a *loss*, written notice must be given us or our authorized agent stating:

- (a) the identity of the *insured*;
- (b) a description of the auto or *trailer*;
- (c) the time, place and details of the *loss*; and
- (d) the names and addresses of any witnesses.

In case of theft, the **insured** must promptly notify the police.

2. TWO OR MORE AUTOS

If this policy covers two or more autos or **trailers**, the limit of coverage and any deductibles apply separately to each.

3. ASSISTANCE AND COOPERATION OF THE **INSURED**

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

- (a) in the investigation of the **loss**;
- (b) in making settlements;
- (c) in the conduct of suits;
- (d) in enforcing any right of subrogation against any legally responsible person or organization;
- (e) at trials and hearings;
- (f) in securing and giving evidence; and
- (g) by obtaining the attendance of witnesses.

4. ACTION AGAINST US

Suit will not lie against us unless the policy terms have been complied with and until 30 days after proof of loss is filed and the amount of **loss** is determined.

5. **INSURED'S** DUTIES IN EVENT OF **LOSS**

In the event of **loss** the **insured** will:

- (a) Protect the auto, whether or not the **loss** is covered by this policy. Further **loss** due to the **insured's** failure to protect the auto will not be covered. Reasonable expenses incurred for this protection will be paid by us.
- (b) File with us, within 91 days after **loss**, his sworn proof of loss including all information we may reasonably require.
- (c) At our request, the **insured** will exhibit the damaged property.

6. APPRAISAL

If we and the **insured** do not agree on the amount of **loss**, either may, within 60 days after proof of loss is filed, demand an appraisal of the **loss**. In that event, we and the **insured** will each select a competent appraiser. The appraisers will select a competent and disinterested umpire. The appraisers will state separately the **actual cash value** and the amount of the **loss**. If they fail to agree, they will submit the dispute to the umpire. An award in writing of any two will determine the amount of **loss**. We and the **insured** will each pay his chosen appraiser and will bear equally the other expenses of the appraisal and umpire.

We will not waive our rights by any of our acts relating to appraisal.

7. PAYMENT OF **LOSS**

We may at our option:

- (a) pay for the **loss**; or
- (b) repair or replace the damaged or stolen property.

At any time before the **loss** is paid or the property replaced, we may return any stolen property to **you** or to the address shown in the declarations at our expense with payment for covered damage. We may take all or part of the property at the agreed or appraised value, but there will be no abandonment to us. We may settle claims for **loss** either with the **insured** or the owner of the property.

8. NO BENEFIT TO BAILEE

This insurance does not apply directly or indirectly to the benefit of a carrier or other bailee for hire liable for the **loss** of the auto.

9. SUBROGATION

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

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

SECTION IV

Uninsured Motorists Coverage

Protection For You, Your Relatives And Your Passengers For Injuries And Property Damage Caused By Uninsured Motorists

DEFINITIONS

The definitions of terms for Section I apply to Section IV, except for the following special definitions:

1. "**Insured**" means:

- (a) **you** and **your relatives** who reside in **your** household;
- (b) any person using an **insured motor vehicle** with **your** permission;
- (c) any person **occupying** an **insured motor vehicle** with **your** permission;
- (d) any person who is entitled to recover damages under a wrongful death statute of any state because of the death of an **insured** under (a), (b) or (c) above.

If there is more than one *insured*, our limits of liability will not be increased.

2. "*Insured motor vehicle*" is a *motor vehicle* described in the policy and to which the liability coverage of the policy applies.

3. "*Motor vehicle*" is a self-propelled vehicle designed for use on a highway and includes *trailers* and semi-trailers designed for use with these vehicles. The term *motor vehicle* does not include traction engines, road rollers, farm tractors, tractor cranes, power shovels, well drillers or any vehicle propelled by electric power from overhead wires but not operated on rails.

4. "*Property damage*" means damage or destruction of an *insured's* property.

5. "*Uninsured motor vehicle*" is a *motor vehicle* of which:

- (a) there is no applicable bodily injury liability and property damage liability insurance with limits complying with the financial responsibility requirements of the State of South Carolina; or
- (b) the insurance carrier successfully denies coverage; or
- (c) the insurance carrier is declared insolvent, or is in delinquency proceedings, suspension or receivership, or is proven unable fully to respond to a judgment; and
- (d) there is no bond or deposit of cash or securities in lieu of bodily injury and property damage liability insurance.
- (e) the owner of the *motor vehicle* has not qualified as a self-insurer in accordance with the applicable provisions of law.

The term *uninsured motor vehicle* includes a *motor vehicle* which causes *bodily injury* or *property damage* to an *insured* and the owner or operator of which is unknown provided that:

- (a) the *insured* or someone in his behalf reports the accident to some appropriate police authority within a reasonable time after its occurrence;
- (b) the injury or damage was caused by physical contact with the unknown vehicle, or the accident was witnessed by someone other than the owner or operator of the insured vehicle and that witness submits a signed affidavit attesting to the truth of the facts of the accident;
- (c) the *insured* was not negligent in failing to determine the identity of the other vehicle and its driver at the time of the accident;
- (d) the *insured* or someone for him files with us within 30 days or as soon as practical thereafter, a written statement that he has a cause of action for damages against an unidentified person; and

- (e) the *insured* or someone for him makes available, at our request, the *motor vehicle occupied by the insured*, at the time of the accident.

The term *uninsured motor vehicle* does not include a *motor vehicle* owned by the United States of America or any governmental unit or agency.

LOSSES WE PAY

Under this coverage we will pay damages for *bodily injury* and *property damage* caused by accident which the *insured* is legally entitled to recover from the owner or operator of an *uninsured motor vehicle* arising out of the ownership, maintenance or use of that *motor vehicle*.

EXCLUSIONS

1. This coverage does not apply to *bodily injury* or *property damage* to an *insured* if he or his legal representative has made a settlement or has been awarded a judgment without our prior written consent.
2. There is no coverage for *bodily injury* or *property damage* to an *insured* while *occupying* or through being struck by an *uninsured motor vehicle* owned by an *insured* or a *relative*.
3. This coverage will not benefit directly or indirectly any workmen's compensation insurer, self insurer, disability benefits insurer or property insurer.
4. There is no coverage for *property damage* to the first \$200 of the amount of damage to the property of each *insured* as the result of any one accident.
5. There is no coverage for *property damage* if the *insured* has been compensated by insurance or otherwise.

LIMITS OF LIABILITY

Regardless of the number of *insured motor vehicles*; *insureds*, claims made or *motor vehicles* involved in the accident, the most we will pay for damages resulting from any one accident is the limit on the *insured motor vehicle* involved in the accident.

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

3. The limit of property damage liability stated in the declarations as applicable to "each accident" is our total limit of liability for all damages to the property of one or more *insureds* as the result of any one accident.

4. Any amount payable under this insurance shall be reduced by all sums:

- (a) paid or payable under any Uninsured Motorists coverage applicable on the vehicle involved in the accident;
- (b) paid or payable by or for anyone who is legally responsible, including all sums paid under the policy's liability insurance.

5. If separate policies with us are in effect for *you* or any person in *your* household, they may not be combined to increase the limit of our liability for a loss.

6. Any amount paid under this insurance will reduce any amount an *insured* may be paid under the policy's liability insurance.

OTHER INSURANCE

When an *insured occupies a motor vehicle* not described in this policy, this insurance is excess over any other similar insurance available to the *insured for bodily injury* and the insurance which applies to the occupied auto is primary.

If none of an *insured's motor vehicles* is involved in the accident, coverage is available to the extent of coverage on any one *insured motor vehicle*. Coverage on any other vehicles shall not be added to that coverage.

Except as provided above, if the *insured* has other similar bodily injury insurance available to him and applicable to the accident, the damages for *bodily injury* will be deemed not to exceed the higher of the applicable limits of liability of this insurance and the other insurance. If the *insured* has other insurance against a loss covered by Uninsured Motorists provisions of this policy, we will not be liable for more than our pro-rata share of the total coverage available.

With respect to *property damage*, this insurance shall be excess over other valid and collectible insurance applicable to the damaged property.

We will not be liable for a greater proportion of any loss under this coverage than its limit of liability bears to the sum of the applicable limits of liability and this and all such other insurance.

TRUST AGREEMENT

When we make a payment under this coverage:

1. We will be entitled to repayment of that amount out of any settlement or judgment the *insured* recovers from

any person or organization legally responsible for the *bodily injury*.

2. The *insured* will hold in trust for our benefit all rights of recovery which he may have against any person or organization responsible for these damages. He will do whatever is necessary to secure all rights of recovery and will do nothing after the loss to prejudice these rights.

3. At our written request, the *insured*, in his own name, will take, through a designated representative, appropriate actions necessary to recover payment for damages from the legally responsible person or organization. The *insured* will pay us out of the recovery for our expenses, costs and attorneys' fees.

4. The *insured* will execute and furnish us with any needed documents to secure his and our rights and obligations.

CONDITIONS

1. PROOF OF CLAIM

As soon as possible, the *insured* or other person making claim must give us written proof of claim, under oath if required. This will include details of the nature and extent of *bodily injury*, treatment, and other facts which may affect the amount payable. Proof of claim must be made on forms furnished by us unless we have not furnished these forms within 15 days after receiving notice of claim.

The injured person will submit to examination by doctors chosen by us as often as we may reasonably require. In the event of the *insured's* incapacity or death, his legal representative must, at our request, authorize us to obtain medical reports and copies of records.

The *insured* or other person making a claim for damage to property shall file a proof of loss in sworn statement form with us within 60 days after the loss occurs (unless we extend the time in writing). This statement must show: the interest of the *insured* and all others in the property, any liens or other claims on the property, the actual cash value at time of loss, and description and amounts of all other insurance on the property. If we ask, the *insured* must show us the damaged property.

2. ASSISTANCE AND COOPERATION OF THE INSURED

After we receive notice of a claim, we may require the *insured* to take any action necessary to preserve his recovery rights against any allegedly legally responsible person or organization.

3. NOTICE OF LEGAL ACTION

If the *insured* or his legal representative files suit before we make a settlement under this coverage, he must immediately provide us with a copy of the pleadings served in the manner provided by law.

4. PAYMENT OF LOSS

Any amount due is payable to the *insured* or his authorized representative.

5. ACTION AGAINST US

Suit will not lie against us unless the *insured* or his legal representative has fully complied with all of the policy terms.

SECTION V

General Conditions

These Conditions Apply To All Coverages In This Policy

1. TERRITORY

This policy applies only to accidents, occurrences or losses during the policy period within the United States of America, its territories or possessions, or Canada or when the auto is being transported between ports thereof.

2. PREMIUM

When you dispose of, acquire ownership of, or replace a *private passenger, farm or utility auto*, any necessary premium adjustment will be made as of the date of the change and in accordance with our manuals.

3. CHANGES

The terms and provisions of this policy cannot be waived or changed, except by an endorsement issued to form a part of this policy.

We may revise this policy during its term to provide more coverage without an increase in premium. If we do so, *your* policy will automatically include the broader coverage when effective in *your* state.

The premium for each auto is based on the information we have in *your* file. *You* agree:

- (a) that we may adjust *your* policy premiums during the policy term if any of this information on which the premiums are based is incorrect, incomplete or changed.
- (b) that *you* will cooperate with us in determining if this information is correct and complete.
- (c) that *you* will notify us of any changes in this information.

Any calculation or recalculation of *your* premium or changes in *your* coverage will be based on the rules, rates and forms on file, if required, for our use in *your* state.

4. ASSIGNMENT

Your rights and duties under this policy may not be assigned without our written consent.

If *you* die, this policy will cover:

- (a) *your* surviving spouse;
- (b) the executor or administrator of *your* estate, but only while operating an *owned auto* and while acting within the scope of his duties;
- (c) any person having proper temporary custody of and operating the *owned auto*, as an *insured*, until the appointment and qualification of the executor or administrator of *your* estate; and
- (d) under the Medical Payments coverage, a person who was a *relative* at the time of *your* death.

5. POLICY PERIOD

Unless otherwise cancelled, this policy will expire as shown in the declarations. But, it may be continued by our offer to renew and *your* acceptance by payment of the required renewal premium prior to the expiration date. Each period will begin and expire at 12:01 A.M. local time at *your* address stated in the declarations.

6. CANCELLATION BY THE *INSURED*

You may cancel this policy by providing notice to us stating when, after the notice, cancellation will be effective.

If this policy is cancelled, *you* may be entitled to a premium refund. The premium refund, if any, will be computed according to our manuals.

7. CANCELLATION BY US

We may cancel this policy by mailing to *you*, at the address shown in this policy, written notice stating when the cancellation will be effective. We will mail this notice at least 15 days prior to the effective date of that cancellation.

The mailing or delivery of this notice will be sufficient proof of notice. The policy will cease to be in effect as of the date and hour stated in the notice.

If this policy is canceled, *you* may be entitled to a premium refund. The premium refund, if any, will be computed according to our manuals. Payment or tender of unearned premium is not a condition of cancellation.

8. CANCELLATION BY US IS LIMITED

After this policy has been in effect for 90 days or, if the policy is a renewal policy, we will not cancel except for any of the following reasons:

- (a) **You** do not pay the initial premium on other than a renewal policy or any additional premium for this policy or fail to pay any premium installment when due to us.
- (b) **You** or any other operator who either resides in **your** household or customarily operates a motor vehicle insured under this policy has had his driver's license suspended or revoked during the policy period or, if it is a renewal policy, during its policy period or the 90 days preceding the last anniversary of the effective date.
- (c) **You** become a non-resident of South Carolina and register **your** South Carolina motor vehicle in another state.

We may increase **your** deductible to \$250 under Section III - Physical Damage Coverages.

9. RENEWAL

We guarantee to renew this policy for **private passenger, farm or utility autos** as long as the following conditions are met:

- (a) **You** (or **your** spouse) are at least 50 years old and **you** (or **your** spouse) are a principal operator of an auto insured under this policy. There are no principal or occasional operators under the age of 25.
- (b) **You** and all operators of autos insured under this policy must be physically and mentally able to safely operate an auto. We may require an operator to provide certification of this from a doctor acceptable to us.
- (c) The autos insured are principally located in a state which has approved the use of this condition, and that state continues to approve the use of this condition.
- (d) The representations provided in **your** application for this policy were true.

If the above requirements are not met, the guaranteed renewal condition does not apply. We reserve the right to terminate this guaranty in any state in which conditions require that we discontinue writing new and renewal policies for all our **insureds**. Should we choose not to renew **your** policy, we will mail to **you**, at the address shown in this policy, written notice of our refusal to renew at least 15 days prior to the expiration date. The mailing or delivery of this by us will be sufficient proof of notice.

This policy will expire without notice if any of the following conditions exist:

- (a) **You** do not pay any premium as we require to renew this policy.
- (b) **You** have informed us or our agent that **you** wish the policy to be cancelled or not renewed.

- (c) **You** do not accept our offer to renew or **you** refuse to provide us with renewal classification and rating information as we may require.

We may increase **your** deductible to \$250 under Section III - Physical Damage Coverages.

10. OTHER INSURANCE

If other insurance is obtained on **your** insured auto, any similar insurance afforded under this policy for that auto will terminate on the effective date of the other insurance.

If **you** relinquish possession of a leased vehicle or if you sell or relinquish ownership of an **owned auto**, any coverage provided by this policy for that vehicle will terminate on the day **you** do so.

11. DIVIDEND PROVISION

You are entitled to share in a distribution of the surplus of the Company as determined by its Board of Directors from time to time.

12. DECLARATIONS

By accepting this policy, **you** agree that:

- (a) the statements in **your** application and in the declarations are **your** agreements and representations;
- (b) this policy is issued in reliance upon the truth of these representations; and
- (c) this policy, along with the application and declaration sheet, embodies all agreements relating to this insurance. The terms of this policy cannot be changed orally.

13. FRAUD AND MISREPRESENTATION

Coverage is not provided to any person who knowingly conceals or misrepresents any material fact or circumstance relating to this insurance:

- (a) at the time of application; or
- (b) at any time during the policy period; or
- (c) in connection with the presentation or settlement of a claim.

14. EXAMINATION UNDER OATH

The **insured** or any other person seeking coverage under this policy must submit to examination under oath by any person named by us when and as often as we may require.

15. TERMS OF POLICY CONFORMED TO STATUTES

Any terms of this policy in conflict with the laws of South Carolina are amended to conform to those statutes.

SECTION VI - AMENDMENTS AND ENDORSEMENTS

1. SPECIAL ENDORSEMENT UNITED STATES GOVERNMENT EMPLOYEES

A. Under the Property Damage coverage of Section I, we provide coverage to United States Government employees, civilian or military, using

1. Motor vehicles owned or leased by the United States Government or any of its agencies, or
2. Rented motor vehicles used for United States Government business,

when such use is with the permission of the United States Government. Subject to the limits described in paragraph B. below, we will pay sums **you** are legally obligated to pay for damage to these vehicles.

B. The following limits apply to this coverage:

1. A \$100 deductible applies to each occurrence.
2. For vehicles described in A.1. above, our liability shall not exceed the lesser of the following:

- a. the **actual cash value** of the property at the time of the occurrence; or
- b. the cost to repair or replace the property, or any of its parts with other of like kind and quality; or
- c. two months basic pay of the **insured**; or
- d. the limit of Property Damage liability coverage stated in the declarations.

3. For vehicles described in A.2. above, our liability shall not exceed the lesser of the following:

- a. the **actual cash value** of the property at the time of the occurrence; or
- b. the cost to repair or replace the property, or any of its parts with other of like kind and quality; or
- c. the limit of Property Damage liability coverage stated in the declarations.

This insurance is excess over other valid and collectible insurance.



J. C. Stewart
Secretary

GOVERNMENT EMPLOYEES INSURANCE COMPANY
HOME OFFICE - 5260 Western Avenue
Chevy Chase, Maryland 20815-3799



O. M. Nicely
President

EXHIBIT C

400001031564719010102000416



Government Employees Insurance Company

One Geico Center
Macon, GA 31296-9709

RECEIVED
FEB 19 2014

BY:.....

02/17/2014

Mark Scoggin
PO Box 438
N Myrtle Bch, SC 29597-0438

Company Name: Government Employees Insurance Company
Claim Number: 031564719-0101-020
Loss Date: Wednesday, September 5, 2012
Policyholder: Mark Scoggin



Dear Mark Scoggin,

With respect to the above motor vehicle accident, Government Employees Insurance Company will not be providing any coverage for the above referenced claim to Mark Scoggin. The Ford Taurus that Mr. Scoggin was driving is not considered as an owned or non-owned vehicle as described in the policy. Government Employees Insurance Company will take no further action with respect to this claim.

If you have any questions, please contact me at the number below. Please refer to our claim number when calling or writing about this claim.

Sincerely,

Je'Taime Gordon, Examiner Code JX02
478-621-1736
Claims Department

cc: Turner Padgett Graham & Laney

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)
)
Erie Insurance Exchange,)
)
)
Plaintiff,)
)
vs.)
)
Government Employees Insurance)
Company, Mark Allison Scoggin and)
Angela Bennett Hill,)
)
Defendants.)

IN THE COURT OF COMMON PLEAS

Docket No.: 2014-CP-26-06382

ANSWER OF DEFENDANT
GOVERNMENT EMPLOYEES
INSURANCE COMPANY

HORRY COUNTY
CLERK OF COURT
16 OCT 31 PM 2:11
JELANE JENNINGS-WARD

The Defendant, Government Employees Insurance Company (hereinafter "GEICO"), answering the Complaint of the Plaintiff herein, would respectfully show unto this Court as follows:

FOR A FIRST DEFENSE

1. This Defendant admits, upon information and belief, the allegations contained in Paragraph 1 of the Plaintiff's Complaint.
2. This Defendant admits the allegations contained in Paragraph 2 of the Plaintiff's Complaint.
3. This Defendant admits, upon information and belief, the allegations contained in Paragraph 3 of the Plaintiff's Complaint.
4. This Defendant admits, upon information and belief, the allegations contained in Paragraph 4 of the Plaintiff's Complaint.
5. This Defendant admits, upon information and belief, the allegations contained in Paragraph 5 of the Plaintiff's Complaint.

10. (sic) This Defendant admits, upon information and belief, the allegations contained in Paragraph 10 of the Plaintiff's Complaint.

11. This Defendant admits, upon information and belief, the allegations contained in Paragraph 11 of the Plaintiff's Complaint. However, as for any and all documents referenced therein, this Defendant would crave reference to the terms and conditions of those documents and would otherwise deny any and all allegations inconsistent therewith.

12. This Defendant admits, upon information and belief, the allegations contained in Paragraph 12 of the Plaintiff's Complaint. However, as for any and all documents referenced therein, this Defendant would crave reference to the terms and conditions of those documents and would otherwise deny any and all allegations inconsistent therewith. Furthermore, it is specifically denied that Exhibit B to Plaintiff's Complaint contains the entire policy referenced in Paragraph 12 of the Complaint.

13. This Defendant lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations contained in Paragraph 13 of the Plaintiff's Complaint, and therefore, denies the same.

13. (sic) This Defendant admits, upon information and belief, the allegations contained in Paragraph 13 of the Plaintiff's Complaint. (sic)

14. This Defendant admits, upon information and belief, the allegations contained in Paragraph 14 of the Plaintiff's Complaint.

15. This Defendant admits only so much of the allegations contained in Paragraph 15 of the Plaintiff's Complaint as could be construed to be alleged that GEICO has denied excess liability coverage of \$25,000 for any and all alleged injuries in the underlying suit, cause of

action number: 13-CP-26-2592. However, as for any documents referenced in Paragraph 15 of the Plaintiff's Complaint, this Defendant would crave reference to the terms and conditions of those documents and would otherwise deny any and all allegations inconsistent therewith. By way of further response, this Defendant denies any and all further allegations including any and all inferences drawn therefrom.

16. In responding to the allegations of Paragraph 16 of Plaintiff's Complaint, this Defendant assumes that Plaintiff is referencing language contained in Exhibit B to the Complaint and based on that assumption, this Defendant denies the allegations contained in Paragraph 16 as the Plaintiff has failed to include an entire copy of the policy referenced in Paragraph 12, supra, and attached to the Complaint as Exhibit B. As for any remaining documents referenced in Paragraph 16 of the Plaintiff's Complaint, partial or otherwise, this Defendant would crave reference to the terms and conditions of those documents and would otherwise deny any and all allegations inconsistent therewith. By way of further response, this Defendant denies any and all further allegations including any and all inferences drawn therefrom.

17. In responding to the allegations of Paragraph 17 of Plaintiff's Complaint, this Defendant assumes that Plaintiff is referencing language contained in Exhibit B to the Complaint and based on that assumption, this Defendant denies the allegations contained in Paragraph 17 as the Plaintiff has failed to include an entire copy of the policy referenced in Paragraph 12, supra, and attached to the Complaint as Exhibit B. As for any remaining documents referenced in Paragraph 17 of the Plaintiff's Complaint, partial or otherwise, this Defendant would crave reference to the terms and conditions of those documents and would otherwise deny any and all

allegations inconsistent therewith. By way of further response, this Defendant denies any and all further allegations including any and all inferences drawn therefrom.

18. In responding to the allegations of Paragraph 18 of Plaintiff's Complaint, this Defendant assumes that Plaintiff is referencing language contained in Exhibit B to the Complaint and based on that assumption, this Defendant denies the allegations contained in Paragraph 18 as the Plaintiff has failed to include an entire copy of the policy referenced in Paragraph 12, supra, and attached to the Complaint as Exhibit B. As for any remaining documents referenced in Paragraph 18 of the Plaintiff's Complaint, partial or otherwise, this Defendant would crave reference to the terms and conditions of those documents and would otherwise deny any and all allegations inconsistent therewith. By way of further response, this Defendant denies any and all further allegations including any and all inferences drawn therefrom.

19. This Defendant denies the allegations contained in Paragraph 19 of the Plaintiff's Complaint, including any and all sub-parts.

20. This Defendant lacks sufficient knowledge or information upon which to form a belief as to the truth of the allegations contained in Paragraph 20 of the Plaintiff's Complaint, and therefore, denies the same.

21. The allegations contained in Paragraph 21 of the Plaintiff's Complaint state a legal conclusion to which no response is required. To the extent a response is necessary, same are denied.

21. (sic) This Defendant denies the allegations contained in Paragraph 21 of the Plaintiff's Complaint insomuch as Plaintiff is entitled to any relief, equitable or otherwise.

22. This Defendant denies the "Wherefore" clause of the Plaintiff's Complaint.

23. This Defendant denies each and every allegation of the Plaintiff's Complaint not hereinbefore specifically admitted.

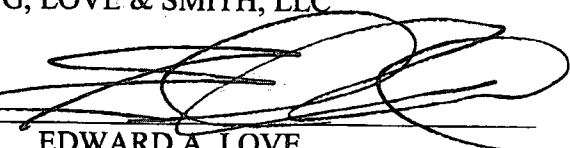
WHEREFORE, having fully answered, Defendant GEICO prays that:

- a) this Court award any and all relief it deems just and equitable;
- b) this Court deny the declaratory relief sought by Plaintiff; and
- c) the Plaintiff's Complaint against it be dismissed with costs.

Florence, South Carolina

October 30, 2014

KING, LOVE & SMITH, LLC

BY: 

EDWARD A. LOVE

I.D. No.: 75118

Post Office Box 1764

135 South Dargan Street, Suite 201

Florence, SC 29503

(843) 407-5525 – Tel

(843) 407-5782 – Fax

ATTORNEY FOR DEFENDANT
GEICO

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Erie Insurance Exchange,

Plaintiff,

vs.

Government Employees Insurance
Company, Mark Allison Scoggin and
Angela Bennett Hill,

Defendants.

IN THE COURT OF COMMON PLEAS

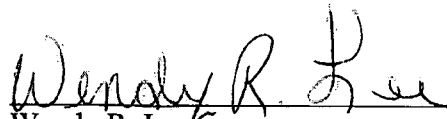
Docket No.: 2014-CP-26-06382

CERTIFICATE OF SERVICE

HORRY COUNTY
14 OCT 31 PM 2:11
CLERK OF COURT

I hereby certify that I have this 30th day of October 2014, served a copy of the foregoing *Answer* on counsel for the Plaintiff by mailing a copy of the same postage prepaid to:

J. Dwight Hudson, Esquire
Hudson Law Offices
1203 48th Avenue North, Suite 111
Myrtle Beach, SC 29577


Wendy R. Lee
Legal Assistant to Edward A. Love

000086

12-30-13

1 mother's vehicle; is that right?

2 A. Yes.

3 Q. Did you own a vehicle at that time?

4 A. Yes.

5 Q. And at the time of the collision were
6 you living with your mother?

7 A. Yes.

8 Q. I understand the vehicle that was in
9 the collision was registered to your mom; is that
10 right?

11 A. Yes.

12 Q. And the vehicle, the second vehicle
13 was that registered to you?

14 A. Yes.

15 Q. Okay. And was there any reason you
16 were driving your mom's car versus your own car?

17 A. Yes.

18 Q. What was that?

19 A. She had a dog seat set up in her car
20 for her little dog and I had to take the dog
21 every time you went out or he'd pitch a fit. So
22 I always took the dog with me on my short trips.
23 Now if it was a long -- anything long drive I
24 wouldn't take him. But that's the only reason I
25 took her car because she had the seat set up for

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000087

12-30-13

1 him.

2 Q. Okay. And I'm going to ask you a few
3 questions that your lawyer also asked my client
4 and we ask everybody, but number one, have you --
5 do you have any type of criminal record?

6 A. No, sir.

7 Q. Have you ever been, other than this
8 incident, have you ever been arrested for
9 anything before?

10 A. No, sir, not that I remember.

11 Q. Have you ever been institutionalized
12 for mental health?

13 A. No.

14 Q. Have you ever been institutionalized
15 for any alcohol or drug issues?

16 A. No.

17 Q. Okay. On the day of this incident,
18 let's go back to that date, 9/5/2012.

19 Approximately what time do you recall the
20 accident being at?

21 A. Around six o'clock or a little after,
22 somewhere along in there.

23 Q. Okay. If you could take me through
24 your day from the time you woke up and let me
25 just sort of back up. But before we start had --

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12-30-13

1 did you at any time that day go to any
2 restaurants?

3 A. No.

4 Q. Did you go to any bars that day?

5 A. No.

6 Q. Okay. If you could just sort of tell
7 me from the time you got up what you did, what
8 you recall, if anything.

9 A. Okay. I got up and made breakfast
10 and my mama came in and ate too. I made
11 breakfast for her usually. And that's all I, you
12 know, all I can remember doing that day except
13 when I went left to get the mail.

14 Q. So you got the mail and that would
15 have been on your property or ---

16 A. No, it was a post office box.

17 Q. Okay.

18 A. In North Myrtle Beach.

19 Q. Okay. So you got your mail. What
20 time would that have been at?

21 A. Going on six, somewhere along in
22 there, five-thirty or going toward six o'clock,
23 somewhere in that area.

24 Q. And you had taken your dog with you?

25 A. Yeah, I took the dog every time I

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12-30-13

1 went out on short trips or so.

2 Q. And so after you got the mail what
3 happened next?

4 A. I was coming back home and I was
5 coming up Avenue Eleven and I missed the turnoff
6 to the back of CVS there. Forgot about it
7 really, I had a prescription for my mother to
8 fill. And so I come up to the stoplight and it
9 turned green. And I went up and was going to
10 turn left to go back -- to go back into CVS and I
11 just cut it too close is all I know.

12 Q. Okay. And so you had a green light.
13 What lane would you have been in?

14 A. The right lane.

15 Q. The right lane. And how many lanes
16 are there going in that direction?

17 A. Two, that I know of.

18 Q. Okay. Is it just the right and the
19 left or is there a turn lane?

20 A. Yeah, just a right and left turn,
21 then you go straight or take a right or go in and
22 take a left.

23 Q. Okay. And you were in the right
24 lane?

25 A. Yes.

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ORIGINAL

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY)

2014-CP-26-06382

ERIE INSURANCE EXCHANGE,)

Plaintiff,)

Transcript of Record

vs.)

March 17, 2015

GOVERNMENT EMPLOYEES)

INSURANCE COMPANY, MARK)

ALLISON SCOGGIN AND)

ANGELA BENNETT HILL,)

Defendants.)

B E F O R E:

Honorable Paul M. Burch
Horry County Courthouse
Conway, South Carolina

A P P E A R A N C E S:

J. Dwight Hudson, Esquire
Attorney for Defendant Erie Insurance

Robert T. King, Esquire
Attorney for Defendant GEICO

Kay H. Richardson
Circuit Court Reporter

000091

I N D E X

March 17, 2015

Pg.

By Mr. Hudson	3
By Mr. King	9
By Mr. Hudson	17
By Mr. King	21
By the Court	22
Certificate of Court Reporter	23

E X H I B I T S

<u>No.</u>		<u>ID</u>	<u>EV</u>
D1	Stipulation of Facts		3
D2	Deposition of Mark Allison Scoggin		3
D3	Plaintiff's Memorandum		3
D4	Memorandum of Law (GEICO)		3

1 (March 17, 2015 - 10:10 A.M.)

2 MR. HUDSON: We have a stipulation of facts in this
3 matter and I think we briefly mentioned it to you and I have
4 that marked and hand up to Your Honor.

5 DEFENDANT'S EXHIBIT NUMBER ONE THROUGH FOUR

6 ADMITTED INTO EVIDENCE

7 MR. HUDSON: This is the stipulation signed by all
8 parties including Maguire who will not be here. He's the
9 liability claims attorney and that's a memorandum which we ---

10 MR. KING: And the Deposition of the Defendant, Mr.
11 Scoggin and ---

12 MR. HUDSON: We have no objection to that Deposition of
13 Scoggin, Your Honor. Actually, that was taken in a liability
14 action and neither of the attorneys' firms were involved at
15 that time in the liability action but it just goes to, I
16 think, some testimony that the Court might want to consider
17 concerning the use of the particular vehicle that was involved
18 in the accident.

19 THE COURT: All right.

20 MR. HUDSON: May it please the Court?

21 THE COURT: Yes, sir.

22 BY MR. HUDSON:

23 MR. HUDSON: Your Honor, for the record, Attorney Dwight
24 Hudson representing Erie Insurance Exchange in connection with
25 the declaratory judgment action 2014-CP-26-6382.

1 I'll try to simplify this matter as much as possible even
2 though there are lot references to policy provisions in the
3 briefs. Both sides have cited numerous provisions of policy
4 in the memorandums that we just handed up to Your Honor.

5 Basically, this situation, if I can kind of explain it in
6 a nutshell has to do with Mr. Scoggin, who was living with his
7 mother who has since passed away. At the time of this
8 accident, she was still with us. The date of the accident was
9 September the 5th, 2012. It so happens that both Mr. Scoggin,
10 an adult male, single male living with his mother who was
11 probably not in the best of health at that time either, but
12 both of them had their own automobiles insured by GEICO, both
13 were insured by GEICO, separate policies, actually separate
14 policy amounts. This accident took place in North Myrtle
15 Beach and GEICO under the mother's policy, which Mr. Scoggin
16 was driving at the time, has paid their coverage of 50,000
17 approximately. My client Erie Insurance was the underinsured
18 carrier for the Plaintiff, it's a North Carolina policy. And
19 there are provisions in there in the North Carolina policies
20 for underinsured coverage that they have the option under
21 certain circumstances, if the policy holder doesn't have any
22 underinsured matters decided by arbitration in their home
23 county in North Carolina. That's one of the reasons because
24 of that option that I think the Court has agreed to let us go
25 ahead with this declaratory judgment action to decide

1 basically whether there is excess coverage before that takes
2 priority and comes before the underinsured motorist coverage
3 of Erie. The excess coverage would be, our contention is the
4 policy of approximately 25,000 coverage under Mr. Scoggin with
5 the excess. He was driving his mother's vehicle with
6 permission. So, that is basically the situation as far as
7 coverages go and the issues involved are that GEICO denied
8 coverage for excess coverage to the Plaintiff and Mr. Scoggin
9 saying he did not have any coverage. Our declaratory judgment
10 action is basically under the law is that they do, that their
11 attempt to defeat coverage, GEICO's attempt to defeat coverage
12 is invalid, void and against public policy.

13 I think the key to this case is also a Government
14 Employees Insurance or GEICO in the case came out this year or
15 last year, August of 2014, 409 S.C. 586, *Williams v. GEICO*,
16 and it had several key elements that we think are applicable
17 in this case. In that case, the Court said that, that any
18 policy of insurance forced to seek a limit or reduce the
19 coverage afforded by the provisions required by 38-77-142 is
20 void. Once the face amount of coverage is agreed upon, it may
21 not be arbitrarily reduced or limited by conflicting policy
22 provisions that retract the stated coverage. The dec sheets
23 involved in this policy has nothing about any limitations of
24 coverage or liability coverage based on any family
25 relationships or anything to that effect.

1 This case also holds if any attempt to reduce or defeat
2 coverage because of family relationships is void ab initio as
3 against public policy. This was a new case and addressing
4 that situation it said it just basically doesn't meet the
5 reasonable and rational test that it was valid based on family
6 relationships.

7 GEICO is seeking to defeat coverage based on their
8 definitions of owned and non-owned automobiles. What they
9 came out with in this denial letter says, well, the letter
10 stated that there is no excess coverage that would cause Mr.
11 Scoggin was not driving an owned or a non-owned vehicle. I
12 don't know what's in between but it didn't fit either one.

13 When we got the case, I looked at it and I said, well, it
14 seems like to me it's got to be one or the other, I don't know
15 what's in between. If you pay a premium, you've got that kind
16 of coverage and so I went and looked at it and I think the
17 rule of construction, having practiced for years and I think
18 most lawyers including my worthy opponents, when you're
19 looking for coverage, you're looking at the insurance policy,
20 you go look at that policy and you see what's excluded. You
21 have to see what coverage you have to find out what you don't
22 have and it should be in the exclusions. If they're relying
23 on this as simply a definition that conflicts really with the
24 omnibus clause of what is a non-owned vehicle and it's a non-
25 owned vehicle it's not covered if it's furnished for regular

1 use. This is not in the exclusions, it's simply in the
2 definitions. And they're attempting through some fairly
3 crafty craftsmanship or wordsmanship to put an exclusion in a
4 definition, really in the definitions and/or the omnibus
5 clause. Also, it says without any qualification in the policy
6 that there is excess coverage on non-owned automobiles or
7 automobiles you do not own. Not the magic words non-owned but
8 vehicles you do not own which is the old King's English, you
9 take the regular definition.

10 So, we have cited several issues in there as to
11 conflicting made provisions of the policy that should be under
12 the case law interpreted against GEICO. The *Williams v. GEICO*
13 that referred to that was a 2014 has a good -- and it's
14 attached to the stipulations and our memorandum -- I think
15 it's attached to our memorandum -- fully discusses why these
16 attempts to defeat coverage based on family relationships are
17 no longer valid. Where there is a split of authority
18 nationwide, the Supreme Court has come down solid with that
19 unequivocally that that is not a valid consideration in
20 coverage and you cannot defeat coverage.

21 Also, basically, is that it is not in any exclusions. In
22 other words, poor Mr. Scoggin thought he was covered, he was
23 driving but he's not according to GEICO when driving another
24 car in the family, which they say was provided for his regular
25 use. He even had his own car insured by them under a separate

1 policy. So, I don't think we have regular use whatsoever even
2 under the factual situation. But be that as it may, even
3 though it's not regular use, he just would drive that car
4 occasionally to take his mother's dog because the dog wanted
5 to get out occasionally and he had -- there was a little dog
6 seat in the car. Other than that, I don't think he drove the
7 car hardly any but he drove his own car. So, the
8 inconsistency and the logic of the Supreme Court should be
9 upheld and we think in this instance because it does equal the
10 family relationship and what you're dealing with here is Mr.
11 Scoggin, if he was driving his neighbor's car, next-door, if
12 his was broken down and not available for whatever reason that
13 he needed to borrow his neighbor's car, maybe he was out of
14 gas, he would've been covered. GEICO is saying no, because
15 you were in the same house as your mother, even though we
16 wrote separate policies, separate premiums, without
17 qualification or exclusion on the dec sheet and/or in the
18 policy, you're not covered based on this definition of non-
19 owned automobile. We say that that's invalid, void and
20 against public policy, that the excess insurance provided by
21 Mr. Scoggin's policy should be valid and come ahead of Erie's
22 underinsured motorist coverage which is available subject to
23 the coverages ahead of it with two GEICO policies.

24 BY MR. KING:

25 MR. KING: Thank you very much, Your Honor. May it

1 please the Court. Rob King here on behalf of the Defendant
2 Government Employees Insurance Company, otherwise known as
3 GEICO, Your Honor.

4 My esteem counsel started out by saying that this was a
5 pretty simple case and listening to his recitation of the
6 facts, I'm probably more confused than I ever was. But he's
7 right, it is a simple case. If you apply the plain
8 unambiguous language of the policy, you find that GEICO's
9 position is correct. The pertinent facts that have been
10 stipulated to and handed up to the Court are this: The
11 Defendant Mark Scoggin was living with his mother at the time
12 at the accident. He was driving his mother's vehicle at the
13 time of the accident. His mother's vehicle was insured under
14 a policy of insurance with GEICO carrying \$50,000 liability --
15 per person liability limits. That coverage was tendered to
16 the injured party who is a named Defendant but is not here
17 today, Ms. Hill. Mr. Scoggin had a separate vehicle that was
18 his. The car that he was driving at the time of the accident
19 was his mother's. He had a separate vehicle that was his.
20 That vehicle was at home, it wasn't out of use, it wasn't
21 anything, he just happened to be driving his mother's car
22 because it had a dog seat in the front and whenever he took
23 short trips, insisted that the dog -- the dog always insisted
24 that it go along with him. How the dog knew that they were
25 short trips, I'm not sure, but that his testimony was -- and

1 that's been handed up as well. His testimony was, was there a
2 reason you were driving your mom's car versus your own car and
3 the answer was yes. And the question was, what was that --
4 and I'm looking at Page 11 of the deposition, Your Honor. She
5 had a dog seat up in her car for a little dog and I had to
6 take the dog every time he went out or he'd pitch a fit. So,
7 I always took the dog with me on my short trips. Now, if it
8 was long, anything long drive, I wouldn't take him. That's
9 the only reason why I took the car because she had a seat set
10 up for him. So, he regularly took his mother's car on short
11 trips to accommodate the dog's wishes. In any event, the day
12 of the accident, Mr. Scoggin was not driving his vehicle that
13 was at home and that was insured under a separate policy with
14 GEICO. So, we've got two vehicles at the home owned by
15 relatives who meet the definition of relatives under the
16 policy provision, insured under separate policies. As I
17 mentioned, GEICO paid the first policy, the mother's vehicle
18 policy. They tendered limits in exchange for a covenant not
19 to execute. The Plaintiff then asserted an underinsured
20 motorist claim -- I said the Plaintiff -- Ms. Hill, who is a
21 Defendant, asserted a underinsured motorist claim against her
22 own coverage and the Plaintiff Erie Insurance Company a North
23 Carolina insurer then brought this declaratory judgment action
24 asserting that Mr. Scoggin's at-home policy on his vehicle
25 applies and is excess to his mother's policy.

1 In order to determine whether there is coverage under any
2 policy, as Your Honor is well aware, we look to the language
3 of the policy itself. And if that language is plain and
4 unambiguous, you apply the policy language as written. Only
5 if the policy is ambiguous do you then start with your typical
6 contract interpretation principles. Your Honor, in this case,
7 the policy was unambiguous and plain and it provides as
8 follows -- what Mr. Hudson has been referring to as the
9 omnibus clause I typically refer to as the coverage agreement
10 clause but it sets what the coverage is. That coverage
11 agreement says, and this is for the bodily injury liability
12 portion, that policy says under Section 1, bodily injury, we
13 will pay any damages which an insured becomes legally
14 obligated to pay because of, one, bodily injury sustained by a
15 person and; two, damage to or destruction of property arising
16 out of the ownership, maintenance or use of the owned auto or
17 a non-owned auto. We need to go further into the policy to
18 see what the definitions of owned auto, which is defined by
19 the policy, and non-owned auto, which is also defined by the
20 policy. An owned auto is one that is in essence covered under
21 the policy. It's described in the policy language or
22 described in the dec page, listed in the dec page. It doesn't
23 meet that definition. The vehicle that Mr. Scoggin was
24 driving doesn't meet that definition of an owned auto. It was
25 not listed in the dec page. Or one that is obtained by you

1 and becomes yours within thirty days. That didn't apply
2 either. Or a temporary substitute auto, and I'll address that
3 in just a second, Your Honor. But under any definition of
4 owned auto, the vehicle that Mr. Scoggin was not -- was
5 driving at the time does not meet that. It wasn't his
6 vehicle; it was his mother's vehicle; it wasn't obtained by
7 him and then listed on the policy; it remained his mother's
8 vehicle and it wasn't a temporary substitute auto. A
9 temporary substitute auto, Your Honor, is one that is, as Your
10 Honor, I'm sure is aware, one that is a substitute when your
11 vehicle is taken out of regular use because of breakdown, car
12 troubles, what have you, and that is certainly not the case.
13 In fact, his testimony is clear the reason he was driving his
14 mother's car was because of the dog, not because his was
15 broken down.

16 So, we turn to the definition of not-owned auto. The
17 definition of non-owned auto is under the policy is a private
18 passenger, farm or utility auto or trailer not owned by or
19 furnished for the regular use of either you or your relatives
20 except a temporary substitute auto. Your Honor, this vehicle,
21 as has been stipulated by all parties was owned by a relative
22 of Mr. Scoggin as defined by the policy. It was owned by Mr.
23 Scoggin's mother, a blood relative obviously, who lived with
24 him at the time of the accident. They resided in the same
25 household. It is by that definition not an owned auto. Under

1 the omnibus clause or coverage agreement clause, however you
2 want to label that particular clause, there simply is no
3 coverage under this policy for that. Now, Mr. Hudson says
4 public policy, *Williams v. GEICO*, you can't draw a distinction
5 between family members or base coverage decision on family
6 members. Your Honor, *Williams v. GEICO* has no application in
7 this case whatsoever. What *Williams* involved was, as I'm sure
8 Your Honor is well aware, a step-down provision. The
9 declarations page in the policy provided -- I can't remember
10 the exact language but I think it was 100/\$300,000 limits in
11 that page, I mean in that particular policy. A parent was
12 driving the vehicle and they got into an accident and the
13 children, passengers, family member passengers were injured.
14 They became the plaintiffs in that case. They asserted claims
15 against the parent and GEICO attempted to apply the family
16 step-down provision in that policy which was listed under some
17 other exclusionary portions not in the dec page that said
18 notwithstanding what's covered -- what's on the dec page, if a
19 family member injured in the accident and is asserting a claim
20 that we only apply minimum limits with South Carolina law, a
21 step-down. So, you had one limit for non-family member
22 innocent injured parties and a separate limit for family --
23 family members that was not provided for on the dec page.
24 What the Supreme Court actually said is that step-down
25 provision were the innocent injured party is a family member

1 is against public policy. There's no rational basis to
2 distinguish between family members versus non-family members
3 where they're the actual claimants. It didn't say that
4 coverage determinations were coverage definitions based on
5 family members and omnibus clauses or anything else are
6 invalid. The simple fact of the matter is in this case, there
7 is no coverage that's triggered under the policy. This isn't
8 an exclusion, this isn't anything other than a coverage
9 determination. The rationale behind these types of provisions
10 is obvious and is well established and the courts across the
11 nation have addressed them and found the policy or the policy
12 behind these -- the rationale behind these provisions is
13 valid. And that is, Your Honor, what you don't want to have
14 is a situation where a family has four or five cars but only
15 insures one of them. You title vehicles at home in different
16 family members name, you insure one of them and then you
17 basically buy insurance for five vehicles or however many
18 vehicles but only pay premiums on one of them. Your Honor,
19 you can't have a situation like that. And that's why the non-
20 owned auto excludes or takes out of the definition resident
21 relative -- resident relative vehicles. This provision, Your
22 Honor, and I cited to them in my brief, there are two notable
23 cases, Your Honor, that I've cited. One is out of Georgia and
24 one is out of Kansas that addressed these, addressed these
25 provisions and I'll hand up to Your Honor. Both have found,

1 found these types of provision valid and discussed at length
2 the rationale behind them.

3 So, Your Honor, in *GEICO v. Hanzlik* we had a situation
4 where a husband was driving his wife's vehicle, husband's
5 vehicle was insured under a GEICO policy with almost the same
6 language that we're dealing with today. He was operating his
7 wife's vehicle at the time of the accident. His wife's
8 vehicle happened to be insured under a State Farm policy and
9 the court applied the non-owned auto definition to say that
10 the GEICO policy does not apply. It does not apply to excess
11 coverage. The *Danforth* provision actually addressed the same
12 language but in a temporary substitute auto situation and it
13 discussed the rationale and the -- I'm sorry -- I may've
14 flipped those, Your Honor. *Danforth* is the GEICO -- *Danforth*
15 is the Georgia case and the *Hanzlik* case is the Kansas case.
16 Both of them addressed this identical language that we're
17 dealing with and found -- and found the provisions valid and
18 applicable. The -- I believe in *Danforth*, he was operating
19 the -- the insured was operating his mother's vehicle at the
20 time of the accident, so we have an almost identical situation
21 here.

22 Your Honor, the provisions do not conflict with 38-77-142
23 which the Plaintiff cites. What that provision actually deals
24 with is where there's applicable coverage. You can't then
25 arbitrarily reduce the limits, the coverages available under

1 the declarations limits. We have a situation here that the
2 coverage is never triggered to begin with.

3 It seems to be that Erie's position, Your Honor, is that
4 you can never have any -- if you issue a declarations page
5 then you've always got to honor your coverage, you've always
6 got to provide whatever those policy limits are and we know
7 that that's not the case. We have exclusions, we have policy
8 definitions, we have coverage agreement clauses, omnibus
9 clauses, all of which have to be considered in whole and all
10 of which define where there's coverage and where there's not
11 in addition to the statutes. You can't just say you've issued
12 a declarations page, the declarations page says you have 25/50
13 in coverage, therefore that applies all the time in every
14 situation and we know that is simply not the case, Your Honor.
15 And Williams doesn't hold otherwise and neither does 38-77-
16 142.

17 Finally, Your Honor, the Plaintiff cites to the other
18 insurance provision of the policy and that other insurance
19 provision provides any insurance we provide for losses arising
20 out of the ownership, maintenance or use of a vehicle, you do
21 not own and shall not be -- or shall be excess over any other
22 valid and collectible insurance.

23 Your Honor, what the Plaintiff -- what Erie wants to skip
24 over is the first part of that policy. They want to go
25 directly to we provide excess coverage and say, ah ha, that's

1 it. What they skip over is any insurance we provide for
2 losses. There first has to be coverage for the excess
3 provision to apply. The other insurance clause doesn't
4 establish coverage. What the other insurance provision does,
5 as Your Honor I'm sure is aware, is establishes priority of
6 applicable policies. If there is no coverage, then the other
7 insurance provision is meaningless because there's no
8 coverage. It's only when you have two or more applicable
9 policies that cover the same loss do you look to the other
10 insurance to determine whose policy goes first. Here you
11 don't get to that point, Your Honor, because the other
12 insurance provision -- I mean, because the policy that we're
13 here to talk today simply does not apply. So, priorities is
14 meaningless.

15 And I'll be happy to answer any questions the Court may
16 have. Otherwise, we've submitted a memorandum of law that
17 addresses all this, Your Honor.

18 Thank you.

19 THE COURT: Mr. Hudson?

20 BY MR. HUDSON:

21 MR. HUDSON: Again, Your Honor, bringing up a couple -- a
22 few items, but basically also repeating the fact that none of
23 this is in the exclusions to the policy, none whatsoever.
24 We've cited all applicable law as to ambiguities and exactly
25 what GEICO is trying to -- attempting to do with their

1 language in this policy. And I might add, without going
2 through every word but pretty much looking at the policy, this
3 is a pretty much identical policy that was used in the 2014
4 *Williams v. GEICO* case that we've cited and handed up to the
5 Court that we think is pretty much controlling in this
6 situation. If I can cite from that case, Your Honor, where
7 our Supreme Court -- and basically, there's no question
8 they're trying to limit or deny coverage in this situation,
9 that's what they've done, based on a family relationship
10 situation and nothing else. That's what's involved here.
11 We've got two automobiles, we don't have one policy holder
12 with several cars or anything like that or several drivers.
13 It says family exclusions are injurious to a substantial
14 segment of the citizens of our common -- they're citing a
15 Kentucky case of which they adopt -- of our commonwealth.
16 They deny injured persons the ability to rely on the insurance
17 coverage purchased by the policyholder. As a result,
18 seriously injured accident victims will suffer financial
19 hardship if the family exclusion clauses are validated.
20 Almost every member of the public is potentially a member of
21 this excluded class. The exclusion is overly broad, based
22 upon surmise and against the public good. It's time for us to
23 take the next logical step, thus we hold that the family
24 exclusion provisions in liability insurance contracts violate
25 the public policy of this commonwealth and unenforceable. The

1 Supreme -- South Carolina Supreme Court, we agree with the
2 Court's reasoning in *Lewis* -- that's the name of that Kentucky
3 case -- to allow an insurer to determine the extent to which
4 an injured party can recover within the insured's policy
5 coverage based solely on familial relationship is arbitrary
6 and capricious and violative of public policy. As I said
7 earlier, if Mr. Scoggin had been driving his neighbor's car,
8 plenty of coverage. The mere fact that he was living with his
9 mother and they each had their own cars and their own
10 policies, then they're attempting to deny coverage we think in
11 a situation that is violative, clearly violative of public
12 policy and really serves no rationale. We have, as far as the
13 regular use, a South Carolina case 260 S.C. 150, 194 S.E.2d
14 877, even though I don't necessarily think we need to go
15 there, but this is not in any circumstances a regular use.
16 The Court -- actually, I think it was a Georgetown County
17 case, 1973, and the reason for regular use in those is that
18 the intent is clear to protect the insurer of a situation
19 whereby an insured can purchase a policy covering one
20 automobile and be covered without qualification as to all
21 automobiles available for the use, regular use is used through
22 an automobile policy provisions setting out the exclusion from
23 the driver of the car. Language of the policy suggests a
24 principle use as distinguished from a casual or incidental
25 use. Under a liability policy excluding coverage where an

1 automobile involved in an accident was furnished for regular
2 use to the insured, the term may be used in sense of time,
3 steady as opposed to the occasional or the sense of type of
4 use, usual as against the unusual. So, this -- I don't think
5 this is regular use. This is not a high school student. This
6 is not furnishing it for your wife or whatever. This was just
7 at best an occasional use. But backing up to the exclusion --
8 and it's not an exclusion, Your Honor, that's the key. One of
9 the real keys and key salient points of this, it's not even
10 listed in the exclusions. It's in the omnibus clause and the
11 way they defined it, even though it's a non-owned automobile,
12 it's really addressing to coverage. By all rights, it should
13 be in the exclusion. What is it simply doing is reducing that
14 coverage for which Mr. Scoggin paid a premium on that dec
15 sheet without any reference on that dec sheet whatsoever to
16 any of the exclusions and it wasn't even included in the
17 exclusions.

18 So, we just say it's invalid, it's against public policy
19 that there are so many ways that they could've made this clear
20 to a policy owner when he's buying a policy. What you do, as
21 I said earlier at the start of this argument, you go to the
22 exclusions. You'll never find this except in some situation
23 like this that they crunch the language to fit this situation,
24 factual situation, which it really doesn't fit this factual
25 situation. So, we say it's just going against public policy

1 and *Williams v. GEICO*, a 2014 case, addresses all the
2 situations involved here. And, of course, we have the general
3 law as to ambiguity and conflicting provisions of the policy
4 which is set out in our brief and in our complaint.

5 Thank you.

6 THE COURT: Anything else?

7 BY MR. KING:

8 MR. KING: Your Honor, just one point, the Kentucky case,
9 the *Lewis* case that is cited and Mr. Hudson referenced in the
10 *Williams* case is also a step-down provision, identical
11 provision. The concern was the family exclusion in a step-
12 down where the innocent injured party is the -- is the family
13 member. It has nothing to do with this situation. This
14 language is never even quoted, cited, mentioned. This type of
15 situation was not discussed at all in the *Williams* case and it
16 doesn't apply. The fact the Georgetown County case that
17 counsel just read, I believe, from his iPhone to the Court, it
18 addresses the rationale for these types of provisions and
19 clearly upholds that policy behind these and that's all I have
20 to say about that, Your Honor.

21 BY THE COURT:

22 THE COURT: Okay. All right. Give Sam and I a few days
23 to work this out. Y'all get me some proposed orders, say, in
24 twenty days.

25 MR. KING: Certainly, Your Honor.

1 MR. HUDSON: Thank you, Your Honor.

2 MR. KING: Thank you.

3 THE COURT: Good seeing you.

4 (ADJOURNED - 10:49 A.M.)

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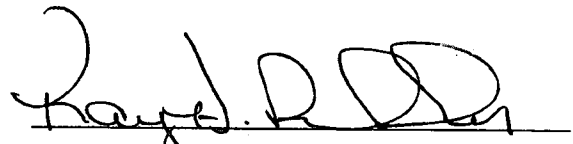
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C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of Erie Insurance Exchange versus Government Employees Insurance Company, et al., held in the Court of Common Pleas for Horry County, Horry County Courthouse, Conway, South Carolina, on March 17, 2015.

I do hereby certify that I am neither of kin, counsel, nor interest to any party hereto.



Kay H. Richardson

Official Court Reporter

October 15, 2015.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRD JUDICIAL CIRCUIT
COUNTY OF HORRY	)	Case No: 2014-CP-26- 6382

Erie Insurance Exchange,	)
	)
Plaintiff,	)
	)
vs.	)
	)
Government Employees Insurance	)
Company, Mark Allison Scoggin and	)
Angela Bennett Hill,	)
	)
Defendants.	)
_____	)

STIPULATION of FACTS

The parties named above, by their signature or by and through their undersigned counsel, do hereby STIPULATE to the following facts:

1. The Plaintiff, Erie Insurance Exchange (Hereinafter "Erie"), is a corporation organized and existing pursuant to the laws of some State of the United States of America, and is engaged in the insurance business and conducts business in the County of Horry, State of South Carolina.
2. The Defendant, Government Employees Insurance Company (Hereinafter "GEICO"), is a corporation organized and existing pursuant to the laws of some State of the United States of America, and is engaged in the insurance business and conducts business in the County of Horry, State of South Carolina.
3. The Defendant, Mark Allison Scoggin, is a citizen and resident of the County of Horry, State of South Carolina.
4. The Defendant, Angela Bennett Hill, is a citizen and resident of Wake County, North Carolina.
5. On September 5, 2012, at or around 6:10 p.m. Defendant Hill was operating a 2011 Hyundai eastbound on 11th Avenue North when Hill alleges that a 2002 Ford Taurus SEL operated by Defendant Scoggin made a left turn across her lane of travel, colliding with her vehicle. Defendant Hill alleges that she suffered injuries in this

accident and she filed suit in Horry County, which action bears case number 13-CP-26-2592 and is captioned as follows: "Angela Bennett Hill vs. Mark Allison Scoggin." The exact circumstances and chain of events relative to the collision are contested, as are liability and damages, but all parties agree that the subject motor vehicle accident occurred on the aforesaid date, at the aforesaid time, and in the aforesaid location.

6. On the date of the subject accident, the 2002 Ford Taurus SEL operated by Defendant Scoggin was owned by his Mother, the late Mildred Scoggin, with whom Defendant Scoggin resided. The vehicle, bearing VIN 1FAHP59SO2A211430, was insured by GEICO for coverage period 06/03/12-12/03/12 under Policy Number 0929-32-50-09 with liability coverage of \$50,000.00 per person and \$100,000.00 per accident.

The Declarations Page for this Policy is attached hereto as EXHIBIT A.

7. On the date of the subject accident, Defendant Mark Scoggin owned a 2005 Chevrolet Colorado VIN 1GCDT136458245763, which was insured by GEICO for coverage period 07/27/12-01/27/13 under Policy Number 4085-57-17-45 which provided liability coverage of \$25,000.00 per person and \$50,000.00 per accident. **The**

Declarations Page for this Policy is attached hereto as EXHIBIT B.

8. On the date of the subject accident, the 2011 Hyundai Elantra operated by Plaintiff Hill was owned by Mauren Craig. The vehicle, bearing VIN KMHDH4AE8BU149209, was insured by Erie Insurance Exchange for named insureds Robert Hill and Angela Hill for coverage period 05/11/12-05/11/13 under Policy Number Q05 1107128 which provided undersured/underinsured motorist coverage of \$100,000.00 per person and \$300,000.00 per accident. **The Declarations Page for this Policy is attached hereto as EXHIBIT C.**

9. Thereafter, Hill made claim(s) under the aforementioned policies and subsequently filed the lawsuit referenced above.

10. GEICO has defended Hill's lawsuit under the Mildred Scoggin policy covering the vehicle being operated by Mark Scoggin on the date of the accident and it has now paid the liability coverage of \$50,000.00 available under that policy.

11. GEICO denies that the Mark Scoggin policy provides excess coverage of \$25,000.00 for the subject accident and it issued the denial letter which is attached hereto as **Exhibit D**. This letter includes GEICO's denial of coverage for the Mark Scoggin

policy because: "The Ford Taurus that Mr. Scoggin was driving is not considered as an owned or non-owned vehicle as described in the policy."

12. The GEICO policy applicable to both Mildred Scoggin and Mark Scoggin is attached hereto as **Exhibit E and an applicable Amendment thereto is attached as Exhibit E1**. The policy and amendment include the following definitions:

- (a) **"Insured** means a person or organization described under PERSONS INSURED."
(GEICO Policy; "Definitions" - #4)
- (b) **"Relative** means a person who continuously lives in your household, and is related to you by blood, marriage, or adoption (including a ward or foster child.)"
GEICO Policy Amendment; "Definitions" - #8)
- (c) **"Non-owned auto** means a private passenger, farm, or utility auto or trailer not owned by or furnished for the regular use of the either you or your relatives, except a temporary substitute auto. You or your relatives must be using the non-owned auto or trailer within the scope of permission given by its owner. A non-owned auto rented or leased for more than 30 days will be considered as furnished for regular use. (GEICO Policy Amendment; "Definitions" - #5)
- (d) **"Owned auto** means: (a) a vehicle described in this policy for which a premium charge is shown for these coverages; (b) a **trailer** owned by you; (c) a **private passenger, farm or utility auto**, ownership of which **you** acquire during the policy period or for which **you** enter into a lease during the policy period for a term of six months or more, if: (i) it replaces an **owned auto** as defined in (a) above; or (ii) we insure all **private passenger, farm and utility autos** owned or leased by **you** on the date of the acquisition, and **you ask** us to add it to the policy no more than 30 days later; (GEICO Policy; "Definitions" - #6)
- (e) **"Temporary substitute auto** means an automobile or **trailer**, not owned by **you**, temporarily used with the permission of the owner. This vehicle must be used as a substitute for the **owned auto or trailer** when withdrawn from normal use because of its breakdown, repair, servicing, loss or destruction. (GEICO Policy; "Definitions" - #9)

13. The omnibus clause of the GEICO policy states as follows:

LOSSES WE WILL PAY FOR YOU UNDER SECTION I

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

1. **bodily injury**, sustained by a person; and
 2. damage to or destruction of property;
- arising out of the ownership, maintenance or use of the **owned auto** or a **non-owned auto**.

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

(GEICO Policy; p. 4 of 15)

14. As to excess coverage, the GEICO policy states as follows: "Any insurance we provide for losses arising out of the ownership, maintenance or use of a vehicle **you** do not own shall be excess over any other valid and collectible insurance. (GEICO Policy; "Other Insurance")

15. The policy of Erie Insurance Exchange applicable to Defendant Hill, the Plaintiff in the underlying liability action, is attached hereto as **Exhibit F** is a North Carolina policy and under the terms of the policy and pursuant to North Carolina law, Erie's coverage is offset by the liability coverage and, in addition, Erie has paid the Plaintiff its medical payments coverage of \$1,000.00 which it is also entitled to offset.

16. The interests of the unrepresented Defendant, Mark Allison Scoggin, are protected by the Covenant Not to Execute entered as part of GEICO's settlement under his late mother's policy. Because of the Covenant, Mr. Scoggin will not be personally affected by the Court's determination. The other parties, who will likely be affected by the Court's determination in this action, by and through their attorneys of record, have signed below, Stipulating to these facts.

WHEREFORE, the stipulating parties ask that the Court consider the same, together with the parties' pleadings, arguments and Memoranda (if any) and determine whether the subject GEICO policy provides excess insurance coverage for the underlying motor vehicle accident.

WE SO STIPULATE:

J. Dwight Hudson, Esq.
Attorney for Plaintiff
Erie Insurance Exchange

Edward A. Love, Esq.
Attorney for Defendant
Government Employees Insurance Company

Ian D. Maguire, Esq.
Attorney for Defendant
Angela Bennett Hill

EXHIBIT A

5



Tel: 1-800-841-3000

GOVERNMENT EMPLOYEES INSURANCE COMPANY

One GEICO Center
Macon, GA 31295-0001

Date Issued: April 20, 2012

MILDRED ALLISON SCOGGIN
PO BOX 438
NORTH MYRTLE BEACH SC
29597-0438

Email Address: Log in to geico.com to update

Declarations Page

This is a description of your coverage.
Please retain for your records.

Policy Number: 0929-32-50-09

Coverage Period:

06-03-12 through 12-03-12

12:01 a.m. local time at the address of the named insured.

Named Insured

Mildred A Scoggin

Additional Drivers

None

Vehicle

VIN

Vehicle Location

**Finance Company/
Lienholder**

1 2002 Ford Taurus SEL 1FAHP59S02A211430 Little River SC 29566

Coverages*

Limits and/or Deductibles

Vehicle 1

Bodily Injury Liability		
Each Person/Each Occurrence	\$50,000/\$100,000	\$446.50
Property Damage Liability	\$25,000	\$263.80
Medical Payments	\$1,000	\$38.20
Uninsured Motorists Bodily Injury		
Each Person/Each Occurrence	\$50,000/\$100,000	\$37.60
Property Damage	\$25,000	\$6.80
Underinsured Motorist Bodily Injury	\$50,000/\$100,000	\$65.80
Each Person/Each Occurrence		
Property Damage	\$25,000	\$2.80
Comprehensive	\$500 Ded	\$179.20
Collision	\$500 Ded	\$296.00
Emergency Road Service	Full	\$10.40
Rental Reimbursement	\$30 Per Day	\$18.30
	\$900 Max	-
Total Six Month Premium		\$1,365.40

*Coverage applies where a premium or \$0.00 is shown for a vehicle.

If you elect to pay your premium in installments, you may be subject to an additional fee for each installment. The fee amount will be shown on your billing statements and is subject to change.

T-W

DEC_PAGE (11-11) (Page 1 of 2)

Continued on Back
Renewal Policy Page 7 of 18

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Discounts

The total value of your discounts is	\$47.70
Seatbelt (All Vehicles)	\$6.70
Anti-Lock Brakes (All Vehicles)	\$15.60
Passive Restraint/Air Bag (All Vehicles)	\$25.40

Contract Type: A70SC

Contract Amendments: ALL VEHICLES - A54SC A70SC

Unit Endorsements: A115A (VEH 1); A347 (VEH 1); A431 (VEH 1); M700ERS2 (VEH 1);
M700RR (VEH 1)

Important Policy Information

- Please review the front and/or back of this page for your coverage and discount information.
- Active Duty, Guard, Reserve or Retired Military: Call 1-800-MILITARY to see if you qualify for the Military Discount.
- Special 50+ rating applies.
- Congratulations! Your policy has been issued with our Prime Time Contract that contains a lifetime renewal guarantee provision. Please review your policy contract for specific exceptions to this guarantee.
- The following fees are applicable to South Carolina policies and failure to pay any fee when due could result in us commencing collection proceedings against you: Installment Fees-\$5.00, Electronic Fund Transfer Fee-\$1.00, Returned Check Fee-\$20.00 and Certificate of Financial Security/SR22 Filing Fee-\$25.00.
- Reminder - Physical damage coverage will not cover loss for custom options on an owned automobile, including equipment, furnishings or finishings including paint, if the existence of those options has not been previously reported to us. This reminder does NOT apply in VIRGINIA and NORTH CAROLINA. Please call us at 1-800-841-3000 or visit us at geico.com if you have any questions.
- The GEICO group of companies includes three automobile insurance companies presently writing insurance coverage in South Carolina. You are not receiving the lowest rate in the GEICO group because of the driving convictions. Being a good driver will help improve your rates.
- The GEICO group of companies includes three automobile insurance companies presently writing insurance coverage in South Carolina. You are not receiving the lowest rate in the GEICO group because of the accident(s) on the driving record. Being a good driver will help improve your rates.

EXHIBIT B



Tel: 1-800-841-3000

One GEICO Center
Macon, GA 31295-0001

Policy Number: 4085-57-17-45

GEICO Use: 39 A70SC

**GOVERNMENT EMPLOYEES INSURANCE
COMPANY**

June 23, 2012

MARK SCOGGIN
PO BOX 438
N MYRTLE BCH SC 29597-0438



Dear Mark Scoggin,

Thank you for continuing to be part of the GEICO family and trusting us to meet your insurance needs. We appreciate the opportunity to provide you this valuable coverage. We're here for you 24/7, 365 days a year.

Enclosed in your packet you will find the following important insurance documents:

Identification (ID) Cards (Pages 3 - 4) - Please review and retain your Identification (ID) Cards. On the back is the phone number for Customer Service and Claims.

Billing Statement (Pages 5 - 6) - Please review your payment schedule and learn about money saving opportunities through our automatic payment options.

Declarations Page (Pages 7 - 8) - Here you will find your coverages, drivers, vehicles, discounts and other policy information. Please retain for your records.

Additional Insurance Documents (Pages 9 - 14) - Includes additional policy documents.

We value you as our policyholder and look forward to serving your insurance needs for many years to come. For additional insurance services, please review the "Insuring what's important to you" section. If you have any questions, please contact GEICO at geico.com or 1-800-841-3000. We'll be happy to help you!

Sincerely,

O. M. Nicely
Chairman

COVER_LTR

(over, please)
000123

Insuring what's important to you



Sure GEICO insures cars ...but did you know we can help you insure your home? It's true! Whether you rent or own, the GEICO Insurance Agency has something for you, so get a free quote today on geico.com. If you buy, it may qualify you for our multi-policy discount (and we know you like to save).



Got a motorcycle? We've got insurance to protect your ride. Get a free quote today to see how much you could be saving (to spend on gear, of course).



Think of a Personal Umbrella Policy like a safety net for your everyday life. It protects your assets in the event of a significant incident. It's surprisingly affordable, so call for a free quote today.



Own a boat? If so, we hope you know we can help with personal watercraft coverage for folks that love time on the water. Get a quote on geico.com and set sail for some savings.



Expand your horizons with an RV insurance quote. Our coverage fits your needs whether you're a weekender or a year-round traveler. Visit geico.com/getaquote/rv for a free RV quote today.

Putting you in control and saving you time



With our paperless bill, paperless policy and automatic billing options like electronic funds transfer (EFT) or recurring card payments (RCP), you can help save a tree or two while having 24/7 access to your account and peace of mind knowing your policy is paid for.

Please visit **geico.com** or call **1-800-841-3000** to get a quote, make a policy change or to file a claim.

Homeowners, Renters and Boat are written through non-affiliated insurance companies and are secured through the GEICO Insurance Agency, Inc. GEICO Motorcycle insurance is written by GEICO Indemnity Company.

GEICO South Carolina Insurance
geico.com Identification Card 1-800-841-3000

GOVERNMENT EMPLOYEES INSURANCE COMPANY
One GEICO Center • Macon, GA 31295-0001
The liability coverage provided by this policy meets the minimum financial responsibility requirements of South Carolina law.

Policy Number	Effective Date	Expiration Date	
4085-57-17-45	07-27-12	01-27-13	
Year	Make	Model	Vehicle ID No.
2005	CHEV	COLORADO	1GCDT136458245763
Insured:			
Mark Scoggin			

PLEASE KEEP THIS CARD IN YOUR VEHICLE AT ALL TIMES

GEICO South Carolina Insurance
geico.com Identification Card 1-800-841-3000

GOVERNMENT EMPLOYEES INSURANCE COMPANY
One GEICO Center • Macon, GA 31295-0001
The liability coverage provided by this policy meets the minimum financial responsibility requirements of South Carolina law.

Policy Number	Effective Date	Expiration Date	
4085-57-17-45	07-27-12	01-27-13	
Year	Make	Model	Vehicle ID No.
2005	CHEV	COLORADO	1GCDT136458245763
Insured:			
Mark Scoggin			

PLEASE KEEP THIS CARD IN YOUR VEHICLE AT ALL TIMES

Important Information

Here are your Insurance Identification Cards. Two cards have been provided for each vehicle insured. Please destroy your old cards when the new cards become effective. A law enforcement officer may ask you to prove that you have liability insurance meeting the basic requirements of South Carolina law. The Insurance Identification cards provide this proof.

Due to space limitations on the ID Card, only the Named Insured and the Co-Insured are listed. For a full list of Drivers covered under this policy, please reference the Driver's Section on your Declarations Page (Page 7).

Please notify us promptly of any change in your address to be sure you receive all important policy documents.

If you would like additional ID Cards, you can log into your policy online at **geico.com** or call us at **1-800-841-3000**.

MARK SCOGGIN
PO BOX 438
N MYRTLE BCH SC 29597-0438

VOID

VOID

VOID

VOID

000125

What to do at the time of an accident.

- Do not admit fault.
- Do not reveal the limits of your liability coverage to anyone.
- Exchange contact information; get year, make, model, plate number, insurance carrier and policy number of all involved. Also, identify witnesses and collect contact information.
- Contact the police or 911 if applicable.
- Contact GEICO by calling **1-800-841-3000** or visit **geico.com** to report the accident.

U-4-SC (01-10)

What to do at the time of an accident.

- Do not admit fault.
- Do not reveal the limits of your liability coverage to anyone.
- Exchange contact information; get year, make, model, plate number, insurance carrier and policy number of all involved. Also, identify witnesses and collect contact information.
- Contact the police or 911 if applicable.
- Contact GEICO by calling **1-800-841-3000** or visit **geico.com** to report the accident.

U-4-SC (01-10)

**BILL**

Government Employees Insurance Company

Policy Number & Period

Auto

Policy # 4085-57-17-45

Jul-27-12 to Jan-27-13

GEICO CUSTOMER SERVICE CONTACTS

Billing Payment Options:

Mail

Internet: Visit geico.com

EFT: To enroll, see below.

Phone Pay: To pay with a check over
the phone, call 1-800-932-8872.

Policy Changes: Visit geico.com or call

1-800-841-3000

Billing Activity**Activity Date & Description****Amount**

BALANCE FROM PREVIOUS POLICY TERM	\$	385.20
Jan-16-Policy Change	\$	-1.68
Jan-16-Policy Change	\$	-30.80
Jan-19-Payment Received - Thank You	\$	-352.72
Jun-22-Policy Renewal	\$	357.70
CURRENT BALANCE AS OF Jun-25-12	\$	357.70

Payment Schedule

Due	Amount
Jul-27-12	\$ 357.70

It's easy to pay your future bill(s) with our Electronic Funds Transfer (EFT) program. To enroll in Electronic Funds Transfer (which automatically debits your checking account), please read and sign the Authorization Agreement on the stub portion below. (Your Signature is required to enroll in EFT.) ONLY SIGN BELOW IF YOU WANT TO ENROLL IN ELECTRONIC FUNDS TRANSFER (EFT).

The banking information on your enclosed check will be used to process your request. Your next scheduled payment will be the first payment to be automatically withdrawn.

When enrolling in Electronic Funds Transfer (EFT), you authorize GEICO to initiate automatic debits for future premium payments to the checking account used to make this payment, and you authorize your financial institution to debit your account for these payments. You acknowledge that changes to your policy or rate structure may change the amount debited. Three (3) business days are required to deactivate the EFT program.

MESSAGES:

-Your current insurance expires as of 12:01 a.m. on Jul-27-12. If your payment of \$357.70 is not received prior to Jul-27-12, this renewal policy will be void.

Please detach and return the portion below with your payment made payable to GEICO in the enclosed envelope.

AUTHORIZATION AGREEMENT FOR ELECTRONIC FUNDS

TRANSFER (EFT): I hereby authorize GEICO to initiate automatic debits for future premium payments to the checking account used to make this payment, and I authorize my financial institution to debit my account for these payments. I acknowledge that changes to my policy or rate structure may change the amount debited.

To Enroll in EFT - Sign Here _____

Policy Number: 4085-57-17-45

Issue Date: Jun-25-12

CURRENT BALANCE \$ 357.70

Due Date: Jul-27-12

Minimum Amount Due**\$357.70**

MARK SCOGGIN
PO BOX 438
N MYRTLE BCH SC 29597-0438

ONE GEICO PLAZA
Bethesda, MD 20810-0001

4085571745 1220999100236 00357707 00357707

Payment Plans

A premium installment charge will be included in the bill for each installment, excluding the One Payment Plan.

One Payment	100% due on the policy effective date
Two Payment	50% due on the policy effective date 50% due two months after the policy effective date
Three Payment	40% due on the policy effective date 30% due one month after the policy effective date 30% due two months after the policy effective date
Four Payment	25% due on the policy effective date 25% due one, two, and three months after the policy effective date
Six Payment	16.66% due one month prior to the policy effective date 16.66% due on the policy effective date 16.66% due one, two, three and four months after the policy effective date

Payment Options	
Automatic Payments	Pay your bills automatically. (1) Enroll in Electronic Funds Transfer (EFT) by enclosing your check and signing the Authorization Agreement on your bill stub. You may also enroll in EFT by visiting geico.com or calling us at 1-800-932-8872; or (2) Enroll in recurring card payment by visiting us at geico.com or calling us at 1-800-932-8872.
Internet	Pay your bill online by visiting our website at geico.com .
Phone Pay	Make payments using your checking account or debit or credit card. Call 1-800-932-8872.
Mail	Use the enclosed envelope to mail your payment.

Payment Address: GEICO Remittance Center
One GEICO Plaza
Bethesda, MD 20810-0001

Policy Number: 4085-57-17-45

EXCPP4 (11-07)

Paying by check authorizes GEICO to send your check information electronically to your bank. Your account may be debited the same day we receive your payment. You will not receive your cancelled check, however the transaction will appear on your bank statement. If we cannot post the transaction electronically, we may present a copy of your check for payment.



Tel: 1-800-841-3000

Declarations Page

This is a description of your coverage.
Please retain for your records.

GOVERNMENT EMPLOYEES INSURANCE COMPANY

One GEICO Center
Macon, GA 31295-0001

Date Issued: June 23, 2012

Policy Number: 4085-57-17-45

Coverage Period:

07-27-12 through 01-27-13

12:01 a.m. local time at the address of the named insured.

MARK SCOGGIN
PO BOX 438
N MYRTLE BCH SC 29597-0438

Email Address: scogginmark@yahoo.com

Named Insured

Mark Scoggin

Additional Drivers

None

<u>Vehicle</u>	<u>VIN</u>	<u>Vehicle Location</u>	<u>Finance Company/ Lienholder</u>
1 2005 Chev Colorado	1GCDT136458245763	Little River SC 29566	Bb&T Sales Finance

<u>Coverages*</u>	<u>Limits and/or Deductibles</u>	<u>Vehicle 1</u>
Bodily Injury Liability		
Each Person/Each Occurrence	\$25,000/\$50,000	\$80.80
Property Damage Liability	\$25,000	\$61.60
Uninsured Motorists Bodily Injury		
Each Person/Each Occurrence	\$25,000/\$50,000	\$19.00
Property Damage	\$25,000	\$3.70
Underinsured Motorist Bodily Injury	Insured-Rejects	-
Each Person/Each Occurrence		
Property Damage	Insured-Rejects	-
Comprehensive	\$500 Ded	\$97.90
Collision	\$500 Ded	\$94.70
Total Six Month Premium		\$357.70

*Coverage applies where a premium or \$0.00 is shown for a vehicle.

If you elect to pay your premium in installments, you may be subject to an additional fee for each installment. The fee amount will be shown on your billing statements and is subject to change.

Discounts

The total value of your discounts is	\$63.50
Anti-Lock Brakes (All Vehicles)	\$5.00
Anti-Theft Device (All Vehicles)	\$5.10
5 Year Good Driving (All Vehicles)	\$53.40

Contract Type: A70SC

Contract Amendments: ALL VEHICLES - A54SC A70SC

Unit Endorsements: UE316 (VEH 1)

Important Policy Information

- Please review the front and/or back of this page for your coverage and discount information.
- Special 50+ rating applies.
- Congratulations! Your policy has been issued with our Prime Time Contract that contains a lifetime renewal guarantee provision. Please review your policy contract for specific exceptions to this guarantee.
- The following fees are applicable to South Carolina policies and failure to pay any fee when due could result in us commencing collection proceedings against you: Installment Fees-\$5.00, Electronic Fund Transfer Fee-\$1.00, Returned Check Fee-\$20.00 and Certificate of Financial Security/SR22 Filing Fee-\$25.00.
- Reminder - Physical damage coverage will not cover loss for custom options on an owned automobile, including equipment, furnishings or finishings including paint, if the existence of those options has not been previously reported to us. This reminder does NOT apply in VIRGINIA and NORTH CAROLINA. Please call us at 1-800-841-3000 or visit us at geico.com if you have any questions.
- Confirmation of coverage has been sent to your lienholder and/or additional insured.

GOVERNMENT EMPLOYEES INSURANCE COMPANY

Service and Installment Fees

The following Service and or Payment installment fees are applicable to South Carolina policies:

Installment Fees:	\$5.00 (\$3.00 for GEICO umbrella policies)
Electronic Fund Transfer Fee:	\$1.00 (in lieu of installment fee)
Returned Check Fee:	\$20.00
Certificate of Financial Security/SR22 Filing Fee:	\$25.00

Failure to pay any of the above applicable service fees could result in us commencing collection proceedings against you.



GOVERNMENT EMPLOYEES INSURANCE COMPANY

Policy Number: 4085-57-17-45

Notice of Change in Policy Terms

Your Loss Payable Clause Endorsement has been revised. These changes can be found in the enclosed policy documents. Please read the endorsement for the specific language added to your policy.

GOVERNMENT EMPLOYEES INSURANCE COMPANY

ENDORSEMENT

LOSS PAYABLE CLAUSE

The Policy Number and Effective Date need be completed only when this endorsement is issued subsequent to preparation of the policy.

Policy Number: 4085-57-17-45

Effective Date: 07-27-12

Any covered **loss** under the Physical Damage Coverages of the policy will be paid jointly to the **insured** and the Lienholder in the Declarations. We may settle a claim at our option by separate payment to the **insured** and the Lienholder. The Lienholder's interest will not be protected:

1. When fraud, misrepresentation, material omission, or intentional damage has knowingly been committed by or at the direction of any **insured**; or
2. In any case of conversion, embezzlement, secretion, or intentional damage to the vehicle(s) by or at the direction of any **insured**, or any owner of the vehicle(s); or
3. For any **loss** or damage caused by, or reasonably expected to result from, a criminal act or omission of any **insured** or any owner of the vehicle(s). This applies regardless of whether any **insured**, or any owner of the vehicle(s) is actually charged with, or convicted of a crime. For the purpose of this clause, criminal acts or omissions do not include traffic violations.

The Lienholder has no greater rights under the provisions of the policy than any **insured**.

The Lienholder must notify us if they become aware of any increased hazard or change of ownership of the vehicle(s) or they will lose all rights under this policy.

If any **insured** fails to file with us a Proof of Loss within 91 days after the **loss**, the Lienholder must do so within the following 60 days.

Whenever we pay the Lienholder, we shall be subrogated to the Lienholder's rights of recovery to the extent of our payment to the Lienholder. If the policy is in effect as to the Lienholder but has been canceled as to any **insured**, the Lienholder must assign the loan to us to the extent of our payment, if we ask.

We will notify the Lienholder at least 10 days and not less than the notice period required by law before we cancel their interest in the policy.

This endorsement forms a part of **your** policy. It is effective at 12:01 A.M. local time at **your** address on the effective date shown above.

EXHIBIT C

JJJ

ERIE INSURANCE EXCHANGE
PERSONAL AUTO POLICY

AMENDED DECLARATIONS 02 * * EFFECTIVE 07/11/12
ATTACH THIS TO YOUR POLICY.

REASON FOR AMENDMENT - MULTIPLE CHANGES

JJ1178 DALTON INS AGENCY, INC 05/11/12 TO 05/11/13 Q05 1107128 NC

ROBERT HILL &
ANGELA HILL
3300 NUNAMAKER CT
RALEIGH NC 27616-8912

AS LISTED BELOW

AGENT - DALTON INS AGENCY, INC

6512 SIX FORKS RD STE 102A

AGENT PHONE - (919) 676-9446

RALEIGH NC 27615 6516

* CONGRATULATIONS! A PIONEER EXPERIENCE RATING CREDIT HAS *
* BEEN APPLIED TO YOUR POLICY PREMIUM. *

ITEM 4. AUTOS COVERED

AUTO	YR	MAKE	VIN	ST	TER	PHY	CMCL	RATING	CLASS	PTS
1	08	TOYO	COROLLA CE	1NXBR32E58Z052037	NC	16	G	1CM		
2	07	JEEP	PATRIOT SP	1J8FF28W27D417984	NC	16	7	1AM		
3	10	CHRY	TOWN & COU	2A4RR8DX0AR436626	NC	16	G	1AM		
4	11	HYUN	ELANTRA	KMHDH4AE8BU149209	NC	16		2728	1BM	

ITEM 5. INSURANCE IS PROVIDED WHERE A PREMIUM, OR INCL, IS SHOWN FOR THE COVERAGE. FOR "UNINSURED AND/OR UNDERINSURED MOTORISTS COVERAGE," IF A PREMIUM CHARGE IS INDICATED, COVERAGE IS PROVIDED FOR EACH VEHICLE LISTED UNDER ITEM 4 FOR WHICH LIABILITY PROTECTION HAS BEEN PURCHASED. COVERAGES, LIMITS AND ANNUAL PREMIUMS ARE AS FOLLOWS-

	#1	#2	#3	#4
LIABILITY PROTECTION-				
BODILY INJURY \$100M/PERSON \$300M/ACC	158.22	488.15	135.15	125.15
PROPERTY DAMAGE \$50M/ACC	125.15	380.15	107.15	99.15
MEDICAL PAYMENTS-				
\$1M/PERSON	14	45	12	11
PHYSICAL DAMAGE COVERAGES-				
COMPREHENSIVE - \$100 DED	71	48	57	72
COLLISION - \$250 DED	243		224	254
COLLISION - \$500 DED		492		
OPTIONAL COVERAGES-				
TOWING & LABOR \$100/DISABLEMENT		6	6	6
TOWING & LABOR \$50/DISABLEMENT	4			
EXTENDED TRANS EXP - \$30/DAY, \$900/LOSS	20	20	20	20
TOTAL ANNUAL PREMIUM FOR EACH AUTO	635.37	1479.30	561.30	587.30
UNINSURED MOTORISTS COVERAGE-				
PROPERTY DAMAGE \$50M/ACC-\$100 DED		7		
UNINSURED/UNDERINSURED MOTORISTS COVERAGE-				

000138

BODILY INJURY \$100M/PERSON \$300M/ACC

127

TOTAL ANNUAL POLICY PREMIUM \$ 3,397.27

ADDITIONAL CHARGE DUE TO THIS CHANGE \$ 410.00

ITEM 6. APPLICABLE POLICY, ENDORSEMENTS, EXCEPTIONS TO DECLARATIONS ITEMS
ALL AUTOS - NC0330 06/03, NC0001 06/05, APNA02 05/06, NC0013 01/10, UF-6851
05/12*.

AUTO 1 - NC0303 09/95, NC0302 01/99.

AUTO 2 - NC0303 09/95, NC0302 01/99.

AUTO 3 - NC0303 09/95, NC0302 01/99.

AUTO 4 - NC0303 09/95, NC0302 01/99, NC0319 07/80.

***ADDED LIENHOLDER ON AUTO 2

***COMPREHENSIVE AND/OR COLLISION ADDED

Y AGTJRD 07/11/12

000139

INEXPERIENCED OPERATOR SURCHARGE APPLIED AUTO 2
AUTO/HOME MULTI POLICY DISCOUNT APPLIES
ANTI-LOCK BRAKE DISCOUNT APPLIED AUTO 1
ANTI-LOCK BRAKE DISCOUNT APPLIED AUTO 2
ANTI-LOCK BRAKE DISCOUNT APPLIED AUTO 3
ANTI-LOCK BRAKE DISCOUNT APPLIED AUTO 4
10% ANTI-THEFT DISCOUNT APPLIED AUTO 1
10% ANTI-THEFT DISCOUNT APPLIED AUTO 2
10% ANTI-THEFT DISCOUNT APPLIED AUTO 3
10% ANTI-THEFT DISCOUNT APPLIED AUTO 4
30% AIRBAG DISCOUNT APPLIED AUTO 1
30% AIRBAG DISCOUNT APPLIED AUTO 2
30% AIRBAG DISCOUNT APPLIED AUTO 3
30% AIRBAG DISCOUNT APPLIED AUTO 4
DISCOUNTS AVAILABLE - SEE ENCLOSED FORM UF-6851

* FIRST ACCIDENT FORGIVENESS APPLIES. THE FIRST SURCHARGE FOR A *
* FUTURE AT-FAULT ACCIDENT WILL BE WAIVED. *

DRIVING EXPERIENCE FACTOR APPLIED 29 YEARS OF EXPERIENCE AUTO 3
DRIVING EXPERIENCE FACTOR APPLIED 35 YEARS OF EXPERIENCE AUTO 4

MISCELLANEOUS INFORMATION

ITEM 7. EACH AUTO WE INSURE WILL BE PRINCIPALLY GARAGED AT THE ADDRESS SHOWN
IN ITEM 1, UNLESS ANOTHER ADDRESS IS SHOWN BELOW.

ITEM 9. UNLESS A CO-OWNER OR LIENHOLDER IS LISTED BELOW, THE NAMED INSURED
IS THE SOLE OWNER OF EACH AUTO WE INSURE.

LOSS PAYEE FOR AUTO 1
WORLD OMNI FINANCIAL CORP
6150 OMNI PARK DRIVE
MOBILE AL 36609-5195

LOSS PAYEE FOR AUTO 2
WELLS FARGO DEALER SERVICES
PO BOX 5075
COPAOPOLIS PA 15108-5075

LOSS PAYEE FOR AUTO 3
ALLY
PO BOX 674
MINNEAPOLIS MN 55440-0674

LOSS PAYEE FOR AUTO 4
HYUNDAI MOTOR FINANCE
PO BOX 20829
FOUNTAIN VALLEY CA 92728-0829

ADDITIONAL INSURED FOR AUTO 4
HYUNDAI MOTOR FINANCE
PO BOX 20829
FOUNTAIN VALLEY CA 92728-0829

DRIVER	ST
1 ROBERT HILL	NC
2 ANGELA HILL	NC
3 JOSHUA HILL	NC
4 MEREDITH P HILL	NC

Q05 1107128

EXHIBIT D



Government Employees Insurance Company

One Geico Center
Macon, GA 31296-9709

RECEIVED
FEB 19 2014

BY:

02/17/2014

Mark Scoggin
PO Box 438
N Myrtle Bch, SC 29597-0438

Company Name: Government Employees Insurance Company
Claim Number: 031564719-0101-020
Loss Date: Wednesday, September 5, 2012
Policyholder: Mark Scoggin



Dear Mark Scoggin,

With respect to the above motor vehicle accident, Government Employees Insurance Company will not be providing any coverage for the above referenced claim to Mark Scoggin. The Ford Taurus that Mr. Scoggin was driving is not considered as an owned or non-owned vehicle as described in the policy. Government Employees Insurance Company will take no further action with respect to this claim.

If you have any questions, please contact me at the number below. Please refer to our claim number when calling or writing about this claim.

Sincerely,

JeT'aime Gordon, Examiner Code JX02
478-621-1736
Claims Department

cc: Turner Padgett Graham & Laney

EXHIBIT E

GEICO

ONE GEICO PLAZA

Washington, D. C. 20076-0001

Telephone: 1-800-841-3000

**South Carolina
Family
Automobile
Insurance
Policy**

- Government Employees Insurance Company

POLICY INDEX

	Page		Page
SECTION I		Conditions..... 10	
Liability Coverages		Notice	
Your Protection Against Claims From Others		Two Or More Autos	
Definitions.....	3	Assistance And Cooperation Of The Insured	
Losses We Will Pay For You.....	4	Action Against Us	
Additional Payments We Will Make Under The		Insured's Duties In Event Of Loss	
Liability Coverages.....	4	Appraisal	
Legal Expenses And Court Costs		Payment Of Loss	
Bail And Appeal Bonds		No Benefit To Bailee	
First Aid Expenses		Subrogation	
Exclusions: When Section I Does Not Apply	4	SECTION IV	
Persons Insured: Who Is Covered	5	Uninsured Motorists Coverage	
Financial Responsibility Laws	5	Your Protection For Injuries Caused By Uninsured	
Out Of State Insurance	5	Motorists	
Limits Of Liability	5	Definitions	11
Other Insurance	5	Losses We Pay	11
Conditions.....	6	Exclusions: When Section IV Does Not Apply	11
Notice		Limits Of Liability	12
Two Or More Autos		Other Insurance	12
Assistance And Cooperation Of The Insured		Trust Agreement.....	12
Action Against Us		Conditions.....	12
Subrogation		Proof Of Claim	
SECTION II		Assistance And Cooperation Of The Insured	
Auto Medical Payments		Notice Of Legal Action	
Definitions.....	6	Payment Of Loss	
Payments We Will Make	6	Action Against Us	
Exclusions: When Section II Does Not Apply.....	7	SECTION V	
Limit Of Liability	7	General Conditions	
Other Insurance	7	The Following Apply To All Coverages In This Policy	
Conditions.....	7	Territory	13
Notice		Premium.....	13
Two Or More Autos		Changes.....	13
Action Against Us		Assignment.....	13
Medical Reports - Proof And Payment Of Claims		Policy Period.....	13
Subrogation		Cancellation By The Insured.....	14
SECTION III		Cancellation By Us	14
Physical Damage Coverages		Cancellation By Us Is Limited.....	14
Your Protection For Loss Of Or Damage To Your Car		Renewal.....	14
Definitions.....	7	Other Insurance	14
Losses We Will Pay	8	Dividend Provision.....	14
Comprehensive Coverage	8	Declarations	14
Collision Coverage	9	Fraud And Misrepresentation.....	15
Additional Payments We Will Make Under The		Examination Under Oath.....	15
Physical Damage Coverages.....	9	Terms Of Policy Conformed To Statutes	15
Car Rental If Your Car Is Stolen		SECTION VI	
Exclusions: When The Physical Damage		Amendments And Endorsements	
Coverages Do Not Apply.....	9	Special Endorsement - United States Government	
Limit Of Liability	9	Employees	
Other Insurance	9	15	

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

AGREEMENT

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

SECTION I

Liability Coverages

Your Protection Against Claims From Others

Bodily Injury Liability

Property Damage Liability

DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) a **temporary substitute auto**.

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

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

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

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

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

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

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

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

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

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

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

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

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

LOSSES WE WILL PAY FOR YOU UNDER SECTION I

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

1. **bodily injury**, sustained by a person; and

2. damage to or destruction of property;

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

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

ADDITIONAL PAYMENTS WE WILL MAKE UNDER THE LIABILITY COVERAGES

1. All investigative and legal costs incurred by us.

2. All court costs charged to an **insured** in a covered law suit.

3. All interest accruing after entry of judgment on that amount of a judgment which represents our limit of liability until we have paid, offered or deposited in court that part of the judgment not exceeding the limit of our liability.

4. Premiums for appeal bonds in a suit we appeal, or premiums for bonds to release attachments; but the face amount of these bonds may not exceed the applicable limit of our liability.

5. Premiums for bail bonds paid by an **insured** due to traffic law violations arising out of the use of an insured auto, not to exceed \$250 per bail bond.

6. Costs incurred by any **insured** for first aid to others at the time of an accident involving an insured auto.

7. Loss of earnings up to \$50 a day, but not other income, if we request an **insured** to attend hearings and trials.

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

EXCLUSIONS

When Section I Does Not Apply

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

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

2. Section I does not apply to any vehicle used to carry passengers or goods for hire. However, a vehicle used in an ordinary car pool on a ride sharing or cost sharing basis is covered.

3. **Bodily injury** or property damage caused intentionally by or at the direction of an **insured** is not covered.

4. We do not cover **bodily injury** or property damage that is insured under a nuclear liability policy.

5. **Bodily injury** or property damage arising from the operation of farm machinery is not covered.

6. **Bodily injury** to an employee of an **insured** arising out of and in the course of employment by an **insured** is not covered.

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

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

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

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

10. We do not cover damage to:

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

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

12. We do not cover:

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

PERSONS INSURED

Who Is Covered

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

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

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

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

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

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

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

FINANCIAL RESPONSIBILITY LAWS

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

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

OUT OF STATE INSURANCE

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

LIMITS OF LIABILITY

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

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

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

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

OTHER INSURANCE

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

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

CONDITIONS

The following conditions apply to Section I:

1. NOTICE

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

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

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

2. TWO OR MORE AUTOS

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

3. ASSISTANCE AND COOPERATION OF THE INSURED

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

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

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

4. ACTION AGAINST US

No suit will lie against us:

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

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

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

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

5. SUBROGATION

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

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

SECTION II

Auto Medical Payments

Protection For You And Your Passengers For Medical Expenses

DEFINITIONS

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

PAYMENTS WE WILL MAKE

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

This Coverage applies to:

1. **you** and each **relative** who sustains **bodily injury** caused by accident:
 - (a) while **occupying** the **owned auto**; or
 - (b) while **occupying** a **non-owned auto** if **you** or **your relative** reasonably believe **you** have the owner's permission to use the auto and the use is within the scope of that permission; or
 - (c) when struck as a pedestrian by an auto or **trailer**.
2. any other person who sustains **bodily injury** caused by accident while **occupying** the **owned auto** while being used by **you**, a resident of **your** household, or other persons with **your** permission.

EXCLUSIONS

When Section II Does Not Apply

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

LIMIT OF LIABILITY

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

OTHER INSURANCE

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

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

CONDITIONS

The following conditions apply to this Coverage:

1. NOTICE

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

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

2. TWO OR MORE AUTOS

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

3. ACTION AGAINST US

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

4. MEDICAL REPORTS - PROOF AND PAYMENT OF CLAIMS

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

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

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

5. SUBROGATION

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

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

SECTION III

Physical Damage Coverages

Your Protection For Loss Or Damage To Your Car

DEFINITIONS

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

1. "**Actual cash value**" is the replacement cost of the auto or property less **depreciation** or **betterment**.
2. "**Betterment**" is improvement of the auto or property to a value greater than its pre-loss condition.
3. "**Collision**" means **loss** caused by upset of the covered auto or its collision with another object, including an attached vehicle.

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

5. "**Insured**" means:

(a) regarding the **owned auto**:

(i) **you** and **your relatives**;

(ii) a person or organization maintaining, using or having custody of the auto with **your** permission, if his use is within the scope of that permission.

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

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

(a) the auto, including its equipment; or

(b) other insured property.

7. "**Non-owned auto**" means a **private passenger auto**, **farm auto** or **utility auto** or **trailer** not owned by or furnished for the regular use of either **you** or **your relatives**, except a **temporary substitute auto**. **You** or **your relative** must be using the auto or trailer within the scope of permission given by its owner. An auto rented or leased for more than 30 days will be considered as furnished for regular use.

8. "**Owned auto**" means:

(a) any vehicle described in this policy for which a specific premium charge indicates there is coverage;

(b) a **private passenger**, **farm** or **utility auto** or a **trailer**, ownership of which is acquired by **you** during the policy period or for which **you** enter into a lease during the policy period for a term of six months or more; if

(i) it replaces an **owned auto** as described in (a) above, or

(ii) we insure all **private passenger**, **farm**, **utility autos** and **trailers** owned or leased by **you** on the date of such acquisition and **you** request us to add it to the policy within 30 days afterward;

(c) a **temporary substitute auto**.

9. "**Trailer**" means a trailer designed for use with a **private passenger auto** and not used as a home, office, store, display or passenger trailer.

LOSSES WE WILL PAY FOR YOU Comprehensive (Excluding Collision)

1. We will pay for each **loss**, less the applicable deductible, caused other than by **collision**, to the **owned** or **non-owned auto**. This includes breakage of glass and **loss** caused by:

- | | |
|--------------------------------------|-------------------------|
| (a) missiles; | (j) windstorm; |
| (b) falling objects; | (k) hail; |
| (c) fire; | (l) water; |
| (d) lightning; | (m) flood; |
| (e) theft; | (n) malicious mischief; |
| (f) larceny; | (o) vandalism; |
| (g) explosion; | (p) riot; or |
| (h) earthquake; | (q) civil commotion. |
| (i) colliding with a bird or animal; | |

No deductible will apply to **loss** caused by fire, lightning, smoke, smudge or damage sustained while the vehicle is being transported on any conveyance.

At the option of the **insured**, breakage of glass caused by **collision** may be paid under the Collision coverage, if included in the policy. No deductible will apply to **loss** to the safety glass of an **owned** or **non-owned auto**.

2. We will pay, up to \$200 per occurrence, less any deductible shown in the declarations, for **loss** to personal effects due to:

- | | |
|-------------------------------------|----------------------|
| (a) fire; | (e) falling objects; |
| (b) lightning; | (f) earthquake; or |
| (c) flood; | (g) explosion. |
| (d) theft of the entire automobile; | |

The property must be owned by **you** or a **relative**, and must be in or upon an **owned auto**.

No deductible will apply due to **loss** by fire or lightning.

3. **Losses** arising out of a single occurrence shall be subject to no more than one deductible.

Collision

1. We will pay for **collision loss** to the **owned** or **non-owned auto** for the amount of each **loss** less the applicable deductible. No deductible will apply to **loss** to the safety glass of an **owned** or **non-owned auto**.

2. We will pay up to \$200 per occurrence, less the applicable deductible, for **loss** to personal effects due to a **collision**. The property must be owned by **you** or a **relative**, and must be in or upon an **owned auto**.

3. **Losses** arising out of a single occurrence shall be subject to no more than one deductible.

ADDITIONAL PAYMENTS WE WILL MAKE UNDER THE PHYSICAL DAMAGE COVERAGES

1. We will reimburse the **insured** for transportation expenses incurred during the period beginning 48 hours after a theft of the entire auto covered by Comprehensive coverage under this policy has been reported to us and the police. Reimbursement ends when the auto is returned to use or we pay for the **loss**.

Reimbursement will not exceed \$15 per day nor \$450 per **loss**.

2. We will pay general average and salvage charges for which the **insured** becomes legally liable when the auto is being transported.

3. We will pay for **loss** to any of the following equipment (including **loss** to accessories and antennas):

- (a) car phone;
- (b) citizen's band radio;
- (c) two-way mobile radio;
- (d) scanning monitor receiver; or
- (e) device designed for the recording and/or reproduction of sound.

We will pay only if the equipment at the time of **loss**:

- (a) is permanently installed in or upon an **owned auto**; and
- (b) that auto is insured under the appropriate coverage.

EXCLUSIONS

When The Physical Damage Coverages Do Not Apply

1. An auto used to carry passengers or goods for hire is not covered. However, a vehicle used in an ordinary car pool on a ride sharing or cost sharing basis is covered.

2. **Loss** due to **war** is not covered.

3. We do not cover **loss** to a **non-owned auto** when used by the **insured** in the **auto business**.

4. There is no coverage for **loss** caused by and limited to wear and tear, freezing, mechanical or electrical breakdown or failure, unless that damage results from a covered theft.

5. Tires, when they alone are damaged by **collision**, are not covered.

6. **Loss** due to radioactivity is not covered.

7. **Loss** to any tape, wire, record disc or other medium for use with a device designed for the recording and/or reproduction of sound is not covered.

8. We do not cover **loss** to any radar or laser detector.

9. We do not cover **trailers** when used for business or commercial purposes with vehicles other than **private passenger, farm or utility autos**.

LIMIT OF LIABILITY

The limit of our liability for **loss**:

1. is the **actual cash value** of the property at the time of the **loss**;

2. will not exceed the cost to repair or replace the property, or any of its parts, with other of like kind and quality and will not include compensation for any diminution in the property's value that is claimed to result from the **loss**;

3. to personal effects arising out of one occurrence is \$200;

4. to a **trailer** not owned by **you** is \$500;

5. for custom options is limited to the **actual cash value** of equipment, furnishings or finishings (including paint) installed in or upon the vehicle only by the auto factory or an authorized auto dealer and included in the purchase price of the vehicle.

Actual cash value of property will be determined at the time of the **loss** and will include an adjustment for **depreciation/betterment** and for the physical condition of the property.

OTHER INSURANCE

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

Any insurance we provide for a vehicle **you** do not own shall be excess over any other valid and collectible insurance.

CONDITIONS

The following conditions apply only to the Physical Damage Coverages:

1. NOTICE

As soon as possible after a **loss**, written notice must be given us or our authorized agent stating:

- (a) the identity of the **insured**;
- (b) a description of the auto or **trailer**;
- (c) the time, place and details of the **loss**; and
- (d) the names and addresses of any witnesses.

In case of theft, the **insured** must promptly notify the police.

2. TWO OR MORE AUTOS

If this policy covers two or more autos or **trailers**, the limit of coverage and any deductibles apply separately to each.

3. ASSISTANCE AND COOPERATION OF THE **INSURED**

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

- (a) in the investigation of the **loss**;
- (b) in making settlements;
- (c) in the conduct of suits;
- (d) in enforcing any right of subrogation against any legally responsible person or organization;
- (e) at trials and hearings;
- (f) in securing and giving evidence; and
- (g) by obtaining the attendance of witnesses.

4. ACTION AGAINST US

Suit will not lie against us unless the policy terms have been complied with and until 30 days after proof of loss is filed and the amount of **loss** is determined.

5. **INSURED'S** DUTIES IN EVENT OF **LOSS**

In the event of **loss** the **insured** will:

- (a) Protect the auto, whether or not the **loss** is covered by this policy. Further **loss** due to the **insured's** failure to protect the auto will not be covered. Reasonable expenses incurred for this protection will be paid by us.
- (b) File with us, within 91 days after **loss**, his sworn proof of loss including all information we may reasonably require.
- (c) At our request, the **insured** will exhibit the damaged property.

6. APPRAISAL

If we and the **insured** do not agree on the amount of **loss**, either may, within 60 days after proof of loss is filed, demand an appraisal of the **loss**. In that event, we and the **insured** will each select a competent appraiser. The appraisers will select a competent and disinterested umpire. The appraisers will state separately the **actual cash value** and the amount of the **loss**. If they fail to agree, they will submit the dispute to the umpire. An award in writing of any two will determine the amount of **loss**. We and the **insured** will each pay his chosen appraiser and will bear equally the other expenses of the appraisal and umpire.

We will not waive our rights by any of our acts relating to appraisal.

7. PAYMENT OF **LOSS**

We may at our option:

- (a) pay for the **loss**; or
- (b) repair or replace the damaged or stolen property.

At any time before the **loss** is paid or the property replaced, we may return any stolen property to **you** or to the address shown in the declarations at our expense with payment for covered damage. We may take all or part of the property at the agreed or appraised value, but there will be no abandonment to us. We may settle claims for **loss** either with the **insured** or the owner of the property.

8. NO BENEFIT TO BAILEE

This insurance does not apply directly or indirectly to the benefit of a carrier or other bailee for hire liable for the **loss** of the auto.

9. SUBROGATION

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

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

SECTION IV

Uninsured Motorists Coverage

Protection For You, Your Relatives And Your Passengers For Injuries And Property Damage Caused By Uninsured Motorists

DEFINITIONS

The definitions of terms for Section I apply to Section IV, except for the following special definitions:

1. "**Insured**" means:

- (a) **you** and **your relatives** who reside in **your** household;
- (b) any person using an **insured motor vehicle** with **your** permission;
- (c) any person **occupying** an **insured motor vehicle** with **your** permission;
- (d) any person who is entitled to recover damages under a wrongful death statute of any state because of the death of an **insured** under (a), (b) or (c) above.

If there is more than one **insured**, our limits of liability will not be increased.

2. "**Insured motor vehicle**" is a **motor vehicle** described in the policy and to which the liability coverage of the policy applies.

3. "**Motor vehicle**" is a self-propelled vehicle designed for use on a highway and includes **trailers** and semi-trailers designed for use with these vehicles. The term **motor vehicle** does not include traction engines, road rollers, farm tractors, tractor cranes, power shovels, well drillers or any vehicle propelled by electric power from overhead wires but not operated on rails.

4. "**Property damage**" means damage or destruction of an **insured's** property.

5. "**Uninsured motor vehicle**" is a **motor vehicle** of which:

- (a) there is no applicable bodily injury liability and property damage liability insurance with limits complying with the financial responsibility requirements of the State of South Carolina; or
- (b) the insurance carrier successfully denies coverage; or
- (c) the insurance carrier is declared insolvent, or is in delinquency proceedings, suspension or receivership, or is proven unable fully to respond to a judgment; and
- (d) there is no bond or deposit of cash or securities in lieu of bodily injury and property damage liability insurance.
- (e) the owner of the **motor vehicle** has not qualified as a self-insurer in accordance with the applicable provisions of law.

The term **uninsured motor vehicle** includes a **motor vehicle** which causes **bodily injury** or **property damage** to an **insured** and the owner or operator of which is unknown provided that:

- (a) the **insured** or someone in his behalf reports the accident to some appropriate police authority within a reasonable time after its occurrence;
- (b) the injury or damage was caused by physical contact with the unknown vehicle, or the accident was witnessed by someone other than the owner or operator of the insured vehicle and that witness submits a signed affidavit attesting to the truth of the facts of the accident;
- (c) the **insured** was not negligent in failing to determine the identity of the other vehicle and its driver at the time of the accident;
- (d) the **insured** or someone for him files with us within 30 days or as soon as practical thereafter, a written statement that he has a cause of action for damages against an unidentified person; and

- (e) the **insured** or someone for him makes available, at our request, the **motor vehicle occupied** by the **insured**, at the time of the accident.

The term **uninsured motor vehicle** does not include a **motor vehicle** owned by the United States of America or any governmental unit or agency.

LOSSES WE PAY

Under this coverage we will pay damages for **bodily injury** and **property damage** caused by accident which the **insured** is legally entitled to recover from the owner or operator of an **uninsured motor vehicle** arising out of the ownership, maintenance or use of that **motor vehicle**.

EXCLUSIONS

1. This coverage does not apply to **bodily injury** or **property damage** to an **insured** if he or his legal representative has made a settlement or has been awarded a judgment without our prior written consent.
2. There is no coverage for **bodily injury** or **property damage** to an **insured** while **occupying** or through being struck by an **uninsured motor vehicle** owned by an **insured** or a **relative**.
3. This coverage will not benefit directly or indirectly any workmen's compensation insurer, self insurer, disability benefits insurer or property insurer.
4. There is no coverage for **property damage** to the first \$200 of the amount of damage to the property of each **insured** as the result of any one accident.
5. There is no coverage for **property damage** if the **insured** has been compensated by insurance or otherwise.

LIMITS OF LIABILITY

Regardless of the number of **insured motor vehicles**; **insureds**, claims made or **motor vehicles** involved in the accident, the most we will pay for damages resulting from any one accident is the limit on the **insured motor vehicle** involved in the accident.

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

3. The limit of property damage liability stated in the declarations as applicable to "each accident" is our total limit of liability for all damages to the property of one or more **insureds** as the result of any one accident.

4. Any amount payable under this insurance shall be reduced by all sums:

- (a) paid or payable under any Uninsured Motorists coverage applicable on the vehicle involved in the accident;
- (b) paid or payable by or for anyone who is legally responsible, including all sums paid under the policy's liability insurance.

5. If separate policies with us are in effect for **you** or any person in **your** household, they may not be combined to increase the limit of our liability for a loss.

6. Any amount paid under this insurance will reduce any amount an **insured** may be paid under the policy's liability insurance.

OTHER INSURANCE

When an **insured occupies** a **motor vehicle** not described in this policy, this insurance is excess over any other similar insurance available to the **insured** for **bodily injury** and the insurance which applies to the occupied auto is primary.

If none of an **insured's motor vehicles** is involved in the accident, coverage is available to the extent of coverage on any one **insured motor vehicle**. Coverage on any other vehicles shall not be added to that coverage.

Except as provided above, if the **insured** has other similar bodily injury insurance available to him and applicable to the accident, the damages for **bodily injury** will be deemed not to exceed the higher of the applicable limits of liability of this insurance and the other insurance. If the **insured** has other insurance against a loss covered by Uninsured Motorists provisions of this policy, we will not be liable for more than our pro-rata share of the total coverage available.

With respect to **property damage**, this insurance shall be excess over other valid and collectible insurance applicable to the damaged property.

We will not be liable for a greater proportion of any loss under this coverage than its limit of liability bears to the sum of the applicable limits of liability and this and all such other insurance.

TRUST AGREEMENT

When we make a payment under this coverage:

1. We will be entitled to repayment of that amount out of any settlement or judgment the **insured** recovers from

any person or organization legally responsible for the **bodily injury**.

2. The **insured** will hold in trust for our benefit all rights of recovery which he may have against any person or organization responsible for these damages. He will do whatever is necessary to secure all rights of recovery and will do nothing after the loss to prejudice these rights.

3. At our written request, the **insured**, in his own name, will take, through a designated representative, appropriate actions necessary to recover payment for damages from the legally responsible person or organization. The **insured** will pay us out of the recovery for our expenses, costs and attorneys' fees.

4. The **insured** will execute and furnish us with any needed documents to secure his and our rights and obligations.

CONDITIONS

1. PROOF OF CLAIM

As soon as possible, the **insured** or other person making claim must give us written proof of claim, under oath if required. This will include details of the nature and extent of **bodily injury**, treatment, and other facts which may affect the amount payable. Proof of claim must be made on forms furnished by us unless we have not furnished these forms within 15 days after receiving notice of claim.

The injured person will submit to examination by doctors chosen by us as often as we may reasonably require. In the event of the **insured's** incapacity or death, his legal representative must, at our request, authorize us to obtain medical reports and copies of records.

The **insured** or other person making a claim for damage to property shall file a proof of loss in sworn statement form with us within 60 days after the loss occurs (unless we extend the time in writing). This statement must show: the interest of the **insured** and all others in the property, any liens or other claims on the property, the actual cash value at time of loss, and description and amounts of all other insurance on the property. If we ask, the **insured** must show us the damaged property.

2. ASSISTANCE AND COOPERATION OF THE **INSURED**

After we receive notice of a claim, we may require the **insured** to take any action necessary to preserve his recovery rights against any allegedly legally responsible person or organization.

3. NOTICE OF LEGAL ACTION

If the **insured** or his legal representative files suit before we make a settlement under this coverage, he must immediately provide us with a copy of the pleadings served in the manner provided by law.

4. PAYMENT OF LOSS

Any amount due is payable to the **insured** or his authorized representative.

5. ACTION AGAINST US

Suit will not lie against us unless the **insured** or his legal representative has fully complied with all of the policy terms.

SECTION V

General Conditions

These Conditions Apply To All Coverages In This Policy

1. TERRITORY

This policy applies only to accidents, occurrences or losses during the policy period within the United States of America, its territories or possessions, or Canada or when the auto is being transported between ports thereof.

2. PREMIUM

When you dispose of, acquire ownership of, or replace a **private passenger, farm or utility auto**, any necessary premium adjustment will be made as of the date of the change and in accordance with our manuals.

3. CHANGES

The terms and provisions of this policy cannot be waived or changed, except by an endorsement issued to form a part of this policy.

We may revise this policy during its term to provide more coverage without an increase in premium. If we do so, **your** policy will automatically include the broader coverage when effective in **your** state.

The premium for each auto is based on the information we have in **your** file. **You** agree:

- (a) that we may adjust **your** policy premiums during the policy term if any of this information on which the premiums are based is incorrect, incomplete or changed.
- (b) that **you** will cooperate with us in determining if this information is correct and complete.
- (c) that **you** will notify us of any changes in this information.

Any calculation or recalculation of **your** premium or changes in **your** coverage will be based on the rules, rates and forms on file, if required, for our use in **your** state.

4. ASSIGNMENT

Your rights and duties under this policy may not be assigned without our written consent.

If **you** die, this policy will cover:

- (a) **your** surviving spouse;
- (b) the executor or administrator of **your** estate, but only while operating an **owned auto** and while acting within the scope of his duties;
- (c) any person having proper temporary custody of and operating the **owned auto**, as an **insured**, until the appointment and qualification of the executor or administrator of **your** estate; and
- (d) under the Medical Payments coverage, a person who was a **relative** at the time of **your** death.

5. POLICY PERIOD

Unless otherwise cancelled, this policy will expire as shown in the declarations. But, it may be continued by our offer to renew and **your** acceptance by payment of the required renewal premium prior to the expiration date. Each period will begin and expire at 12:01 A.M. local time at **your** address stated in the declarations.

6. CANCELLATION BY THE **INSURED**

You may cancel this policy by providing notice to us stating when, after the notice, cancellation will be effective.

If this policy is cancelled, **you** may be entitled to a premium refund. The premium refund, if any, will be computed according to our manuals.

7. CANCELLATION BY US

We may cancel this policy by mailing to **you**, at the address shown in this policy, written notice stating when the cancellation will be effective. We will mail this notice at least 15 days prior to the effective date of that cancellation.

The mailing or delivery of this notice will be sufficient proof of notice. The policy will cease to be in effect as of the date and hour stated in the notice.

If this policy is canceled, **you** may be entitled to a premium refund. The premium refund, if any, will be computed according to our manuals. Payment or tender of unearned premium is not a condition of cancellation.

8. CANCELLATION BY US IS LIMITED

After this policy has been in effect for 90 days or, if the policy is a renewal policy, we will not cancel except for any of the following reasons:

- (a) **You** do not pay the initial premium on other than a renewal policy or any additional premium for this policy or fail to pay any premium installment when due to us.
- (b) **You** or any other operator who either resides in **your** household or customarily operates a motor vehicle insured under this policy has had his driver's license suspended or revoked during the policy period or, if it is a renewal policy, during its policy period or the 90 days preceding the last anniversary of the effective date.
- (c) **You** become a non-resident of South Carolina and register **your** South Carolina motor vehicle in another state.

We may increase **your** deductible to \$250 under Section III - Physical Damage Coverages.

9. RENEWAL

We guarantee to renew this policy for **private passenger, farm or utility autos** as long as the following conditions are met:

- (a) **You** (or **your** spouse) are at least 50 years old and **you** (or **your** spouse) are a principal operator of an auto insured under this policy. There are no principal or occasional operators under the age of 25.
- (b) **You** and all operators of autos insured under this policy must be physically and mentally able to safely operate an auto. We may require an operator to provide certification of this from a doctor acceptable to us.
- (c) The autos insured are principally located in a state which has approved the use of this condition, and that state continues to approve the use of this condition.
- (d) The representations provided in **your** application for this policy were true.

If the above requirements are not met, the guaranteed renewal condition does not apply. We reserve the right to terminate this guaranty in any state in which conditions require that we discontinue writing new and renewal policies for all our **insureds**. Should we choose not to renew **your** policy, we will mail to **you**, at the address shown in this policy, written notice of our refusal to renew at least 15 days prior to the expiration date. The mailing or delivery of this by us will be sufficient proof of notice.

This policy will expire without notice if any of the following conditions exist:

- (a) **You** do not pay any premium as we require to renew this policy.
- (b) **You** have informed us or our agent that **you** wish the policy to be cancelled or not renewed.

- (c) **You** do not accept our offer to renew or **you** refuse to provide us with renewal classification and rating information as we may require.

We may increase **your** deductible to \$250 under Section III - Physical Damage Coverages.

10. OTHER INSURANCE

If other insurance is obtained on **your** insured auto, any similar insurance afforded under this policy for that auto will terminate on the effective date of the other insurance.

If **you** relinquish possession of a leased vehicle or if you sell or relinquish ownership of an **owned auto**, any coverage provided by this policy for that vehicle will terminate on the day **you** do so.

11. DIVIDEND PROVISION

You are entitled to share in a distribution of the surplus of the Company as determined by its Board of Directors from time to time.

12. DECLARATIONS

By accepting this policy, **you** agree that:

- (a) the statements in **your** application and in the declarations are **your** agreements and representations;
- (b) this policy is issued in reliance upon the truth of these representations; and
- (c) this policy, along with the application and declaration sheet, embodies all agreements relating to this insurance. The terms of this policy cannot be changed orally.

13. FRAUD AND MISREPRESENTATION

Coverage is not provided to any person who knowingly conceals or misrepresents any material fact or circumstance relating to this insurance:

- (a) at the time of application; or
- (b) at any time during the policy period; or
- (c) in connection with the presentation or settlement of a claim.

14. EXAMINATION UNDER OATH

The **insured** or any other person seeking coverage under this policy must submit to examination under oath by any person named by us when and as often as we may require.

15. TERMS OF POLICY CONFORMED TO STATUTES

Any terms of this policy in conflict with the laws of South Carolina are amended to conform to those statutes.

SECTION VI - AMENDMENTS AND ENDORSEMENTS

1. SPECIAL ENDORSEMENT UNITED STATES GOVERNMENT EMPLOYEES

A. Under the Property Damage coverage of Section I, we provide coverage to United States Government employees, civilian or military, using

1. Motor vehicles owned or leased by the United States Government or any of its agencies, or
2. Rented motor vehicles used for United States Government business,

when such use is with the permission of the United States Government. Subject to the limits described in paragraph B. below, we will pay sums **you** are legally obligated to pay for damage to these vehicles.

B. The following limits apply to this coverage:

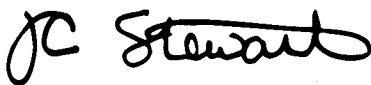
1. A \$100 deductible applies to each occurrence.
2. For vehicles described in A.1. above, our liability shall not exceed the lesser of the following:

- a. the **actual cash value** of the property at the time of the occurrence; or
- b. the cost to repair or replace the property, or any of its parts with other of like kind and quality; or
- c. two months basic pay of the **insured**; or
- d. the limit of Property Damage liability coverage stated in the declarations.

3. For vehicles described in A.2. above, our liability shall not exceed the lesser of the following:

- a. the **actual cash value** of the property at the time of the occurrence; or
- b. the cost to repair or replace the property, or any of its parts with other of like kind and quality; or
- c. the limit of Property Damage liability coverage stated in the declarations.

This insurance is excess over other valid and collectible insurance.



J. C. Stewart
Secretary

GOVERNMENT EMPLOYEES INSURANCE COMPANY
HOME OFFICE - 5260 Western Avenue
Chevy Chase, Maryland 20815-3799



O. M. Nicely
President

EXHIBIT E1



GOVERNMENT EMPLOYEES INSURANCE COMPANY
Policy Number: 4085-57-17-45

Automobile Policy Amendment South Carolina

Your policy is amended as follows:

SECTION I- LIABILITY COVERAGES

DEFINITIONS

The following definitions are revised as follows:

3. **Farm auto** means a truck type vehicle with a gross vehicle weight of 15,000 pounds or less, not used for commercial purposes other than farming.
5. **Non-owned auto** means a **private passenger, farm, or utility auto** or **trailer** not owned by or furnished for the regular use of the either **you** or **your relatives**, except a **temporary substitute auto**. **You** or **your relatives** must be using the **non-owned auto** or **trailer** within the scope of permission given by its owner. A **non-owned auto** rented or leased for more than 30 days will be considered as furnished for regular use.
8. **Relative** means a person who continuously lives in **your** household, and is related to **you** by blood, marriage, or adoption (including a ward or foster child).
11. **Utility auto** means a vehicle, other than a **farm auto**, with a gross vehicle weight of 15,000 pounds or less of the pick-up body, van or panel truck type not used for commercial purposes.
13. **You** and **your** mean the policyholder named in the declarations or his or her spouse if a resident of the same household.

ADDITIONAL PAYMENTS WE WILL MAKE UNDER THE LIABILITY COVERAGES

Item 3. is revised as follows:

3. Interest calculated on that part of a judgment that is within our limit of liability and accruing:
 - (a) Before the judgment, where owed by law, and until we pay, offer to pay, or deposit in court the amount due under this coverage;
 - (b) After the judgment, and until we pay, offer to pay, or deposit in court, the amount due under this coverage.

After item 5. the following sentence is added.

We will upon request by an **insured**, provide reimbursement for the following items:

Items 6., 7., and 8. are renumbered as follows:

- (a) Costs incurred by any **insured** for first aid to others at the time of an accident involving an **owned auto** or **non-owned auto**.
- (b) Loss of earnings up to \$50 a day, but not other income, if we request an **insured** to attend hearings and trials.
- (c) All reasonable costs incurred by an **insured** at our request.

EXCLUSIONS

The first paragraph is changed to read:

We will not defend any claim or suit for damages if one or more of the exclusions listed below applies. We do not provide liability coverage under Exclusions 1,2,3,8, and 18 in excess of the minimum limits of liability required by South Carolina law. We do not provide any liability coverage for the remaining Exclusions.

Exclusion 2. is revised as follows:

2. Section I does not apply to **bodily injury** or property damage arising out of the ownership, maintenance, or use of an **owned** or **non-owned auto** while being used to carry persons or property for compensation or a fee, including but not limited to the delivery of food or any other products. However, this exclusion will not apply to shared-expense car pools.

The following exclusions are added:

13. **Bodily injury** or property damage that results from nuclear exposure or explosion including resulting fire, radiation or contamination is not covered.
14. **Bodily injury** or property damage that results from bio-chemical attack or exposure to bio-chemical agents is not covered.
15. We do not cover **bodily injury** or property damage caused by an auto driven in or preparing for any racing, speed or demolition contest or stunting activity of any nature, whether or not prearranged or organized.

16. We do not cover any liability assumed under any contract or agreement.
17. We do not cover punitive or exemplary damages recovered or potentially recoverable from any **insured** arising from the use or abuse of alcohol, medication or drugs.
18. We do not cover any liability arising out of the use of an **owned** or **non-owned auto** in connection with the commission of or attempt to commit a felony by an **insured**.

LIMITS OF LIABILITY

Items 1. & 2. of Limits of Liability are revised as follows:

1. The limit of bodily injury liability stated in the declarations as applicable to "each person" is the limit of our liability for all damages, including but not limited to, damages for care and loss of services, loss of consortium, bystander claims, and claims for mental anguish, because of **bodily injury** sustained by one person as the result of one occurrence.
2. The limit of such liability stated in the declarations as applicable to "each occurrence" is, subject to the above provision respecting each person, the total limit of our liability for all such damages, including but not limited to, damages for care and loss of services, loss of consortium, bystander claims, and claims for mental anguish, because of **bodily injury** sustained by two or more persons as the result of any one occurrence.

CONDITIONS

Condition 5. SUBROGATION is replaced as follows:

5. If we make payment under Section I-Liability Coverages of the policy, and the person to or for whom payment was made has a right to recover damages from another, we shall be subrogated to that right. That person shall do whatever is necessary to enable us to exercise our rights and shall do nothing after loss or bodily injury to prejudice them.
If we make payment under this policy to or for whom payment is made recovers damages from another, that person shall hold in trust for us the proceeds of the recovery, and shall reimburse us to the extent of our payment.

SECTION II - AUTO MEDICAL PAYMENTS

PAYMENTS WE WILL MAKE

The following paragraphs are added:

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 are incurred for the specific medical service.

Services are necessary only if the services are rendered by a licensed medical provider within the scope of the provider's practice and license and are essential.

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.

EXCLUSIONS

Exclusion 1. is revised as follows:

1. There is no coverage for **bodily injury** sustained by any occupant of an **owned auto** used to carry persons or property for compensation or a fee, including but not the delivery of food or any other products. However, this exclusion will not apply to shared-expense car pools.

The following exclusions are added:

7. There is no coverage for **bodily injury** or property damage that results from nuclear exposure or explosion including resulting fire, radiation or contamination.
8. There is no coverage for **bodily injury** or property damage that results from bio-chemical attack or exposure to bio-chemical agents.
9. We do not cover **bodily injury** caused by an auto driven in or preparing for any racing, speed or demolition contest or stunting activity of any nature, whether or not prearranged or organized.
10. There is no coverage for **bodily injury** sustained while **occupying** any motorized vehicle which is not defined as an **owned** or **non-owned auto** under this policy.
11. There is no coverage for **bodily injury** occurring during the course of employment if workers' compensation benefits are required or available.
12. There is no coverage for **bodily injury** sustained while **occupying** an **owned** or **non-owned auto** being used in connection with the commission or the attempt to commit a felony by an **insured**.

The following provision is added:

NON-DUPLICATION

No person for whom medical expenses are payable under the Medical Payments coverage shall be paid more than once for the same medical expense under this or similar vehicle insurance, including any no fault benefits required by law.

LIMITS OF LIABILITY

The following sentence is added:

An auto and attached **trailer** are considered one auto.

CONDITIONS

Condition 2. TWO OR MORE AUTOS, is deleted.

Condition 5. SUBROGATION, is replaced as follows:

5. If we make a payment under Section II-Auto Medical Payments of this policy, and the person to or for whom payment was made has a right to recover damages from another, we shall be subrogated to that right. That person shall do whatever is necessary to enable us to exercise our rights and shall do nothing after loss or bodily injury to prejudice them.

If we make payment under this policy and the person to or for whom payment is made recovers damages from another, that person shall hold in trust for us the proceeds of the recovery and shall reimburse us to the extent of our payment, costs, and fees.

SECTION III - PHYSICAL DAMAGE COVERAGES

DEFINITIONS

Definition 9. **Trailer**, is revised as follows:

9. **Trailer** means a trailer of the flatbed variety designed for use with a **private passenger auto** and not used as a home, residence, office, store, display or passenger trailer. **Trailer** does not mean a trailer with built in sleeping facility designed for recreational or camping use.

The following definition is added:

10. **Custom parts or equipment** means paint, equipment, devices, accessories, enhancements, and changes, other than those which are original manufacturer installed, which:

- (a) Are permanently installed or attached; or
- (b) Alter the appearance or performance of a vehicle.

This includes any electronic equipment, antennas, and other devices used exclusively to send or receive audio, visual, or data signals, or to play back recorded media, other than those which are original manufacturer installed, that are permanently installed in the **owned auto** or a newly acquired vehicle using bolts or brackets, including slide-out brackets.

ADDITIONAL PAYMENTS WE WILL MAKE UNDER THE PHYSICAL DAMAGE COVERAGES

The second paragraph under 1. is revised as follows:

Reimbursement will not exceed \$25 per day, or \$750 per loss.

Item 3. is deleted.

EXCLUSIONS

When Section III does not apply

Exclusion 1. is revised as follows:

1. An auto used to carry person or property for compensation or a fee, including but not limited to the delivery of food or any other products is not covered. However, a vehicle used in an ordinary car pool on a ride sharing or cost sharing basis is covered.

The following exclusions are added:

10. There is no coverage for **loss** that results from nuclear exposure or explosion including resulting fire, radiation or contamination.
11. There is no coverage for **loss** that results from bio-chemical attack or exposure to bio-chemical agents.
12. We do not cover any physical damage to an auto being driven in or preparing for any racing, speed or demolition contest or stunting activity of any nature, whether or not prearranged or organized.
13. We do not cover **loss** for **custom parts or equipment** unless the existence of those **custom parts or equipment** has been previously reported to us and an endorsement to the policy has been added.
14. There is no coverage for any liability assumed under any contract or agreement.
15. There is no coverage for **loss** or damage resulting from:
 - (a) The acquisition of a stolen vehicle;
 - (b) Any governmental, legal or other action to return a vehicle to its legal, equitable, or beneficial owner, or anyone claiming an ownership interest in the vehicle;
 - (c) Any confiscation, seizure or impoundment of a vehicle by governmental authorities; or
 - (d) The sale of an **owned auto**.
16. There is no coverage for the destruction, impoundment, confiscation or seizure of a vehicle by governmental or civil authorities due to its use by **you**, a **relative** or a permissive user of the vehicle in illegal activity.

LIMIT OF LIABILITY

Item 2. is revised as follows:

2. Will not exceed the prevailing competitive price to repair or replace the property at the time of loss, or any of its parts, including parts from non-original equipment manufacturers, with other of like kind and quality and will not include compensation for any diminution in the property's value that is claimed to result from the **loss**. Although **you** have the right to choose any repair facility or location, the limit of liability for repair or replacement of such property will not exceed the prevailing competitive price, which is the price we can secure from a competent and conveniently located repair facility. At **your** request, we will identify a repair facility that will perform the repairs at the prevailing competitive price.

The first paragraph of item 5. is replaced with the following:

5. For **custom parts or equipment** is limited to the **actual cash value** of the **custom parts or equipment**, not to exceed the **actual cash value** of the vehicle.

CONDITIONS

Condition 4., ACTION AGAINST US, the following paragraph is added:

If we retain salvage, we have no duty to preserve or otherwise retain the salvage for any purpose, including as evidence for any civil or criminal proceeding. If **you** ask us immediately after a **loss** to preserve the salvage for inspection, we will do so for a period not to exceed 30 days. **You** may purchase the salvage from us if **you** wish.

Condition 9. SUBROGATION, is revised as follows:

9. If we make a payment under Section III-Physical Damage Coverages of this policy, and the person to or for whom payment was made has a right to recover damages from another, we shall be subrogated to that right. That person shall do whatever is necessary to enable us to exercise our rights and shall do nothing after loss or bodily injury to prejudice them.

If we make payment under this policy and the person to or for whom payment is made recovers damages from another, that person shall hold in trust for us the proceeds of the recovery and shall reimburse us to the extent of our payment, costs, and fees.

The following condition is added:

10. ASSIGNMENT

With respect to Section III-Physical Damage Coverages, an Assignment of interest under this policy will not bind us without our consent. Any nonconforming assignment shall be void and invalid. Moreover, the assignee of a nonconforming assignment shall acquire no rights under this contract and we shall not recognize any such assignment.

SECTION IV - UNINSURED MOTORISTS COVERAGE

EXCLUSIONS

The following exclusions are added:

6. **Bodily injury** or **property damage** that results from nuclear exposure or explosion including resulting fire, radiation or contamination is not covered.
7. **Bodily injury** or **property damage** that results from bio-chemical attack or exposure to bio-chemical agents is not covered.
8. This coverage does not apply to any liability assumed under any contract or agreement.
9. This coverage does not apply to damage caused by an **insured's** participation in or preparation for any racing, speed or demolition contest or stunting activity of any kind, whether or not prearranged or organized.
10. There is no coverage for **bodily injury** to any other person while **occupying** an **owned auto** without **your** consent or operating an **owned auto** without a reasonable belief that person has **your** permission to do so.

LIMITS OF LIABILITY

Paragraphs 1. & 2. are revised as follows:

1. The limit of liability for Uninsured Motorists Coverage stated in the declarations for "each person" is the limit of our liability for all damages, including but not limited to, damages for care or loss of services, loss of consortium, bystander claims, and claims for mental anguish, because of **bodily injury** sustained by one person as the result of one occurrence.
2. The limit of such liability stated in the declarations as applicable to "each accident" is, subject to the above provision respecting each person, the total limit of our liability for all such damages, including but not limited to, damages for care and loss of services, loss of consortium, bystander claims, and claims for mental anguish, because of **bodily injury** sustained by two or more persons as the result of any one occurrence.

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SECTION V - GENERAL CONDITIONS

The second paragraph of 10. Other Insurance is deleted.

The following conditions are added:

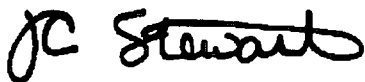
16. DISPOSAL OF VEHICLE

If **you** relinquish possession of a leased vehicle or if **you** sell or relinquish ownership of an **owned auto**, any coverage provided by this policy for that vehicle will terminate on the date **you** do so.

17. CHOICE OF LAW

The policy and any amendment(s) and endorsement(s) are to be interpreted pursuant to the laws of the state of South Carolina.

We affirm this amendment.



J. C. Stewart
Secretary



O. M. Nicely
President

EXHIBIT F

Personal Auto

From Erie Insurance

North Carolina Insurance Policy



Erie
Insurance®

800 167

YOUR PERSONAL AUTO POLICY QUICK REFERENCE

DECLARATIONS PAGE

Your Name and Address
Your Auto or Trailer
Policy Period
Coverages and Amounts of Insurance

	Beginning on Page		Beginning on Page
AGREEMENT	4	PART D -- COVERAGE FOR DAMAGE TO YOUR AUTO	
DEFINITIONS	4	Insuring Agreement	12
PART A -- LIABILITY COVERAGE		Transportation Expenses	
Insuring Agreement	5	Salvage Charges	
Supplementary Payments		Exclusions	
Exclusions		Limit of Liability	
Limit of Liability		Payment of Loss	
Out of State Coverage		No Benefit to Bailee	
Financial Responsibility		Other Insurance	
Other Insurance		Appraisal	
PART B -- MEDICAL PAYMENTS COVERAGE		Loss Payee	
Insuring Agreement	6	PART E -- DUTIES AFTER AN ACCIDENT OR LOSS FILING A CLAIM	
Exclusions		General Duties	15
Limit of Liability		Additional Duties for Uninsured and Combined Uninsured/Underinsured Motorists Coverage	
Non-Duplication		Additional Duties for Coverage for Damage to Your Auto	
Other Insurance		PART F -- GENERAL PROVISIONS	
Arbitration		Bankruptcy	16
PART C1 -- UNINSURED MOTORISTS COVERAGE		Changes	
Insuring Agreement	8	Fraud or Material Misrepresentation	
Exclusions		Legal Action Against Us	
Limit of Liability		Our Right to Recover Payment	
Other Insurance		Policy Period and Territory	
Our Right to Recover Payment		Termination	
Arbitration		Cancellation	
PART C2 -- COMBINED UNINSURED/ UNDERINSURED MOTORISTS COVERAGE		Nonrenewal	
Insuring Agreement	10	Automatic Termination	
Exclusions		Other Termination Provisions	
Limit of Liability		Transfer of Your Interest in This Policy	
Our Right to Recover Payment		Auto Repairs	
Other Insurance		Choice of Law	
Arbitration		POLICY CHANGE ENDORSEMENT	
		Definitions	18
		Additional Erie Insurance	
		Exchange Definitions	
		Agreement - Erie Insurance Exchange	
		General Provisions	
		Additional Erie Insurance	
		Exchange Conditions	
		No Contingent Liability	
		Accounting	

This policy is a legal contract between you and us. The Personal Auto Policy is:

- designed for easy reference;
- simplified to make it more understandable; and
- arranged to better display the available coverage.

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READ YOUR POLICY CAREFULLY

AGREEMENT

In return for payment of the premium and subject to all the terms of this policy, we agree with you as follows:

DEFINITIONS

Throughout this policy, "you" and "your" refer to:

1. The "named insured" shown in the Declarations; and
2. The spouse if a resident of the same household.

"We", "us" and "our" refer to the Company providing this insurance.

For the purposes of this policy, a private passenger type auto, pickup or van shall be deemed to be owned by a person if leased:

1. Under a written agreement to that person; and
2. For a continuous period of at least 6 months.

Other words and phrases are defined. They are boldfaced or in quotation marks when used.

"**Bodily Injury**" means bodily harm, sickness or disease, including death that results.

"**Business**" means trade, profession or occupation.

"**Family member**" means a person related to you by blood, marriage or adoption who is a resident of your household. This includes a ward or foster child.

"**Occupying**" means in; upon; getting in, on, out or off.

"**Property damage**" means physical injury to, destruction of, or loss of use of tangible property.

"**Trailer**" means a vehicle designed to be pulled by a:

1. Private passenger auto or station wagon type; or
2. Pickup truck or van.

It also means a farm wagon or farm implement while pulled by a vehicle listed in 1. or 2. above.

"**Your covered auto**" means:

1. Any vehicle shown in the Declarations.
2. A newly acquired auto.
3. Any trailer you own.
4. Any auto or trailer not owned by you while used as a temporary substitute for any other vehicle described in this definition which is out of normal use because of its:
 - a. breakdown;
 - b. repair;
 - c. servicing;
 - d. loss; or
 - e. destruction.

This provision (4.) does not apply to Part D - Coverage For Damage To Your Auto.

"**Newly acquired auto**" means any of the following types of vehicles you become the owner of during the policy period:

1. a private passenger auto or station wagon type; or
2. a pickup truck or van that:
 - a. has a Gross Vehicle Weight as specified by the manufacturer of less than 10,000 pounds; and
 - b. is not used for the delivery or transportation of goods and materials unless such use is:
 - 1) incidental to your business of installing, maintaining or repairing furnishings or equipment; or
 - 2) for farming or ranching.

Any coverage for a newly acquired auto is subject to the following:

1. If a newly acquired auto replaces a vehicle shown in the Declarations, it will have the same coverage as the vehicle it replaced except that coverage, if any, under Part D - Coverage For Damage To Your Auto applies only if you ask us to insure it within 30 days after you become the owner.
2. If a newly acquired auto is in addition to any shown in the Declarations, it will have the broadest coverage we now provide for any vehicle shown in the Declarations if you ask us to insure it within 30 days after you become the owner.
3. Coverage under this policy terminates for any newly acquired auto on the effective date and time of a policy (other than this policy) issued by us or any other company that describes such vehicle on its declarations page.
4. If you ask us to insure a newly acquired auto within the applicable specified time period described in 1. or 2. above, any coverage we provide for the newly acquired auto begins on the date you become the owner. If you ask us to insure a newly acquired auto after the applicable specified time period described above has elapsed, any coverage we provide for the newly acquired auto will begin at the time you request the coverage. You must pay us any added amount due for any coverage we provide for a newly acquired auto.

PART A -- LIABILITY COVERAGE

INSURING AGREEMENT

We will pay damages for bodily injury or property damage for which any insured becomes legally responsible because of an auto accident. Damages include pre-judgment interest awarded against the insured. We will settle or defend, as we consider appropriate, any claim or suit asking for these damages. In addition to our limit of liability, we will pay all defense costs we incur. Our duty to settle or defend ends when our limit of liability for this coverage has been exhausted. We have no duty to defend any suit or settle any claim for bodily injury or property damage not covered under this policy.

"Insured" as used in this Part means:

1. You or any family member for the ownership, maintenance or use of any auto or trailer.
2. Any person using your covered auto.
3. For your covered auto, any person or organization but only with respect to legal responsibility for acts or omissions of a person for whom coverage is afforded under this Part.
4. For any auto or trailer, other than your covered auto, any person or organization but only with respect to legal responsibility for acts or omissions of you or any family member for whom coverage is afforded under this Part. This provision applies only if the person or organization does not own or hire the auto or trailer.

SUPPLEMENTARY PAYMENTS

In addition to our limit of liability:

1. We will pay the following on behalf of an insured:
 - a. Premiums on appeal bonds and bonds to release attachments in any suit we defend. We have no duty to purchase bonds in an amount exceeding our limit of liability, and we have no duty to apply for or furnish these bonds; and
 - b. All costs taxed against the insured and interest accruing after a judgment is entered in any suit we defend. Costs do not include prejudgment interest. Our duty to pay postjudgment interest ends when we offer to pay that part of the judgment which does not exceed our limit of liability for the coverage.
2. We will pay the following to an insured:
 - a. Up to \$250 for the cost of bail bonds required because of traffic law violations resulting from an accident. The accident must result in bodily injury or property damage covered under this policy;
 - b. Up to \$200 a day for loss of wages or salary, but not other income, because of attendance at hearings or trials at our request;
 - c. Up to \$200 for expenses incurred by an insured for emergency first aid to others performed at the scene of an accident that involves any auto covered by this policy;
 - d. Other reasonable expenses incurred at our request.

The amount of any costs, wages, salary, or other expenses listed above that are incurred by an insured must be reported to us by such insured before we will make payment.

EXCLUSIONS

A. We do not provide Liability Coverage for any insured:

1. Who intentionally causes bodily injury or property damage. This exclusion applies only to the extent that the limit of liability of this policy exceeds the minimum limit required by the financial responsibility law of North Carolina.
2. For property damage to property owned or being transported by that insured.
3. For property damage to property:
 - a. rented to;
 - b. used by; or
 - c. in the care of;

that insured. This exclusion does not apply to a residence or private garage.

4. For bodily injury to an employee of that insured during the course of employment. This exclusion does not apply to a domestic employee unless workers' compensation benefits are required or available for that domestic employee.
5. For that insured's liability arising out of the ownership or operation of a vehicle while it is being used as a public or livery conveyance. This exclusion does not apply to a share-the-expense car pool.
6. While employed or otherwise engaged in the business of:
 - a. selling;
 - b. repairing;
 - c. servicing;
 - d. storing; or
 - e. parking;

vehicles designed for use mainly on public highways. This includes road testing and delivery. This exclusion does not apply to the ownership, maintenance or use of your covered auto by:

- a. you;
- b. any family member; or
- c. any partner, agent or employee of you or any family member.

This exclusion applies only to the extent that the limit of liability of this policy exceeds the minimum limit required by the financial responsibility law of North Carolina.

7. Maintaining or using any vehicle while that insured is employed or otherwise engaged in any business (other than farming or ranching) not described in Exclusion 6. This exclusion does not apply to the maintenance or use of a:
 - a. private passenger auto;
 - b. pickup or van that:
 - 1) You own; or
 - 2) You do not own while used as a temporary substitute for your covered auto which is out of normal use because of its:
 - a) breakdown;
 - b) repair;
 - c) servicing;
 - d) loss, or

- e) destruction; or
- c. trailer used with a vehicle described in a. or b. above.
- 8. Using a vehicle without a reasonable belief that that insured is entitled to do so. This Exclusion A.8. does not apply to a family member using your covered auto which is owned by you.
- 9. For bodily injury or property damage for which that insured:
 - a. is an insured under a nuclear energy liability policy; or
 - b. would be an insured under a nuclear energy liability policy but for its termination upon exhaustion of its limit of liability.

A nuclear energy liability policy is a policy issued by any of the following or their successors:

- a. Nuclear Energy Liability Insurance Association;
- b. Mutual Atomic Energy Liability Underwriters; or
- c. Nuclear Insurance Association of Canada.

B. We do not provide Liability Coverage for the ownership, maintenance or use of:

- 1. Any vehicle, other than your covered auto, which is:
 - a. owned by you; or
 - b. furnished for your regular use.
- 2. Any vehicle, other than your covered auto, which is:
 - a. owned by any family member; or
 - b. furnished for the regular use of any family member.

However, this exclusion (B.2.) does not apply to your maintenance or use of any vehicle which is:

- a. owned by a family member; or
- b. furnished for the regular use of a family member.

LIMIT OF LIABILITY

The limit of liability shown in the Declarations for each person for Bodily Injury Liability Coverage is our maximum limit of liability for all damages for bodily injury, including damages for care, loss of services or death, sustained by any one person in any one auto accident. Subject to this limit for each person, the limit of liability shown in the Declarations for each accident for Bodily Injury Liability Coverage is our maximum limit of liability for all damages for bodily injury resulting from

any one auto accident. The limit of liability shown in the Declarations for each accident for Property Damage Liability Coverage is our maximum limit of liability for all damages to all property resulting from any one auto accident. This is the most we will pay as a result of any one auto accident regardless of the number of:

- 1. Insureds;
- 2. Claims made;
- 3. Vehicles or premiums shown in the Declarations; or
- 4. Vehicles involved in the auto accident.

OUT OF STATE COVERAGE

If an auto accident to which this policy applies occurs in any state or province other than the one in which your covered auto is principally garaged, we will interpret your policy for that accident as follows:

If the state or province has:

- 1. A financial responsibility or similar law specifying limits of liability for bodily injury or property damage higher than the limit shown in the Declarations, your policy will provide the higher specified limit.
- 2. A compulsory insurance or similar law requiring a nonresident to maintain insurance whenever the nonresident uses a vehicle in that state or province, your policy will provide at least the required minimum amounts and types of coverage.

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

FINANCIAL RESPONSIBILITY REQUIRED

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

OTHER INSURANCE

If there is other applicable liability insurance, we will pay only our share of the loss. Our share is the proportion that our limit of liability bears to the total of all applicable limits. However, any insurance we provide for a vehicle you do not own shall be excess over any other collectible insurance.

PART B -- MEDICAL PAYMENTS COVERAGE

INSURING AGREEMENT

We will pay reasonable expenses incurred for necessary medical and funeral services because of bodily injury:

- 1. Caused by accident; and
- 2. Sustained by an insured.

We will pay only those expenses incurred for services rendered within 3 years from the date of the accident.

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 use of acupuncture or other related procedures of a similar nature; or
 - c. 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 licensed medical provider within the scope of the provider's practice and license 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.

"Insured" as used in this Part means:

1. You or any family member:
 - a. while occupying; or
 - b. as a pedestrian when struck by;
a motor vehicle designed for use mainly on public roads or a trailer of any type.
2. Any other person while occupying:
 - a. your covered auto; or
 - b. any other motor vehicle:
 - 1) operated by you; or
 - 2) operated by a family member if the motor vehicle is a private passenger auto or trailer.

EXCLUSIONS

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

1. Sustained while occupying your covered auto when it is being used as a public or livery conveyance. This exclusion does not apply to a share-the-expense car pool.
2. Sustained while occupying any vehicle located for use as a residence or premises.
3. Occurring while employed or otherwise engaged in the business of:
 - a. selling;
 - b. repairing;
 - c. servicing;
 - d. storing; or
 - e. parking;

vehicles designed for use mainly on public highways. This includes road testing and delivery. This exclusion applies only if workers' compensation benefits are available for the bodily injury.

4. Sustained while occupying, or when struck by, any vehicle (other than your covered auto) which is:
 - a. owned by you; or
 - b. furnished for your regular use.
5. Sustained while occupying, or when struck by, any vehicle (other than your covered auto) which is:
 - a. owned by any family member; or
 - b. furnished for the regular use of any family member.

However, this exclusion does not apply to you.

6. Sustained while occupying a vehicle without a reasonable belief that that insured is entitled to do so.

This Exclusion 6. does not apply to a family member using your covered auto which is owned by you.

7. Sustained while occupying any auto not owned by, or furnished for the regular use of, you or any family member, while used to carry persons or property for a fee. This exclusion does not apply to:
 - a. a share-the-expense car pool, or
 - b. you or any family member.
8. Resulting from the maintenance or use of any auto not owned by, or furnished for the regular use of, you or any family member, while that insured is engaged in the business of:
 - a. selling;
 - b. repairing;
 - c. servicing;
 - d. storing; or
 - e. parking;

vehicles designed for use mainly on public highways. This includes road testing and delivery. This exclusion does not apply to you or any family member.

9. Resulting from the maintenance or use of any auto not owned by, or furnished for the regular use of, you or any family member, while that insured is employed or otherwise engaged in any business not described in Exclusion 8. This exclusion does not apply:
 - a. to you or any family member; or
 - b. if the bodily injury results from the operation of a private passenger auto or trailer by you.
10. Caused by or as a consequence of:
 - a. war (declared or undeclared);
 - b. civil war;
 - c. insurrection; or
 - d. rebellion or revolution.
11. Sustained while occupying any motorized vehicle having fewer than four wheels.

LIMIT OF LIABILITY

The limit of liability shown in the Declarations for this coverage is our maximum limit of liability for each person injured in any one accident regardless of the number of:

1. Claims made;
2. Vehicles or premiums shown in the Declarations; or
3. Vehicles involved in the accident.

NON-DUPLICATION

No person for whom medical expenses are payable under this coverage shall be paid more than once for the same medical expense under this or similar vehicle insurance, including any no-fault benefits required by law.

OTHER INSURANCE

If there is other applicable auto medical payments insurance we will pay only our share of the loss. Our share is the proportion that our limit of liability bears to the total of all applicable limits. However, any insurance we provide with respect to a vehicle you do not own shall be excess over any other collectible auto insurance providing payments for medical or funeral expenses.

ARBITRATION

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 services. The arbitrators' decision shall be limited to whether or

not the medical expenses were reasonable and the services were necessary, with the amount due being equal only to the reasonable expenses for necessary 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.

PART C1 -- UNINSURED MOTORISTS COVERAGE

INSURING AGREEMENT

We will pay compensatory damages which an insured is legally entitled to recover from the owner or operator of an uninsured motor vehicle because of:

1. Bodily injury sustained by an insured and caused by an accident; and
2. Property damage caused by an accident.

The owner's or operator's liability for these damages must arise out of the ownership, maintenance or use of the uninsured motor vehicle.

Any judgment for damages arising out of a suit is not binding on us unless we have been served with a copy of the summons, complaint or other process against the uninsured motorist.

"Insured" as used in this Part means:

1. You or any family member.
2. Any other person occupying:
 - a. your covered auto; or
 - b. any other auto operated by you.
3. Any person for damages that person is entitled to recover because of bodily injury to which this coverage applies sustained by a person listed in 1. or 2. above.

"Property damage" as used in this Part means injury to or destruction of:

1. Your covered auto.
2. Any property owned by a person listed in 1. or 2. of insured.

"Uninsured motor vehicle" means a land motor vehicle or trailer of any type:

1. To which neither:
 - a. a liability bond or policy; nor
 - b. cash or securities on file with the North Carolina Commissioner of Motor Vehicles;

applies at the time of the accident.

2. To which a liability bond or policy applies at the time of the accident; provided its limit for liability is less than the minimum limit specified by the financial responsibility law of North Carolina.

3. Which, with respect to damages for bodily injury only, is a hit-and-run vehicle whose operator or owner cannot be identified and which hits:

- a. you or any family member;
- b. a vehicle which you or any family member are occupying; or
- c. your covered auto.

4. To which a liability bond or policy applies at the time of the accident but the bonding or insuring company:

- a. denies coverage; or
- b. is or becomes insolvent.

However, "uninsured motor vehicle" does not include any vehicle or equipment:

1. Owned by you.
2. Owned or operated by a self-insurer under any applicable motor vehicle law; except a self-insurer which is or becomes insolvent.
3. Owned by:
 - a. The United States of America;
 - b. Canada;
 - c. a state; or
 - d. an agency, other than a political subdivision of a., b. or c. above.
4. Operated on rails or crawler treads.
5. Which is a farm type tractor or equipment designed mainly for use off public roads while not on public roads.
6. While located for use as a residence or premises.

EXCLUSIONS

A. We do not provide Uninsured Motorists Coverage for property damage or bodily injury sustained by any insured:

1. If that insured or the legal representative settles the bodily injury or property damage claim without our written consent.
2. While occupying your covered auto while it is being used as a public or livery conveyance. This exclusion does not apply to a share-the-expense car pool.
3. Using a vehicle without a reasonable belief that that insured is entitled to do so. This Exclusion A.3. does not apply to a family member using your covered auto which is owned by you.

4. For the first \$100 of the amount of property damage to the property of each insured as the result of any one accident.
5. If the property is contained in or struck by a motor vehicle (other than your covered auto) owned by you or any family member.
6. For any punitive or exemplary damages, or legal costs related thereto.
7. While occupying, or when struck by, any motor vehicle owned by you or any family member which is not insured for this coverage under this policy. This includes a trailer of any type used with that vehicle.

However, this exclusion does not apply to you or any family member.

B. We do not provide Uninsured Motorists Coverage for property damage caused by a hit-and-run vehicle whose operator or owner cannot be identified.

C. This coverage shall not apply directly or indirectly to benefit any insurer or self-insurer under any of the following or any similar law:

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

LIMIT OF LIABILITY

The limit of bodily injury liability shown in the Declarations for each person for Uninsured Motorists Coverage is our maximum limit of liability for all damages for bodily injury, including damages for care, loss of services or death, sustained by any one person in any one auto accident.

Subject to this limit for each person, the limit of bodily injury liability shown in the Declarations for each accident for Uninsured Motorists Coverage is our maximum limit of liability for all damages for bodily injury resulting from any one accident. The limit of property damage liability shown in the Declarations for each accident for Uninsured Motorists Coverage is our maximum limit of liability for all damages to all property resulting from any one accident. This is the most we will pay for bodily injury or property damage regardless of the number of:

1. Insureds;
2. Claims made;
3. Vehicles or premiums shown in the Declarations; or
4. Vehicles involved in the accident.

The limit of liability otherwise applicable under this coverage shall be reduced by all sums:

1. Paid because of the bodily injury or property damage by or on behalf of persons or organizations who may be legally responsible. This includes all sums paid under Part A;
2. Paid or payable because of the bodily injury under any worker's compensation law. However, this reduction does not apply to the extent that an employer's lien is required to be paid under North Carolina's workers' compensation law; and
3. Paid or payable because of the bodily injury under any disability benefits law or any similar law.

No payment will be made for loss paid or payable to the insured under Part D or any policy of property insurance.

Any payment to any person under this coverage will reduce any amount that person is entitled to recover for the same damages under Part A.

This coverage is excess over and shall not duplicate any amount paid or payable under Part B.

OTHER INSURANCE

If this policy and any other auto insurance policy apply to the same accident, the maximum amount payable under all applicable policies for injuries to an insured caused by an uninsured motor vehicle shall be the sum of the highest limit of liability for this coverage under each such policy.

In addition, if there is other applicable similar insurance we will pay only our share of the loss. Our share is the proportion that our limit of liability bears to the total of all applicable limits. However, any insurance we provide with respect to a vehicle you do not own shall be excess over any other collectible insurance.

OUR RIGHT TO RECOVER PAYMENT

A. If we make a payment under this coverage and the person to or for whom payment was made has a right to recover damages from another, we shall be subrogated to that right. Further, the execution of a covenant not to enforce judgment by the injured party shall not preclude us from pursuing our right to sue for or otherwise recover any payment made under this coverage from anyone else who may be liable. The person to or for whom payment was made shall do:

1. Whatever is necessary to enable us to exercise our rights; and
2. Nothing after loss to prejudice them.

B. If we make a payment under this coverage and the person to or for whom payment is made recovers damages from another, that person shall:

1. Hold in trust for us the proceeds of the recovery; and
2. Reimburse us to the extent of our payment.

ARBITRATION

If we and an insured do not agree:

1. Whether that insured is legally entitled to recover compensatory damages from the owner or driver of an uninsured motor vehicle; or
2. As to the amount of such damages;

the insured may demand to settle the dispute by arbitration.

The following procedures will be used:

1. Each party will select a competent arbitrator. The two so selected will select a third.
2. If the third arbitrator is not selected within 30 days, the insured or we may request a judge of a court of record to name one. The court must be in the county and state in which arbitration is pending.
3. Each party will pay its chosen arbitrator. Each will pay half of all other expenses of arbitration. Fees to lawyers and expert witnesses are not considered arbitration costs.

tration expenses and are to be paid by the party hiring these persons.

4. Unless the insured and we agree otherwise, arbitration will take place in the county and state in which the insured lives. Arbitration will be subject to the usual rules of procedure and evidence in such county and state. The arbitrators will resolve the issues. A written decision on which two arbitrators agree will be binding on the insured and us.

5. Any arbitration action against the company must begin within the time limit allowed for bodily injury or death actions in the state where the accident occurred.
6. Judgment upon award may be entered in any proper court.
7. As an alternative, the insured and we may agree to arbitrate by rules other than stated above.

PART C2 -- COMBINED UNINSURED/UNDERINSURED MOTORISTS COVERAGE

INSURING AGREEMENT

We will pay compensatory damages which an insured is legally entitled to recover from the owner or operator of an uninsured motor vehicle because of:

1. Bodily injury sustained by an insured and caused by an accident; and
2. Property damage caused by an accident.

The owner's or operator's liability for these damages must arise out of the ownership, maintenance or use of the uninsured motor vehicle.

We will also pay compensatory damages which an insured is legally entitled to recover from the owner or operator of an underinsured motor vehicle because of bodily injury sustained by an insured and caused by an accident. The owner's or operator's liability for these damages must arise out of the ownership, maintenance or use of the underinsured motor vehicle. We will pay for these damages only after the limits of liability under any applicable liability bonds or policies have been exhausted by payments of judgments or settlements, unless we:

1. Have been given written notice in advance of settlement between an insured and the owner or operator of the underinsured motor vehicle; and
2. Consent to advance payment to the insured in the amount equal to the tentative settlement.

Any judgment for damages arising out of a suit is not binding on us unless we have been served with a copy of the summons, complaint or other process against the uninsured or underinsured motorist.

"Insured" as used in this Part means:

1. You or any family member.
2. Any other person occupying:
 - a. your covered auto; or
 - b. any other auto operated by you.
3. Any person for damages that person is entitled to recover because of bodily injury to which this coverage applies sustained by a person listed in 1. or 2. above.

"Property damage" as used in this Part means injury to or destruction of:

1. Your covered auto.
2. Any property owned by a person listed in 1. or 2. of insured.

"Underinsured motor vehicle" means a land motor vehicle or trailer of any type:

1. The ownership, maintenance or use of which is insured or bonded for liability at the time of accident; and
2. The sum of the limits of liability under all bodily injury liability bonds and insurance policies applicable at the time of the accident is equal to or greater than the minimum limit specified by the financial responsibility law of North Carolina and:
 - a. is less than the limit of liability for this coverage; or
 - b. the total limit of liability available has been reduced to less than the limit of liability for this coverage by payment of damages to other persons.

However, "underinsured motor vehicle" does not include any vehicle or equipment:

1. Operated on rails or crawler treads.
2. Which is a farm-type tractor or other vehicle designed for use principally off public roads and while not upon public roads.
3. While located for use as a residence or premises.
4. Which is an uninsured motor vehicle.
5. Which is insured under Liability Coverage of this policy if such policy's limit of liability for Combined Uninsured/Underinsured Motorists Coverage is equal to or less than its limit of liability for Liability Coverage.

"Uninsured motor vehicle" means a land motor vehicle or trailer of any type:

1. To which neither:
 - a. a liability bond or policy; nor
 - b. cash or securities on file with the North Carolina Commissioner of Motor Vehicles;

applies at the time of the accident.

2. To which a liability bond or policy applies at the time of the accident; provided its limit for liability is less than the minimum limit specified by the financial responsibility law of North Carolina.
3. Which, with respect to damages for bodily injury only, is a hit-and-run vehicle whose operator or owner cannot be identified and which hits:
 - a. you or any family member;
 - b. a vehicle which you or any family member are occupying; or
 - c. your covered auto.
4. To which a liability bond or policy applies at the time of the accident, but the bonding or insuring company:
 - a. denies coverage; or
 - b. is or becomes insolvent.

However, "uninsured motor vehicle" does not include any vehicle or equipment:

1. Owned by you.
2. Owned or operated by a self-insurer under any applicable motor vehicle law; except a self-insurer which is or becomes insolvent.
3. Owned by:
 - a. The United States of America;
 - b. Canada;
 - c. a state; or
 - d. an agency, other than a political subdivision of a, b. or c. above.
4. Operated on rails or crawler treads.
5. Which is a farm type tractor or equipment designed mainly for use off public roads while not on public roads.
6. While located for use as a residence or premises.

EXCLUSIONS

A. We do not provide coverage for property damage or bodily injury caused by an uninsured motor vehicle and sustained by any Insured:

1. If that insured or the legal representative settles the bodily injury or property damage claim without our written consent.
2. While occupying your covered auto while it is being used as a public or livery conveyance. This exclusion does not apply to a share-the-expense car pool.
3. Using a vehicle without a reasonable belief that that insured is entitled to do so. This exclusion A.3. does not apply to a family member using your covered auto which is owned by you.
4. For the first \$100 of the amount of property damage to the property of each insured as the result of any one accident.
5. If the property is contained in or struck by a motor vehicle (other than your covered auto) owned by you or any family member.
6. For any punitive or exemplary damages, or legal costs related thereto.
7. While occupying, or when struck by, any motor vehicle owned by you or any family member which is not insured for this coverage under this policy. This includes a trailer of any type used with that vehicle.

However, this exclusion does not apply to you or any family member.

B. We do not provide coverage for property damage caused by a hit-and-run vehicle whose operator or owner cannot be identified.

C. We do not provide coverage for bodily injury caused by an underinsured motor vehicle and sustained by any insured:

1. If that insured or the legal representative settles the bodily injury claim without our consent. However, this exclusion does not apply if we:
 - a. have been given written notice in advance of a settlement between an insured and the owner or operator of the underinsured motor vehicle; and
 - b. we fail to advance payment to the insured in an amount equal to the tentative settlement within thirty days following receipt of such written notice.

2. While occupying your covered auto while it is being used as a public or livery conveyance. This exclusion does not apply to a share-the-expense car pool.
3. Using a vehicle without reasonable belief that that insured is entitled to do so. This Exclusion C.3. does not apply to a family member using your covered auto which is owned by you.
4. For any punitive or exemplary damages, or legal costs related thereto.
5. While occupying, or when struck by, any motor vehicle owned by you or any family member which is not insured for this coverage under this policy. This includes a trailer of any type used with that vehicle.

However, this exclusion does not apply to you or any family member.

D. This coverage shall not apply directly or indirectly to benefit any insurer or self-insurer under any of the following or any similar law:

1. workers' compensation law; or
2. disability benefits law.

LIMIT OF LIABILITY

The limit of bodily injury liability shown in the Declarations for each person for Combined Uninsured/Underinsured Motorists Coverage is our maximum limit of liability for all damages for bodily injury, including damages for care, loss of services or death, sustained by any one person in any one auto accident.

Subject to this limit for each person, the limit of bodily injury liability shown in the Declarations for each accident for Combined Uninsured/Underinsured Motorists Coverage is our maximum limit of liability for all damages for bodily injury resulting from any one accident. The limit of property damage liability shown in the Declarations for each accident for Combined Uninsured/Underinsured Motorists Coverage is our maximum limit of liability for all damages for property damage caused by an uninsured motor vehicle and resulting from any one accident.

This is the most we will pay for bodily injury and property damage regardless of the number of:

1. Insureds;
2. Claims made;
3. Vehicles or premiums shown in the Declarations; or
4. Vehicles involved in the accident.

The limits of bodily injury liability shown in the Declarations for each person and each accident for this coverage shall be reduced by all sums:

1. Paid because of the bodily injury by or on behalf of persons or organizations who may be legally responsible. This includes all sums paid under Part A;
2. Paid or payable because of the bodily injury under any workers' compensation law. However, this reduction does not apply to the extent that an employer's lien is required to be paid under North Carolina's workers' compensation law; and
3. Paid or payable because of the bodily injury under any disability benefits law or any similar law.

The most we will pay for bodily injury damages to an insured under this coverage is the lesser of:

- a. the limit of bodily injury liability shown in the Declarations for each person for this coverage reduced by all sums described in items 1., 2. and 3. of the preceding paragraph; or
- b. the damages sustained by the insured for bodily injury reduced by all sums described in items 1., 2. and 3. in the preceding paragraph.

The limit of property damage liability under this coverage shall be reduced by all sums paid because of the property damage by or on behalf of persons or organizations who may be legally responsible. This includes all sums payable under Part A.

No payment will be made for loss paid or payable to the insured under Part D or any policy of property insurance.

Any payment to any person under this coverage will reduce any amount that person is entitled to recover for the same damages under Part A.

This coverage is excess over and shall not duplicate any amount paid or payable under Part B.

OUR RIGHT TO RECOVER PAYMENT

If we make a payment under this coverage and the person to or for whom payment was made has a right to recover damages from another, we shall be subrogated to that right. Further, the execution of a covenant not to enforce judgment by the injured party shall not preclude us from pursuing our right to sue for or otherwise recover any payment made under this coverage from anyone else who may be liable. The person to or for whom payment was made shall do:

1. Whatever is necessary to enable us to exercise our rights; and
2. Nothing after loss to prejudice them.

However, our rights under this paragraph do not apply against the owner or operator of an underinsured motor vehicle if we have been given written notice in advance of a settlement and fail to advance payment in an amount equal to the tentative settlement within 30 days following receipt of such notice.

If we make a payment under this coverage and the person to or for whom payment is made recovers damages from another, that person shall:

1. Hold in trust for us the proceeds of the recovery; and
2. Reimburse us to the extent of our payment.

PART D -- COVERAGE FOR DAMAGE TO YOUR AUTO

INSURING AGREEMENT

We will pay for direct and accidental loss to your covered auto or any non-owned auto, including their equipment. Direct and accidental loss does not include any reduction in the value of any vehicle after it has been repaired, as compared to its value before it was damaged.

OTHER INSURANCE

If this policy and any other auto insurance policy apply to the same accident, the maximum amount payable under all applicable policies for all injuries to an insured caused by an uninsured motor vehicle or underinsured motor vehicle shall be the sum of the highest limit of liability for this coverage under each policy.

In addition, if there is other applicable similar insurance, we will pay only our share of the loss. Our share is the proportion that our limit of liability bears to the total of all applicable limits. However, any insurance we provide with respect to a vehicle you do not own shall be excess over any other collectible insurance.

ARBITRATION

If we and an insured do not agree:

1. Whether that insured is legally entitled to recover compensatory damages from the owner or driver of an uninsured motor vehicle or underinsured motor vehicle; or
2. As to the amount of such damages;

the insured may demand to settle the dispute by arbitration.

The following procedure will be used:

1. Each party will select a competent arbitrator. The two so selected will select a third.
2. If the third arbitrator is not selected within 30 days, the insured or we may request a judge of a court of record to name one. The court must be in the county and state in which arbitration is pending.
3. Each party will pay its chosen arbitrator. Each will pay half of all other expenses of arbitration. Fees to lawyers and expert witnesses are not considered arbitration expenses and are to be paid by the party hiring these persons.
4. Unless the insured and we agree otherwise, arbitration will take place in the county and state in which the insured lives. Arbitration will be subject to the usual rules of procedure and evidence in such county and state. The arbitrators will resolve the issues. A written decision on which two arbitrators agree will be binding on the insured and us.
5. Any arbitration action against the company must begin within the time limit allowed for bodily injury or death actions in the state where the accident occurred.
6. Judgment upon award may be entered in any proper court.
7. As an alternative, the insured and we may agree to arbitrate by rules other than stated above.

We will pay for loss to your covered auto caused by:

1. Other than collision only if the Declarations indicate that Comprehensive Coverage is provided for that auto.
2. Collision only if the Declarations indicate that Collision Coverage is provided for that auto.

If there is a loss to a non-owned auto, we will provide the broadest coverage applicable to any of your covered auto shown in the Declarations.

Our payment will be reduced by any deductible shown in the Declarations. The deductible will not apply to a loss caused by:

1. fire or lightning;
2. smoke due to a sudden, unusual and faulty operation of any fixed heating equipment serving the premises in which the auto is stored;
3. the stranding, sinking, burning, collision or derailment of any conveyance in or on which the auto is being transported.

"Collision" means the upset of your covered auto or a non-owned auto or their impact with another vehicle or object.

Loss caused by the following is considered other than collision:

1. Missiles or falling objects;
2. Fire;
3. Theft or larceny;
4. Explosion or earthquake;
5. Windstorm;
6. Hail, water or flood;
7. Malicious mischief or vandalism;
8. Riot or civil commotion;
9. Contact with bird or animal; or
10. Breakage of glass.

If loss is caused by contact with a bird or animal, or if breakage of glass is caused by collision, you may elect to have either loss considered to be caused by collision.

"Non-owned auto" means:

1. Any private passenger auto, station wagon type, pickup truck, van or trailer not owned by or furnished or available for the regular use of you or any family member while in the custody of or being operated by you or any family member.
2. Any auto or trailer you do not own while used as a temporary substitute for your covered auto which is out of normal use because of its:
 - a. breakdown;
 - b. repair;
 - c. servicing;
 - d. loss; or
 - e. destruction.

We will also pay for direct and accidental loss caused by fire or lightning to clothes or other personal effects:

1. which are owned by you or any family member; and
2. which are in or on your covered auto.

"Permanently installed" means installed by bolts, brackets, or welding in a location in accordance with applicable laws and regulations for the installation of such equipment or device.

TRANSPORTATION EXPENSES

In addition, we will pay, without application of a deductible, up to \$15 per day, to a maximum of \$450, for:

1. Transportation expenses incurred by you in the event of the total theft of your covered auto. This applies only if the Declarations indicate that Comprehensive Coverage is provided for that auto.
2. Loss of use expenses for which you become legally responsible in the event of the total theft of a non-owned auto. This applies only if the Declarations indicate that Comprehensive Coverage is provided for any your covered auto.

We will pay only expenses incurred during the period:

1. Beginning 48 hours after the theft; and
2. Ending when your covered auto or the non-owned auto is returned to use or we pay for its loss.

SALVAGE CHARGES

In addition, we will pay general average and salvage charges that you or any family member are legally responsible for in transporting an auto.

EXCLUSIONS

We will not pay for:

1. Loss to your covered auto or any non-owned auto which occurs while they are being used as a public or livery conveyance. This exclusion does not apply to a share-the-expense car pool.
2. Damage due and confined to:
 - a. wear and tear;
 - b. freezing;
 - c. mechanical or electrical breakdown or failure; or
 - d. road damage to tires.

This exclusion does not apply if the damage results from the total theft of your covered auto or any non-owned auto.

3. Loss due to or as a consequence of:
 - a. radioactive contamination;
 - b. war (declared or undeclared);
 - c. civil war;
 - d. insurrection; or
 - e. rebellion or revolution.
4. Loss to:
 - a. any electronic equipment or device that records, emits, amplifies, receives or transmits audio, visual, or data signals, including, but not limited to:
 - 1) radios and stereos;
 - 2) tape decks;
 - 3) compact disc players or recorders;
 - 4) citizens band radios;
 - 5) telephones;
 - 6) two-way mobile radios;
 - 7) scanning monitor receivers;
 - 8) television monitor receivers;
 - 9) video cassette players or recorders;
 - 10) audio cassette players or recorders;

- 11) personal computers; or
- 12) digital video disc player or recorder.

- b. tapes, records, discs, or other media used with any equipment or device described in a.
- c. any accessories used with equipment described in a.

Exclusions 4.a. and 4.c. do not apply to:

- a. any equipment or device that is permanently installed by the vehicle's manufacturer; or
- b. the first \$1,000 of any equipment or device that is permanently installed by other than the vehicle's manufacturer;

in any your covered auto or a non-owned auto.

- 5. Loss to a camper body or trailer you own which is not shown in the Declarations. This exclusion (5.) does not apply to a camper body or trailer you:
 - a. acquire during the policy period; and
 - b. ask us to insure within the policy period or within 30 days after you become the owner.
- 6. Loss to any non-owned auto while used by you or any family member in the business of:
 - a. selling;
 - b. repairing;
 - c. servicing;
 - d. storing; or
 - e. parking;
 vehicles designed for use mainly on public highways. This includes road testing and delivery.
- 7. Loss to any non-owned auto if used without the express or implied permission of the owner or other person in lawful possession of such vehicle.
- 8. With respect to any trailer shown in the Declarations, loss to:
 - a. awnings or cabanas; or
 - b. equipment designed to create additional living facilities.
- 9. Loss to your covered auto or any non-owned auto due to forfeiture ordered by the courts or destruction or confiscation by governmental or civil authorities because you or any family member:
 - a. engaged in illegal activities; or
 - b. failed to comply with Environmental Protection Agency or Department of Transportation standards.

This exclusion does not apply to the interest of Loss Payees in your covered auto.

- 10. Loss to equipment designed or used to detect or deter radar, laser or other speed monitoring equipment whether or not permanently installed.
- 11. Loss to any non-owned auto being maintained or used by any person while employed or otherwise engaged in any business not described in Exclusion 6. This exclusion does not apply to the maintenance or use by you or any family member of a non-owned auto which is a private passenger auto or trailer.
- 12. Loss to any custom furnishings or equipment in or upon any your covered auto or a non-owned auto including, but not limited to:
 - a. special carpeting and insulation, furniture or bars;
 - b. facilities for cooking and sleeping;
 - c. height extending roofs or ladders;
 - d. custom windows, murals, paintings or other decals or graphics;
 - e. tool boxes, and fifth wheel conversions;

- f. side exhausts and headers;
- g. winches and roll bars;
- h. special wheels/tires; or
- i. body or suspension alterations.

However, this exclusion (12.):

- a. does not apply to the first \$1,000 of any such custom furnishings or equipment; and
- b. does not apply to a camper body shown in the Declarations, or a cap, cover or bedliner in or upon any pickup truck you own.

- 13. Loss to, or loss of use of, a non-owned auto rented by:

- a. you; or
- b. any family member;

if a rental vehicle company is precluded from recovering such loss or loss of use, from you or that family member, pursuant to the provisions of any applicable rental agreement or state law.

LIMIT OF LIABILITY

Our limit of liability will be the lesser of the:

- 1. Actual cash value of the stolen or damaged property;
- 2. Amount necessary to repair or replace the property with other property of like kind and quality.

This amount 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.

Subject to the above, our limit of liability for loss to:

- 1. Personal effects is \$100; and
- 2. A trailer not owned by you is \$1,500.

An adjustment for depreciation and physical condition will be made in determining actual cash value at the time of loss.

PAYMENT OF LOSS

We may pay for the loss in money or repair or replace the damaged or stolen property. We may, at our expense, return any stolen property to:

- 1. You; or
- 2. The address shown in this policy.

If we return stolen property, we will pay for any damage resulting from the theft. We may keep all or part of the property at an agreed or appraised value. [IN THE REPAIR OF YOUR COVERED AUTO UNDER THE PHYSICAL DAMAGE COVERAGE PROVISIONS OF THIS POLICY, WE MAY REQUIRE OR SPECIFY THE USE OF AUTOMOBILE PARTS NOT MADE BY THE ORIGINAL MANUFACTURER. THESE PARTS ARE REQUIRED TO BE AT LEAST EQUAL IN TERMS OF FIT, QUALITY, PERFORMANCE AND WARRANTY TO THE ORIGINAL MANUFACTURER PARTS THEY REPLACE.]

NO BENEFIT TO BAILEE

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

OTHER INSURANCE

If other insurance also covers the loss, we will pay only our share of the loss. Our share is the proportion that our limit of liability bears to the total of all applicable limits. However, any insurance we provide with respect to a non-owned auto shall be excess over any other collectible insurance.

APPRAISAL

If we and you do not agree on the amount of loss, either may demand an appraisal of the loss. In this event, each party will select a competent appraiser. The two appraisers will select an umpire. The appraisers will state separately the actual cash value and the amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

1. Pay its chosen appraiser; and
2. Bear the expenses of the appraisal and umpire equally.

We do not waive any of our rights under this policy by agreeing to an appraisal.

LOSS PAYEE

If a Loss Payee is shown in the Declarations, then any Collision Coverage or Comprehensive Coverage provided by this policy applies to the Loss Payee's interest in your covered auto. If Collision Coverage or Comprehensive Coverage is cancelled or nonrenewed, we will provide coverage for the Loss Payee's interest until 10 days after the date we mail or electronically transmit a notice of the cancellation or nonrenewal to the Loss Payee. Any coverage for the Loss Payee's interest shall terminate on the earlier of the expiration of this 10 day period or the effective date of a policy or insurance binder for similar coverage for the Loss Payee's interest issued by another insurance carrier. Except for any continuation of coverage for the Loss Payee's interest that may be provided under this paragraph in connection with the Loss Payee's right to notice of cancellation or nonrenewal, this coverage for the Loss Payee's interest is only provided for a loss that would otherwise be payable to you.

Notwithstanding any other provisions of this policy, including but not limited to any continuation of coverage for the Loss Payee's interest as set forth above, if Collision Coverage or Comprehensive Coverage is rescinded, the Loss Payee's interest will not be protected and the Loss Payee shall have no rights greater than your rights to recover for a loss.

If we pay you or the Loss Payee, then we are entitled to your and the Loss Payee's rights of recovery to the extent of our payment. Our right of recovery does not impair the Loss Payee's right to recover the full amount of its claim from you.

PART E -- DUTIES AFTER AN ACCIDENT OR LOSS -- FILING A CLAIM

GENERAL DUTIES

We must be notified promptly of how, when and where the accident or loss happened. Notice should also include the names and addresses of any injured persons and of any witnesses.

A person seeking coverage must:

1. Cooperate with us in the investigation, settlement or defense of any claim or suit.
2. Promptly send us copies of any notices or legal papers received in connection with the accident or loss.
3. Submit as often as we reasonably require:
 - a. to physical exams by physicians we select. We will pay for these exams.
 - b. to examinations under oath and subscribe the same.
4. Authorize us to obtain:
 - a. medical reports; and
 - b. other pertinent records.
5. Submit a proof of loss when required by us.

ADDITIONAL DUTIES FOR UNINSURED AND COMBINED UNINSURED/UNDERINSURED MOTORISTS COVERAGE

A person seeking Uninsured or Combined Uninsured/Underinsured Motorists Coverage must also:

1. Promptly notify the police if a hit-and-run driver is involved.
2. Promptly send us copies of the legal papers if a suit is brought. A suit may not be brought by an insured until 60 days after that person notifies us of their belief that the prospective defendant is an uninsured motorist.

Any person who intends to pursue recovery against the owner or operator of an underinsured motor vehicle for damages beyond those paid or payable under this policy shall give us:

1. Notice of such intent; and
2. The opportunity to participate, at our expense, in the prosecution of such claim.

ADDITIONAL DUTIES FOR COVERAGE FOR DAMAGE TO YOUR AUTO

A person seeking Coverage For Damage To Your Auto must also:

1. Take reasonable steps after loss to protect your covered auto or any non-owned auto and their equipment from further loss. We will pay reasonable expenses incurred to do this.

2. Promptly notify the police if your covered auto or any non-owned auto is stolen.
3. Permit us to inspect and appraise the damaged property before its repair or disposal.

PART F -- GENERAL PROVISIONS

BANKRUPTCY

Bankruptcy or insolvency of the insured shall not relieve us of any obligations under this policy.

CHANGES

The premium for each of your covered autos is based on information we have received from you or other sources.

You agree:

1. That if any of this information material to the development of the policy premium is incorrect, incomplete or changed, we may adjust the premium accordingly during the policy period.
2. To cooperate with us in determining if this information is correct and complete, and to advise us of any changes in this information.

Any adjustment of your premium will be made using the rules in effect at the time of the change.

Premium adjustment may be made as the result of a change in:

1. Autos insured by the policy, including changes in use.
2. Drivers.
3. Coverages or coverage limits.
4. Rating territory.
5. Eligibility for discounts or other premium credits.

We may revise your policy coverages to provide more protection without additional premium charge. If we do this and you have the coverage which is changed, your policy will automatically provide the additional coverage as of the date the revision is effective in North Carolina. Otherwise, this policy contains all of the coverage agreements between you and us. Its terms may not be changed or waived except by an endorsement issued by us.

FRAUD OR MATERIAL MISREPRESENTATION

We do not provide coverage for any insured:

1. who has made a fraudulent statement or engaged in fraudulent conduct in connection with any accident or loss for which coverage is sought under this policy; or
2. if a named insured made a material misrepresentation in the application for this policy of insurance.

This provision applies to Part A - Liability Coverage to the extent that the limits of liability exceed the minimum limits required by the Financial Responsibility Law of North Carolina. If we make payment under Part A - Liability Coverage which we would not have otherwise made in the absence of the preceding sentence, then we shall have the right to recover such payment from any insured who made a fraudulent statement, engaged in fraudulent conduct, or made a material misrepresentation.

LEGAL ACTION AGAINST US

No legal action may be brought against us until there has been full compliance with all the terms of this policy. In addition, under Part A, no legal action may be brought against us until:

1. We agree in writing that the insured has an obligation to pay; or
2. The amount of that obligation has been finally determined by judgment after trial.

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

OUR RIGHT TO RECOVER PAYMENT

A. If we make a payment under this policy and the person to or for whom payment was made has a right to recover damages from another, we shall be subrogated to that right. That person shall do:

1. Whatever is necessary to enable us to exercise our rights; and
2. Nothing after loss to prejudice them.

However, our rights under this paragraph do not apply to:

1. Part B;
2. Parts C1 and C2, as those parts contain separate provisions which state our right to recover payment under those parts;
3. Part D, against any person using your covered auto with a reasonable belief that that person is entitled to do so.

B. If we make a payment under this policy and the person to or for whom payment is made recovers damages from another, that person shall:

1. Hold in trust for us the proceeds of the recovery; and
2. Reimburse us to the extent of our payment.

However, our rights in this paragraph do not apply to Part B.

POLICY PERIOD AND TERRITORY

This policy applies only to accidents and losses which occur:

1. During the policy period as shown in the Declarations; and
2. Within the policy territory.

The policy territory is:

1. The United States of America, its territories or possessions;
2. Puerto Rico; or
3. Canada.

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

TERMINATION-CANCELLATION, NONRENEWAL, AUTOMATIC TERMINATION, OTHER TERMINATION PROVISIONS

Cancellation. This policy may be cancelled during the policy period as follows:

1. The named insured shown in the Declarations may cancel by:
 - a. returning this policy to us; or
 - b. giving us advance written notice of the date cancellation is to take effect.
2. We may cancel the Liability, Medical Payments and Uninsured Motorists or Combined Uninsured/Underinsured Motorists Coverages by mailing by first class mail to the named insured shown in the Declarations at the last known address:
 - a. at least 15 days notice if cancellation is for non-payment of premium; or
 - b. at least 60 days notice in all other cases.
3. We may cancel any coverage other than Liability, Medical Payments and Uninsured Motorists or Combined Uninsured/Underinsured Motorists Coverages by mailing to the named insured shown in the Declarations at the last known address 10 days notice.
4. We will cancel the Liability, Medical Payments and Uninsured Motorists or Combined Uninsured/Underinsured Motorists Coverages only for the following reasons:
 - a. Nonpayment of premiums.
 - b. You become a nonresident of North Carolina and are not otherwise entitled to insurance through the Reinsurance Facility on submission of new application.
 - c. The termination of our contract with the agent through whom this policy was written. This does not apply if we terminate the contract because of the quality of the agent's insureds.
 - d. The cancellation of this policy pursuant to a power of attorney given to a company licensed pursuant to the provisions of G.S. 58-35-5.
 - e. You fail, at time of renewal, to meet the requirements of our corporate charter, articles of incorporation or by-laws, if we are organized for the sole purpose of providing members with insurance policies in North Carolina.

f. If you knowingly make a material misrepresentation of:

- 1) the years of driving experience; or
- 2) the driving record of

you or any other driver who lives with you and customarily uses your covered auto.

Nonrenewal. If we decide not to renew or continue the Liability, Medical Payments and Uninsured Motorists or Combined Uninsured/Underinsured Motorists Coverages of this policy we will mail notice to the named insured shown in the Declarations at the last known address. Notice will be mailed at least 60 days before the end of the policy period. If we decide not to renew or continue any other coverage, we will mail the notice at least 10 days before the end of the policy period. We will refuse to renew or continue this policy only as permitted by the laws of North Carolina.

Automatic Termination. If we offer to renew or continue and you or your representative do not accept, this policy will automatically terminate at the end of the current policy period. Failure to pay the required renewal or continuation premium when due, shall mean that you have not accepted our offer.

If you obtain other insurance on your covered auto, any similar insurance provided by this policy will terminate as to that auto on the effective date of the other insurance.

Other Termination Provisions

1. If the law in effect in North Carolina at the time this policy is issued, renewed or continued:
 - a. requires a longer notice period;
 - b. requires a special form of or procedure for giving notice; or
 - c. modifies any of the stated termination reasons;we will comply with those requirements.
2. Proof of mailing of any notice shall be sufficient proof of notice.
3. If this policy is cancelled, you may be entitled to a premium refund. If so, we will send you the refund. The premium refund, if any, will be computed according to our manuals. However, making or offering to make the refund is not a condition of cancellation.
4. The effective date of cancellation stated in the notice shall become the end of the policy period.

TRANSFER OF YOUR INTEREST IN THIS POLICY

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

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

3. Any person having proper temporary custody of your covered auto, as an insured, until the appointment of a legal representative.

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

AUTO REPAIRS

We shall not recommend the use of a particular motor vehicle repair service without clearly informing the claimant that:

1. the claimant is under no obligation to use the recommended repair service;
2. the claimant may use the repair service of the claimant's choice; and

3. the amount determined by us to be payable under the policy will be paid regardless of whether or not the claimant uses the recommended repair service.

CHOICE OF LAW

This policy is issued in accordance with the laws of North Carolina and covers property or risks principally located in North Carolina. Any and all claims or disputes in any way related to this policy shall be governed by the laws of North Carolina.

POLICY CHANGE ENDORSEMENT - APNA02 (Ed. 5/06)

DEFINITIONS

The following definitions are added:

"Declarations," "Amended Declarations," "Revised Declarations," "Reinstatement of Coverage" or "Continuation Notice" means the form which shows your coverages, limits of protection, your covered autos, premium charges and other information. This form is part of your policy.

An Amended Declarations shows you the policy has been changed. A Revised Declarations shows you the policy has been corrected. A Reinstatement of Coverage shows you the previously canceled policy and coverages are back in force. A Continuation Notice shows you the policy is being continued for another policy period.

ADDITIONAL ERIE INSURANCE EXCHANGE DEFINITIONS

The following words have a special meaning in policies issued by Erie Insurance Exchange:

"Subscriber" means the person(s) who signed the Subscriber's Agreement.

"Subscriber's Agreement" means the agreement, including a limited power-of-attorney, among the Subscribers and the Erie Indemnity Company, as Attorney-in-Fact.

These definitions are deleted from the definitions section and replaced by the following for policies issued by Erie Insurance Exchange:

"We," "us," or "our" means the Subscribers at Erie Insurance Exchange as represented by their common Attorney-in-Fact, Erie Indemnity Company.

"You," or "your" means the Subscriber and others named in Item 1 in the Declarations. These words include the spouse of the Subscriber if a resident of the same household.

AGREEMENT

This entire section is deleted and replaced by the following for policies issued by Erie Insurance Exchange:

ERIE INSURANCE EXCHANGE:

In return for your timely premium payment, your compliance with all of the provisions of this policy, and your signing of a Subscriber's Agreement with Erie Indemnity Company and other Subscribers, we agree to provide the coverages you have purchased. Your coverages and limits of protection are shown in the Declarations, which are part of this policy.

Your signing the Subscriber's Agreement, which includes a limited power-of-attorney, permits Erie Indemnity Company, as Attorney-in-Fact, to make reciprocal insurance contracts between you and other Subscribers and otherwise manage the business of the Erie Insurance Exchange. This power-of-attorney applies only to your insurance business at the Exchange and is limited to the purposes described in the Subscriber's Agreement.

Your responsibility as a Subscriber is determined by this policy and the Subscriber's Agreement. You are liable for just the policy premiums charged and are not subject to any other premium liability under this policy.

This agreement is made in reliance on the information you have given us and is subject to all the terms of this policy.

This policy, all endorsements to it, and the Subscriber's Agreement, constitute the entire agreement between you and us.

GENERAL PROVISIONS

This entire section is added:

ADDITIONAL ERIE INSURANCE EXCHANGE CONDITIONS

The following conditions apply only to policies issued by Erie Insurance Exchange:

(1) NO CONTINGENT LIABILITY

This policy is not subject to contingent liability or assessment.

(2) ACCOUNTING

Erie Indemnity Company may keep up to 25 percent of the premium written or assumed by Erie Insurance Exchange as compensation for:

- a. becoming and acting as Attorney-in-Fact;
- b. managing the business and affairs of Erie Insurance Exchange, its affiliates and subsidiaries; and
- c. paying general administrative expenses, including sales commissions, salaries and employee benefits, taxes, rent, depreciation, supplies and data processing.

The rest of the premium will be placed on the books of the Erie Insurance Exchange. We will deposit or invest this amount as permitted by law. This amount will be used to:

- a. pay losses and loss adjustment expenses;
- b. investment expenses;
- c. damages, legal expenses, and court costs;
- d. taxes;
- e. assessments;
- f. licenses;
- g. fees;
- h. any other governmental fines and charges;
- i. establishment of reserves, surplus, and reinsurance; and
- j. may be used for dividends and other purposes Erie Indemnity Company decides are to the advantage of the Subscribers.

This policy has been signed on our behalf at Erie, Pennsylvania by our President and Secretary. If required by law, it has been Countersigned on the Declarations by our Authorized Agent.


Secretary


President



**Erie
Insurance**

Home Office • 100 Erie Insurance Place • Erie, PA 16530 • 814.870.2000
Visit our Website at www.erieinsurance.com

NORTH CAROLINA -- NOTICE TO POLICYHOLDERS**RETURNED PAYMENT FEE**

A \$25.00 charge will be applied to your account if your check or other payment is returned unpaid by your financial institution.

DO NOT LET YOUR RENEWAL POLICY EXPIRE ...

In order to keep your auto policy in force, it is important that you pay the amount due by the due date stated on your invoice. Your policy contains an Automatic Termination Condition which states, *"If we offer to renew or continue and you or your representative do not accept, this policy will automatically terminate at the end of the current policy period. Failure to pay the required renewal or continuation premium when due shall mean that you have not accepted our offer."*

If ERIE does not receive payment by the due date indicated on your renewal invoice, your policy will automatically terminate as of the effective date of the renewal and your renewal policy will not take effect. This procedure is different from our prior practice regarding the expiration of your policy.

In the event that you do not pay as required, you will receive a past due notice which will advise you that your policy has expired and give you the opportunity to reinstate your policy without a lapse in coverage. However, if you do not pay the amount indicated by the due date on the past due notice, **YOUR POLICY WILL REMAIN OUT OF FORCE** as of the effective date of the renewal policy. This will result in a lapse in coverage. During the lapse, coverage will not be available in the event of a loss.

PLEASE NOTIFY YOUR AGENT IF YOU:

- change your address or marital status;
- change the use of your vehicle or the distance you drive to or from work/school;
- change the location where your vehicle is principally garaged;
- add/delete an auto or lienholder or another party having a financial interest in your vehicle(s);
- add/delete a licensed resident in your household, even if they have their own auto and insurance;
- modify the appearance or performance of your vehicle with customized equipment.

This information is needed to properly rate your policy. Your policy will be amended to reflect the change.

NOTICE OF INSURANCE INFORMATION PRACTICES - As part of our procedure for processing your insurance, personal information such as a credit report, prior insurance claims report, and/or motor vehicle record may be obtained concerning you and other individuals proposed for coverage. In determining whether to renew your policy each year, we may review your credit report or obtain or use a credit based insurance score based on the information contained in that credit report. We may use a third party in connection with the development of your insurance score. No information from our files will be given to anyone without your written consent, except as allowed by law in order to conduct our business. You have the right to know the kind of information we have in your file, to have access to that information, and to request correction of information you believe is inaccurate. We will provide a more detailed description of our information practices, if you so request.

DISCOUNTS - The Discounts which have been applied to your policy are indicated on your Declarations. For additional information on these discounts, contact your Agent. You must notify your Agent if you qualify for any of these discounts and they are not indicated on your Declarations.

Age 55 Or Over Discount - Available if you are age 55 or over as of your renewal date AND the principal driver of a private passenger auto listed on your Declarations. To be eligible for the discounts, all operators in the household must have at least three years driving experience.

Air Bag Discount - Available for autos equipped with factory-installed air bags.

Anti-Lock Brakes Discount - Available for autos equipped with anti-lock brakes on all four wheels.

Anti-Theft Device Discount - Available for autos equipped with anti-theft devices such as:

- security alarms
- hood locking mechanisms unlocked by a key or electronic device
- remote monitoring alarms and central base computer systems
- etching VIN or serial number on automobile parts.

Multi-Car Discount - Available if two or more four-wheel private passenger autos owned by an individual or owned jointly by two or more individuals resident in the same household are insured on the same policy.

If "M" appears after the Rating Class in ITEM 4, the auto has received the Multi-Car Discount.

Multi-Policy Discount - Available if you have an ERIE Personal Auto Policy and an:

- ERIE Homeowner or Mobile Homeowner Policy; and/or
- ERIE Life Policy that meets specified criteria.

The discount will be given on the Personal Auto Policy and the Homeowner Policy.

Pay Plan Discount - Available if your policy premium is paid under one of the following ERIE pay plans. The discount applied under Plan A is greater than the discount applied under Plan B.

- **Plan A** - entire premium paid by policy effective date.
- **Plan B** - one third of the premium paid by policy effective date. One third of the premium paid within 30 days after policy effective date. One third of the premium paid within 60 days after policy effective date.

To qualify for this discount, choose Plan A or Plan B prior to your policy effective date. If you choose one of these payment plans during the policy period, the discount will be applied at your next renewal. If you do not make payments in accordance with the terms of the pay plan you selected, you may lose the pay plan discount and your premium will be adjusted to reflect quarterly payments for the remainder of the policy period.

Prior Bodily Injury Limits Discount - Available if your Bodily Injury Liability limit was at least \$300,000 per accident:

- **Renewal business** - at the beginning of your previous ERIE policy period.
- **New business** - on the expiring policy with your previous insurer.

Reduced Usage Discount (Exchange and Voluntary Company only) - Available on an auto that will not be driven for a period of at least 90 consecutive days during the policy period. This discount cannot be added retroactively.

Safe Driver Discount/Pioneer Experience Rating Credit (PERC) (Exchange and Voluntary Company only) - Available if your policy has a good claim/violation history. Variables that determine the discount percentage may include the violation history of all drivers on the policy, number of years the policy has been in force and the claims experience of all drivers on the policy.

SAFE DRIVER INSURANCE PLAN (SDIP SURCHARGE) - Any digits appearing below "PTS" in ITEM 4 of the Declarations, indicate the surcharge points which have been applied to the premium for that particular auto because of accidents and/or violations. Surcharges for each incident are applied for a maximum of 3 years. Incidents which may be subject to ERIE's Safe Driver Plan are at fault accidents, moving traffic violations, license suspensions, and financial responsibility filings.

INEXPERIENCED DRIVER SURCHARGE - An Inexperienced Operator Surcharge will be applied for each owner or resident operator of the auto who has less than three years driving experience as a licensed driver. The surcharge will not be applied for more than three years.

CUSTOMER INCENTIVES - Neither First Accident Forgiveness nor Feature Fifteen will affect our right to cancel or non-renew your policy should we decide such action is necessary.

First Accident Forgiveness (Erie Insurance Exchange Policyholders Only) - The ERIE will forgive the surcharge on the first at-fault accident presented on your policy. If you have more than one such policy with us, only one accident will be forgiven. Violations which are subject to The ERIE's Safe Driver Plan will continue to result in a surcharge.

Feature Fifteen (Erie Insurance Company Voluntary policies written before 12/1/08 and all Erie Insurance Exchange policies) - If you have been insured on an Erie Personal Auto Insurance Policy for fifteen consecutive years, we will not apply a Safe Driver Plan surcharge for at-fault accidents presented on your policy. A policy lapse of 30 days or more is considered an interruption of coverage and starts a new 15 year period.

ABBREVIATIONS USED IN ITEM 5 OF YOUR DECLARATIONS

ACC - ACCIDENT
BOD - BODILY
COLL - COLLISION
COMP - COMPREHENSIVE
COV - COVERAGE
DED - DEDUCTIBLE
INJ - INJURY
M - THOUSAND
MAX - MAXIMUM

MED PAY - MEDICAL PAYMENTS
OCC - OCCURRENCE
PERS - PERSONAL
PROP - PROPERTY
PRSN - PERSON
RCV - RECREATIONAL CAMPING VEHICLE
TRANSP - TRANSPORTATION
WC - WORKERS COMPENSATION
WK(S) - WEEK(S)

ABBREVIATIONS USED ON YOUR DECLARATIONS FOR ATTRIBUTES ASSIGNED TO SPECIFIC DRIVERS

AA3 - First chargeable accident in a three-year period, first year the surcharge is on policy
AA2 - First chargeable accident in a three-year period, second year the surcharge is on policy
AA1 - First chargeable accident in a three-year period, third year the surcharge is on policy
AB3 - Second chargeable accident in a three-year period, first year the surcharge is on policy
AB2 - Second chargeable accident in a three-year period, second year the surcharge is on policy
AB1 - Second chargeable accident in a three-year period, third year the surcharge is on policy
AC3 - Third chargeable accident in a three-year period, first year the surcharge is on policy
AC2 - Third chargeable accident in a three-year period, second year the surcharge is on policy
AC1 - Third chargeable accident in a three-year period, third year the surcharge is on policy
ACC - Chargeable Accident
ADV - Aggressive Driving
AFY - Accident Free Years
APC - Accident Prevention Course
CLU - Comprehensive Loss Underwriting Exchange
DWR - Driving on Wrong Side of Road
F15 - Accident Forgiven Under Feature 15
FAF - First Accident Forgiven

FTC - Following Too Closely
HMA - Homicide or Assault
HRP - Hit & Run With Property Damage
ILP - Illegal Passing
IOS - Inexperienced Operator Surcharge
LSP - License Suspension
MDT - Mature Driver Training Course-Over Age 55
MVL - Moving Violation
MVR - Motor Vehicle Request
MV1 - Hit and Run or Leaving the Scene of an Accident
MV2 - Drag Racing on a Public Highway
MV3 - Driving under Suspension
MV4 - Attempting to Evade Arrest in a Car
MV5 - Assault with a Car
MV6 - Any Misdemeanor or Felony Involving a Car
MV7 - Driving While Intoxicated
NSA - Non-surchargeable At-fault Accident
NSN - Non-surchargeable Not At-fault Accident
NVL - Non-chargeable Violation
PAD - Preassigned Driver
PRA - Pre-Arranged Racing
PSB - Passing a Stopped School Bus
RKD - Reckless Driving
SPD - Speeding
SPE - Speeding In Excess of 75 MPH
TIL - Transporting Illegal Liquor For Sale



ERIE INSURANCE GROUP

AUTO
NC0319 (Ed. 7/80) UF-6486

ADDITIONAL INSURED - LESSOR

Any liability and any required no fault coverages afforded by this policy for your leased auto also apply to the lessor named on the Declarations as an additional insured. This insurance is subject to the following additional provisions:

1. We will pay damages for which the lessor becomes legally responsible only if the damages arise out of acts or omissions of:
 - a. you or any family member, or
 - b. any other person except the lessor or any employee or agent of the lessor using your leased auto.
2. "Your leased auto" means:
 - a. an auto shown on the Declarations which you lease for a continuous period of at least six months under a written agreement which requires you to provide primary insurance for the lessor, and
 - b. any substitute or replacement auto furnished by the lessor named on the Declarations
3. If we terminate this policy, notice will also be mailed to the lessor.
4. The lessor is not responsible for payment or premiums.
5. The designation of the lessor as an additional insured shall not operate to increase our Limits of Liability.

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AMENDATORY ENDORSEMENT -- NORTH CAROLINA

This endorsement is part of your policy. Except for the changes it makes, all other terms of the policy remain the same and apply to this endorsement.

PART A - LIABILITY COVERAGE

Part A is amended as follows:

Exclusion 2. is deleted and replaced by the following:

We do not provide Liability Coverage for any insured:

2. For property damage to property:
 - a. owned in whole or in part by that insured; or
 - b. being transported by that insured.

The following provision is added following the Other Insurance provision:

APPRAISAL - DIMINUTION IN VALUE

If there is no dispute between the claimant and us regarding the insured's liability for the property damage to the claimant's vehicle, but:

1. the claimant and we fail to agree as to the difference in fair market value of the vehicle immediately before the accident and immediately after the accident; and
2. the difference in the claimant's and our estimate of the diminution in fair market value is greater than two thousand dollars (\$2,000) or twenty-five percent (25%) of the fair market retail value of the vehicle prior to the accident as determined by the latest edition of the National Automobile Dealers Association Pricing Guide Book or other publications approved by the Commissioner of Insurance, whichever is less; then

on the written demand of either the claimant or us, the dispute regarding the amount of the diminution in value shall be determined by appraisal in accordance with G.S. 20-279.21 (d1).

PART C1 - UNINSURED MOTORISTS COVERAGE

Part C1 is amended as follows:

The third paragraph of Limit of Liability is deleted and replaced by the following:

The limits of bodily injury liability shown in the Declarations for each person and each accident for this coverage shall be reduced by all sums:

1. Paid because of the bodily injury by or on behalf of persons or organizations who may be legally responsible. This includes all sums paid under Part A; and

2. Paid or payable because of the bodily injury under any disability benefits law or any similar law.

The most we will pay for bodily injury damages to an insured under this coverage is the lesser of:

1. the limit of bodily injury liability shown in the Declarations for each person for this coverage reduced by all sums described in items 1. and 2. of the preceding paragraph; or
2. the damages sustained by the insured for bodily injury reduced by:
 - a. all sums described in items 1. and 2. in the preceding paragraph; and
 - b. all sums paid or payable because of the bodily injury under any workers' compensation law. However, this reduction does not apply to the extent that an employer's lien is required to be paid under North Carolina's workers' compensation law.

The limit of property damage liability under this coverage shall be reduced by all sums paid because of the property damage by or on behalf of persons or organizations who may be legally responsible. This includes all sums payable under Part A.

The first paragraph of Arbitration is deleted and replaced by the following:

If we and an insured do not agree:

1. Whether that insured is legally entitled to recover compensatory damages from the owner or operator of an uninsured motor vehicle; or
2. As to the amount of such compensatory damages;

then the insured may demand to settle these disputed issues by arbitration. If an insured files a lawsuit against us or an owner or operator of an uninsured motor vehicle seeking damages that are the subject of the claim for Uninsured Motorists Coverage under this policy, the insured shall have the right to demand arbitration only if such lawsuit is filed within the time limit required by the law of the state where the accident occurred for filing a lawsuit against the owner or operator of the uninsured motor vehicle for the damages arising out of the accident and only if the insured gives us a written demand for arbitration within thirty (30) days after the filing of such lawsuit.

Item 5. of Arbitration is deleted and the remaining paragraphs are renumbered appropriately.

PART C2 - COMBINED UNINSURED/UNDERINSURED MOTORISTS COVERAGE

Part C2 is amended as follows:

The fourth and fifth paragraphs of Limit of Liability are deleted and replaced by the following:

The limits of bodily injury liability shown in the Declarations for each person and each accident for this coverage shall be reduced by all sums:

1. Paid because of the bodily injury by or on behalf of persons or organization who may be legally responsible. This includes all sums paid under Part A; and
2. Paid or payable because of the bodily injury under any disability benefits law or any similar law.

The most we will pay for bodily injury damages to an insured under this coverage is the lesser of:

1. the limit of bodily injury liability shown in the Declarations for each person for this coverage reduced by all sums described in items 1. and 2. of the preceding paragraph; or
2. the damages sustained by the insured for bodily injury reduced by:
 - a. all sums described in items 1. and 2. in the preceding paragraph; and
 - b. all sums paid or payable because of the bodily injury under any worker's compensation law. However, this reduction does not apply to the extent that an employer's lien is required to be paid under North Carolina's worker's compensation law.

The first paragraph of Arbitration is deleted and replaced by the following:

If we and an insured do not agree:

1. Whether that insured is legally entitled to recover compensatory damages from the owner or operator of an uninsured motor vehicle or underinsured motor vehicle; or
2. As to the amount of such compensatory damages;

then the insured may demand to settle these disputed issues by arbitration.

For purposes of an:

1. Uninsured Motorists Coverage claim, if an insured files a lawsuit against us or an owner or operator of an uninsured motor vehicle seeking damages that are the subject of the claim for Uninsured Motorists Coverage under this policy, the insured shall have the right to demand arbitration only if such lawsuit is filed within the time limit required by the laws of the state where the accident occurred for filing a lawsuit against the owner or operator of the uninsured motor vehicle for the damages arising out of the accident and only if the insured gives us a written demand for arbitration within thirty (30) days after the filing of such lawsuit.
2. Underinsured Motorists Coverage claim, if an insured files a lawsuit against an owner or operator

of an underinsured motor vehicle seeking damages that are the subject of the claim for Underinsured Motorists Coverage under this policy, the insured shall have the right to demand arbitration only if the insured gives us a written demand for arbitration within thirty (30) days after the later of:

- a. The date we advance payment to the insured in an amount equal to a tentative settlement between the insured and the owner or operator of the underinsured motor vehicle;
- b. The date any applicable liability bonds or policies have been exhausted by payments of judgments or settlements; or
- c. The date the insured files a lawsuit against an owner or operator of an underinsured motor vehicle seeking damages that are the subject of the claim for Underinsured Motorists Coverage under this policy, provided that such lawsuit is filed within the time limit required by the laws of the state where the accident occurred for filing a lawsuit against the owner or operator of the underinsured motor vehicle for the damages arising out of the accident.

Item 5. of Arbitration is deleted and the remaining paragraphs are renumbered appropriately.

PART D - COVERAGE FOR DAMAGE TO YOUR AUTO

Part D is amended as follows:

Exclusion 9 is changed by deleting the following:

This exclusion does not apply to the interests of Loss Payees in your covered auto.

PART F - GENERAL PROVISIONS

Part F is amended as follows:

Termination - Cancellation, Nonrenewal, Automatic Termination, Other Termination Provisions is amended by adding the following to paragraph 4 of the Cancellation Provision:

- g. The named insured is no longer an eligible risk under G.S 58-37-1.
- h. Any other reason permitted by the North Carolina General Statutes.

Other Termination Provisions is deleted and replaced by the following:

1. If the law in effect in North Carolina at the time this policy is issued, renewed or continued:
 - a. requires a longer notice period;
 - b. requires a special form of or procedure for giving notice;
 - c. modifies any of the stated termination reasons; or
 - d. adds any additional termination reasons;

we will comply with those requirements and this policy shall be deemed amended to include any such change in the law.

2. Proof of mailing of any notice shall be sufficient proof of notice.
3. If this policy is cancelled, you may be entitled to a premium refund. If so, we will send you the refund. The premium refund, if any, will be computed according to our manuals. However, making or offering to make the refund is not a condition of cancellation.
4. The effective date of cancellation stated in the notice shall become the end of the policy period.

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRD JUDICIAL CIRCUIT
COUNTY OF HORRY	)	Case No: 2014-CP-26-

Erie Insurance Exchange,	)
	)
Plaintiff,	)
	)
vs.	)
	)
Government Employees Insurance	)
Company, Mark Allison Scoggin and	)
Angela Bennett Hill,	)
	)
Defendants.	)
_____	)

PLAINTIFF'S MEMORANDUM

This case arises from a motor vehicle accident that occurred on September 5, 2012 in Horry County involving vehicles driven by Angela Bennett Hill and Mark Scoggin. Ms. Hill filed a lawsuit against Mr. Scoggin, sounding in negligence and that action remains pending.

At the time of the accident Ms. Hill was driving a vehicle owned by Mauren Craig Hill which was insured by Ms. Angela Hill and her husband, Robert, with the Plaintiff, Erie Insurance Exchange. Mr. Scoggin owned a vehicle but at the time of the accident he was driving his late mother, Mildred Scoggin's vehicle. Mr. Scoggin and his late mother resided in the same residence. Both Mildred Scoggin and Mark Scoggin carried liability insurance through Government Employees Insurance Company (GEICO).

GEICO paid the liability coverage from the Mildred Scoggin policy but denied excess liability coverage under the Mark Scoggin policy. This declaratory judgment action by Erie followed, wherein Erie contends that GEICO provides applicable excess liability coverage under

the Mark Scoggin policy which would come before Erie's available underinsured coverage on the Hill policy.

I. **VEHICLES AND COVERAGE AND PAYMENTS:**

A. THE MILDRED SCOGGIN VEHICLE (2002 FORD TAURUS)

1. The late Mildred Scoggin owned this vehicle which was being driven by Defendant Mark Scoggin at the time of the underlying MVA on 9/5/2012.

2. Mildred Scoggin, who has since passed away, was Mark Scoggin's mother. Mildred and Mark Scoggin resided in the same household.

3. GEICO insured this vehicle for coverage period 06/03/12-12/03/12 under Policy Number 0929-32-50-09, providing liability coverage of \$50,000.00 per person and \$100,000.00 per accident.

4. GEICO paid the Mildred Scoggin liability coverage of \$50,000.00 to Angela Hill in exchange for a Covenant Not To Execute.

B. THE MARK SCOGGIN VEHICLE (2005 Chevrolet Colorado)

1. Defendant Mark Scoggin owned this vehicle at the time of the underlying MVA on 9/5/2012, but he was driving his mother, Mildred Scoggin's vehicle when he was involved in the accident with Defendant Hill.

2. GEICO insured Mark Scoggin's vehicle for coverage period 07/27/12-01/27/13 under Policy Number 4085-57-17-45, providing liability coverage of \$25,000.00 per person and \$50,000.00 per accident.

3. GEICO denied excess liability coverage under the Mark Scoggin policy, issuing a denial letter stating that coverage was denied because the vehicle Mr. Scoggin was driving at the time of the accident was "not considered as an owned or a non-owned vehicle."

C. THE ANGELA HILL VEHICLE (2011 Hyundai Elantra)

1. Mauren Craig Hill owned the Hyundai driven by Angela Hill at the time of this accident, 9/5/2012.

2. The Hill vehicle was insured by Erie Insurance Exchange for coverage period 05/11/12-05/11/13 under Policy Number Q05 1107128, providing stated uninsured/underinsured motorist coverage of \$100,000.00 per person and \$300,000.00 per accident.

3. The Hills are residents of North Carolina and the Erie policy is a North Carolina policy, so it is subject to North Carolina law as to underinsured carriers receiving credit for liability insurance payments rather than an offset as would be the case in South Carolina, meaning that the limits of Erie's underinsured coverage are reduced by its prior payment of \$1,000.00 in medical payments coverage, by the \$50,000.00 liability coverage paid under the Mildred Scoggin policy and should be reduced by an additional \$25,000.00 in excess liability coverage under the Mark Scoggin policy, leaving \$24,000.00 in potentially available coverage under the Erie policy.

4. The Erie policy, as a North Carolina policy, also potentially includes the right to arbitrate in Ms. Hill's home county in North Carolina.

II. THE ISSUE IN THIS DJ -- PRIORITIES OF COVERAGE & THE AVAILABILITY OF EXCESS LIABILITY COVERAGE UNDER THE GEICO/MARK SCOGGIN POLICY:

1. GEICO denies that the Mark Scoggin policy, 4085-57-17-45, provides excess coverage of \$25,000.00 for the subject accident and it issued a denial letter because: "The Ford Taurus that Mr. Scoggin was driving is not considered as an owned or non-owned vehicle as described in the policy."

2. Erie contends that both under the policy and under South Carolina law, inclusive of the recent SC Supreme Court decision of Williams v. Gov't Employees Ins. Co (GEICO) (attached hereto and incorporated herein by reference) Opinion No. 27435, 2014 S.C. LEXIS 361 (Aug. 20, 2014) GEICO's Mark Scoggin policy provides excess liability coverage for this accident.

3. Erie contends that the excess coverage under the Mark Scoggin/GEICO policy precedes its underinsured coverage in terms of coverage priorities according to South Carolina law.

III. THE APPLICABLE PROVISIONS OF THE GEICO POLICY:

1. The GEICO policy applicable to both Mildred Scoggin and Mark Scoggin is attached hereto as **Exhibit E**. The policy includes the following definitions:

(a) **"Insured** means a person or organization described under PERSONS INSURED." (GEICO Policy; "Definitions" - #4)

(b) **"Relative** means a person who continuously lives in your household, and is related to you by blood, marriage, or adoption (including a ward or foster child.)" GEICO Policy Amendment; "Definitions" - #8)

(c) **"Non-owned auto** means a private passenger, farm, or utility auto or trailer not owned by or furnished for the regular use of either you or your relatives, except a temporary substitute auto. You or your relatives must be using the non-owned auto or trailer within the scope of permission given by its owner. A non-owned auto rented or

leased for more than 30 days will be considered as furnished for regular use. (GEICO Policy Amendment; "Definitions" - #5)

(d) **"Owned auto** means: (a) a vehicle described in this policy for which a premium charge is shown for these coverages; (b) a **trailer** owned by you; (c) a **private passenger, farm or utility auto**, ownership of which you acquire during the policy period or for which you enter into a lease during the policy period for a term of six months or more, if: (i) it replaces an **owned auto** as defined in (a) above; or (ii) we insure all **private passenger, farm and utility autos** owned or leased by you on the date of the acquisition, and you ask us to add it to the policy no more than 30 days later; (GEICO Policy; "Definitions" - #6)

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

5. The omnibus clause of the GEICO policy states as follows:

LOSSES WE WILL PAY FOR YOU UNDER SECTION I

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

1. **bodily injury**, sustained by a person; and
2. damage to or destruction of property; arising out of the ownership, maintenance or use of the **owned auto** or a **non- owned auto**.

We will defend any suit for damages payable under the terms of this policy. We may investigate and settle any claims or suit. Our duty to settle or defend ends when our limit of liability for this coverage has been exhausted.
(GEICO Policy; p. 4 of 15)

6. As to excess coverage, the GEICO policy states as follows: "Any insurance we provide for losses arising out of the ownership, maintenance or use of a vehicle you do not own

shall be excess over any other valid and collectible insurance. (GEICO Policy; "Other Insurance")

IV. WHY COVERAGE EXISTS UNDER THE GEICO POLICY:

1. The Plaintiff alleges that GEICO's denial erred and/or that liability coverage or excess liability coverage exists for the subject accident under the Mark Scoggin policy, 0929-32-50-09, for a number of reasons, including, but not limited to, the following:

(A) Coverage under Mr. Scoggin's policy should be evaluated based on GEICO's separate and distinct obligations to Mr. Scoggin's as to coverage written for him. Applicability of the coverage should not be granted or denied based upon whether the company also happened to provide coverage for a relative who resided with Mr. Scoggin. In this case, if Mr. Scoggin were driving his mother's car and she did not reside with him then GEICO would honor the coverage that its insured paid for;

(B) The GEICO policy includes a definition for "non-owned" auto but that is not part of the exclusions for using a vehicle provided for your regular use owned by a family member so there is no exclusion that takes away coverage; GEICO's reliance on the definition for non-owned autos has no applicability in this case because that exclusion applies only while carrying persons employed or otherwise engaged in auto business; Regular use is not noted in the exclusions or the Amendment and it doesn't refer to regular use or using another vehicle owned by family member;

(C) GEICO is impermissibly limiting coverage ostensibly offered by its policy by way of carefully crafted definitions which, in particular, results in excluding excess coverage for an insured under the insured's own policy if, at the time of a loss the insured is operating a vehicle owned by a resident relative. This results in an insured having excess coverage if he is driving a neighbor's car but in denying it to him if he is driving his wife's car;

(D) Based upon the policy's definitions, in limiting the provision of coverage to owned" and "non-owned" vehicles, GEICO's omnibus clause conflicts with the excess insurance clause such that the policy should be construed to provide excess coverage for this loss; and/or

(E) As to liability coverage and excess liability coverage, the provisions of the GEICO policy are ambiguous as to other policy provisions and particularly, as to the coverage declared to exist and on the Declarations Page. Those ambiguities include but are not limited to the following:

1. The Declarations Page for the Mark Scoggin policy states as follows: "This is a description of your coverage." It also states that Coverage applies where a premium or \$0.00 is shown for a vehicle." Despite the fact that the described coverage included \$25,000.00/\$50,000.00 in bodily injury and UM coverage, and included comprehensive and collision coverages, provisions of the policy, and the policy definitions of "owned," "non-owned," and "relative", are such that GEICO has determined the policy provides no coverage to Mark Scoggin for the present loss; and;

2. The policy definition of "owned" auto conflicts with the Declarations Page certifying coverage of \$25,000.00/\$50,000.00 to Mark Scoggin for this loss; and

3. The policy provision as to "Losses We Will Pay For You Under Section I" provides that the Policy covers on bodily injury liability arising out of the "ownership, maintenance or use" of an owned or non-owned auto. The "Other Insurance" provision does not use the defined terms of owned or non-owned but instead provides that bodily injury coverage for a vehicle "you do not own" shall be excess. Given this ambiguity, as to this accident, the more liberal provision should control and - in the alternative - the policy declares that bodily injury coverage for an accident that occurred while Mark Scoggin operated a vehicle that he did not own would be excess; and

4. The policy defines a "temporary substitute auto" as an "owned" vehicle but it would be a vehicle "you do not own" for purposes of the excess clause; and

5. The policy defines a "non-owned auto" as one not owned by or furnished for the regular use of either you (Mark Scoggin) or a relative (Mildred Scoggin) other than a "temporary substitute auto" but the "Other Insurance"/Excess provision references a "non-owned auto" as "a vehicle you do not own; and

6. The policy provides that "you and your relatives" are insureds with regard to "an owned auto" but the policy definitions do not define a resident relatives' car as an "owned" or a "non-owned" auto and then it restricts bodily injury liability coverage to losses arising out of the use, maintenance or ownership of an "owned" or "non-owned" vehicle.

(F) The Policy's Declarations Page declares that Mark Scoggins is insured for bodily injury liability coverage of \$25,000.00/\$50,000.00. §38-77-142 of the SC Code requires that "insurers must provide liability coverage to insureds "within the coverage of the policy" and may not limit or reduce liability coverage in the policy below the declared or "face amount" of the coverage. *Williams v. Gov't Employees Ins. Co (GEICO)* Opinion No. 27435, 2014 S.C. LEXIS 361 (S.C. Aug. 20, 2014);

(G) The GEICO policy provisions cited above seek to arbitrarily reduce, limit or eliminate the face amount of the coverage purchased, agreed upon and declared. This violates South Carolina law; to wit - "Once the face amount of coverage is agreed upon, it may not be arbitrarily reduced or limited by conflicting policy provisions that effectively retract this stated coverage," *Williams v. GEICO, supra*;

(H) After agreeing to provide Mark Scoggin with coverage of \$25,000.00/\$50,000.00, GEICO is not permitted to withdraw it or to define it out of existence. *Id.*

(I) In the present case, GEICO uses the familial relationship between Mark and Mildred Scoggin to limit the policy coverage available to Mark Scoggin. This violates South Carolina law and public policy; to wit - "To allow an insurer to determine the extent to which an injured party can recover within the insured's policy coverage based solely on a familial relationship is arbitrary and capricious and violative of public policy." *Williams v. GEICO, supra*,

(J) Excess Coverage is not subject to the provisions of the "Motor Vehicle Financial Responsibility Act" (Chapter 9, Title 56, SC Code Ann.) or its public policy considerations but it is subject to the state's insurance laws, specifically including the requirements of §38-77-142 that policy provisions cannot reduce the face amount of coverage stated in the Declarations and

the GEICO policy at issue, or GEICO's interpretation of the policy, violates South Carolina law and public policy. See: Williams v. GEICO;

(K) GEICO's policy issued to Mark Scoggin is ambiguous, violates both South Carolina law and South Carolina public policy;

(L) GEICO's "Other Insurance" provision does not condition excess coverage on "owned" or "non-owned" vehicle definitions. The terms are therefore inapplicable and the policy should be construed according to South Carolina law to provide excess coverage for this loss;

(M) GEICO's attempt to use the omnibus clause and policy definitions to limit coverage declared to exist by the policy's declarations page is contrary to South Carolina law and public policy;

(N) GEICO's policy violates public policy and it is therefore void ab initio and is deemed never to have come into existence and is therefore incapable of being enforced by the courts;

V. **RULING REQUESTED:**

1. WHEREFORE, the Plaintiff respectfully requests the this Court issue an Order as follows:

A. That GEICO's Policy 4085-57-17-45, covering named insured Mark Scoggin, provides excess liability coverage of \$25,000.00 potentially available to the Plaintiff Hill, for her claim and lawsuit arising out of the motor vehicle accident of September 5, 2012; and

B. In terms of priority, the excess liability coverage under the Mark Scoggin policy would be payable before the underinsured coverage under Hill's policy;

C. The policy of Erie Insurance Exchange is a North Carolina policy and under the policy and North Carolina law, coverage limits of underinsured/uninsured coverage are reduced by the amount of the payment of the liability coverage and by Erie's prior

payment to the Plaintiff of its medical payments coverage such that after GEICO's payment to the Plaintiff of its \$75,000.00 in available coverage, 24,000.00 in UI/UM coverage would be available under Erie's policy; and

D. GEICO's policy provisions referenced above, including those which purport to limit or withdraw excess liability coverage from the Mark Scoggin policy, violate public policy and are therefore void *ab initio* and incapable of being enforced; and

E. Awarding the Plaintiff attorney's fees and costs necessitated by GEICO's improper denial of coverage under the Mark Scoggin Policy.

F. For such other and further relief as this Court may deem just and proper.

s/ J. Dwight Hudson, Esq.

J. Dwight Hudson, Esquire
SC Bar #2753
Hudson Law Offices
1203 48th Avenue North
Suite 111
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(843) 692-9889

Attorney for Plaintiff

Dated:

Williams v. Gov't Emples. Ins. Co.

Supreme Court of South Carolina

March 21, 2013, Heard; August 20, 2014, Filed

Opinion No. 27435

Reporter

409 S.C. 586; 762 S.E.2d 705; 2014 S.C. LEXIS 361; 2014 WL 4087958

Delores Williams, Personal Representative of the Estate of Edward Murry, Deceased, and Matthew Whitaker, Jr., as Personal Representative of the Estate of Annie Mae Murry, Deceased, Appellants, v. Government Employees Insurance Company (GEICO), Respondent.

Prior History: [***] Appeal From Richland County George C. James, Jr., Circuit Court Judge. Appellate Case No. 2011-196449.

Disposition: AFFIRMED IN PART, REVERSED IN PART.

Core Terms

coverage, insured, step-down, public policy, provisions, statutory minimum, named insured, ambiguous, limits, liability coverage, exclusions, bodily injury, Declarations, circuit court, void, insurance policy, family member, insurance contract, provides, statutes, liability insurance, offends, minimum limit, terms, automobile insurance policy, coverage of the policy, property damage, per accident, contracts, parties

Case Summary

Overview

ISSUE: Whether the trial court erred in entering a judgment declaring that the coverage under a deceased husband and wife's auto policy was the statutory minimum of \$ 15,000 based on the policy's family step-down provision that reduced liability coverage for bodily injury to family members from the stated coverage of \$ 100,000 to the statutory minimum. HOLDINGS: [1]-The trial court properly held that the policy language was unambiguous; [2]-The family step-down provision was violative of public policy and thus void, as it conflicted with S.C. Code Ann. § 38-77-142's requirement that insurers provide liability coverage to

insureds "within the coverage of the policy" and prohibited insurers from reducing liability coverage in the policy below the amount provided in § 38-77-142; moreover, enforcement of the family step-down provision would be injurious to the public welfare.

Outcome

The judgment was affirmed in part and reversed in part.

LexisNexis® Headnotes

Insurance Law > ... > Coverage > Compulsory Coverage > General Overview

Insurance Law > ... > Coverage > Compulsory Coverage > General Overview

HN1 With respect to motor vehicle insurance, former S.C. Code Ann. § 38-77-140 provided for liability coverage with a minimum limit of \$ 15,000.

Civil Procedure > ... > Declaratory Judgments > State Declaratory Judgments > General Overview

Insurance Law > Remedies > Costs & Attorney Fees > Declaratory Judgments

Civil Procedure > ... > Declaratory Judgments > State Declaratory Judgments > General Overview

Insurance Law > Remedies > Costs & Attorney Fees > Declaratory Judgments

HN2 A suit for declaratory judgment is neither legal nor equitable, but is determined by the nature of the underlying issue. When the purpose of the underlying dispute is to determine whether coverage exists under an insurance policy, the action is one at law.

Civil Procedure > Trials > Bench Trials

Civil Procedure > Appeals > Standards of Review > Questions of Fact & Law

Mary Anne Graham

000203

409 S.C. 586, *586; 762 S.E.2d 705, **705; 2014 S.C. LEXIS 361, ***1

Civil Procedure > Appeals > Standards of Review > De Novo Review

Civil Procedure > ... > Standards of Review > Substantial Evidence > Sufficiency of Evidence

Civil Procedure > Trials > Bench Trials

Civil Procedure > Appeals > Standards of Review > Questions of Fact & Law

Civil Procedure > Appeals > Standards of Review > De Novo Review

Civil Procedure > ... > Standards of Review > Substantial Evidence > Sufficiency of Evidence

HN3 In an action at law tried without a jury, the appellate court will not disturb the trial court's findings of fact unless there is no evidence to reasonably support them. However, an appellate court may make its own determination on questions of law and need not defer to the trial court's rulings in this regard.

Civil Procedure > Appeals > Standards of Review > Questions of Fact & Law

Civil Procedure > Appeals > Standards of Review > Questions of Fact & Law

HN4 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.

Insurance Law > Claim, Contract & Practice Issues > Policy Interpretation > General Overview

Contracts Law > Contract Interpretation > General Overview

Insurance Law > Claim, Contract & Practice Issues > Policy Interpretation > General Overview

Contracts Law > Contract Interpretation > General Overview

HN5 An insurance policy is a contract between the insured and the insurance company, and the policy's terms are to be construed according to the law of contracts.

Contracts Law > Contract Interpretation > General Overview

Contracts Law > Contract Interpretation > General Overview

HN6 Where a contract's language is clear and unambiguous, the language alone determines the contract's force and effect.

Insurance Law > Claim, Contract & Practice Issues > Policy Interpretation > Ordinary & Usual Meanings

Insurance Law > Claim, Contract & Practice Issues > Policy Interpretation > Ordinary & Usual Meanings

HN7 Courts must enforce, not write, contracts of insurance, and their language must be given its plain, ordinary and popular meaning.

Contracts Law > Contract Interpretation > Ambiguities & Contra Proferentem > General Overview

Civil Procedure > Trials > Jury Trials > Province of Court & Jury

Contracts Law > Contract Interpretation > Ambiguities & Contra Proferentem > General Overview

Civil Procedure > Trials > Jury Trials > Province of Court & Jury

HN8 It is a question of law for the court whether the language of a contract is ambiguous.

Civil Procedure > Trials > Jury Trials > Province of Court & Jury

Contracts Law > Contract Interpretation > Ambiguities & Contra Proferentem > General Overview

Contracts Law > Contract Interpretation > Intent

Contracts Law > Contract Interpretation > General Overview

Contracts Law > Contract Interpretation > Parol Evidence > General Overview

Civil Procedure > Trials > Jury Trials > Province of Court & Jury

Contracts Law > Contract Interpretation > Ambiguities & Contra Proferentem > General Overview

Contracts Law > Contract Interpretation > Intent

Contracts Law > Contract Interpretation > General Overview

Contracts Law > Contract Interpretation > Parol Evidence > General Overview

HN9 The construction of a clear and unambiguous contract is a question of law for the court to determine. If the court decides the language is ambiguous, however, evidence may be admitted to show the intent of the parties, and the determination of the parties' intent becomes a question of fact for the fact-finder.

Insurance Law > ... > Policy Interpretation > Ambiguous Terms > Construction Against Insurers

409 S.C. 586, *586; 762 S.E.2d 705, **705; 2014 S.C. LEXIS 361, ***1

Insurance Law > ... > Policy Interpretation > Ambiguous Terms > Construction Against Insurers

HN10 Ambiguous or conflicting terms in an insurance policy must be construed liberally in favor of the insured and strictly against the insurer.

Contracts Law > Contract Interpretation > Ambiguities & Contra Proferentem > General Overview

Contracts Law > Contract Interpretation > Ambiguities & Contra Proferentem > General Overview

HN11 A contract is ambiguous when it is capable of more than one meaning when viewed objectively by a reasonably intelligent person who has examined the context of the entire integrated agreement and who is cognizant of the customs, practices, usages and terminology as generally understood in the particular trade or business. A contract is read as a whole document so that one may not create an ambiguity by pointing out a single sentence or clause. Whether a contract is ambiguous is to be determined from examining the entire contract, not by reviewing isolated portions of the contract.

Insurance Law > ... > Policy Interpretation > Ambiguous Terms > General Overview

Insurance Law > ... > Policy Interpretation > Ambiguous Terms > General Overview

HN12 An ambiguity exists in an insurance policy only when the language is reasonably capable of being understood in more than one way.

Insurance Law > Industry Practices > General Overview

Contracts Law > Defenses > Public Policy Violations

Insurance Law > Claim, Contract & Practice Issues > General Overview

Insurance Law > Industry Practices > General Overview

Contracts Law > Defenses > Public Policy Violations

Insurance Law > Claim, Contract & Practice Issues > General Overview

HN13 As a general rule, insurers have the right to limit their liability and to impose conditions on their obligations provided they are not in contravention of public policy or some statutory inhibition. While parties are generally permitted to contract as they see fit, freedom of contract is not absolute and coverage that is required by law may not be omitted. Statutes governing an insurance contract are part of the contract as a

matter of law, and to the extent a policy provision conflicts with an applicable statute, the provision is invalid.

Insurance Law > ... > Coverage > Compulsory Coverage > General Overview

Insurance Law > ... > Motor Vehicle Insurance > Liability Limitations > General Overview

Insurance Law > ... > Motor Vehicle Insurance > Exclusions > General Overview

Insurance Law > ... > Coverage > Compulsory Coverage > General Overview

Insurance Law > ... > Motor Vehicle Insurance > Liability Limitations > General Overview

Insurance Law > ... > Motor Vehicle Insurance > Exclusions > General Overview

HN14 The purpose of the South Carolina Motor Vehicle Financial Responsibility Act, S.C. Code Ann. tit. 56, is to give greater protection to those injured through the negligent operation of automobiles. This legislation requires insurance for the benefit of the public, and an insurer may not nullify its purposes by engrafting exceptions from liability as to uses that the evident purpose of the legislation was to cover. Similarly, the stated purpose of the chapter on automobile insurance in S.C. Code Ann. tit. 38 was to implement a complete reform of automobile insurance in order to, among other things, make sure every risk meeting certain criteria was entitled to automobile insurance and prevent the evasion of coverage provided for by that chapter. S.C. Code Ann. § 38-77-10 (2002).

Insurance Law > Claim, Contract & Practice Issues > General Overview

Contracts Law > Defenses > Public Policy Violations

Civil Procedure > Appeals > Standards of Review > De Novo Review

Civil Procedure > Appeals > Standards of Review > Questions of Fact & Law

Insurance Law > Claim, Contract & Practice Issues > General Overview

Contracts Law > Defenses > Public Policy Violations

Civil Procedure > Appeals > Standards of Review > De Novo Review

Civil Procedure > Appeals > Standards of Review > Questions of Fact & Law

Mary Anne Graham

000205

HN15 Whether a particular provision in an insurance policy violates the public policy of South Carolina is a question of law that is reviewed de novo by an appellate court. Public policy considerations include not only what is expressed in state law, such as the constitution and statutes, and decisions of the courts, but also a determination whether the agreement is capable of producing harm such that its enforcement would be contrary to the public interest or manifestly injurious to the public welfare.

Insurance Law > ... > Motor Vehicle Insurance > Exclusions > Public Policy

Insurance Law > ... > Motor Vehicle Insurance > Exclusions > Public Policy

HN16 With respect to motor vehicle insurance, the public policy of South Carolina, as evidenced in S.C. Code Ann. § 38-77-142, prevents an insurer from reducing coverage from the amount stated in the policy to the statutory minimum limit required by S.C. Code Ann. § 38-77-140(A) during the policy period at issue.

Insurance Law > ... > Motor Vehicle Insurance > Exclusions > Public Policy

Insurance Law > ... > Coverage > Compulsory Coverage > General Overview

Insurance Law > ... > Motor Vehicle Insurance > Exclusions > Public Policy

Insurance Law > ... > Coverage > Compulsory Coverage > General Overview

HN17 See S.C. Code Ann. § 38-77-142.

Insurance Law > ... > Coverage > Compulsory Coverage > General Overview

Insurance Law > ... > Coverage > Compulsory Coverage > General Overview

HN18 S.C. Code Ann. § 38-77-142 requires every motor vehicle policy issued to insure the named insured and permissive users against liability for death or injury sustained or loss or damage incurred within the coverage of the policy.

Civil Procedure > Appeals > Standards of Review > De Novo Review

Civil Procedure > Appeals > Standards of Review > De Novo Review

HN19 The South Carolina Supreme Court exercises de novo review of public policy issues.

Governments > Legislation > Interpretation

Governments > Courts > Common Law

Evidence > Inferences & Presumptions > Presumptions

Governments > Legislation > Interpretation

Governments > Courts > Common Law

Evidence > Inferences & Presumptions > Presumptions

HN20 The court presumes the South Carolina General Assembly is aware of the common law when enacting subsequent legislation.

Insurance Law > ... > Coverage > Compulsory Coverage > General Overview

Insurance Law > ... > Motor Vehicle Insurance > Liability Limitations > General Overview

Insurance Law > ... > Coverage > Compulsory Coverage > General Overview

Insurance Law > ... > Motor Vehicle Insurance > Liability Limitations > General Overview

HN21 S.C. Code Ann. § 38-77-142 provides insurers must provide liability coverage to insureds within the coverage of the policy and may not limit or reduce liability coverage in the policy below the amount provided in § 38-77-142. Thus, it is the face amount of the coverage that is relevant under § 38-77-142, not the statutory minimum limits of liability coverage set forth in S.C. Code Ann. § 38-77-140, which are not even mentioned in § 38-77-142.

Insurance Law > ... > Motor Vehicle Insurance > Exclusions > General Overview

Insurance Law > ... > Coverage > Compulsory Coverage > General Overview

Insurance Law > ... > Motor Vehicle Insurance > Liability Limitations > General Overview

Insurance Law > ... > Motor Vehicle Insurance > Exclusions > General Overview

Insurance Law > ... > Coverage > Compulsory Coverage > General Overview

Insurance Law > ... > Motor Vehicle Insurance > Liability Limitations > General Overview

HN22 The general assembly has specifically included language in S.C. Code Ann. § 38-77-142(C) (2002) prohibiting provisions in the policy that limit or reduce coverage: any endorsement, provision, or rider attached to or included in any policy of insurance which purports

or seeks to limit or reduce the coverage afforded by the provisions required by § 38-77-142 is void. Therefore, once the face amount of coverage is agreed upon, it may not be arbitrarily reduced or limited by conflicting policy provisions that effectively retract this stated coverage.

Governments > Legislation > Interpretation

Governments > Legislation > Interpretation

HN23 In interpreting a statute, the court must presume the legislature did not intend a futile act, but rather intended its statutes to accomplish something.

Insurance Law > ... > Motor Vehicle Insurance > Exclusions > Public Policy

Insurance Law > ... > Motor Vehicle Insurance > Exclusions > Family Members

Insurance Law > ... > Motor Vehicle Insurance > Exclusions > Public Policy

Insurance Law > ... > Motor Vehicle Insurance > Exclusions > Family Members

HN24 With respect to motor vehicle insurance, to allow an insurer to determine the extent to which an injured party can recover within the insured's policy coverage based solely on a familial relationship is arbitrary and capricious and violative of public policy.

Contracts Law > Defenses > Public Policy Violations

Insurance Law > Claim, Contract & Practice Issues > General Overview

Contracts Law > Defenses > Public Policy Violations

Insurance Law > Claim, Contract & Practice Issues > General Overview

HN25 A contract provision that is against public policy is void ab initio and, because it is deemed legally never to have come into existence, it is incapable of being enforced by courts. Where courts have found insurance provisions to be void as against public policy, they have, as a matter of course, refused to give any effect to those provisions in the appeals before them.

Counsel: Terry E. Richardson, Jr. and Christopher James Moore, both of Richardson, Patrick, Westbrook & Brickman, LLC, of Barnwell; and Robert A. McKenzie, of McDonald, McKenzie, Rubin, Miller and Lybrand, LLP, of Columbia, for Appellants.

William H. Bowman, III and Robert P. Wood, both of Rogers Townsend & Thomas, PC, of Columbia, for Respondent.

Judges: JUSTICE BEATTY, TOAL, C.J., and Acting Justice James E. Moore, concur. PLEICONES, J., concurring in part and dissenting in part in a separate opinion in which KITTREDGE, J., concurs.

Opinion

[*590] [*708] **JUSTICE BEATTY:** Delores Williams, the personal representative of the Estate of Edward Murry, and Matthew Whitaker, Jr., the personal representative of the Estate of Annie Mae Murry (PRs), [*591] brought this declaratory judgment action to determine whether a GEICO motor vehicle insurance policy issued to the Murrays provided \$15,000 or \$100,000 in liability proceeds for bodily injury for an accident in which both of the Murrays were killed. The circuit court concluded coverage was limited to the statutory minimum of \$15,000 based on a family step-down [***2] provision in the policy that reduced coverage for bodily injury to family members from the stated policy coverage of \$100,000 to the statutory minimum amount mandated by South Carolina law during the policy period. The PRs appeal, contending the step-down provision is ambiguous and/or violative of public policy. We affirm in part and reverse in part.

I. FACTS

The facts in this case were either stipulated to by the parties or are not in dispute. The Murrays, who were husband and wife, purchased a motor vehicle insurance policy from GEICO, policy number 0685-44-55-04, effective September 2, 2006 until March 2, 2007. The Murrays were the only named insureds on the policy. The Murrays carried liability coverage in excess of the statutory minimum limits. As indicated on the "Family Automobile Renewal Policy Declarations" page for the policy (Declarations), they purchased liability insurance with limits of \$100,000 per person and \$300,000 per accident for bodily injury, and \$50,000 per accident for property damage.

On September 3, 2006, the Murrays were the sole occupants of their vehicle when it was struck by a train. Both of the Murrays died from injuries caused by the collision. It is unknown [***3] who was the driver and who was the passenger at the time of the accident.

Mary Anne Graham

000207

However, since both of the Murrys were insureds under the policy, the accident resulted in bodily injury to an insured, regardless of who was driving.

A dispute arose as to the amount of liability proceeds due under the policy. The PRs believed the proper amount of coverage was the stated policy amount of \$100,000. GEICO took the position that only \$15,000 was owed under the Exclusions portion of the policy as a result of the following provision contained under Section I, entitled "Liability Coverage":

[*592] EXCLUSIONS

When Section I Does Not Apply

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

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

The above language is often referred to as a family "step-down provision" as it operates to "step down," or reduce, coverage for injured family members from the original [***4] policy limit, which was \$100,000 here, to the statutory minimum limit required by law during the policy period, which was \$15,000.²

[**709] The PRs filed this complaint against GEICO seeking a declaratory judgment as to the amount of liability proceeds due under the policy for [***5] the

accident. After a bench trial, the circuit court entered judgment for GEICO. The court concluded "the Family Member Exclusion in the Policy applies to limit liability coverage to \$15,000.00 for damages arising out of the accident of September 3, 2006."³

[*593] The court rejected the PRs' assertion that the GEICO insurance policy was ambiguous, stating even though the Declarations page listed liability coverage for bodily injury of \$100,000/\$300,000, the policy terms had to be read as a whole and the family step-down provision was capable of only one reasonable interpretation. The circuit court also found the family step-down provision did not violate this state's public policy or the statutes governing automobile insurance, particularly S.C. Code Ann. § 38-77-142. The PRs appealed, and this Court certified the case from the Court of [***6] Appeals for its review pursuant to Rule 204(b), SCACR.

II. STANDARD OF REVIEW

HN2 "A suit for declaratory judgment is neither legal nor equitable, but is determined by the nature of the underlying issue." Felts v. Richland County, 303 S.C. 354, 356, 400 S.E.2d 784, 782 (1991). "When the purpose of the underlying dispute is to determine whether coverage exists under an insurance policy, the action is one at law." S.C. Farm Bureau Mut. Ins. Co. v. Kennedy, 398 S.C. 604, 610, 730 S.E.2d 862, 864 (2012) (citation omitted).

HN3 "In an action at law tried without a jury, the appellate court will not disturb the trial court's findings of fact unless there is no evidence to reasonably support them." Crossmann Cmty. of N.C., Inc. v. Harleysville Mut. Ins. Co., 395 S.C. 40, 46-47, 717 S.E.2d 589, 592 (2011) (citation omitted); accord Townes Assocs. v. City of

¹ With respect to an "owned vehicle," the policy provides Section I applies to the following "insureds": (1) "you and your relatives"; (2) "any other person driving the auto with your permission and within the actual scope of your permission"; and (3) "any other person or organization for his or its liability because of acts or omissions of an insured under 1. or 2. above."

² Although GEICO has called the policy provision a "family member exclusion," we believe the provision here is more accurately termed a "step-down provision" as it does not eliminate all coverage, contrary to its captioning. A step-down provision is one in which "the coverage 'steps down' from the actual policy limits to the minimum required by statute." Liberty Mut. Ins. Co. v. Shores, 2006 UT App 393, 147 P.3d 456, 458 n.4 (Utah Ct. App. 2006) (quoting 1 Rowland H. Long, The Law of Liability Insurance § 2.05[5] (2003)). However, it should be noted that in previous litigation in other jurisdictions GEICO has successfully argued that similar provisions totally excluded family members.

³ The circuit court noted that **HN1** S.C. Code Ann. § 38-77-140 provided for liability coverage with a minimum limit of \$15,000 at the time the policy was issued. Section 38-77-140 was later amended in 2006 for policies issued or renewed on or after January 1, 2007 to increase the minimum to \$25,000. The limits are currently \$25,000 per person and \$50,000 per accident for bodily injury, and \$25,000 for property damage. S.C. Code Ann. § 38-77-140 (Supp. 2013).

409 S.C. 586, *593; 762 S.E.2d 705, **709; 2014 S.C. LEXIS 361, ***6

Greenville, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976). "However, an appellate court may make its own determination on questions of law and need not defer to the trial court's rulings in this regard." Kennedy, 398 S.C. at 610, 730 S.E.2d at 864. **HN4** "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." WDW Props. v. City of Sumter, 342 S.C. 6, 10, 535 S.E.2d 631, 632 (2000).

[*594] III. LAW/ANALYSIS

On appeal, the PRs contend the circuit court erred in failing to find (1) the insurance contract was misleading and ambiguous, and (2) the family step-down provision violates South Carolina's public policy.

A. Ambiguity

The PRs first argue the insurance contract is contradictory and misleading and that the circuit court erred in failing [*7] to find the policy was ambiguous.

HN5 An insurance policy is a contract between the insured and the insurance company, and the policy's terms are to be construed according to the law of contracts. Auto Owners Ins. Co. v. Rollison, 378 S.C. 600, 663 S.E.2d 484 (2008); Coakley v. Horace Mann Ins. Co., 376 S.C. 2, 656 S.E.2d 17 (2007); Estate of Revis v. Revis, 326 S.C. 470, 484 S.E.2d 112 (Cl. App. 1997); see generally S.C. Code Ann. § 38-61-10 (2002) ("All contracts of insurance on property, lives, or interests in this State are considered to be made in the State . . . and are subject to the laws of this State.").

HN6 "Where the contract's language is clear and unambiguous, the language alone determines the contract's force and effect." McGill v. Moore, 381 S.C. 179, 185, 672 S.E.2d 571, 574 (2009). **HN7** "Courts must enforce, not write, contracts of insurance, and their language must be given its plain, ordinary and popular meaning." Sloan Constr. [*710] Co. v. Cent. Nat'l Ins. Co. of Omaha, 269 S.C. 183, 185, 236 S.E.2d 818, 819 (1977).

HN8 "It is a question of law for the court whether the language of a contract is ambiguous." S.C. Dep't of Natural Res. v. Town of McClellanville, 345 S.C. 617, 623, 550 S.E.2d 299, 302-03 (2001). **HN9** The construction of a clear and unambiguous contract is a

question of law for the court to determine. Hawkins v. Greenwood Dev. Corp., 328 S.C. 585, 592, 493 S.E.2d 875, 878 (Cl. App. 1997). If the court decides the language is ambiguous, however, evidence may be admitted to show the intent of the parties, and the determination of the parties' intent becomes a question of fact for the fact-finder.⁴ Id. at 592, 493 S.E.2d at 878-79.

[*595] **HN10** "Ambiguous or conflicting terms in an insurance policy must be construed liberally [*8] in favor of the insured and strictly against the insurer." Diamond State Ins. Co. v. Homestead Indus. Inc., 318 S.C. 231, 236, 456 S.E.2d 912, 915 (1995). **HN11** "A contract is ambiguous when it is capable of more than one meaning when viewed objectively by a reasonably intelligent person who has examined the context of the entire integrated agreement and who is cognizant of the customs, practices, usages and terminology as generally understood in the particular trade or business." Hawkins, 328 S.C. at 592, 493 S.E.2d at 878 (quoting 17A Am. Jur. 2d Contracts § 338, at 345 (1991)).

"A contract is read as a whole document so that one may not create an ambiguity by pointing out a single sentence or clause." McGill, 381 S.C. at 185, 672 S.E.2d at 574. Whether a contract is ambiguous is to be determined from examining the entire contract, not by reviewing isolated portions of the contract. Farr v. Duke Power Co., 265 S.C. 356, 218 S.E.2d 431 (1975); Silver v. Abstract Pools & Spas, Inc., 376 S.C. 585, 658 S.E.2d 539 (Cl. App. 2008).

The PRs contend the circuit court wrongly found they were reading the Declarations in isolation when they had actually pointed to a variety of contradictions in the Declarations and the body of the policy document to show the contract "was far from clear." The PRs argue the policy starts out by listing the Murrys as the named insureds with \$100,000/\$300,000 of liability coverage for bodily injury, but it is not indicated anywhere in the Declarations that the coverage does not include either of the named insureds [*9] or their household relatives and that only the statutory minimums in South Carolina apply to them. Further, there is nothing in the Declarations or the rest of the policy stating what the statutory minimum limits are in South Carolina.

The PRs additionally point out that the general language in the policy states GEICO will pay damages which an

⁴ The circuit court conducted a bench trial here and, thus, was the fact-finder.

insured becomes legally obligated to pay because of bodily injury sustained by a person, but the policy does not define "person" or explicitly limit that term to everyone who is *not* an insured or a resident relative. The PRs argue, "After repeated indications that the named insureds are covered up to the liability [*596] amounts provided in the declarations page for bodily injury, GEICO slips in the family step-down, which is unclear in and of itself." The PRs contend, "It fails to alert the purchaser what the statutory minimums are, and fails to alert them that this provision means you and your household relatives are NOT protected in these amounts shown. This creates an irreparable ambiguity upon which GEICO cannot deny coverage in the full liability limits."

In contrast, GEICO argues the PRs do not consider the entire integrated agreement, but instead [***10] read the Declarations and certain provisions in the policy in isolation to create an ambiguity. GEICO asserts, "Insurance contracts contain many limitations and exclusions and it would be unrealistic and unreasonable to expect an insurer to identify every such limitation and exclusion and note it on the declarations page. Hence, the rule that the entire integrated agreement must be considered."

GEICO contends "person" need not be defined in the policy as it is understood to refer generically to "any human being."⁵ [***711] Moreover, any of the provisions for coverage in the policy must be read in conjunction with the exclusions explicitly contained therein.

Section V, paragraph 12 of the policy, entitled "Declarations," states in relevant part: "By accepting this policy, **you** agree that . . . this policy, along with the application and declaration sheet, embodies all agreements relating to this insurance." Thus, by its terms, the policy, along with the application and the Declarations, constitute the entire agreement between the Murrys and GEICO. *Compare Prince v. State Mut. Life Ins. Co.*, 77 S.C. 187, 191, 57 S.E. 766, 767 (1907) ("For the general [***11] purposes of construction, an application will be considered a part of the contract, if it is referred to in the policy in such a way as to indicate a clear intent to make it a part thereof." (citation omitted)) with *Ferguson v. Allied Mut. Ins. Co.*, 512 N.W.2d 296, 299 (Iowa 1994) ("When construing insurance policies we consider the effect of the [*597] policy as a whole, in

light of all declarations, riders, or endorsements attached.").

Section I of the policy states GEICO will pay damages that an insured becomes legally obligated to pay indicates because of bodily injury sustained by a person and damages to or destruction of property. Although the Declarations page the named insureds have liability limits of \$100,000 per person and \$300,000 per accident for bodily injury, Section I of the policy contains a list of twelve enumerated items under the heading "EXCLUSIONS," among them, the family step-down provision and three others (1, 2, 3, and 8) for which the statutory minimum limits apply. Consequently, these specified items are not actually full exclusions, but rather, are limitations on, or reductions in, coverage.

GEICO concedes, "While perhaps Exclusions 1, 2, 3, and 8 might more properly have been labeled 'limitations' under a separate heading, there [***12] is only one fair and reasonable way to interpret this language. Liability coverage will be provided for Exclusions 1, 2, 3, and 8 but only up to the minimum limits of liability required by South Carolina law while no liability coverage will be provided for the other Exclusions. Simply because an insurance contract is not written in the most desirable manner, if it is unmistakable in its meaning, when carefully read, it is valid and enforceable." GEICO maintains, "When all of the provisions of the [p]olicy are read together, it unambiguously provides that liability coverage for bodily injury to an insured or resident relative is limited to the minimum limits of liability required by South Carolina law."

Read as a whole, we agree with the circuit court that the language in the contract is unambiguous. Although it was not artfully worded, as GEICO acknowledges, it is, nevertheless, apparent upon examination that there is an unambiguous limitation in this regard because it may only be understood one way. The PRs correctly note that the exclusion for named insureds and resident relatives actually states there is "no coverage"; however, when all of the pertinent provisions are read together, including [***13] the sentences immediately before it that "[w]e do not provide liability coverage, Under Exclusions 1, 2, 3 and 8, in excess of the minimum limits of liability required by South Carolina law" and "[w]e do not provide any [*598] liability coverage for the

⁵ "Person" is statutorily defined in this context as "[e]very natural person, firm, copartnership, association or corporation[.]" S.C. Code Ann. § 56-9-20(10) (2006).

409 S.C. 586, *598; 762 S.E.2d 705, **711; 2014 S.C. LEXIS 361, ***13

remaining Exclusions," then it is unmistakable what the intent for coverage is here.

Moreover, we disagree with the PRs' assertion that the failure to specifically state *what* the statutory minimum limits of coverage were renders the GEICO policy ambiguous. **HN12** An ambiguity exists only when the language is reasonably capable of being understood in more than one way. Hawkins, 328 S.C. at 592, 493 S.E.2d at 878. The fact that the parties would need to look up the statutory minimum limits for coverage does not render the policy ambiguous. See Universal Underwriters Ins. Co. v. Hill, 24 Kan. App. 2d 943, 955 P.2d 1333, 1336-37 (Kan. Ct. App. 1998) (holding step-down provision and language in addendum limiting liability to "limits required by Kansas law" might be "stylistically inelegant," but it was not ambiguous as a reasonable person would not be misled as to the policy limits). Consequently, we hold the [**712] circuit court did not err in failing to find the GEICO policy contained an ambiguity that invalidated the step-down provision.

B. Public Policy

The PRs next assert the circuit court erred in failing to [***14] find the step-down provision is invalid because it contravenes this state's public policy.

HN13 As a general rule, insurers have the right to limit their liability and to impose conditions on their obligations provided they are not in contravention of public policy or some statutory inhibition. B.L.G. Enters., Inc. v. First Fin. Ins. Co., 334 S.C. 529, 535-36, 514 S.E.2d 327, 330 (1999); Burns v. State Farm Mut. Auto. Ins. Co., 297 S.C. 520, 523, 377 S.E.2d 569, 570 (1989); Cobb v. Benjamin, 325 S.C. 573, 580-81, 482 S.E.2d 589, 593 (Ct. App. 1997).

While parties are generally permitted to contract as they see fit, freedom of contract is not absolute and coverage that is required by law may not be omitted. Jordan v. Aeina Cas. & Sur. Co., 264 S.C. 294, 297, 214 S.E.2d 818, 820 (1975). Statutes governing an insurance contract are part of the contract as a matter of law, and to the extent a policy provision conflicts with an applicable statute, the provision is invalid. Allstate Ins. Co. v. Thatcher, 283 S.C. 585, 587, 325 [**599] S.E.2d 59, 61 (1985); Jordan, 264 S.C. at 297, 214 S.E.2d at 820; Boyd v. State Farm Mut. Auto. Ins. Co., 260 S.C. 316, 319, 195 S.E.2d 706, 707 (1973).

HN14 The purpose of the Motor Vehicle Financial Responsibility Act (MVFRA), contained in Title 56 of the

South Carolina Code, is to give greater protection to those injured through the negligent operation of automobiles. Pa. Nat'l Mut. Cas. Ins. Co. v. Parker, 282 S.C. 546, 551, 320 S.E.2d 458, 461 (Ct. App. 1984). This legislation requires insurance for the benefit of the public, and an insurer may not nullify its purposes by engrafting exceptions from liability as to uses that the evident purpose of the legislation was to cover. *Id.*; Lincoln Gen. Ins. Co. v. Progressive N. Ins. Co., 406 S.C. 534, 539-40, 753 S.E.2d 437, 440 (Ct. App. 2013). Similarly, the stated purpose of the chapter on automobile insurance in Title 38 was to implement a complete [***15] reform of automobile insurance in order to, among other things, make sure every risk meeting certain criteria was entitled to automobile insurance and prevent the evasion of coverage provided for by that chapter. S.C. Code Ann. § 38-77-10 (2002).

HN15 Whether a particular provision in an insurance policy violates the public policy of the state is a question of law that is reviewed *de novo* by an appellate court. County Preferred Ins. Co. v. Whitehead, 2012 IL 113365, 979 N.E.2d 35, 42, 365 Ill. Dec. 669 (Ill. 2012). Public policy considerations include not only what is expressed in state law, such as the constitution and statutes, and decisions of the courts, but also a determination whether the agreement is capable of producing harm such that its enforcement would be contrary to the public interest or manifestly injurious to the public welfare. *Id.* at 42-43.

The PRs contend **HN16** the public policy of this state, as evidenced in section 38-77-142, prevents an insurer from reducing coverage from the amount stated in the policy, which here was \$100,000, to the statutory minimum limit required by section 38-77-140(A), which was \$15,000 per person for bodily injury during the policy period at issue. We agree.

Section 38-77-142 provides in relevant part as follows:

[*600] SECTION 38-77-142. Policies or contracts of bodily injury or property damage liability insurance covering liability; required provisions.

HN17 (A) No policy [***16] or contract of bodily injury or property damage liability insurance covering liability arising from the ownership, maintenance, or use of a motor vehicle may be issued or delivered in this State to the owner of a vehicle . . . unless the policy contains a provision insuring the named insured and

any other person using or responsible for the use of the motor vehicle with the expressed or implied consent of the named insured against liability for death or injury sustained or loss or damage incurred within the coverage of the policy or contract as [**713] a result of negligence in the operation or use of the vehicle by the named insured or by any such person. . . .

(B) No policy or contract of bodily injury or property damage liability insurance relating to the ownership, maintenance, or use of a motor vehicle may be issued or delivered in this State to the owner of a vehicle . . . without an endorsement or provision insuring the named insured, and any other person using or responsible for the use of the motor vehicle with the expressed or implied consent of the named insured, against liability for death or injury sustained, or loss or damage incurred within the coverage of the policy or contract [***17] as a result of negligence in the operation or use of the motor vehicle by the named insured or by any other person. If an insurer has actual notice of a motion for judgment or complaint having been served on an insured, the mere failure of the insured to turn the motion or complaint over to the insurer may not be a defense to the insurer, nor void the endorsement or provision, nor in any way relieve the insurer of its obligations to the insured, provided the insured otherwise cooperates and in no way prejudices the insurer.

....

(C) Any endorsement, provision, or rider attached to or included in any policy of insurance which purports or [**601] seeks to limit or reduce the coverage⁶ afforded by the provisions required by this section is void.

S.C. Code Ann. § 38-77-142 (2002) (emphasis added).

The PRs rely particularly upon subsection (C) and argue "[t]he statute mandates that all South Carolina insurance

policies must insure the named insureds against liability for death or injury and, more importantly, the insurance policy may not limit or reduce that coverage or it will be void [as] against public policy." The PRs contend, "Here, GEICO is attempting to reduce the coverage its policy states is provided for the named insureds through the step-down provision which plainly contravenes this statute because it reduces the amount of coverage stated in the declarations page under Section I." The PRs note section 38-77-142 does not reference in any way the minimum coverage statutorily provided by section 38-77-140, but instead specifically states that an insurance contract may not reduce the coverage afforded in the policy against liability for death or injury, and the amount contracted for under the policy at issue is \$100,000, not the \$15,000 statutory minimum.

The circuit court correctly concluded that HN18 section 38-77-142 "requires every policy issued to insure the named insured and permissive users against liability for death or injury [***19] sustained or loss or damage incurred 'within' the coverage of the policy." However, the court erred when it found "that 'within the coverage of the policy' does not mandate coverage up to the maximum amount of liability coverage under a policy when there is a family member claimant." The court failed to give any consideration to subsection (C).

The circuit court found section 38-77-142 provides liability coverage may be reduced, so long as it is not reduced below the statutory minimum mandated by section 38-77-140. [**602] Therefore, it does not contravene public policy, citing Hansen ex rel. Hansen v. United Services Automobile Association, 350 S.C. 62, 565 S.E.2d 114 (Ct. App. 2002) (holding a step-down provision along with an out-of-state provision in an Ohio insurance policy did not create an ambiguity voiding coverage).

Initially, we note Hansen is not controlling of our decision here as it involved Ohio insurance provisions drafted in accordance with Ohio law and did not address section 38-77-142. [**714] The accident in that case occurred in 1998, prior to the effective date of the statute. See Cowan v. Allstate Ins. Co., 357 S.C. 625, 626, 594 S.E.2d 275, 276 (2004) (noting the General Assembly enacted section 38-77-142 in 1997 and it became

⁶ The concurrence/dissent interprets the word "coverage" as referring to the individuals protected by the policy. However, such an interpretation conflicts with the way the word "coverage" is used in subsections (A) and (B). It is striking that the word "coverage" is used in these sections to refer to the levels of protection afforded by the policy. Moreover, these subsections clearly indicate that the General Assembly knew when and how to use the [***18] words "insured" or "person" and would have used those words in subsection (C) if that was what it intended "coverage" to mean.

effective on March 1, 1999). Although the circuit court recognized this fact, it nevertheless referenced the case in support of its conclusion.

Likewise, several decisions GEICO additionally references for the proposition [***20] that coverage for insureds may be reduced from the policy amount to the statutory minimums are not controlling here as they, like *Hansen*, involve accidents that occurred prior to the effective date of *section 38-77-142*, and the decisions do not address the statute's application. See, e.g., *United Servs. Auto. Ass'n v. Markosky*, 340 S.C. 223, 530 S.E.2d 660 (Ct. App. 2000); *Universal Underwriters Ins. Co. v. Metro. Prop. & Life Ins. Co.*, 298 S.C. 404, 380 S.E.2d 858 (Ct. App. 1989). To the extent the concurrence/dissent maintains the validity of step-down provisions has already been established by this Court, it is mistaken. Although it refers to the Court of Appeals's decision in *Universal Underwriters*, that case cannot possibly control our decision here because the accident in *Universal Underwriters* occurred at least a decade prior to the effective date of *section 38-77-142*. In any event, we are not limited by a decision of the Court of Appeals, as **HN19** this Court exercises *de novo* review of public policy issues. The General Assembly is presumed to know the law, so in our view, the enactment of *section 38-77-142* could be perceived as a response to these earlier decisions. See *Grier v. AMISUB of S.C., Inc.*, 397 S.C. 532, 536, 725 S.E.2d 693, 696 (2012) (stating **HN20** "we presume the General Assembly is 'aware of the common law'" when enacting subsequent legislation (citation omitted)).

[*603] In viewing the plain wording of *section 38-77-142*, we find *subsections (A) and (B)* require a policy for liability insurance to contain a provision insuring the [***21] named insureds and permissive users against liability for damage incurred "within the coverage of the policy." *Subsection (B)* additionally contains a provision regarding notice that states the mere failure to turn over a motion or complaint will not void coverage. Finally, *subsection (C)* provides that no policy provision may limit or *reduce* the coverage required by *this section*, which refers to *section 38-77-142*, or else it is void.

We think it is significant that **HN21** *section 38-77-142* provides insurers must provide liability coverage to insureds "within the coverage of the policy" and may not limit or reduce liability coverage in the policy below the

amount provided *in this section*, meaning *section 38-77-142*. Thus, it is the face amount of the coverage that is relevant under *section 38-77-142*, not the statutory minimum limits of liability coverage set forth in *section 38-77-140*, which are not even mentioned in the statute.⁷ In contrast to the circuit court's interpretation, we believe the General Assembly could have simply stated coverage may not be reduced below the statutory minimum limits and/or below the amount provided in *section 38-77-140*, if that was its intent. However, it did not do so. Here, the circuit court has engrafted an additional restriction into *section 38-77-142* that was not included by the General Assembly by determining [***22] coverage may be reduced to the statutory minimum, in direct contravention to the explicit language of *section 38-77-142(C)* that coverage may not be reduced below the coverage in the policy.

The General Assembly, in considering *section 38-77-142*, contemplated how automobile insurance is actually marketed. It realized that the actual policy containing any exclusions or limitations is not provided contemporaneously with the entering of the insurance agreement. As a result, **HN22** the General Assembly specifically included language in *section 38-77-142(C)* prohibiting provisions in the policy that limit or reduce coverage:

[*604] (C) Any endorsement, provision, or rider attached to or included in any policy of insurance which purports or seeks to limit or reduce the coverage afforded by [***715] the provisions required by this section is void.

S.C. Code Ann. § 38-77-142(C) (2002) (emphasis added).

Therefore, once the face amount of coverage is agreed upon, it may not be arbitrarily reduced or limited by conflicting policy provisions that effectively retract this stated coverage. Any other interpretation [***23] of *section 38-77-142(C)* would render the section useless, and the General Assembly is presumed not to perform useless acts. See *Denene, Inc. v. City of Charleston*, 352 S.C. 208, 212, 574 S.E.2d 196, 198 (2002) (**HN23** "The Court must presume the legislature did not intend a futile act, but rather intended its statutes to accomplish something," (citing *TNS Mills, Inc. v. S.C. Dept of Rev.*

⁷ Moreover, the Declarations page of the Murrys' policy explicitly states: "This is a description of your coverage" and it lists bodily injury liability coverage of \$100,000/\$300,000. (Emphasis added.)

331 S.C. 611, 503 S.E.2d 471 (1998)). After agreeing on a policy with \$100,000 in stated liability coverage for the named insureds, GEICO should not be permitted to subsequently reduce it with what it deems an "exclusion" in the policy.

There is, indeed, a wide divergence of authority in this area, as courts have considered the statutory schemes, case law, and public policy determinations in their own jurisdictions in scrutinizing provisions attempting to reduce or eliminate coverage to family members. See Martin J. McMahon, Annotation, *Validity, Under Insurance Statutes, of Coverage Exclusion for Injury to or Death of Insured's Family or Household Members*, 52 A.L.R.4th 18 (1987 & Supp. 2014) (discussing a variety of scenarios in which courts have examined such provisions). There is no true consensus.

In one case, Lewis v. West American Insurance Co., 927 S.W.2d 829, 439 Ky. L. Summary 22 (Ky. 1996), the Supreme Court of Kentucky found a step-down provision was void as against that state's public policy. The Kentucky court focused on two key points: (1) a customer's motivation in purchasing liability insurance above the statutory minimum is to obtain increased protection for anyone injured; and (2) [***24] the fact that the only possible justification for these types of exclusions is to prevent the possibility of collusion among family members, a concern which has been mostly abrogated in other contexts.

[*605] In *Lewis*, the court acknowledged that neither Kentucky's state constitution nor its statutes addressed family exclusions, so it would turn to its court decisions to determine the state's public policy. *Id.* at 836. The court stated it has long been recognized that, where there is no legislative prohibition on a certain character of agreement, before a court is authorized to declare it void "it must appear that such an agreement or contract has a tendency to injure the public or is against the public good, or is contrary to sound policy" *Id.* at 835 (citation omitted). The court observed that, "[w]ith the erosion of the immunities provided by the doctrines of interspousal and parental immunity, insurance companies sought to protect their interests by inserting family exclusions into their insurance contracts." *Id.* at 832. Over the years, the purported justification for those rules, the possibility of fraud and collusion, was determined to no longer justify the hardships imposed by these rules. *Id.* The court found the [***25] family exclusion "prevents a specific class of innocent victims from receiving adequate financial protection" and is

based entirely on the person's status. *Id.* "Without documentation or factual basis, every member of this excluded class is labeled high risk and branded as being more likely to engage in collusion and fraud." *Id.* The court concluded, "To uphold the family exclusion would result in perpetuating socially destructive inequities." *Id.* at 833.

Family exclusions are injurious to a substantial segment of the citizens of our Commonwealth. They deny injured persons the ability to rely upon the insurance coverage purchased by the policyholder. As a result, seriously injured accident victims will suffer financial hardship if family exclusion clauses are validated. Almost every member of the public is potentially a member of this excluded class. The exclusion is overly broad, based upon surmise, and against the public good.

It is time for us to take the next logical step Thus, we hold that family exclusion provisions in liability insurance contracts violate the public policy of this Commonwealth and are unenforceable.

[**716] *Id.* at 836. We agree with the court's reasoning in *Lewis*. **HN24** To allow an insurer [***26] to determine the extent to which an injured party can recover within the insured's policy coverage based solely on a familial relationship is arbitrary and capricious and [*606] violative of public policy. See Mut. of Enumclaw Ins. Co. v. Wiscomb, 97 Wn.2d 203, 643 P.2d 441, 444 (1982) ("This exclusion becomes particularly disturbing when viewed in light of the fact that this class of victims is the one most frequently exposed to the potential negligence of the named insured. Typical family relations require family members to ride together on the way to work, church, school, social functions, or family outings. Consequently, there is no practical method by which the class of persons excluded from protection by this provision may conform their activities so as to avoid exposure to the risk of riding with someone who, as to them, is uninsured."), cited with approval in Lewis, 927 S.W.2d at 832-33; see also Factory Mut. Liab. Ins. Co. of Am. v. Kennedy, 256 S.C. 376, 380-81, 182 S.E.2d 727, 729 (1971) (stating liability insurance not only affords protection to insured motorists, it serves the important "public purpose of affording protection to innocent victims of motor vehicle accidents" (citation omitted) (emphasis added)).

As written by GEICO, the policy in the current matter provides very limited coverage to families where those injured would otherwise undisputedly fall within the defined [***27] class of "insureds." As noted above, children injured while being driven to school by a parent would come under the family step-down provision, and thus only the statutory minimum limit would be available, regardless of the actual policy coverage purchased by the parent. The exclusion would also apply to the transportation of infants in family vehicles, where collusion could not be seriously asserted. Likewise, a husband and wife traveling together, as happened in the current appeal, would have only the statutory minimum amount, not the coverage provided for in the policy. In this case involving the Murrys, there can be no possibility of collusion, as both of the named insureds tragically perished in the accident.

The policy provision here has far-reaching effects that can impact a substantial segment of the population, as it serves not only to markedly reduce coverage to family members, but it even reduces the policy's coverage to the *named insureds*, as happened with the Murrys. The legislative purpose of affording protection to the innocent victims of motor vehicle accidents is eviscerated by GEICO's reduction in coverage to injured family members, who are no less innocent victims [***28] in accidents solely because they are injured by the negligence of [***607] a family member. It would indeed be an unusual public policy that would condone denying coverage to a child where he or she is catastrophically injured while being driven by a parent to school, but would allow recovery where the parent injures a stranger while on the way to work.

Ultimately, regardless of the split of authority from other jurisdictions, we find the clear terms of section 38-77-142 are controlling of this state's public policy and justify the result we reach today.⁸ In this case, the Murrys, the named insureds, purchased a [***717]

policy with liability coverage limits of \$100,000 per person and \$300,000 per accident for bodily injury, and \$50,000 per accident for property damage. In our view, GEICO has improperly attempted to reduce the coverage in the policy to the named insureds by means of the step-down provision, which it has characterized as an "exclusion." We find this provision is in direct contravention to the prohibition set forth in section 38-77-142. In addition, to allow an insurer to determine the extent to which an injured party can recover within the insured's policy coverage based solely on a familial relationship is arbitrary, [***29] capricious and injurious to the public good. See Lewis, 927 S.W.2d at 836. For these reasons, the family step-down provision is void as against the public policy of this state.

[***608] **HN25** A provision that is against public policy is void *ab initio* and, because it is deemed legally never to have come into existence, it is incapable of being enforced by courts. 16 Richard A. Lord, *Williston on Contracts* § 49:12 (4th ed. 2000). We see no reason to depart from this procedure here, as suggested in the concurrence/dissent, as it would be a hollow victory indeed for the prevailing parties if we were to enforce the offending provision here and restrict relief to prospective cases only. Where courts have found insurance provisions to be void as against public policy, they have, as a matter of course, refused to give any effect to those provisions in the appeals before them. See generally Lewis v. W. Am. Ins. Co., 927 S.W.2d 829, 836, 43-9 Ky. L. Summary 22 (Ky. 1996); Walters v. Dairyland Ins. Co., 50 Ohio App. 2d 106, 361 N.E.2d 1068 (Ohio Ct. App. 1976); Ryan v. Knoller, 695 A.2d 990 (R.I. 1997).

IV. CONCLUSION

We agree with the circuit court that GEICO's policy is not ambiguous, but we conclude the family step-down provision, which reduced the coverage under the liability

⁸ We disagree with the position taken by the concurrence/dissent that section 56-9-20(5)(d) of the MVFRA somehow serves to thwart the application of section 38-77-142(C) because the Murrys purchased coverage over the statutory minimum limits. This assertion rests on the premise that "excess" coverage is not part of the insurance policy that is subject to the MVFRA and, consequently, its public policy considerations. See S.C. Code Ann. § 56-9-20(5)(d) (2006) (stating "excess or additional coverage shall not be subject to the provisions of this chapter," and "the term 'motor vehicle liability policy' shall apply only to that part of the coverage which is required by this article [Article 1 of Chapter 9]"). However, by its express terms, section 56-9-20(5)(d) limits its reach to the provisions in the MVFRA. *Id.* (stating excess coverage "shall not be subject to the provisions of this chapter," i.e., Chapter 9 of Title 56); see *id.* § 56-9-10 ("This chapter [Chapter 9 of Title 56] may be cited as the 'Motor Vehicle Financial Responsibility Act.'"). As a result, section 56-9-20(5)(d) has no bearing on the application of *other* motor vehicle laws, such as section 38-77-142, or the related consideration [***30] of our state's public policy. See generally *id.* § 56-9-100 ("This chapter [Chapter 9 of Title 56] shall in no respect be considered a repeal of any other provision contained in this Title or the motor vehicle laws of this State but shall be considered as supplemental and cumulative thereto.").

policy from the stated policy amount [***31] to the statutory minimum, is violative of public policy and is, therefore, void. The provision not only conflicts with the mandates set forth in section 38-77-142, but its enforcement would be injurious to the public welfare.

AFFIRMED IN PART, REVERSED IN PART.

TOAL, C.J., and Acting Justice James E. Moore, concur. PLEICONES, J., concurring in part and dissenting in part in a separate opinion in which KITTREDGE, J., concurs.

Concur by: PLEICONES (In Part)

Dissent by: PLEICONES (In Part)

Dissent

JUSTICE PLEICONES: I agree with the majority that the insurance policy at issue here is not ambiguous, but disagree with the finding that the family step-down provision offends South Carolina's public policy. I therefore concur in part and dissent in part, and would therefore affirm the circuit court order.

The majority finds the family step-down provision offends public policy as expressed by the General Assembly in S.C. Code Ann. §38-77-142 (C) (2006). In my opinion, reliance on § 38-77-142 is misplaced here, as that statute is concerned with the persons who must be covered under an automobile [**609] insurance policy, and nothing in the family step-down alters the individuals covered by the GEICO policy. In my view, the relevant statutes against which we should judge the step-down are S.C. Code Ann. 38-77-140 (2006) [***32]⁹ and S.C. Code Ann. § 56-9-20(5)(d) (2006).¹⁰ I find nothing in the family step-down provisions that offends the policies expressed in these statutes.

Section 38-77-140 provides that all South Carolina automobile insurance policies must contain "a provision insuring the persons defined as insured against losses from the liability imposed by law for damages arising out of the ownership, [**718] maintenance, or use of these motor vehicles . . ." and then establishes the minimum

liability limits. § 38-77-140. The statute concludes "Nothing in this article prevents an insurer from issuing, selling, or delivering a policy providing liability coverage in excess of these requirements." *Id.* Section 38-77-140 is the statute that establishes the minimum [***33] monetary coverage that must be a part of every South Carolina automobile liability policy. While this section permits but does not require an insurer to offer a policy that provides coverage in excess of the minimums, § 38-77-140 contains no language analogous to that found in § 38-77-142 (C).

Sections 38-77-142(A) and (B), on the other hand, are concerned with the persons who must be afforded coverage under an automobile insurance policy, and not with the amount of coverage that must be offered. When § 38-77-142(C) voids any provision "which purports or seeks to limit or reduce the coverage afforded by the provisions required by this section," it is referring only to the persons who must be covered, which is the subject of § 38-77-142, and not to the monetary amount of liability coverage, which is the subject of § 38-77-140. In my opinion, a family step-down provision does not offend § 38-77-142(C) because it does not limit or [**610] reduce the type of coverage to an individual identified in § 38-77-142(A) or (B), but rather only reduces the amount of monetary coverage to the minimum limits found in § 38-77-140.

Moreover, we have already decided that an automobile insurance policy may contain a provision stepping-down coverage to minimum limits without offending public policy. Universal Underwriters Ins. Co. v. Metropolitan Prop. and Life Ins. Co., 298 S.C. 404, 380 S.E.2d 858 (Ct. App. 1989) (insurers have the right to limit their [***34] liability within statutory limits, and while permitted to offer additional coverage, are only required to provide the mandatory minimums). In my opinion, given the pervasive statutory regulation of automobile insurance policies, it is for the General Assembly and not for the Court to decide that a family step-down provision offends South Carolina's public policy. That the legislature has not acted to alter the rule announced in *Universal Underwriters* indicates to me that we were correct in holding that step-downs are valid. Finally, if we are to change the rules and now prohibit step-down provisions

⁹ This version of the statute rather than the amended version found in the 2012 Supplement applies here.

¹⁰ This section found in the Motor Vehicle Financial Responsibility Act (MVFRA), S.C. Code Ann. §§56-9-10 et seq. (2006 and Supp. 2012), states that any liability coverage offered over the minimum statutory limits is "not subject to the provisions of this chapter." Thus the legislature has explicitly permitted insurers to offer different terms so long as the mandatory minimum coverage amounts are met. Nothing in GEICO's family step-down provision offends the MVFRA.

409 S.C. 586, *610; 762 S.E.2d 705, **718; 2014 S.C. LEXIS 361, ***34

in automobile insurance policies, we should do so prospectively. Such a delay would permit both insurers and insureds entering contracts after the date this opinion becomes final to decide what coverage they will offer, and what coverage they will buy. I would affirm.

KITTREDGE, J., concurs.

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
C/A No. 14-CP-26-06382

ERIE INSURANCE EXCHANGE,

Plaintiff,

vs.

GOVERNMENT EMPLOYEES
INSURANCE COMPANY, MARK
ALLISON SCOGGIN, and ANGELA
BENNETT HILL,

Defendants.

MEMORANDUM OF LAW OF
GOVERNMENT EMPLOYEES
INSURANCE COMPANY

The Defendant, Government Employees Insurance Company ("GEICO"), respectfully submits this memorandum of law, and requests that this Honorable Court enter judgment in its favor.

I. FACTUAL BACKGROUND

The pertinent facts as stipulated by the parties are as follows:

1. On September 5, 2012, the defendant Mark Scoggin ("Scoggin") and the defendant Angela Hill ("Hill") were involved in a motor vehicle accident in Horry County which resulted in alleged personal injuries to Hill. (Stipulation of Facts ¶ 5.)
2. At the time of the accident, Scoggin was operating a 2002 Ford Taurus owned by his mother, Mildred Scoggin (deceased) ("Ms. Scoggin"). (Id. ¶ 6.)
3. At the time of the accident, Scoggin resided with Ms. Scoggin. (Id.)

4. Ms. Scoggin's Ford Taurus was insured under a policy issued by GEICO (Policy No. 0929-32-50-09) carrying liability limits of \$50,000.00/\$100,000.00. (Id.)

5. GEICO tendered the \$50,000.00 policy limit under Ms. Scoggin's policy (Policy No. 0929-32-50-09) to Hill in exchange for a covenant not to execute. (Id. ¶ 10.)

6. At the time of the accident, Hill was operating a vehicle insured under a policy (Policy No. Q05 1107128) issued by the Plaintiff, Erie Insurance Exchange, which carries UM/UIM limits of \$100,000.00/\$300,000.00. (Id. ¶ 8.)

7. At the time of the accident, Scoggin owned a 2005 Chevrolet Colorado which was insured under a different policy issued by GEICO (Policy No. 4085-57-17-45) (the "Policy") carrying liability limits of \$25,000.00/\$50,000.00. (Id. ¶ 7.)

8. As to third-party liability claims, the Policy provides, in pertinent part:

LOSSES WE WILL PAY FOR YOU UNDER SECTION I

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

1. *bodily injury*, sustained by a person; and
2. damage to or destruction of property;
arising out of the ownership, maintenance or use of the *owned auto* or a *non-owned auto*.

(Id. ¶ 13.)

9. The Policy defines "Owned auto" as:

- (a) a vehicle described in this policy for which a premium charge is shown for these coverages;
- (b) a *trailer* owned by *you*;
- (c) a *private passenger, farm* or *utility auto*, ownership of which *you* acquire during the policy period or for which *you* enter into a lease during the policy period for a term of six months or more, if:
 - (i) it replaces an *owned auto* as defined in (a), above; or
 - (ii) we insure all *private passenger, farm* and *utility autos* owned or leased by *you* on the date of the acquisition, and *you* ask us to add it to the policy no more than 30 days later;

(d) a *temporary substitute auto*.

(Id. ¶ 12.)

10. The Policy defines "*Non-owned auto*" as

a *private passenger, farm, or utility auto or trailer* not owned by or furnished for the regular use of the [sic] either *you* or *your relatives*, except a *temporary substitute auto*. *You* or *your relatives* must be using the *non-owned auto or trailer* within the scope of permission given by its owner. A *non-owned auto* rented or leased for more than 30 days will be considered as furnished for regular use.

(Id.)

11. "*Relative*" is defined as "a person who continuously lives in *your* household, and is related to *you* by blood, marriage, or adoption (including a ward or foster child)." (Id.)

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

13. GEICO denied coverage and a defense under the Policy on the grounds that at the time of the accident, Scoggins was not operating an "owned or non-owned vehicle" as defined under the policy. (Id. ¶ 11.)

II. DISCUSSION

The Plaintiff, as Hill's UIM carrier, seeks a declaration that the Policy issued by GEICO to Scoggins provides excess liability coverage. The Plaintiff's request should be denied because, by its plain and unambiguous terms, the Policy does not provide coverage for the accident in question.

Insurance policies are subject to “the general rules of contract construction.” Hansen v. United Services Auto. Ass’n, 350 S.C. 62, 565 S.E.2d 114, 116 (Ct. App. 2002). Courts “must enforce, not write, contracts of insurance.” Gambrell v. Travelers Ins. Cos., 280 S.C. 69, 310 S.E.2d 814, 816 (1983). “Parties to a contract have the right to construct their own contract without interference from courts to rewrite or torture the meaning of the policy to extend coverage.” Schulmeyer v. State Farm Fire & Cas., 353 S.C. 491, 579 S.E.2d 132, 134 (2003) (citing Gambrell, *supra*). Rather, policy language is to be given its “plain, ordinary, and popular meaning,” and if the contract “is unambiguous, clear, and explicit, it must be construed according to the terms the parties have used.” B.L.G. Enterprises, Inc. v. First Fin. Ins. Co., 334 S.C. 529, 514 S.E.2d 327, 330 (1999); *see also* Schulmeyer, *supra*, 579 S.E.2d at 134 (“[i]f the contract’s language is clear and unambiguous, the language alone determines the contract’s force and effect”).

An insurance contract “‘is ambiguous only when it may fairly and reasonably be understood in more ways than one.’” Hansen, 565 S.E.2d at 117 (quoting Universal Underwriters Ins. Co. v. Metro. Prop. & Life Ins. Co., 298 S.C. 404, 380 S.E.2d 858, 860 (Ct. App. 1989)). “An insurance contract is read as a whole document so that ‘one may not, by pointing out a single sentence or clause, create an ambiguity.’” Schulmeyer, *supra*, 579 S.E.2d at 134 (quoting Yarborough v. Phoenix Mut. Life Ins. Co., 266 S.C. 584, 225 S.E.2d 344, 348 (1976)). “The meaning of a particular word or phrase is not determined by considering the word or phrase by itself, but by reading the policy as a whole and considering the context and subject matter of the insurance contract.” *Id.*

Here, the plain, unambiguous language of the Policy's coverage agreement provides that liability coverage applies to "damages which an *insured* becomes legally obligated to pay because of...*bodily injury*, sustained by a person...arising out of the ownership, maintenance, or use of the *owned auto* or a *non-owned auto*." The Ford Taurus which Scoggins was operating at the time of the accident was not an "owned auto." First, it was not listed on the Policy and there was no premium charged therefor; instead, it was covered by another liability policy for which a premium was paid. Second, it was not acquired or leased by Scoggins during the policy period; rather, it was owned by Scoggins's mother at all relevant times.

Similarly, the Ford Taurus is not a "non-owned auto" under the plain terms of the Policy. First, the vehicle was owned by Scoggins's mother with whom Scoggins resided at the time of the accident. Second, Scoggins's testimony was that he used the Ford Taurus whenever he went on short trips because it had a dog seat in the front seat; therefore, the vehicle was available for his regular use. (Depo. of Mark Allison Scoggin p. 11, ll. 15-25.) Third, the vehicle was not a "temporary substitute auto" as it was not used as a substitute vehicle for his own auto due to its "breakdown, repair, servicing, loss or destruction;" rather, the Ford Taurus was being used in lieu of his owned vehicle because of the dog seat. (*See id.*)

In an effort to avoid its UIM obligations to the defendant Hill, the Plaintiff attempts to convince this Court to ignore the plain, unambiguous terms of the Policy as a whole, and find an ambiguity where none exists by reading policy provisions in isolation and out of context. The Georgia Court of Appeals confronted a very factually similar case involving the same policy provision in Danforth v. Gov't Employees Ins. Co., 638 S.E.2d 852 (Ga. App. 2006). In that case GEICO's insured was involved in an accident while driving a vehicle titled in his mother's

name. GEICO declined to provide coverage for the accident under a separate policy issued on another at-home vehicle on the grounds that the vehicle did not meet the definition of an "owned auto" or "non-owned auto" under the policy. The court agreed, and held that the vehicle was not a "non-owned auto" since the vehicle was owned by a relative (i.e., the insured's mother) with whom the insured resided at the time of the accident. 638 S.E.2d at 859.

In another similar case, GEICO Gen'l Ins. Co. v. Hanzlik, 32 Kan. App. 2d 951, 954, 92 P.3d 1121 (Kan. App. 2004), the Kansas Court of Appeals had an opportunity to consider a similar "non-owned auto" provision in a GEICO policy. In that case a GEICO insured was involved in an accident while operating his wife's vehicle which was insured under a policy with State Farm. The court held that since the vehicle was "owned by 'either you or a relative'," it "by policy definition cannot be a 'nonowned auto'" for the insured. *Id.* Additionally, the court rejected the insured's argument that the "nonowned auto" policy provision was ambiguous, holding, instead, that the policy plainly and unambiguously afforded the insured "liability coverage only while he was operating, maintaining, or using an 'owned auto' or a 'non-owned auto,' but not while he was operating his wife's vehicle which was insured under a different policy." *Id.*, at 958.

The rationale for "nonowned auto" policy provisions such as the one at issue is well-established: "the evident intention of the limitation with respect to other automobiles is to prevent a situation in which the members of one family or household may have two or more automobiles actually or potentially used interchangeably but with only one particular automobile insured." *Id.* (quoting Boyd v U.S. Fidelity & Guaranty Co., 256 So. 2d 1 (Fla. 1971)).

Construing GEICO's "policy precisely as written comports with common sense and sound public policy." *Id.*, at 959.

Under the plain, unambiguous terms of the Policy, Scoggins was not operating an "owned auto" or a "non-owned auto" at the time of the accident; therefore, the Policy does not provide liability coverage for the defendant Hill's claims.

III. CONCLUSION

Based on the foregoing, the GEICO policy issued to the defendant Mark Scoggin (Policy No. 4085-57-17-45) provides no coverage for the accident in question. Judgment should, therefore, be entered in favor of GEICO.

KING, LOVE & SMITH, LLC

BY:



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ATTORNEYS FOR GOVERNMENT

EMPLOYEES INSURANCE COMPANY

March 15, 2015

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRD JUDICIAL CIRCUIT
COUNTY OF HORRY	)	Case No: 2014-CP-26-

Erie Insurance Exchange,	)
	)
Plaintiff,	)
	)
vs.	)
	)
Government Employees Insurance	)
Company, Mark Allison Scoggin and	)
Angela Bennett Hill,	)
	)
Defendants.	)
	)

Affidavit of Attorney Fees & Costs

PERSONALLY APPEARED before me the undersigned J. Dwight Hudson, Esq. who, being duly sworn, states that he is the attorney of record for the Plaintiff in the above captioned declaratory judgment action; that in accord with the Court's Order dated April 29, 2015 and entered or filed on May 7, 2015, which is attached and incorporated herein by reference, he makes this Affidavit in support of his claims for attorney's fees in the amount of \$11,455.00 and costs in the amount of \$185.00 in this matter. These fees and costs are solely those relevant to and arising from work performed and expenses incurred in connection with the declaratory judgment action to establish that Government Employees Insurance Company (GEICO) had excess coverage under a policy written for named insured Mark Allison Scoggin, which coverage preceded the coverage of the Plaintiff as to the underlying MVA.

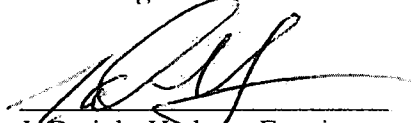
THE fees and costs requested are documented by the enclosed billing sheets and invoice summaries prepared by the Deponent's office, which are incorporated herein by reference, and

are true, accurate and correct. Deponent is informed and believes the attorney's fees are reasonable and customary among attorneys in this location; further, the Deponent states that these fees are billed at the normal hourly rate as agreed to between Defendant and Counsel; are based on the nature, extent, and difficulty of the legal services rendered, the time and labor devoted to the case, the novelty and complexity of the questions involved, skill required to provide proper legal representation and the familiarity with the specific area of law involved, the preclusion of other engagements caused by the acceptance of this engagement, the magnitude of the matter, the results achieved and the customary fees for similar legal services.

Dated: May 13, 2015

FURTHER DEPONENT SAYETH NOT.

/s/ J. Dwight Hudson



J. Dwight Hudson, Esquire
SC Bar # 2753

Hudson Law Offices
PO Box 70218
Myrtle Beach, SC 29572
(843) 692-9889
Attorney For: Plaintiff

Sworn to and Subscribed
Before me this the 13th day
of May, 2014



Notary Public for SC

My commission expires: 3/20/2019

INVOICES/SUMMARIES

November 6, 2014

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ERIE INSURANCE GROUP
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November 6, 2014
File #: 36-020
Inv #: 610

Attention: Joe Jay
RE: Scoggin v. Hill

Task	SUMMARY BY TASK	Effective Rate	Hours	Amount
			13.70	\$1,712.50

DISBURSEMENT SUMMARY	
E112 Court Fees	150.00
Total Disbursements	<u>\$150.00</u>

000228

Date	Description	Hours	Amount	Lawyer
Aug-28-14	Review/analyze file docs in preparation for drafting of DJ Complaint	0.50	62.50	MAG
Aug-29-14	Draft/revise DJ Complaint	1.80	225.00	MAG
	Review/analyze coverage documents and denial letter in preparation for drafting of DJ Complaint	0.90	112.50	MAG
Sep-02-14	Draft/revise DJ Complaint	2.40	300.00	JDH
Sep-03-14	Review/analyze file material to identify and compile Exhibits to DJ Complaint	0.80	100.00	MAG
	Review/analyze insurance policy: caselaw, GEICO policy provisions in re drafting of DJ Complaint	2.20	275.00	MAG
	Draft/revise DJ Complaint	2.20	275.00	MAG
Sep-04-14	Draft/revise Email to J Jay providing draft DJ Complaint for review and approval	0.10	12.50	MAG
Sep-17-14	Communicate with client via Conf with J Jay re status & authority to proceed with DJ	0.40	50.00	JDH
Sep-22-14	Review/analyze file material and discovery documents in re DJ Complaint and pending Trial term	1.00	125.00	MAG
Sep-23-14	Draft/revise Corresp to Court providing DJ Action for filing and service	0.20	25.00	JDH
	Communicate with client via Conf with J Jay re pending Trial Term: need for Pre-Trial Report	0.30	37.50	JDH
	Draft/revise /Finalize DJ Complaint: Civil Action Cover Sheet	0.50	62.50	MAG
Sep-24-14	Draft/revise Email to counsel advising of DJ Action and providing courtesy copy of same	0.20	25.00	JDH
	Review/analyze Email from atty Powell inquiring re our standing for DJ	0.10	12.50	MAG
	Draft/revise Email to atty Powell advising re our standing for DJ	0.10	12.50	MAG

Totals

13.70 1,712.50

DISBURSEMENTS**Disbursements****Receipts**

Sep-24-14 Court Fees : Filing Fee: DJ Complaint 1 @
150.00

150.00

Totals

\$150.00

\$0.00

Total Fees & Disbursements**\$1,862.50**

000229

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FEIN: 57-1043917

ERIE INSURANCE GROUP

PO Box 730

MacGregor Park, 125 Edinburgh South, Suite 300

Cary, NC

27512

November 26, 2014

File #: 36-020

Inv #: 613

Attention: Joe Jay

RE: Scoggin v. Hill

SUMMARY BY TASK

Task	Effective Rate	Hours	Amount
		26.30	\$3,217.50

DISBURSEMENT SUMMARY

E112 Court Fees

35.00

Total Disbursements

\$35.00

000230

Date	Description	Hours	Amount	Lawyer
Sep-29-14	Review/analyze DJ Complaint, clocked from/by Court	0.10	12.50	MAG
	Review/analyze file material and online filings in re agent(s) and info required for service of process in re DJ Complaint	0.50	62.50	MAG
	Draft/revise Email to attys advising of intent to file for Trial Continuance and inquiring re consent to same	0.50	62.50	MAG
	Review/analyze online Roster re Trial status and Public Index re DJ filing	0.30	37.50	MAG
Oct-01-14	Draft/revise Corresp to atty Maguire inquiring re Acceptance of Service in behalf of A Hill	0.20	25.00	MAG
	Draft/revise Acceptance of Service of DJ Action in re A Hill	0.50	62.50	MAG
	Draft/revise Corresp to SCDPI tendering serve of DJ Complaint in behalf of GEICO	0.30	37.50	MAG
	Review/analyze Email from atty Powell advising he is no longer involved in case	0.10	12.50	MAG
	Draft/revise Corresp to insured M Scoggin providing service of DJ Complaint (CMRR - Restricted)	0.50	62.50	MAG
Oct-02-14	Draft/revise Motion for Continuance of Trial re pending DJ action	1.00	125.00	MAG
	Review/analyze file material, Depo Transcripts and photos for update to J Jay	1.00	125.00	MAG
	Draft/revise Email to J Jay discussing pending Trial, DJ Action; strategy in re same	0.70	87.50	MAG
Oct-03-14	Communicate with client via Conf with J Jay re pending Trial & DJ Action	0.30	37.50	JDH
	Review/analyze file, discovery, etc and assess need for continuance of Trial or 40J in re pending DJ action	0.30	37.50	MAG
Oct-06-14	Review/analyze Pre-Trial Report for accuracy and/or additions/revisions	0.30	37.50	JDH
	Review/analyze 10-2 Acceptance of Service of SCDPI in re GEICO	0.10	12.50	MAG
	Draft/revise Email to atty E Love providing SCDPI 10-2 Acceptance of Service and	0.20	25.00	MAG

000231

	discussing his representation of GEICO Draft/revise Affidavit of Service of DJ Complaint as to GEICO	0.30	37.50	MAG
	Draft/revise Corresp to Court providing Affidavit of Service of DJ Complalint on GEICO for filing	0.20	15.00	PARA
Oct-09-14	Communicate with opposing via Conf with atty Powell re Substitution of Counsel	0.30	37.50	JDH
	Draft/revise Consent Substitution of Counsel	0.40	50.00	MAG
	Draft/revise Email to atty Powell discussing and providing Substitution of Counsel for signature	0.10	12.50	MAG
	Draft/revise Email to J Jay advising and providing proposed Substitution of Counsel	0.20	25.00	MAG
Oct-10-14	Draft/revise Answer/Amended Answer	1.00	125.00	MAG
	Draft/revise Email to J Jay advising and providing proposed Answer/Amended Answer	0.20	25.00	MAG
	Review/analyze atty Powell signature to Substitution of Counsel	0.10	12.50	MAG
	Draft/revise Corresp to Judge Hyman discussing status of litigation and request for Substitution of Counsel	0.30	37.50	MAG
Oct-13-14	Review/analyze file material, pleadings, statutes in re DJ strategy	0.30	37.50	JDH
	Draft/revise Email to atys Love and Maguire re expeditig of DJ action	0.20	25.00	MAG
	Communicate with opposing via Conf with Maguire office requesting copy of GEICO Covenant	0.20	15.00	PARA
Oct-14-14	Draft/revise Corresp to atty Maguire re Arbitration of UIM coverage	0.20	25.00	JDH
	Draft/revise Corresp to J Jay re Arbitratio of UIM coverage and providing Covenant for primary liability settlement	0.20	25.00	JDH
	Draft/revise Summons	0.20	25.00	MAG
	Draft/revise Email to J Jay providing Corresp re Arbitration & Covenant	0.10	7.50	PARA
	Draft/revise Email to atty Maguire providing Corresp re Arbitration	0.10	7.50	PARA
Oct-15-14	Review/analyze CMRR corresp to insured M	0.30	22.50	PARA

000232

	Scoggin returned undeliverable. re-post with current address			
Oct-16-14	Research re substantive law applying in NC arbitrations	0.70	87.50	MAG
Oct-17-14	Review/analyze parameters and formulate strategy in re Motion to Stay	0.20	25.00	JDH
	Review/analyze executed Substitution of Counsel from Judge Hyman	0.10	12.50	MAG
	Review/analyze Email from atty Maguire re Motion to Stay	0.10	12.50	MAG
	Draft/revise Corresp to providing Substitution of Counsel for filing and service	0.20	15.00	PARA
	Draft/revise Cover Sheet for Substitution of Counsel	0.20	15.00	PARA
Oct-20-14	Plan and prepare for Roster Meeting & Motions Hearings via review of pleadings, caselaw and file docs. per prior approval of J Jay	2.80	350.00	JDH
	Appear for/attend /Argue Motion for Continuance of Trial & Substitution of Counsel before the Court in Conway SC	3.80	475.00	JDH
Oct-27-14	Review/analyze Motion to Stay for accuracy and/or revisions/additions	0.20	25.00	JDH
	Draft/revise Motion to Stay	1.00	125.00	MAG
Oct-28-14	Draft/revise Motion to Stay to incorporate JDH revisions/additions	0.30	37.50	MAG
	Draft/revise Email to atty Maguire discussing and providing proposed Motion to Stay for review and consent	0.20	25.00	MAG
Oct-29-14	Draft/revise Email to atty Maguire inquiring re Motion to Stay	0.10	12.50	MAG
	Review/analyze atty Maguire requested revisions to Motion to Stay	0.10	12.50	MAG
	Draft/revise Motion to Stay to incorporate atty Maguire revisions	0.30	37.50	MAG
	Draft/revise Email to atty Maguire providing revised Motion to Stay for review and consent	0.10	12.50	MAG
	Review/analyze Email from atty Maguire providing consent to Motion to Stay	0.10	12.50	MAG
	Draft/revise Corresp to Judge Hyman discussing status, strategy and proposed Motion to Stay for consideration	0.50	62.50	MAG
	Draft/revise Motion Cover Sheet and Rule 11 Affirmation in re Motion to Stay	0.30	37.50	MAG
	Draft/revise Email to attys Love and Maguire providign Motion to Stay and Corresp to Judge re same	0.20	25.00	MAG
	Draft/revise Corresp to Clerk of Court filing	0.10	7.50	PARA

000233

	Motion to Stay			
Oct-30-14	Communicate with opposing via Conf with atty E Love re his defense of DJ Action	0.50	62.50	JDH
Oct-31-14	Communicate with opposing via Conf with atty E Love re possibility of stipulation in re DJ Action	0.50	62.50	JDH
	Communicate with client via Conf with J Jay re billing intervals and Motion to Stay	0.30	37.50	JDH
Nov-03-14	Draft/revise Email to J Jay discussing and providing Motion to Stay and GEICO Answer to DJ Complaint	0.50	62.50	MAG
	Review/analyze GEICO Answer to DJ Complaint	0.60	75.00	MAG
	Review/analyze Motion to Stay, clocked, from/by Court	0.10	12.50	MAG
Nov-04-14	Draft/revise Email to Court discussing and inquiring re Motion to Stay	0.20	25.00	MAG
	Draft/revise Email to attys Love and Maguire providing Email to Court inquiring re Motion to Stay	0.10	12.50	MAG
Nov-05-14	Review/analyze Email from Court responding to our inquiry re Motion to Stay	0.10	12.50	MAG

Totals

26.30 \$3,217.50

DISBURSEMENTS**Disbursements****Receipts**

Oct-01-14	Court Fees ; Clerk of Court: Motion to Continue Trial: 1 @ 25.00	25.00	
Oct-20-14	Court Fees ; SCDPI, Service of Process; GEICO - DJ Complaint 1 @ 10.00	10.00	
	Totals	<u>\$35.00</u>	<u>\$0.00</u>

000234

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PO Box 730

MacGregor Park, 125 Edinburgh South, Suite 300

Cary, NC

27512

February 18, 2015

File #: 36-020

Inv #: 634

Attention: Joe Jay

RE: Scoggin v. Hill

SUMMARY BY TASK

Task	Effective Rate	Hours	Amount
Total		11.30	\$1,412.50

000235

Date	Description	Hours	Amount	Lawyer
Nov-06-14	Review/analyze Angela Bennett Hill Answer to DJ Complaint from atty Maguire dated 11-5-14	0.30	37.50	JDH
Jan-13-15	Review/analyze Corresp from atty Love re Stipulations of Fact	0.30	37.50	MAG
Jan-16-15	Draft/revise Corresp to J Jay updating status; Answers, status of service and strategy going forward	1.20	150.00	MAG
Feb-16-15	Review/analyze pleadings for contact info for DJ atty for GEICO, assess benefits of status conf with Court re March Trial Roster	0.30	37.50	MAG
	Review/analyze file and prepare outline in Stipulations of Fact	2.20	275.00	MAG
Feb-17-15	Review/analyze updated draft of Stipulations of Fact	0.70	87.50	JDH
	Review/analyze initial draft of Stipulations of Fact	0.50	62.50	JDH
	Draft/revise Stipulations of Fact	2.50	312.50	MAG
	Review/analyze file material and compile Exhibits to Stipulations of Fact	1.50	187.50	MAG
	Draft/revise Stipulations of Fact to incorporate references to Exhibits	1.50	187.50	MAG
Feb-18-15	Draft/revise Email to attys Love & Maguire providing proposed Stipulations of Fact	0.20	25.00	MAG
	Review/analyze Email from atty Maguire approving proposed Stipulations of Fact	0.10	12.50	MAG
	Totals	11.30	<u>\$1,412.50</u>	

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PO Box 730
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Cary, NC
27512

March 20, 2015
File #: 36-020
Inv #: 651

Attention: Joe Jay
RE: Scoggin v. Hill

SUMMARY BY TASK

Task	Effective Rate	Hours	Amount
Total		32.90	\$4,112.50

000237

Date	Description	Hours	Amount	Lawyer
Feb-19-15	Communicate with opposing via Conf with atty Love re Stipulations of Fact	0.70	87.50	JDH
Feb-23-15	Review/analyze Stipulations of Fact, etc and confer re same in re Trial strategy	0.40	50.00	MAG
Feb-26-15	Communicate via Email Exchange with atty Love re Stipulations of Fact; Confer re possibility of substituting DJ for liability hearing	0.40	50.00	MAG
	Draft/revise Corresp to J Jay updating status re pending DJ & liability actions and hearing/trial of same	0.70	87.50	MAG
Mar-02-15	Communicate with opposing via Conf with atty Love re upcoming Trial & pending DJ	0.40	50.00	JDH
Mar-03-15	Communicate with opposing via Conf with atty Love re upcoming Trial & pending DJ	0.30	37.50	JDH
	Draft/revise Email to Judge John re Trial roster and inquiring re possibility of continuance of Trial due to pending DJ	0.20	25.00	MAG
Mar-05-15	Communicate with client via Email Exchange with insured Scoggins re Trial and documents for review in re same	0.50	62.50	MAG
	Communicate via Email Exchange with Judge John office re substitution of DJ action for liability action	0.30	37.50	MAG
Mar-06-15	Communicate via Email Exchange with Judge John office re our request for substitution of DJ action	0.30	37.50	MAG
Mar-09-15	Communicate with opposing via Conf with atty Maguire re not hearing liability action week of 3-16 and substituting DJ action	0.30	37.50	JDH
	Review/analyze Email from Judge Law Clerk advising he was unable to speak with Judge re continuance or 40J	0.10	12.50	MAG
	Communicate internally with JDH to confer re Trial strategy	0.20	25.00	MAG
	Draft/revise Trial Subpoens & Confer with JDH re same and preparing for Trial per authorization of J Jay in spite of atty Maguire indication he did not intend to try the matter	1.10	137.50	MAG
	Draft/revise Email to Judge John office following up re continuance of Trial, 40J or substitution of DJ action	0.10	12.50	MAG
Mar-10-15	Communicate with client via conf with insured Scoggin responding to request for contact re Trial	0.20	25.00	JDH
	Communicate via Conf with Process Server Jacobs re status of service of Trial Subpoenas	0.20	25.00	MAG

000238

Mar-12-15	Communicate with client via Conf with J Jay re status of Trial & DJ	0.20	25.00	JDH
	Communicate via Conf with JDH analyzing and strategizing re coverage/credit situation in view of our policy being a NC policy	0.30	37.50	MAG
Mar-13-15	Communicate with client via Conf with insured Scoggin re continuance of Trial	0.20	25.00	JDH
	Communicate with opposing via Conf with atty Rob King re hearing DJ on Monday or Tuesday	0.30	37.50	JDH
	Review/analyze supporting Trial Exhibits, particularly as to DJ Action: Organize & Confer re same	1.10	137.50	MAG
	Draft/revise Stipulations of Fact to incorporate atty Love definitions and revisions & Confer re impact of said definitions/revisions	1.40	175.00	MAG
	Draft/revise Email to J Jay discussing and providing updated Stipulations of Fact in re non-owned and resident relative	0.40	50.00	MAG
	Review/analyze Email from atty King advising he can appear Monday for atty Love	0.10	12.50	MAG
	Communicate with opposing via Email	0.30	37.50	MAG
Mar-15-15	Exchange re amended Stipulations of Fact			
	Communicate via Conf with Officer Bruce advising re continuance of Trial	0.20	25.00	JDH
	Plan and prepare for Trial via review of DJ pleadings, etc per prior approval of J Jay	2.00	250.00	JDH
	Communicate via Email Exchange with Officer Bruce re Trial and Trial Subpoena	0.20	25.00	MAG
Mar-16-15	Communicate with client via Conf with J Jay by voicemail re scheduling of DJ action	0.10	12.50	JDH
	Appear for/attend Trial & Roster Meeting via Travel between Myrtle Beach and Conway SC per prior approval of J Jay	2.00	250.00	JDH
	Plan and prepare for Trial via review of liability pleadings, depo transcripts, opposing Memoranda, etc per prior approval of J Jay	2.80	350.00	JDH
	Appear for/attend Roster Meeting & Jury Venire in Conway Issue Statement of Claim per prior approval of J Jay	1.50	187.50	JDH
	Review/analyze DJ Memorandum for accuracy and/or revision	0.40	50.00	JDH

000239

	Draft/revise Judge packet in re Stipulations of Fact with supporting documentation	0.50	62.50	MAG
	Plan and prepare for drafting of supporting DJ Memoranda via review of prior submissions to Judge Burch & Confer/collaborate with JDH re same	1.40	175.00	MAG
	Draft/revise supporting DJ Memorandum	2.30	287.50	MAG
	Draft/revise supporting DJ Memorandum to incorporate JDH revisions and attach supporting caselaw	0.60	75.00	MAG
Mar-17-15	Appear for/attend DJ Action via Travel between Myrtle Beach and Conway SC per prior approval of J Jay	1.50	187.50	JDH
	Plan and prepare for DJ Action via review of supporting Memoranda	2.00	250.00	JDH
	Appear for/attend /Argue DJ Action per prior approval of J Jay	3.00	375.00	JDH
	Communicate via Conf with Court clarifying Judge's filing deadlines	0.20	25.00	JDH
	Draft/revise Email to J Jay advising re results of DJ hearing and providing supporting DJ Memorandum	0.30	37.50	MAG
	Draft/revise Email to Judge & attys providing supporting DJ Memorandum	0.30	37.50	MAG
	Review/analyze policy for step down provisions and compare those with Williams v GEICO & Confer with JDH re same	0.90	112.50	MAG
	Totals	32.90	<u>\$4,112.50</u>	

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ERIE INSURANCE GROUP
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MacGregor Park, 125 Edinburgh South, Suite 300
Cary, NC
27512

April 17, 2015
File #: 36-020
Inv #: 655

Attention: Joe Jay
RE: Scoggin v. Hill

SUMMARY BY TASK

Task	Effective Rate	Hours	Amount
Total		8.00	\$1,000.00

000241

Date	Description	Hours	Amount	Lawyer
Mar-20-15	Review/analyze Email from atty Maguire re filing deadlines	0.10	12.50	JDH
Mar-24-15	Draft/revise Email to J Jay re trial strategy in re substituting DJ for liability action	0.40	50.00	MAG
Mar-25-15	Review/analyze file materials and emails to confirm filing deadlines; previous filings with Judge Burch in re his filing and Order preferences	0.30	37.50	MAG
Mar-30-15	Review/analyze Erie Proposed Order re DJ for accuracy and/or revisions	0.60	75.00	JDH
	Draft/revise Erie Proposed Order re DJ	2.00	250.00	MAG
Mar-31-15	Draft/revise Erie Proposed Order re DJ to incorporate JDH revisions	1.50	187.50	MAG
Apr-02-15	Review/analyze Erie Proposed Order re DJ and assess appealable issues	0.20	25.00	MAG
Apr-03-15	Draft/revise Email to J Jay discussing and providing Proposed Order re DJ	0.30	37.50	MAG
	Review/analyze Email from J Jay approving Erie Proposed Order re DJ	0.10	12.50	MAG
Apr-06-15	Review/analyze GEICO Proposed Oder re DJ	0.50	62.50	MAG
	Draft/revise Corresp to Judge Burch discussing and providing Erie Proposed Order for his consideration with service upon opposing counsel	0.30	37.50	MAG
	Communicate via Conf with Clerk of Court office re Erie Proposed Order	0.20	25.00	MAG
Apr-09-15	Review/analyze online Public Index to check status of filing of Orders; Confer re same	0.20	25.00	MAG
Apr-10-15	Communicate via Conf with Clerk of Court office re our corresp in re Erie Proposed Order	0.20	25.00	MAG
Apr-14-15	Review/analyze online Jury Trial Roster re status of hearing of case; Confer re same and need for hearing of Motion to Stay	0.30	37.50	MAG
Apr-15-15	Communicate via Conf with Clerk of Court office requesting scheduling of Motion to Stay hearing	0.20	25.00	JDH
	Communicate via Conf with Clerk of Court office scheduling of Motion to Stay in re pending Trial Roster	0.20	25.00	MAG
	Review/analyze Email from Clerk of Court office advising to contact Judge John in re our Motion and Substitution requests	0.10	12.50	MAG

Draft/revise Email to J Jay discussing and
alerting to 4-20 Trial term and status in re
same

0.30

37.50

MAG

Totals

8.00

\$1,000.00

ORDER

000244

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) THIRD JUDICIAL CIRCUIT
Case No: 2014-CP-26- 6382

Erie Insurance Exchange,)
))
Plaintiff,)
))
vs.)
))
Government Employees Insurance)
Company, Mark Allison Scoggin and)
Angela Bennett Hill,)
))
Defendants.)
_____)

ORDER

HORRY COUNTY
2015 MAY -7 PM 1:03
MELANIE HUBBARD-WARD
CLERK OF COURT

This action is for Declaratory Judgment by Erie Insurance Exchange ("Erie") seeking to have this Court declare the rights of the parties relative to a policy issued by Government Employees Insurance Company ("GEICO"). Specifically at issue is whether the GEICO policy provides excess liability coverage in the underlying action filed by Plaintiff and Erie Insured. Angela Bennett Hill, against GEICO insured Mark Allison Scoggin. Based upon my consideration of the parties' Stipulation of Facts, the pleadings, the policies, counsels' arguments, submitted memoranda and South Carolina law, I find that the GEICO policy does provide excess coverage for the underlying motor vehicle accident ("MVA").

The underlying MVA occurred on September 5, 2012 in Horry County involving a 2011 Hyundai owned by Mauren Craig but operated by Hill and a 2002 Ford Taurus operated by Scoggin. The Hill vehicle was headed East on 11th Avenue North when she alleges that Scoggin made a left turn across her lane of travel, causing the subject accident and the injuries she complains of in the underlying liability lawsuit, which is pending in this Court. The Taurus

operated by Scoggin was owned by his mother, the late Mildred Scoggin, and insured by GEICO under Policy Number 0929-32-50-09 with liability coverage of \$50,000.00 per person and \$100,000.00 per accident. After an investigation, GEICO paid the \$50,000.00 liability coverage to Hill in exchange for a Covenant Not to Execute protecting Mark Scoggin. Hill claims that her injuries exceeded the liability coverage.

GEICO carried a separate policy for Mark Scoggin on a 2005 Chevrolet Colorado under Policy Number 4085-57-17-45 which provided liability coverage of \$25,000.00 per person and \$50,000.00 per accident. The Craig vehicle operated by Hill was insured by Erie under Policy Number Q05 1107128 which provided stated underinsured/underinsured motorist coverage of \$100,000.00 per person and \$300,000.00 per accident. The Hills are residents of North Carolina and their Erie policy is a North Carolina contract and under the contract and North Carolina law, the amount of available UM/UI coverage for a given accident is reduced by the amount of liability and excess liability coverage and is reduced by any PIP or medical bills coverage paid. In this case, Erie paid Hill the \$1,000.00 medical benefits/PIP coverage available under the policy.

Erie claims that excess liability coverage of \$25,000.00 is available under the GEICO policy for the subject accident. However, GEICO denied the excess liability coverage claim under the Mark Scoggin policy based upon its determination that under its Mark Scoggin policy, the Mildred Scoggin vehicle Mr. Scoggin was operating was neither an "owned" or a "non-owned" vehicle. Erie contends that under the terms of the Mark Scoggin GEICO policy, and under South Carolina law, that excess coverage does apply to the underlying liability action.

All parties agree that Mildred and Mark Scoggin were mother and son, that they resided together, and that Mark Scoggin did not own his mother's car. Further, all parties agree that the

terms and conditions of both GEICO policies covering the Mark and Mildred Scoggin vehicles were identical. Therefore, the issues in this case center around the term "non-owned", which appears in the Omnibus or "insuring" clause of the GEICO policy and is defined in the policy but does not appear on the declarations page of the policy. According to GEICO's definition of "non-owned," a car owned by a household member furnished for the regular use of another household member would be "non-owned."

APPLICABLE PROVISIONS OF THE GEICO POLICY:

(1) THE EXCESS CLAUSE:

This case concerns *GEICO's Excess Liability Clause* and it provides as follows:

"Any insurance we provide for losses arising out of the ownership, maintenance or use of a vehicle you do not own shall be excess over any other valid and collectible insurance. (GEICO Policy; "Other Insurance")

Other provisions of the GEICO Policy relevant to this matter are as follows:

(2) THE OMNIBUS CLAUSE:

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

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

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

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

(GEICO Policy: p. 4 of 15)

(3) CERTAIN POLICY DEFINITIONS:

- (a) "**Insured** means a person or organization described under PERSONS INSURED." (GEICO Policy; "Definitions" - #4)
- (b) "**Relative** means a person who continuously lives in your household, and is related to you by blood, marriage, or adoption (including a ward or foster child.)" (GEICO Policy Amendment; "Definitions" - #8)
- (c) "**Non-owned auto** means a private passenger, farm, or utility auto or trailer not owned by or furnished for the regular use of either you or your relatives, except a temporary substitute auto. You or your relatives must be using the non-owned auto or trailer within the scope of permission given by its owner. A non-owned auto rented or leased for more than 30 days will be considered as furnished for regular use. (GEICO Policy Amendment; "Definitions" - #5)
- (d) "**Owned auto** means: (a) a vehicle described in this policy for which a premium charge is shown for these coverages; (b) a **trailer** owned by you; (c) a **private passenger, farm or utility auto**, ownership of which you acquire during the policy period or for which you enter into a lease during the policy period for a term of six months or more, if: (i) it replaces an **owned auto** as defined in (a) above; or (ii) we insure all **private passenger, farm and utility autos** owned or leased by you on the date of the acquisition, and you ask us to add it to the policy no more than 30 days later; (GEICO Policy; "Definitions" - #6)
- (e) "**Temporary substitute auto** means an automobile or **trailer**, not owned by you, temporarily used with the permission of the owner. This vehicle must be used as a substitute for the **owned auto** or **trailer** when withdrawn from normal use because of its breakdown, repair, servicing, loss or destruction. (GEICO Policy; "Definitions" - #9)

II. ISSUES AS TO COVERAGE AND GEICO'S DENIAL OF COVERAGE:

A. *GEICO'S PAYMENT OF THE LIABILITY COVERAGE UNDER THE MILDRED SCOGGIN POLICY:*

The Mildred Scoggin coverage determination by GEICO applied the definitions of the Omnibus Clause to find that Mark Scoggin had liability coverage under the Mildred Scoggin policy for the subject MVA. If the Mildred Scoggin vehicle were neither an owned nor a non-owned vehicle as to her son's use of it on the day of this accident, then liability coverage wouldn't have applied under the Omnibus clause, because as a vehicle that was not owned or non-owned, it wouldn't fall within the coverage provisions of the Policy. Under GEICO's policy, a car is NOT "non-owned" if it is owned by a resident relative and furnished for regular use.

Yet, GEICO paid liability coverage in exchange for a Covenant Not To Execute. Because Mark Scoggin did not own his mother's car, and he paid no premium for it, the liability coverage had to have been paid under the Mildred Scoggin policy for Mark Scoggin's use of that car as a "non-owned" auto. That car would still be a "Non-owned" vehicle for purposes of considering the excess liability coverage under the Mark Scoggin policy. GEICO stipulated that the Mildred Scoggin vehicle was a non-owned vehicle as to Mark Scoggin under the present facts by paying the liability coverage in exchange for a Covenant and in so doing, it stipulated that the Mildred Scoggin car was not available for Mark Scoggin's regular use. That car retains the same status when considering the Excess Coverage under the Mark Scoggin policy because the terms and conditions of the two policies have been stipulated to be identical.

Hence, GEICO denied excess coverage under the Mark Scoggin policy on the grounds that the Mildred Scoggin vehicle was not a "non-owned" vehicle as to Mark Scoggin, despite the fact that it had reached the opposite conclusion in paying the liability coverage under the same

facts and based upon the same policy terms and conditions. The Court finds that for purposes of Excess coverage under the Mark Scoggin policy, GEICO is bound by its determinations under the Mildred Scoggin policy.

B. *LANGUAGE OF THE EXCESS CLAUSE:*

The Excess Clause does not use the "owned" and "non-owned" criteria, but rather, uses common, ordinary language that is not defined in the policy; to wit, in pertinent part, it says that "Insurance for losses arising out of the use of a vehicle you do not own shall be excess." (GEICO Policy; "Other Insurance") It uses the undefined phrase "use of a vehicle you do not own" rather than employing the policy's "owned" and "non-owned" terminology which is defined.

South Carolina law holds that when terms are not defined in a policy, an interpreting Court should define them "according to the usual understanding of the term's significance to the ordinary person." S.C. Farm Bureau Mut. Ins. Co. v. Durham, 380 S.C. 506, 671 S.E.2d 610, 2009 S.C. LEXIS 6 (S.C. 2009). Mark Scoggin did not own his mother's vehicle and he was using it by driving it at the time of the subject accident. Thus, the Court finds that the Excess Liability Cause would provide coverage for the subject accident.

C. *THE LACK OF AN APPLICABLE EXCLUSION:*

The GEICO policy includes a definition for "non-owned" auto but that is not part of the exclusions for using a vehicle provided for your regular use owned by a family member so there is no exclusion that takes away coverage; GEICO's reliance on the definition for non-owned autos has no applicability in this case because that exclusion applies only while carrying persons employed or otherwise engaged in auto business; Regular use is not noted in the exclusions or

the Amendment and it doesn't refer to regular use or using another vehicle owned by a family member. The Court finds that there is no applicable exclusion supporting GEICO's denial of excess coverage in this case.

D. THE POLICY DECLARATIONS:

The Policy's Declarations Page declares that Mark Scoggin is insured for bodily injury liability coverage of \$25,000.00/\$50,000.00. §38-77-142 of the SC Code requires that "insurers must provide liability coverage to insureds "within the coverage of the policy" and may not limit or reduce liability coverage in the policy below the declared or "face amount" of the coverage. Williams v. Gov't Employees Ins. Co (GEICO) Opinion No. 27435, 2014 S.C. LEXIS 361 (S.C. Aug. 20, 2014);

The GEICO policy uses the Omnibus Clause, rather than a listed exclusion, to exclude coverage based on an insured's "regular use" of a resident relative's vehicle. An insured would not look to an Omnibus clause for an exclusion, but would look to the listed exclusions to review his coverage. Using the Omnibus Clause in this fashion is confusing and misleading. The Policy also contains conflicting provisions that eliminate or reduce coverage. Specifically at issue in this case, the Omnibus Clause uses the defined terms "owned" and "non-owned" and then the Excess liability Clause conditions coverage on driving a car he does not own. This is contrary to South Carolina law as interpreted by our State's Supreme Court; to wit - "Once the face amount of coverage is agreed upon, it may not be arbitrarily reduced or limited by conflicting policy provisions that effectively retract this stated coverage." Williams v. GEICO, supra.

The GEICO policy's declaration page for the Mark Scoggin policy at issue contained no warning of the reduced or eliminated coverage. Although the company provided separate policies covering separate vehicles owned by resident relatives of the same household, GEICO's

declarations pages did not warn either insured that the coverage for which they paid might be reduced, or as with the Mark Scoggin Excess coverage, eliminated altogether, by their act of driving their resident relative's vehicle.

This Court finds that under South Carolina law, GEICO can not declare that it provides Mark Scoggin with coverage of \$25,000.00/\$50,000.00 and then withdraw that coverage or define it out of existence. Williams v. GEICO, supra.

E. THE POLICY DEFINITIONS:

GEICO is limiting the coverage declared on its declarations page by way of carefully crafted definitions. In the present case, GEICO's application of these definitions excluded excess coverage for an insured because, at the time of the MVA, he was operating a vehicle owned by a resident relative. Had GEICO's insured, Mr. Scoggin, been driving a neighbor's car, it would qualify as a "non-owned vehicle" and be covered.

The key to invoking a vehicle as being NOT "non-owned" under the definitions is whether the resident relative's vehicle is available for the "regular use" of a GEICO insured. "Under a liability policy excluding coverage where an automobile involved in an accident was "furnished for regular use" to the insured, the term may be used in the sense of time, steady as opposed to occasional; or in the sense of type of use, usual as against unusual. Hartford Acc. & Indem Co. v. Hiland, 7 Cir., 349 F. (2d) 376." Aetna Casualty & Surety Co. v. Sessions, 260 SC 150, 194 SE2d 844 (1973). In the present case, Mr. Scoggin was using his mother's vehicle to transport a pet to a veterinary appointment, and was using the vehicle because his mother's car was better suited and equipped to transport the animal. Nothing in these facts or in the record indicates that Mark Scoggin drove his mother's car steadily as opposed to occasionally, or that

his use of the car was usual rather than unusual. Further, the purpose of the "regular use" exclusion is to prevent an insured from purchasing one policy as to one automobile and be covered without qualification for all vehicles available for his use. Aetna Casualty & Surety Co. v. Sessions, supra. In this case, there were two vehicles in the household of Mildred and Mark Scoggin and both were insured by GEICO such that GEICO regularly collected a premium for both vehicles.

The Court, therefore, finds that the Mildred Scoggin vehicle was not available for the regular use of Mark Scoggin within the meaning of that term in South Carolina and it further finds that application of the "regular use" doctrine serves no valid purpose where two vehicles in a household are covered by the same insurer and that insurer is regularly paid a premium for the coverage of both vehicles.

E. AMBIGUOUS PROVISIONS OF THE POLICY:

"Ambiguous or conflicting terms in an insurance policy must be construed liberally in favor of the insured and strictly against the insurer." Diamond State Ins. Co. v. Homestead Indus., Inc., 318 S.C. 231, 236, 456 S.E.2d 912, 915 (1995). "A contract is ambiguous when it is capable of more than one meaning when viewed objectively by a reasonably intelligent person who has examined the context of the entire integrated agreement and who is cognizant of the customs, practices, usages and terminology as generally understood in the particular trade or business." Hawkins, 328 S.C. at 592, 493 S.E.2d at 878 (quoting 17A Am. Jur. 2d Contracts § 338, at 345 (1991))." Williams v. GEICO, supra.

After review, the Court finds that the provisions of the GEICO policy are ambiguous. The relevant ambiguities are:

1. The Declarations Page for the Mark Scoggin policy states as follows: "This is a description of your coverage." It also states that Coverage applies where a premium or \$0.00 is shown for a vehicle." Despite the fact that the described coverage included \$25,000.00/\$50,000.00 in bodily injury and UM coverage, and included comprehensive and collision coverages, provisions of the policy, and the policy definitions of "owned," "non-owned," and "relative", are such that GEICO has determined the policy provides no coverage to Mark Scoggin for the present loss; and;

2. The policy definition of "owned" auto conflicts with the Declarations Page certifying coverage of \$25,000.00/\$50,000.00 to Mark Scoggin for this loss; and

3. The policy provision as to "Losses We Will Pay For You Under Section I" provides that the Policy covers on bodily injury liability arising out of the "ownership, maintenance or use" of an owned or non-owned auto. The "Other Insurance" provision does not use the defined terms of owned or non-owned but instead provides that bodily injury coverage for a vehicle "you do not own" shall be excess. Given this ambiguity, as to this accident, the more liberal provision should control and - in the alternative - the policy declares that bodily injury coverage for an accident that occurred while Mark Scoggin operated a vehicle that he did not own would be excess; and

4. The policy defines a "temporary substitute auto" as an "owned" vehicle but it would be a vehicle "you do not own" for purposes of the excess clause; and

5. The policy defines a "non-owned auto" as one not owned by or furnished for the regular use of either you (Mark Scoggin) or a relative (Mildred Scoggin) other than a "temporary substitute auto" but the "Other Insurance"/Excess provision references a "non-owned auto" as "a vehicle you do not own; and

Because the GEICO policy is ambiguous in the pertinent particulars noted above, this Court finds that it must be construed against GEICO and in favor of the insured to find that excess liability coverage for the subject MVA exists.

F. STATE LAW, PUBLIC POLICY & WILLIAMS V. GEICO:

Excess Coverage is not subject to the provisions of the "Motor Vehicle Financial Responsibility Act" (Chapter 9, Title 56, SC Code Ann.) or its public policy considerations but it is subject to the state's insurance laws, specifically including the requirements of §38-77-142 that policy provisions cannot reduce the face amount of coverage stated in the Declarations and the GEICO policy at issue, or GEICO's interpretation of the policy, violates South Carolina law and public policy. Williams v. GEICO, supra.

Further, the Policy's Declarations Page declares that Mark Scoggins is insured for bodily injury liability coverage of \$25,000.00/\$50,000.00. §38-77-142 of the SC Code requires that "insurers must provide liability coverage to insureds "within the coverage of the policy" and may not limit or reduce liability coverage in the policy below the declared or "face amount" of the coverage. Williams v. GEICO, supra. "Once the face amount of coverage is agreed upon, it (the insurer) may not be arbitrarily reduced or limited by conflicting policy provisions that effectively retract this stated coverage." Williams v. GEICO, supra.

Despite the foregoing, after agreeing to provide Mark Scoggin with coverage of \$25,000.00/\$50,000.00, GEICO uses carefully crafted policy definitions and the Omnibus Clause of its policy, together with the familial relationship between Mark and Mildred Scoggin to limit the policy coverage available to Mark Scoggin. This violates South Carolina law and public policy; to wit - "To allow an insurer to determine the extent to which an injured party can recover within the insured's policy coverage based solely on a familial relationship is arbitrary and capricious and violative of public policy." Williams v. GEICO, supra.

Based upon the foregoing, this Court finds that GEICO's use of its Omnibus Clause and definitions provisions, the latter of which clearly conflicted with the language of the excess

clause as was specifically addressed above, improperly and arbitrarily reduced or limited by conflicting policy provisions which retracted, limited or withdrew the coverage stated on the declarations page of the Mark Scoggin Policy. This is contrary to both public policy and the law of the State of South Carolina.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

A. That GEICO's Policy 4085-57-17-45, covering named insured Mark Scoggin, provides excess liability coverage of \$25,000.00 potentially available to the Plaintiff Hill, for her claim and lawsuit arising out of the motor vehicle accident of September 5, 2012; and

B. In terms of priority, the excess liability coverage under the Mark Scoggin policy would be payable before the underinsured coverage under Hill's policy;

C. The policy of Erie Insurance Exchange is a North Carolina policy and under the policy and North Carolina law, coverage limits of underinsured/uninsured coverage are reduced by the amount of the payment of the liability coverage and by Erie's prior payment to the Plaintiff of its medical payments coverage such that after GEICO's payment to the Plaintiff of its \$75,000.00 in available coverage, 24,000.00 in UI/UM coverage would be available under Erie's policy; and

D. GEICO's policy provisions referenced above, including those which purport to limit or withdraw excess liability coverage from the Mark Scoggin policy, violate public policy and are therefore void *ab initio* and incapable of being enforced; and

E. The Court awards the Plaintiff the attorney's fees and costs necessitated by GEICO's denial of coverage under the Mark Scoggin Policy. The Court gives the Plaintiff ten (10) days to file an Affidavit documenting the attorney's fees and costs paid pertaining to the DJ action only. The Defendants will have ten (10) days to file an Affidavit opposing the amounts claimed. This Court will then issue a ruling as to the amount of the Attorney's Fee and Cost award.

AND IT IS SO ORDERED.



The Honorable PAUL M. BURCH
Presiding Judge, Fifteenth Judicial Circuit

Dated: April 29th, 2015

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) THIRD JUDICIAL CIRCUIT
Case No: 2014-CP-26- 6382

Erie Insurance Exchange,)

Plaintiff,)

vs.)

Government Employees Insurance)
Company, Mark Allison Scoggin and)
Angela Bennett Hill,)

Defendants.)

Certification Of Service

HORRY COUNTY
2015 MAY -7 PM 1:03
MELANIE HUDSON-WARD
CLERK OF COURT

This is to certify that the ORDER signed by Judge Paul M. Burch on 4/29/2005, was served by HUDSON LAW OFFICES by and through its undersigned agent, servant and employee on May 5, 2015 by

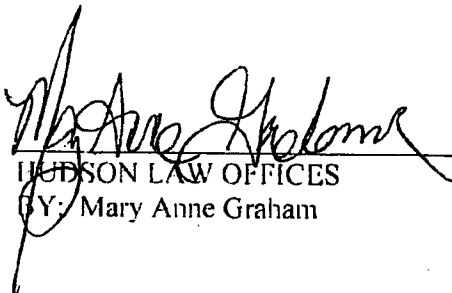
(XX) Placing the same in the United States mail, postage prepaid to the addresses noted below;

() Transmitting the same by facsimile to the numbers noted below;

() Forwarding the same by e-mail to the addresses noted below:

• Ian D. Maguire Esq.
Maguire Law Firm
607 Briarwood Drive, Ste 1
Myrtle Beach, SC 29572

Mr. Robert Thomas King
King, Love & Smith, LLC
PO Box 1764
Florence, SC 29503-1764


HUDSON LAW OFFICES
BY: Mary Anne Graham

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY)

Docket No.: 2014-CP-26-06382

Erie Insurance Exchange,)

Plaintiff,)

vs.)

MOTION TO ALTER OR AMEND
JUDGMENT OR ORDERGovernment Employees Insurance
Company, Mark Allison Scoggin and
Angela Bennett Hill,)

Defendants.)

2015 JUN -2 AM 10:59
HURRY COUNTY
CLERK OF COURT

YOU WILL PLEASE TAKE NOTICE, that, ten (10) days after the service of this Notice or as soon thereafter as counsel may be heard, the undersigned attorneys for Defendant, Government Employees Insurance Company ("GEICO"), will move this Honorable Court pursuant to Rule 59 of the South Carolina Rules of Civil Procedure for an order altering or amending the Order and judgment entered May 7, 2015. The grounds for this Motion include:

1. The Court erred in finding that, because the vehicle operated by Mark Scoggin was a "non-owned" vehicle under the policy of insurance issued to Mildred Scoggin liability policy of insurance it must also be a "non-owned" vehicle under a different policy of insurance issued to Mark Scoggin (the "Policy"), rather than examining the application of the definition independently under each policy.
2. The Court erred in finding that GEICO "stipulated that the Mildred Scoggin vehicle was a non-owned vehicle as to Mark Scoggin under the present facts by paying the liability coverage in exchange for a covenant and in so doing, it stipulated that the Mildred Scoggin car was not available for Mark Scoggin's regular use."

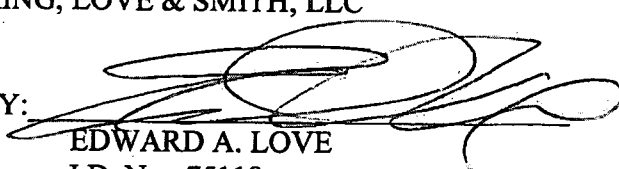
3. The Court erred in finding that, because Mark Scoggin did not own the vehicle involved in the accident but was using it, the Policy provides excess liability coverage without consideration given to the definitions contained within the policy itself to determine coverage.
4. The Court erred in finding that, because there is no applicable exclusion in the Policy, there must be coverage thus ignoring the plain language of the Policy and the definitions provided therein.
5. The Court erred in finding that the declarations page provides coverage without a preliminary finding that such amounts are being paid for claims made “within the coverage.”
6. The Court erred in finding that Williams v. Gov’t Employees Ins. Co., 409 S.C. 586, 762 S.E.2d 705 (2014), is applicable to this case because the Williams opinion involves the applicability of a step-down provision reducing liability coverage from the face amount of the policy to the statutory minimum limits where the injured party and the insured are family members. No similar policy provision is at issue here.
7. The Court erred in finding that the policy definitions for “owned” and “non-owned” vehicles are unclear and/or ambiguous.
8. The Court erred in finding that the GEICO policy violates public policy, are void *ab initio* and incapable of being enforced; and
9. The Court erred in finding that the Plaintiff is entitled to an award of attorney’s fees and costs absent any statutory or contractual basis therefor.

The undersigned counsel hereby affirms that counsel has communicated with Plaintiffs’ counsel in an effort to resolve the matter contained in this Motion, but the matter remains unresolved.

Florence, South Carolina

May 21, 2015

KING, LOVE & SMITH, LLC

BY: 

EDWARD A. LOVE

I.D. No.: 75118

Post Office Box 1764

135 South Dargan Street, Suite 201

Florence, SC 29503

(843) 407-5525 – Tel

(843) 407-5782 – Fax

ATTORNEY FOR DEFENDANT
GEICO

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY)

Docket No.: 2014-CP-26-06382

Erie Insurance Exchange,)

Plaintiff,)

vs.)

Government Employees Insurance)
Company, Mark Allison Scoggin and)
Angela Bennett Hill,)

Defendants.)

CERTIFICATE OF SERVICE

2015 JUN -2 AM 10:59
HORRY COUNTY
COURT OF COMMON PLEAS

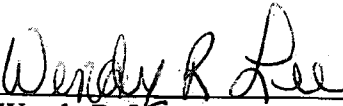
I hereby certify that I have this 21st day of May 2015, served a copy of the foregoing *Motion to Alter or Amend Judgment or Order* on all counsel of record and the Honorable Paul M. Burch by mailing a copy of the same postage prepaid to:

The Honorable Paul M. Burch
Circuit Court Judge
Post Office Box 276
Pageland, SC 29728-0276

J. Dwight Hudson, Esquire
Hudson Law Offices
1203 48th Avenue North, Suite 111
Myrtle Beach, SC 29577

Jimmy C. Powell, Jr., Esquire
Turner, Padgett, Graham & Laney, P.A.
Post Office Box 2116
Myrtle Beach, SC 29578-2116

Ian D. Maguire, Esquire
Maguire Law Firm
1600 North Oak Street, Suite B
Myrtle Beach, SC 29577



Wendy R. Lee

Legal Assistant to Edward A. Love

000261

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) THIRD JUDICIAL CIRCUIT
Case No: 2014-CP-26-

Erie Insurance Exchange,)
))
Plaintiff,)
))
vs.)
))
Government Employees Insurance)
Company, Mark Allison Scoggin and)
Angela Bennett Hill,)
))
Defendants.)
_____)

**Plaintiff's Return To GEICO'S
Motion To Alter Or Amend**

TO: THE PARTIES NAMED ABOVE AND THEIR COUNSEL OF RECORD:

The Plaintiff, ERIE INSURANCE EXCHANGE, hereby makes RETURN to the "Motion To Alter Or Amend Judgment Or Order" filed by Defendant Government Employees Insurance Company (GEICO), and would show unto the Court as follows:

1. **The Court did NOT ERR in finding that the Mildred Scoggin vehicle operated by Mark Scoggin was either non-owned or not non-owned as to both policies**

Under the undisputed facts of this case, the late Mildred Scoggin and Mark Scoggin were mother and son, resided in the same household, and owned separate vehicles which were both insured by GEICO for the same coverage amount under policies with the same terms and conditions. On the occasion of this accident, Mark Scoggin was driving his mother's car because it was more suitable for an errand. GEICO paid the liability coverage under the Mildred Scoggin policy to the Plaintiff and denied the excess liability coverage under Mark Scoggin's own policy.

GEICO's denial letter to Mark Scoggin stated that excess coverage did not exist under his policy for this accident because as to the accident his vehicle was neither "owned" or "non-owned." Under the provisions of the GEICO policy issued to both Mildred and Mark Scoggin, the Omnibus or insuring clause covers only owned and non-owned vehicles. A vehicle is NOT non-owned if it is owned by a resident relative and furnished for an insured's regular use. Thus, under the identical GEICO policies, as to Mark Scoggin, his mother's car was either owned, non-owned or neither owned nor non-owned as to both accidents.

GEICO's decision to pay the liability coverage under the Mildred Scoggin policy indicates that GEICO decided the car was covered as to Mark Scoggin's use of it on the date of this accident. Presumably, GEICO decided the car was covered as non-owned for the MVA, as it did pay the Mildred Scoggin liability coverage and as Mark Scoggin did not own the car. The car retains the same status as to the Mark Scoggin policy, because the facts, the coverage amount and the policy provisions were identical for the Mark Scoggin policy.

In paying the Mildred Scoggin coverage, GEICO decided the car was non-owned and covered as to Mark Scoggin's use of it on the date of this accident. GEICO is therefore bound by this determination of status and coverage under the identical Mark Scoggin policy, and this Court was correct in so holding.

2. The Court did NOT ERR in finding that GEICO's payment of the Mildred Scoggin coverage constituted a stipulation that the vehicle had the same status as to the Mark Scoggin Coverage

As noted above, both of the separate GEICO policies for Mildred and Mark Scoggin had the same terms and conditions and the same policy provisions as a whole. GEICO's determination as to the Mildred Scoggin coverage had to constitute a stipulation as to the Mark Scoggin coverage, given the identical policies and facts. Under the GEICO policy definitions, an

insured's car is not "non-owned" and is not covered under the Omnibus Clause if it is available for the regular use of a resident relative. Thus, if GEICO determined that Mildred Scoggin's car was available for Mark Scoggin's regular use, then his use of it on this occasion would not have been covered for the Mildred Scoggin policy.

In finding coverage and paying the limits of the Mildred Scoggin policy, GEICO was making the same decision as to the Mark Scoggin policy, given the identical policies and the identical facts. Under the identical facts and policies, it would be impossibility for the Mildred Scoggin vehicle to be non-owned (and covered) as to one policy unless it is non-owned (and covered) under both policies.

Thus, in this case, in paying the Mildred Scoggin coverage, GEICO stipulated that her vehicle was "non-owned" as to Mark Scoggin and his use of it on the date of this accident. Had the car been available for Mark Scoggin's regular use at the time of this accident, it would not have been covered for either accident. In deciding it was covered by one policy for this accident, GEICO had to have stipulated that it was covered by the identical policy for the Mark Scoggin accident, and this Court was correct in so holding.

3. The Court did NOT ERR in finding Excess Coverage Under the Mark Scoggin Policy, Which It Did by Considering the Policy Provisions and Definitions, Which Were The Same for both Policies

GEICO attempts to repeatedly contend that the Court reached its decision without examining, considering and interpreting the policy provisions and definitions "under each policy." The Court did, in fact, give due and proper consideration to the policies as a whole, but the Court did not write or re-write the GEICO policies for Mildred or Mark Scoggin, which contained identical terms, conditions, definitions and provisions in all pertinent aspects. The Court's due and proper consideration does not require the Court to imagine that the status of the

vehicle operated in this accident somehow changed from one policy to the other, although none of the facts or policy provisions changed.

The Court gave all necessary consideration to the policy provisions, definitions, terms and conditions, but it appears that GEICO failed to do so, and considered that it could pay one liability policy and then deny coverage under the same policy written for Mark Scoggin.

4. **The Court did NOT ERR in finding that given that the GEICO policy's Excess Clause does not use the terms "owned" and "non-owned" and given that there is no applicable exclusion, that a plain-language interpretation of the Excess Liability Coverage indicates that such coverage exists and applies to this loss:**

GEICO claims that "because there is no applicable exclusion in the Policy" that the Court ignored "the plain language of the policy and the definitions" to find coverage. In this, GEICO errs. The Court found that there is no applicable exclusion in the policy - a conclusion with which GEICO's instant Motion agrees. Because there is no provision to exclude coverage, then the presence or absence of coverage depends upon the policy language.

The subject excess clause provides that "Insurance for losses arising out of the use of a vehicle you do not own shall be excess." (GEICO Policy; "Other Insurance") It uses the language - "a vehicle you do not own" and it does NOT use the terms "owned" or "non-owned." The policy does not define the phrase "a vehicle you do not own."

When terms are not defined in a policy, an interpreting Court should define them "according to the usual understanding of the term's significance to the ordinary person." S.C. Farm Bureau Mut. Ins. Co. v. Durham, 380 SC 506, 671 SE2d 610 (2009) Applying such plain language to the Excess Clause leads to the conclusion that the loss of the plaintiff in the underlying liability action arose out of Mark Scoggin's use of a vehicle he did not own and

therefore the loss "shall be excess" and the excess clause applies to provide Excess Liability Coverage for the underlying accident.

5. **The Court did NOT ERR in finding that South Carolina law holds that after the face amount of coverage is agreed upon and declared by the Declarations Page GEICO could not arbitrarily reduce or limit the coverage by conflicting policy provisions that retract the declared coverage**

The Declarations page of the policy states that it contains a "description of your [Mark Scoggin's] coverage" and it declares that he is insured for "bodily injury liability" each person/each occurrence in the amount of \$25,000/\$50,000. §38-77-142 of the South Carolina code provides that insurers must provide liability coverage within the coverage of the policy and may not limit or reduce liability coverage in the policy below the declared or "face amount" of the coverage. Williams v. Gov't Employees Ins. Co., 409 SC 586, 762 SE2d 705 (2015)

The subject GEICO policy uses policy definitions and the Omnibus Clause instead of a listed exclusion to exclude coverage based on an insured's regular use of a resident relative's vehicle. As the Court found, an insured reviewing his coverage would look to listed exclusions for coverage limitations rather than policy definitions and the Omnibus clause. Here, the Omnibus Clause of the policy uses the defined terms "owned" and "non-owned" BUT the excess liability clause at issue here uses neither term and conditions coverage on an insured driving a car he does not on. Hence, as the Court found, the definitions for the terms "owned" and "non-owned" and the Omnibus clause referencing the same conflict with the Excess Clause at issue.

As the South Carolina Supreme Court recently stated: "Once the face amount of coverage is agreed upon, it may not be arbitrarily reduced or limited by conflicting policy provisions that effectively retract this stated coverage." Williams v. GEICO, *supra*. It is of note that in deciding the Williams v. GEICO case, the SC Supreme Court appeared to have before it

either the same, or a substantially similar GEICO policy before it. This Court correctly ruled that in the present case, in a fashion similar to that found unacceptable by the SC Supreme Court in the recent opinion, the GEICO policy declared coverage to exist, used definitions and the Omnibus clause to retract the declared coverage, and then included an Excess Clause that didn't use the defined terms or conflicted with them.

This Court ruled correctly that coverage declared in the Declarations Page must be offered by the policy, and its ruling should be upheld.

6. The Court did NOT ERR and correctly held that Williams v. Gov't Employees Ins. Co., supra, is applicable to this case

GEICO contends that this Court erred in applying the above-referenced recent SC Supreme Court decision, and in finding principals and holdings therein applicable to this case. GEICO contends that the applicability of the Williams v. GEICO decision is limited to step-down policy provisions. It was a step-down provision before the Court in Williams v. GEICO, and the Court did examine the policy language relative to the step-down, which language differs from the language in the Excess clause before the Court in this case. However, one of the central issues in Williams v. GEICO was whether the step-down violated public policy. To determine that, the SC Supreme Court construed a STATUTE, §38-77-142, and determined that the STATUTE requires that liability coverage declared by the Declarations Page be provided by the policy.

In pertinent part, in construing the Statute, the SC Supreme Court in Williams v. GEICO said as follows:

In viewing the plainwording of section 38-77-142, we find subsections (A) and (B) require a policy for liability insurance to contain a provision insuring the [***21] named insureds and permissive users against liability for damage incurred "within the coverage of the policy." Subsection (B) additionally

contains a provision regarding notice that states the mere failure to turn over a motion or complaint will not void coverage. Finally, subsection (C) provides that no policy provision may limit or reduce the coverage required by this section, which refers to section 38-77-142, or else it is void.

We think it is significant that HN21 section 38-77-142 provides insurers must provide liability coverage to insureds "within the coverage of the policy" and may not limit or reduce liability coverage in the policy below the amount provided in this section, meaning section 38-77-142. Thus, it is the face amount of the coverage that is relevant under section 38-77-142, not the statutory minimum limits of liability coverage set forth in section 38-77-140, which are not even mentioned in the statute.⁷ In contrast to the circuit court's interpretation, we believe the General Assembly could have simply stated coverage may not be reduced below the statutory minimum limits and/or below the amount provided in section 38-77-140, if that was its intent. However, it did not do so. Here, the circuit court has engrafted an additional restriction into section 38-77-142 that was not included by the General Assembly by determining [***22] coverage may be reduced to the statutory minimum, in direct contravention to the explicit language of section 38-77-142(C) that coverage may not be reduced below the coverage in the policy.

The General Assembly, in considering section 38-77-142, contemplated how automobile insurance is actually marketed. It realized that the actual policy containing any exclusions or limitations is not provided contemporaneously with the entering of the insurance agreement. As a result, HN22 the General Assembly specifically included language in section 38-77-142(C) prohibiting provisions in the policy that limit or reduce coverage:

[*604] (C) Any endorsement, provision, or rider attached to or included in any policy of insurance which purports or seeks to limit or reduce the coverage afforded by [**715] the provisions required by this section is void.

S.C. Code Ann. § 38-77-142(C) (2002) (emphasis added).

Therefore, once the face amount of coverage is agreed upon, it may not be arbitrarily reduced or limited by conflicting policy provisions that effectively retract this stated coverage. Any other interpretation [***23] of section 38-77-142(C) would render the section useless, and the General Assembly is presumed not to perform useless acts. See *Denene, Inc. v. City of Charleston*, 352 S.C. 208, 212, 574 S.E.2d 196, 198 (2002) (HN23 "The Court must presume the legislature did not intend a futile act, but rather intended its statutes to accomplish something." (citing *TNS Mills, Inc. v. S.C. Dep't of Rev.*, 7 Moreover, the Declarations page of the Murrays' policy explicitly states:

"This is a description of your coverage" and it lists bodily injury liability coverage of \$100,000/\$300,000. (Emphasis added.) 409 S.C. 586, *602; 762 S.E.2d 705, **714; 2014 S.C. LEXIS 361, ***19 331 S.C. 611, 503 S.E.2d 471 (1998)). After agreeing on a policy with \$100,000 in stated liability coverage for the named insureds, GEICO should not be permitted to subsequently reduce it with what it deems an "exclusion" in the policy.

Williams v. Gov't Employees Ins. Co., p. 603.

The fact that the present case deals with a different policy provision does not make the Williams v. GEICO inapplicable to this case. Here, the issue is an Excess Clause rather than a step-down provision, but it is still a provision in a GEICO policy where the company attempts to arbitrarily reduce or limit by conflicting policy provisions, coverage that it declared to exist on the Declarations Page, and Williams v. GEICO says the Statutes and public policy of South Carolina require otherwise and this Court was correct in so holding.

7. The Court did NOT ERR in its findings relative to the "owned" and "non-owned" definitions or in finding them to conflict with other provisions, including the "Other Insurance" or Excess Clause

GEICO contends that the Court erred "in finding that the policy definitions for "owned" and non-owned" are unclear and/or ambiguous. In making this contention, GEICO drastically over-simplifies the Court's holdings, and does so to the point of mischaracterizing them. The Court did, correctly, find that these defined terms conflicted with the "Other Insurance" or Excess Clause and that they, as part of the policy's Omnibus Clause, conflict with statutes and public policy. However, the Court did not find the definitions of the terms to be unclear or ambiguous, instead, it found the way they are used within the context of the policy drafting.

Specifically, the Court found that the policy improperly uses the Omnibus Clause to restrict coverage rather than using a listed exclusion, and it found that this drafting is confusing and misleading. The Court also found the policy's incorporation of the "regular use" provision

into the policy to serve no valid purpose. It takes away coverage in cases like this one, where two adult GEICO insured relatives lived in the same residence, and the son used his mother's car to run an errand. Had the son used the car of a neighbor, he would have been covered.

In this respect, GEICO's use of the "regular use" restriction as part of the non-owned provision is similarly troublesome to the GEICO "step-down" provision recently invalidated by the Supreme Court.

8. The Court did NOT ERR in finding that the drafting and application of the Pertinent GEICO Policy Provisions Violate South Carolina Law and Public Policy

As discussed above, it violates §38-77-142 for a company to declare coverage on the Declarations Page and then use carefully crafted Policy Provisions and definitions to retract or define it out of existence. Williams v. GEICO, *supra* GEICO does that in this case, and it also uses the familiar relationship between Mark and Mildred Scoggin, via the "owned" and "non-owned" definitions, to limit the coverage available to Mark Scoggin, despite both household residents and relatives being separately insured by GEICO policies.

"To allow an insurer to determine the extent to which an injured party can recover within the insured's policy coverage based solely on a familial relationship is arbitrary and capricious and violative of public policy." Williams v. GEICO, *supra*.

The coverage here was declared by the Declarations Page and was then retracted because Mark Scoggin used the car of a "resident relative" - his Mother - on the date of this accident. This Court correctly held that public policy was violated such that the policy provisions attempting to withdraw excess coverage from the Mark Scoggin policy are void *ab initio* and incapable of being enforced.

9. The Court did NOT ERR in awarding attorney's fees

The named Plaintiff, Erie Insurance Exchange, had to bring this action on behalf of GEICO's named insured, Mark Scoggin, because GEICO unreasonably refused to pay under his coverage under the policy. GEICO, despite this Court's prior ruling finding Excess Coverage, has continued to fail and refuse to defend its insured, and has instead entered an alleged and tentative or arbitrary agreement to pay the coverage to the Plaintiff - if it loses the DJ action. This continues to leave Mr. Scoggin without counsel, save for the UI carrier stepping into his shoes.

"A declaratory judgment action is like a chameleon. Its color is determined by its background, *i.e.*, the underlying action." *See Jacobs v. Service Merchandise Co.*, 297 S.C. 123, 375 S.E. (2d) 1 (Ct. App. 1988) (*Noisette v. Ismail*, 299 S.C. 243, 246, 384 S.E.2d 310, 312, 1989 S.C. App. LEXIS 114, *3 (S.C. Ct. App. 1989) A DJ is a statutory action and will be considered a case at law unless the cause of action and the relief sought are equitable. In the latter case it will be considered equitable. *Id.* Here, the relief sought was more by way of equitable indemnity and the DJ is therefore, a matter of equity. The relief sought was a matter of equitable indemnity because GEICO's failure and refusal to defend its insured forced the Plaintiff to step into the shoes of GEICO's insured. Erie was only forced to assume the defense because of GEICO's failure to honor its obligations. Had GEICO honored its obligation then Erie would not be defending. The duty to defend is GEICO's and in fulfilling it, the Plaintiff is performing GEICO's duty and therefore, the Plaintiff, Erie, as a matter of equity, is entitled to attorney's fees and costs.

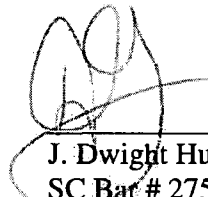
Under §38-59-40, attorney's fees and costs are, therefore, justified in this matter and were properly awarded by the Court.

Conclusion/Summary:

For all of the reasons stated above, and for those stated in the Plaintiff's prior pleadings, memoranda, et al, the Court's Ruling in this case was correct and it should be affirmed.

Defendant reserves the right to supplement this Return.

Respectfully submitted,



J. Dwight Hudson, Esquire
SC Bar # 2753
Hudson Law Offices
PO Box 70218
Myrtle Beach, SC 29572
(843) 692-9889
Attorney For: Plaintiff

Dated:

CERTIFICATION OF SERVICE

This is to certify that the foregoing was served by HUDSON LAW OFFICES by and through its agents, servants and employees on June 3, 2015 by

- (XX) Placing the same in the United States mail, postage prepaid to the addresses noted below;
- () Transmitting the same by facsimile to the numbers noted below;
- (XX) Forwarding the same by e-mail to the addresses noted below:

Edward A. Love Esq.
King, Love & Smith, LLC
PO Box 1764
Florence, SC 29503-1764
Email: elove@klslawfirm.com

The Hon. J. M. Burch
Chief Administrative Judge, Fourth Circuit
PO Box 276
Pageland, SC 29526
Email: PBu@sccourts.org
PBU@sccourts.org

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*Ian D. Maguire**

*Adrian G. Dejeu***

**Licensed in North & South Carolina
**Licensed in South Carolina & Georgia*

IAN D. MAGUIRE, ESQUIRE
ian@maguirelawfirm.com

May 27, 2015

VIA US MAIL & FACSIMILE: (800) 566-1671

Erie Insurance Exchange
ATTN: Claims
100 Erie Insurance Place
Erie PA 16530

RE: Insured/Client: Angela Hill
Date of Loss: 09/05/2012
Policy No.: Q05-1107128
ML File No.: 13IM038AA

Dear Sir or Madam:

I am writing to inform you that my client has received an offer from the excess liability carrier with regard to the above-referenced loss. The carrier has offered the sum of \$25,000.00 in exchange for a Covenant Not to Execute. My client's damages greatly exceed the \$25,000.00 excess policy limits and she fully intends on pursuing all available underinsured motorist insurance policies applicable for this date of loss. I am writing to inform you of the proposed settlement and providing thirty (30) days for your company to assert any subrogation interest it may have in regards to this case and/or to provide any objections to the proposed settlement with the excess carrier. If we have not heard from you or your counsel within the thirty (30) days, we will accept the excess funds and proceed with this case against any and all available underinsured coverage. However, if you do not intend to assert a subrogation interest, then we would appreciate it if you could provide written confirmation allowing my client to accept the \$25,000.00 on a Covenant.

Your attention to this matter is greatly appreciated and I look forward to hearing from you in the near future.

With kind regards, I am,
Sincerely,

/s/ Ian D. Maguire

Ian D. Maguire, Esquire
IDM/bjb

cc: Dwight Hudson, Esquire (via fax: (843) 692-9190)

From: Ian Maquire
To: "John, Steven H. Law Clerk (John Simkovich)"; hudsonlaw@sc.rr.com
Subject: RE: Hill v. Scoggin (2013-CP-26-0592)
Date: Thursday, May 28, 2015 11:06:50 AM

Mr. Simkovich,

All discovery has been completed on the case and the at-fault carrier has tendered the policy limits. The UIM attorney (Mr. Hudson) filed a DJ action arguing that a Geico excess policy was in line before the UIM policy. Recently (April 29, 2015) Judge Birch signed an Order essentially stating that the Geico excess policy would be payable before the UIM. It is my understanding that Geico is going to appeal the Order. However, Geico's counsel has confirmed in writing that they will tender their policy limits to my client if their appeal is unsuccessful. Therefore, I have no idea which carrier should be defending the case at this time. I know Mr. Hudson had filed a Motion to Stay the case but it was cancelled after Judge Birch made his decision. If possible, we would request for the case to be stayed until the DJ action is resolved (or at least until we know who will be defending the case). Thanks in advance for your help in this matter.

Ian

From: John, Steven H. Law Clerk (John Simkovich) [mailto:SJohnLC@sccourts.org]
Sent: Thursday, May 28, 2015 9:45 AM
To: ian@maguirelawfirm.com; hudsonlaw@sc.rr.com
Subject: Hill v. Scoggin (2013-CP-26-0592)

Counselors,

This case appears on next week's jury trial roster. Please indicate whether it is ready for trial and where current settlement negotiations stand. If the case is ready to proceed to trial, please indicate the anticipated number of witnesses and the length of the case.

Thank you,

John Paul Simkovich
Law Clerk to Judge Steven H. John
Circuit Judge – Horry & Georgetown Counties
Phone: 843-915-6697
Fax: 843-915-5859

~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

000275

## Ed Love

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**From:** Ed Love  
**Sent:** Tuesday, May 12, 2015 3:44 PM  
**To:** Ian D. Maguire Esq.  
**Cc:** Rob King  
**Subject:** RE: Hill v Scoggins

Rob, has pointed out to me that I should clarify that GEICO's payment would be contingent upon a losing result. Obviously if they appeal the decision and win (which means they don't have coverage), then they would not pay and you would go after Erie's policy.

**From:** Ed Love  
**Sent:** Tuesday, May 12, 2015 3:30 PM  
**To:** Ian D. Maguire Esq.  
**Cc:** Rob King  
**Subject:** Hill v Scoggins

Ian:

Rob and I spent some time on the phone with the folks at GEICO today. GEICO intends upon challenging the court's decision in the DJ action, but to what extent, we remain uncertain. As a result of the court's order, GEICO would like to propose that it stipulate to tender its \$25,000 under the Mark Scoggins policy **contingent upon** the final resolution of the DJ action (whether that be through appeal or otherwise). Because the covenant prevents Plaintiff from collecting an excess verdict against the Defendant and because I understand your intent is to pursue the Erie claim through NC arbitration, I think this works best for all and prevents you from unnecessarily trying the case. Let me know your thoughts.

Ed

**Edward A. Love**  
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135 South Dargan Street, Suite 201  
PO Box 1764, Florence, SC 29503-1764  
Phone 843-407-5525  
Fax 843-407-5782  
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**KING  
LOVE &  
SMITH, LLC**  
ATTORNEYS AT LAW

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

APPEAL FROM HORRY COUNTY  
Court of Common Pleas  
Paul M. Burch, Circuit Court Judge

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**Appellate Case No.: 2015-001827**

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Erie Insurance Exchange.....Respondent.

v.

Government Employees Insurance Company, Mark Allison Scoggin and Angela Bennett Hill

Of whom Government Employees Insurance Company is.....Appellant.

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**CERTIFICATE OF COUNSEL**

---

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

April 4, 2016



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ATTORNEY FOR APPELLANT

000277

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM HORRY COUNTY  
Court of Common Pleas  
Paul M. Burch, Circuit Court Judge

Appellate Case No.: 2015-001827

**RECEIVED**  
APR 21 2016  
SC Court of Appeals

Erie Insurance Exchange.....Respondent.

v.

Government Employees Insurance Company, Mark Allison Scoggin and Angela Bennett Hill

Of whom Government Employees Insurance Company is.....Appellant.

**CERTIFICATE OF COUNSEL**

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

April 4, 2016



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ATTORNEY FOR APPELLANT

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM HORRY COUNTY  
Court of Common Pleas

The Hon. Paul M. Burch, Circuit Court Judge

**RECEIVED**

APR 21 2016

**SC Court of Appeals**

Case No. 14-CP-26-6382

Appellate Case No. 2015-001827

Erie Insurance Exchange,.....Respondent

v.

Government Employees Insurance Company, Mark Allison Scroggin, and Angela  
Bennett Hill, Defendants,

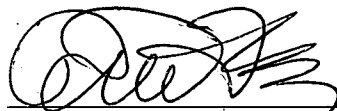
Of which Government Employees Insurance Company is.....Appellant

PROOF OF SERVICE

I, the undersigned, as an attorney for Appellant, do hereby certify that I have  
served the *Brief of Appellant*, *Reply Brief of Appellant*, and *Record on Appeal* this this  
April 21, 2016, by depositing the same in a U.S. Postal Box in envelopes, sufficient  
postage prepaid, properly addressed to the following:

J DWIGHT HUDSON ESQ  
HUDSON LAW OFFICES  
PO BOX 70218  
MYRTLE BEACH SC 29572

IAN D MAGUIRE ESQ  
MAGUIRE LAW FIRM  
1600 OAK ST STE B  
MYRTLE BEACH SC 29577



---

ROBERT T. KING #066237

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ATTORNEYS FOR APPELLANT

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Ashley B. Nance

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April 21, 2016

**RECEIVED**  
APR 21 2016  
SC Court of Appeals

**Via Hand Delivery**

Jenny Abbott Kitchings, Clerk  
South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, SC 29211

RE: Erie Insurance Exchange v. Government Employees Insurance Company,  
Mark Allison Scoggin and Angela Bennett Hill  
Appellate Case No.: 2015-001827  
Our File No.: 41.01747

Dear Ms. Kitchings:

Please find enclosed the following documents in regards to the above matter:

1. Fourteen bound copies and one unbound copy of the Record on Appeal;
2. Fourteen bound copies and one unbound copy of the Appellant's Brief; and
3. Fourteen bound copies and one unbound copy of the Appellant's Reply Brief.

By copy of this letter to all counsel of record, we are herewith serving them with the Appellant's Record on Appeal, Appellant's Final Brief and Appellant's Final Reply Brief.

Should you have any questions, please do not hesitate to contact us.

Sincerely,



Robert T. King  
[RKing@kingandlove.com](mailto:RKing@kingandlove.com)

RTK/wl  
Enclosures

cc: J. Dwight Hudson, Esquire (Via U.S. Mail)  
One copy of each document  
Ian D. Maguire, Esquire (Via U.S. Mail)  
One copy of each document