

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Roger M. Young, Circuit Court Judge

Case No.: 2010-CP-10-7647

Victoria Fire & Casualty Insurance Company,.....Respondent,

v.

Charles P. Singleton and Delissa Singleton,.....Appellants.

RECORD ON APPEAL

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*Attorney for Appellants*

RECEIVED

FEB 15 2012

SC Court of Appeals

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STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS  
CIVIL ACTION NO: 2010-CP-10-7647

Victoria Fire & Casualty Insurance Company,

Plaintiff,

**ORDER GRANTING PLAINTIFF'S MOTION  
FOR SUMMARY JUDGMENT**

vs.

Charles P. Singleton and Delissa Singleton

Defendants.

FILED  
2011 AUG 11 AM 9:16  
JULIE J. ARMSTRONG  
CLERK OF COURT

This matter came before the Court on Motions for Summary Judgment filed by parties. A hearing was held on Monday, July 25, 2011. Present for the Plaintiff was Adam Neji, Esquire. Present for the Defendants was Jonathan Altman, Esquire. Having considered the arguments of counsel and the legal authorities submitted, the Court hereby grants Plaintiff Victoria Fire & Casualty Insurance Company's Motion for Summary Judgment.

The undisputed facts are as follows. In the course of her employment as a bus driver with Veolia Transportation, Inc., Defendant Delissa Singleton was injured as a result of two automobile accidents occurring in or about June of 2009 and again in January of 2010, which occurred while she was driving a Charleston Area Regional Transportation Authority ("CARTA") bus. Neither accident was deemed to be her fault. As a result of these two automobile accidents, Delissa Singleton has settled her liability claims with the respective at-fault drivers and their liability insurance carriers, receiving the full liability policy limits in exchange for signed covenants not to execute in favor of the two allegedly at fault drivers.

Mrs. Singleton is an insured person under a policy of automobile liability insurance issued to Charles P. Singleton as the Named Insured by Victoria (hereinafter "The Policy"). The Policy was in effect at the time of both accidents. In addition to providing liability coverage,

The Policy, number 62379093-3, also includes Underinsured Motorist ("UIM") coverage. The policy limit for the UIM coverage is \$25,000 per person and \$50,000 per accident. Delissa Singleton has demanded that Victoria pay her the policy limit of \$25,000.00 for each accident – a total of \$50,000.00.

Victoria denied Delissa Singleton's claim based on the following policy exclusion (hereinafter "The Exclusion") that appears in the UIM coverage terms:

**COVERAGE EXCLUSIONS**

Coverage does not apply:

• • •

7. To use of any motor vehicle by an insured:
- a) to carry persons or property for a fee; or
  - b) for retail or wholesale delivery, including but not limited to pizza, magazine, newspaper and mail delivery.

This exclusion does not apply to motor vehicles used in shared-expense car pools.

The policy also defines those terms that appear in bold-face type above as follows:

"**MOTOR VEHICLE**" means land motor vehicle designed primarily to be driven on public roads. This does not include vehicles operated on rails or crawler treads;" "**INSURED**" means one who is described as entitled to protection under each coverage."

At the time of both the June 2009 and January 2010 accidents, Mrs. Singleton was an "insured" using a "motor vehicle", specifically a CARTA bus, which was carrying persons who paid a fee to ride thereon. The passengers being transported by Mrs. Singleton either paid a "per ride" fee or, if a student, paid for a semester-long bus pass. Standard passengers paid \$1.50 per ride. Singleton was earning an hourly wage at the time of both the June 2009 and January 2010 accidents.

1) Under the plain and unambiguous terms of the policy, Singleton is not entitled to UIM coverage and, therefore, Victoria is entitled to summary judgment.

2) There is no reported South Carolina case analyzing this exclusion or an exclusion like it. However, Courts from across the country have interpreted this exclusion as valid and enforceable and effective to bar the payment of UIM benefits in situations that are virtually identical to those in this case. In Almendral v. Security National Insurance Co., 704 So.2d 728 (Fla. Dist. Ct. App. 1998), the Florida court upheld the exclusion of uninsured coverage for passengers in a van being used to transport Medicaid patients. Like Singleton, the driver in Almendral (Valdes) received a weekly salary from his employer (Red Top Transportation) for transporting Medicaid passengers to doctors' offices for their appointments. Almendral, 704 So.2d at 728. He did not receive any compensation directly from the passengers. Mr. and Mrs. Almendral were passengers in the van and were injured when it was involved in an accident with an uninsured vehicle. They sought UM benefits from Valdes' personal insurance policy (issued by defendant Security National) which provided UM coverage, but excluded it when the driver was operating the van "to carry persons or property for a fee." Id. The Almendrals apparently conceded that the coverage was not available to Mrs. Almendral because she was the fare-paying Medicaid patient. However, because Mr. Almendral was simply escorting his wife to her doctor's appointment he did not pay a fare. Thus, he claimed the exclusion was inapplicable to him. Id. at 729. Rejecting this argument, the court held:

By the *clear and unambiguous* terms of the business exclusionary provision, except for car pool expenses, [the driver] had no uninsured motorist coverage whenever his van was being used to transport any persons or property for a fee. The identity of the person(s) paying the fee or the status of the occupants in the van at the time are simply irrelevant.

Id. at 730 (emphasis added).

Similarly in both accidents, Singleton was driving a vehicle being used to transport persons for a fee. The fact that she may have been transporting a student who did not pay a fee directly to her but paid at the time he boarded the bus (though he must have paid the student semester fee of \$70) is of no consequence because the "identity of the person(s) paying the fee or the status of the occupants in the [vehicle] are simply irrelevant." Id.

This conclusion is further supported by the Superior Court of Pennsylvania's opinion in Ratush v. Nationwide Mutual Insurance Co., 619 A.2d 733 (Pa. Super. Ct. 1992). In Ratush, a taxi cab driver was injured in an accident and submitted a claim under his wife's insurance policy which excluded coverage for a vehicle which was being "used to carry persons or property for a fee." Ratush, 619 A.2d at 733. The driver argued the policy exclusion was inapplicable to his accident because the taxi which he had been driving was not carrying a passenger at the exact moment of the accident. Id. Rejecting this argument, the court held:

Thus, in the instant case, the language of the policy was clear. A distinction was created between vehicles owned and operated privately, including vehicles used for car pooling purposes, and vehicles being used to carry passengers for hire. The vehicle being operated by [the driver] at the time of his accident was a taxicab whose purpose was to carry passengers for compensation. Applicability of the policy's exclusion did not vary according to whether the taxi was occupied or unoccupied at any given moment or whether its driver, at that time, did or did not intend to pick up passengers.

Id. at 734

Notably, the taxi driver in Ratush was not receiving a fee when the accident occurred. There was no one occupying the taxi cab, so there was no payment to the driver. However, the court recognized that the policy created an intentional distinction between private vehicles and vehicles like taxi cabs and buses which are used to carry passengers for hire. It does not matter who receives payment or whether payment is even received when the purpose of the vehicle is to

carry passengers for compensation. See also, Nationwide Assurance Co. v. Easley, 960 A.2d 843, 848 (Pa. Super. Ct. 2008) (holding fact that taxi driver did not have a passenger when the accident occurred does not render the exclusion invalid); Farmers Insurance Exchange v. Knopp, 50 Cal.App.4<sup>th</sup> 1415, 1421 (Cal. Dist. Ct. App. 1996) (finding that a very similar exclusion was *unambiguous* and upholding its application against a limousine driver even though not carrying passengers at time of accident because the use of the limousine lasted "during the entire process, from dispatch through return").

Whether the passengers being transported by Singleton at the time of the accident paid a fee (which they did) or whether there were even passengers in the bus at the time of the accident is irrelevant. The key fact is that the purpose of the bus was to carry persons for a fee. Therefore, it also does not matter that Singleton herself was not paid for the journey. See Johnson v. Allstate Insurance Co., 505 So.2d 362 (Ala. 1987).

Because the sole purpose of the bus Singleton was operating was transporting people for a fee, the applicability of the exclusion does not depend on who was or was not riding the bus or whether any benefit inured directly to Singleton.

The validity and applicability of the exclusion is especially true when considering the purpose of the exclusion:

The duty owed by the operator to a person being transported for hire is much higher than that owed to a person who is not being transported for hire; and the risk assumed by the insurer where a car is being so used is much greater than in the case of an automobile which is being used for pleasure and ordinary business purposes.

Cartos v. Hartford Acc. & Indem. Co., 160 Va. 505, 505, 169 S.E. 594 (1933). The unambiguous terms of the policy exclude underinsured coverage and, therefore, Victoria is entitled to judgment as a matter of law.

Defendants urged the Court to rely on the unreported decision of the Federal District

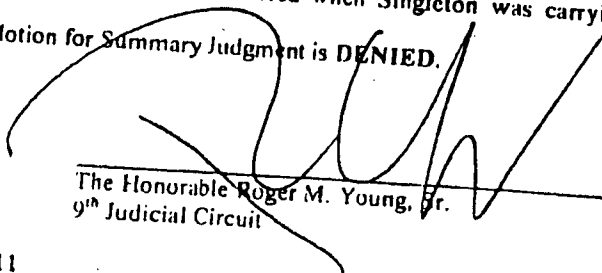
Court in United States v. Allstate Insurance Co., 2001 WL 1854501 (D.S.C. 2001), in which the court held that similar exclusionary language was ambiguous. The Court finds that this decision is not persuasive.

The facts before the District Court were quite different from the facts at issue here. The individual seeking coverage in United States was a rural mail carrier for the United States Postal Service who was driving his own vehicle to deliver mail when he was involved in an accident. The ambiguity in the policy as described by the District Court was "because it is unclear whether it refers only to a per-trip charge, or to any wages paid to an employee whose duties include delivering property." *Id.* at \*3. Singleton urges that the Victoria policy exclusion does not apply because Singleton did not receive the fee. This is not correct. In this case, there was both a "per-trip charge" paid by the bus rider to CARTA and "wages paid to an employee", i.e. Singleton's pay from Veolia. Thus, the ambiguity, even if there were one, is not material to the coverage dispute between Singleton and Victoria because under either interpretation the exclusion is applicable.

#### CONCLUSION

For the reasons stated above, Victoria's Motion for Summary Judgment is **GRANTED** because there is no genuine issue as to material fact that the unambiguous terms of the policy deny underinsured coverage for the accidents that occurred when Singleton was carrying persons for a fee. The Singleton's Motion for Summary Judgment is **DENIED**.

**IT IS SO ORDERED.**

  
The Honorable Roger M. Young, Jr.  
9<sup>th</sup> Judicial Circuit

day of 8/8, 2011

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS  
CIVIL ACTION NO:

Victoria Fire & Casualty Company,

Plaintiff,

vs.

Charles P. Singleton and Delissa Singleton,

Defendants.

DECLARATORY JUDGMENT  
COMPLAINT

2017 SEP 17 PM 2:24  
LIE J. ARISTIDE  
CLERK OF COURT

FILED

The Plaintiff, complaining of the defendants herein, would show and allege as follows:

1. Plaintiff Victoria Fire & Casualty Company (hereinafter "Victoria") is an insurance company organized and existing pursuant to the laws of the state of Ohio. Victoria's principal place of business is in Ohio. Victoria is authorized to write insurance policies and does write insurance policies in South Carolina.
2. Defendants Charles P. Singleton and Delissa Singleton are husband and wife and are citizens and residents of Charleston County, South Carolina.
3. This declaratory judgment action is brought pursuant to the South Carolina Uniform Declaratory Judgment Act and Rule 57, SCRPC.
4. Jurisdiction and venue are proper in this Court.

FACTS

5. Defendant Delissa Singleton is a bus driver employed by the Charleston Area Regional Transportation Authority ("CARTA").

6. In or about June of 2009 and again in January of 2010, Delissa Singleton was involved in an automobile accident while operating a CARTA bus. Neither accident was deemed to be her fault. Mrs. Singleton was injured as result of these two accidents.

7. As a result of these two automobile accidents, Delissa Singleton has settled her liability claims with the respective at-fault drivers and their liability insurance carriers. Upon information and belief, Mrs. Singleton received the full liability policy limits from the liability insurance carriers and, in exchange, signed covenants not to execute in favor of the two allegedly at fault drivers.

8. Mrs. Singleton is an insured person under a policy of automobile liability insurance issued to Charles P. Singleton as the Named Insured by Victoria (hereinafter "The Policy"). The Policy was in effect at the time of both accidents. The Policy is identified by policy number 62379093-3. A copy of The Policy and the declarations page of The Policy is attached hereto as Exhibit A.

9. In addition to providing liability coverage, The Policy also includes Underinsured Motorist ("UIM") coverage. The policy limit for the UIM coverage is \$25,000 per person and \$50,000 per accident.

10. Delissa Singleton has demanded that Victoria pay her the policy limit of \$25,000.00 for each accident - a total of \$50,000.00.

11. Victoria has denied Delissa Singleton's claim based on the following policy exclusion (hereinafter "The Exclusion") that appears in the UIM coverage terms (Ex. A; p. 12):

**COVERAGE EXCLUSIONS**

Coverage does not apply:

\* \* \*

7. To use of any motor vehicle by an insured:

a) to carry persons or property for a fee; or

b) for retail or wholesale delivery, including but not limited to pizza, magazine, newspaper and mail delivery.

This exclusion does not apply to motor vehicles used in shared-expense car pools.

12. The policy also defines those terms that appear in bold-face type above as follows:

“‘MOTOR VEHICLE’ means land motor vehicle designed primarily to be driven on public roads. This does not include vehicles operated on rails or crawler treads.”

“‘INSURED’ means one who is described as entitled to protection under each coverage.”

13. Upon information and belief, at the time of both the June 2009 and January 2010 accidents, Mrs. Singleton was an “insured” using a “motor vehicle”, specifically a CARTA bus, which was carrying persons who paid a fee to ride thereon.

**FOR A FIRST DECLARATION**

14. Victoria repeats and realleges each and every one of the preceding paragraphs as if set forth verbatim herein.

15. The Exclusion is unambiguous.

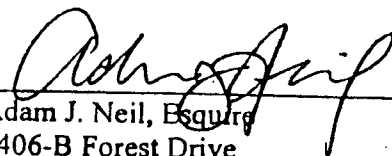
16. The Exclusion, by its terms, applies to bar UIM coverage for the two claims asserted by Delissa Singleton.

17. Victoria is entitled to a declaration from this Court that The Exclusion bars the claims asserted by Delissa Singleton that arise from the June 2009 and the January 2010 automobile accidents.

18. Accordingly, Victoria is entitled to the further declaration that it owes no Underinsured Motorist benefits to Delissa Singleton on account of the allegation that she suffered injuries in the June 2009 and January 2010 automobile accidents.

WHEREFORE, Victoria prays that the Court inquire into these matters and make the above requested declaration and that the Court award such other and further relief as it deems just and proper.

MURPHY & GRANTLAND, P.A.



Adam J. Neil, Esquire

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Columbia, South Carolina 29260

(803) 782-4100

Attorneys for Victoria Fire & Casualty Company

Columbia, South Carolina  
September 16, 2010

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT  
CASE NO.: 2010-CP-10-7647

Victoria Fire & Casualty Insurance )  
Company, )

Plaintiff, )

v. )

Charles P. Singleton and Delissa )  
Singleton, )

Defendants. )

ANSWER

FILED  
2010 OCT -7 PM 2:46  
JULIE J. ARMSTRONG  
CLERK OF COURT

Defendants Charles P. Singleton and Delissa Singleton (hereinafter collectively referred to as "Defendants"), answering the Complaint, allege and state as follows:

1. Defendants deny each and every allegation not specifically admitted herein.
2. Defendants are without information or belief as to the specific allegations of paragraph 1, but admit so much of said paragraph that alleges that Plaintiff is an insurance company writing insurance policies in the state of South Carolina.
3. Defendants admit the allegations of paragraphs 2, 3 and 4.
4. Defendants admit so much of paragraph 5 that alleges that Defendant Delissa Singleton is employed as a bus driver. Mrs. Singleton is employed by Veolia Transportation.
5. Defendants admit the allegations of paragraphs 6, 7, 8, 9, 10 and 11.
6. Defendants are not in possession of the policy referenced in paragraph 12 but make reference to said policy for its specific terms.
7. Defendants admit so much of paragraph 13 that alleges that Mrs. Singleton was operating a CARTA bus at the time of both the June 2009 and January 2010 accidents.

Defendants make reference to their policy with regard to the remaining allegations of paragraph 13.

8. Paragraph 14 requires no response from Defendants. If a response is required, said allegations are denied.

9. Defendants deny the allegations of paragraphs 15, 16, 17 and 18 and expressly state the following:

- a. The exclusion is ambiguous;
- b. UIM coverage applies to the two claims asserted by Defendants;
- c. Defendants are entitled to a declaration from this court that the exclusion at issue does not bar coverage for the claims asserted by Defendants; and
- d. Defendants are entitled to a further declaration that Plaintiff owes underinsured motorist benefits to Defendants on account of the injuries suffered by Defendant Delissa Singleton in these two accidents.

WHEREFORE, Defendants pray that the Court inquire into these matters and make the above requested declaration and that the Court award Defendants such other and further relief as it deems just and proper.

Date: 20 Oct. 5, 2010



Jonathan S. Altman, Esq.  
Derfner, Altman & Wilborn, LLC  
575 King Street, Suite B (29403)  
P.O. Box 600  
Charleston, SC 29402

*Attorney for the Defendants*

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT  
CASE NO.: 2010-CP-10-7647

Victoria Fire & Casualty Insurance )  
Company, )

Plaintiff, )

v. )

Charles P. Singleton and Delissa )  
Singleton, )

Defendants. )

**MOTION FOR SUMMARY JUDGMENT**

FILED  
MAR -9 PM 1:25  
CLERK OF COURT

Please take notice that ten (10) days after service hereof, or soon thereafter as counsel may be heard, Defendants Charles P. Singleton and Delissa Singleton (hereinafter collectively referred to as "Singleton"), by and through their undersigned attorney, will move before the presiding judge of the Ninth Judicial Circuit for Charleston County for an order granting Defendants' motion for summary judgment for all matters and causes set forth in Plaintiff's Declaratory Judgment Complaint pursuant to the South Carolina Rules of Civil Procedure, Rule 56 (c), on the grounds that there are no genuine issues as to any material fact. In support thereof, Singleton states as follows:

**FACTUAL AND PROCEDURAL BACKGROUND**

1. The material facts are undisputed. On June 5, 2009 and January 29, 2010, Delissa Singleton was involved in automobile accidents while operating a CARTA bus. Neither accident was deemed to be her fault. Mrs. Singleton suffered significant injuries in these accidents and required surgery to her cervical spine. Her medical expenses exceed the sum of \$100,000.00.

2. Delissa Singleton has settled her liability claims with the respective at-fault drivers and their liability insurance carriers. She received the full liability policy limits and in exchange, signed Covenants Not to Execute in favor of the at-fault drivers.

3. Mrs. Singleton is an insured person under a policy of automobile liability insurance issued to her husband, Charles Singleton, as a named insured by Victoria Fire & Casualty Insurance Company (hereinafter "Victoria"). Singletons' policy [No. 62379093-3] was in effect at the time of both accidents and included underinsured motorist coverage containing limits of \$25,000.00 per person and \$50,000.00 per accident. Mrs. Singleton has demanded that Victoria pay the policy limits of \$25,000.00 per accident, a total of \$50,000.00.

4. Victoria denied Mrs. Singleton's UIM claims based on the following policy exclusion:

*Coverage Exclusions*

*Coverage does not apply:*

\*\*\*

7. *To use of any motor vehicle by an insured:*

- a) *to carry persons or property for a fee; or*
- b) *for retail or wholesale delivery, including but not limited to pizza, magazine, newspaper and mail delivery.*

*This exclusion does not apply to motor vehicles used in shared-expense car pools.*

5. On September 17, 2009, Victoria filed a Declaratory Judgment Complaint seeking a declaration that the above exclusion bars the claims asserted by Mrs. Singleton. Singleton answered the Complaint, denying the material allegations and sought a declaration that coverage applies to her claims and that Victoria's exclusion is ambiguous and unenforceable.

### FACTUAL BACKGROUND

6. Mrs. Singleton's employment with Veolia Transportation, Inc., the operator of CARTA, began in 2005. Mrs. Singleton worked forty (40) hours per week and was paid hourly. Pay stubs from the time of the two accidents are attached hereto as Exhibits A and B, and reflect hourly rates of pay for Mrs. Singleton of \$17.00 and \$17.43, during the relevant pay periods. She received no bonuses or additional compensation beyond her hourly pay. While Mrs. Singleton's primary job responsibility was operating a CARTA bus, she was also required to assist in maintaining her bus, including:

- a) verifying tire pressure;
- b) checking the bus's brake and tail lights;
- c) verifying adequate fuel supply;
- d) stocking bus with route maps and CARTA information;
- e) ensuring passenger notification system was operable;
- f) checking wheelchair ramp;
- g) inspecting bicycle ramp; and
- h) changing route display.

Mrs. Singleton's compensation was not affected by passenger volume or the profitability of her route.

7. CARTA/Veolia drivers are not involved in the payment of fees/fares. Passengers pay their fares [typically \$1.50] by insertion of the fare into an automated box located at the entrance of the bus. Mrs. Singleton and other CARTA drivers carry no change and maintain no record of fare payment. If a passenger does not have exact change, they are unable to ride the bus.

8. Mrs. Singleton's bus was nearly empty at the time of both accidents. On June 5, 2009, her bus had a single passenger, a student who utilized a student pass to ride the bus. Some schools enter into arrangements with CARTA where students can ride for free. Student passes at a price of \$70.00/semester are available for students of schools who have not entered into an arrangement with CARTA. Although it is not known whether the student riding Mrs. Singleton's bus on June 5, 2009 was required to purchase a student pass, no fee was paid by said student on the day of the accident. As for the January 2010 accident, Mrs. Singleton's bus contained two passengers who had inserted the \$1.50 fee into the bus's fare box.

#### LAW

9. In United States of America v. Allstate Insurance Company, 2001 WL 1854501 (D.S.C.), Judge Seymour considered a similar exclusion to the one Victoria maintains bars coverage to Singleton. A copy of her decision is attached hereto as Exhibit C. In that case, a rural letter carrier for the U.S. Postal Service caused an accident while delivering the mail in his own car. The United States sought indemnity as an additional insured under the carrier's automobile insurance policy issued by Allstate. Allstate denied coverage citing the following exclusion:

*This coverage does not apply to liability for:*

*(1) your insured auto while used to carry persons or property for a charge[.]*

Allstate maintained that its insured was carrying property and was being compensated to do so, thus eliminating coverage.

10. The Court granted the United States' Motion for Summary Judgment and found coverage for the carrier. In her opinion, Judge Seymour stated that individuals wishing to

mail a letter or parcel make payment to the postal center, not the carrier. The carrier/driver did not charge a fee to individuals to deliver their mail.

11. In the present case, Victoria has maintained that Mrs. Singleton was carrying persons who paid a fee to ride the CARTA bus. This allegation is incorrect with regard to accident number 1, where the only passenger was a student who paid no fare on June 5, 2009. As to accident number 2, no passengers paid a fee to Mrs. Singleton to ride the CARTA bus. As in the Allstate case, any fee was paid to Mrs. Singleton's employer, Veolia/CARTA.

12. Judge Seymour cited the "universal rule that insurance policies are to be construed in favor of the insured," and noted that several courts have found that exclusions like Victoria's are ambiguous and therefore, must be construed against the insurer. See, e.g. *Cincinnati Ins., Co. v. West American Ins., Co.*, 112 F. Supp.2d 718, 721 (C.D.Ill.2000). In South Carolina, where language used in an insurance contract is capable of two reasonable interpretations, the construction that is most favorable to the insured should be adopted. *Edens v. S.C. Farm Bureau Mut. Ins., Co.*, 308 S.E.2d 670, 671 (1983). In the present case, Mrs. Singleton was an hourly employee paid by Veolia. Her compensation was not affected by whether the bus she was operating was occupied by passengers or whether she was performing other non-driving job related duties.

#### CONCLUSION

As the material facts are undisputed, Singleton respectfully requests that this Honorable Court grant their motion for summary judgment pursuant to Rule 56 (c) of the South Carolina Rules of Civil Procedure and issue an Order finding that coverage applies to Mrs. Singleton's claim and that Victoria's exclusion is ambiguous and unenforceable.

Respectfully submitted,

Date: March 9, 2011



Jonathan S. Altman, Esq.  
Derfner, Altman & Wilborn, LLC  
575 King Street, Suite B (29403)  
P.O. Box 600  
Charleston, SC 29402

*Attorney for Defendants*

# **EXHIBIT A**

# Earnings Statement

Period Ending: 05/30/2009  
Pay Date: 06/05/2009

Taxable Marital Status: Married  
Exemptions/Allowances:  
Federal: 03  
State: 03;

DELISSA SINGLETON  
6597 HWY. 17 N.  
AWENDAW, SC 29429

| Earnings         | rate    | hours | this period     | year to date    |
|------------------|---------|-------|-----------------|-----------------|
| Regular          | 17.0000 | 56.00 | 952.00          |                 |
| Overtime         | 25.5000 | 10.00 | 255.00          |                 |
| Holiday          | 17.0000 | 8.25  | 140.25          |                 |
| Incentive        | 0.3001  | 9.33  | 2.80            |                 |
| Paid Sick        | 17.0000 | 8.00  | 136.00          |                 |
| Vacation         | 17.0000 | 8.00  | 136.00          |                 |
| <b>Gross Pay</b> |         |       | <b>1,622.05</b> | <b>3,786.51</b> |

## Important Notes

| Deductions     | Statutory               |                |
|----------------|-------------------------|----------------|
|                | Federal Withholding Tax | 28.11-         |
|                | Social Security Tax     | 86.13- 187.38- |
|                | Medicare Tax            | 20.14- 43.82-  |
|                | SC Withholding Tax      | 54.44- 44.84-  |
|                | Other                   |                |
|                | Colonial Cancer         | 27.00-         |
|                | UNION DUES              | 32.00-         |
|                | Dir Dep-Checkng         | 1,060.19-      |
|                | *Medical                | 222.13-        |
|                | *Dental                 | 10.81-         |
|                | *401K Deduction         | 81.10-         |
| <b>Net Pay</b> |                         | <b>0.00</b>    |

\* This deduction reduces taxable gross.

Payroll check number: 00230094  
Period Ending: 05/30/2009  
Pay Date: 06/05/2009

Pay to the  
order of **DELISSA SINGLETON**  
This Amount: **NO AND 00/100 DOLLARS**

**50.00**

**NON-NEGOTIABLE**  
(THIS IS NOT A CHECK)

# **EXHIBIT B**

# Earnings Statement

Period Ending: 01/23/2010  
Pay Date: 01/29/2010

Taxable Marital Status: Married  
Exemptions/Allowances:  
Federal: 07  
State: 07;

DELISSA SINGLETON  
6597 HWY. 17 N.  
AWENDAW, SC 29429

| Earnings         | rate    | hours | this period        | year to date    | Important Notes |
|------------------|---------|-------|--------------------|-----------------|-----------------|
| Regular          | 17.4300 | 72.00 | 1,254.96           |                 |                 |
| Overtime         | 26.1450 | 10.02 | 261.97             |                 |                 |
| Holiday          | 17.4300 | 8.25  | 143.80             |                 |                 |
| Incentive        | 17.4300 | 5.83  | 1.75               |                 |                 |
| <b>Gross Pay</b> |         |       | <b>\$ 1,662.48</b> | <b>3,786.51</b> |                 |

| Deductions          | Statutory |                |         |
|---------------------|-----------|----------------|---------|
| Social Security Tax |           | 87.27-         | 187.38- |
| Medicare Tax        |           | 20.41-         | 43.82-  |
| SC Withholding Tax  |           | 30.81-         | 44.84-  |
| <b>Other</b>        |           |                |         |
| Colonial Cancer     |           | 31.50-         |         |
| 401K Loan           |           | 63.73-         |         |
| Dir Dep-Checking    |           | 1,090.85-      |         |
| *Medical            |           | 243.28-        |         |
| *Dental             |           | 11.49-         |         |
| *401K Deduction     |           | 83.12-         |         |
| <b>Net Pay</b>      |           | <b>\$ 0.00</b> |         |

\* This deduction reduces taxable gross.

Payroll check number: 00040077  
Period Ending: 01/23/2010  
Pay Date: 01/29/2010

Pay to the  
order of **DELISSA SINGLETON**  
This Amount: **NO AND 00/100 DOLLARS**

**\$0.00**

**NON-NEGOTIABLE**  
(THIS IS NOT A CHECK)

# **EXHIBIT C**

Not Reported in F.Supp.2d, 2001 WL 1854501 (D.S.C.)

Motions, Pleadings and Filings

Judges and Attorneys

Only the Westlaw citation is currently available.

United States District Court, D. South Carolina.  
**Howard James WAY, Jr., and Diedra Way, Plaintiffs,**  
v.  
THE UNITED STATES of America Defendant/Third-Party Plaintiff,  
v.  
**ALLSTATE INSURANCE COMPANY, Third-Party Defendant.**

No. 7:00CV819-24.

April 16, 2001.

Lawrence E. Flynn, Jr., Perrin Perrin Mann and Patterson, Ben C Harrison, Harrison White Smith Hayes and Coggins, Spartanburg, for Howard James Way, Jr, Diedra Way, plaintiffs.

John Douglas Barnett, U.S. Attorneys Office, Columbia, for USA, defendants.

ORDER

SEYMOUR, District J.

\*1 Plaintiffs Howard and Diedra Way brought this action under the Federal Tort Claims Act, 28 U.S.C. §§ 2671-2680, (FTCA) to recover damages for personal injuries and property damage they suffered as a result of an automobile accident allegedly caused by the negligence of Randy E. Parker, a United States Postal Service (USPS) employee. The matter is before the court on cross-motions for summary judgment filed by the United States and Allstate Insurance Company (Allstate).

Factual Background

Parker is a rural letter carrier for the USPS. He drives his own car to deliver the mail. On August 8, 1997, while Parker was delivering the mail, his vehicle collided with Plaintiffs' vehicle. After Plaintiffs brought suit under the FTCA, the United States sought indemnity as an additional insured under an automobile insurance policy issued by Allstate to Parker. Allstate denied coverage to the United States, citing an exclusion in the policy.

Discussion

In its memorandum in support of its motion for summary judgment, Allstate argues that coverage is barred by an applicable exclusion. At the hearing on these motions, Allstate raised the additional argument that the United States is not an additional insured under the policy. The court addresses these arguments separately.

The court first considers whether the United States is a additional insured under the policy issued by Allstate to Parker. The policy defines "Insured Persons" to include:

Any other person or organization liable for the use of an insured auto if the auto is not owned or hired by this person or organization.

Third-Party Compl. Ex. B at p. 5.

The parties do not dispute that the United States is liable for damages caused by the negligence of one of its employees while acting within the scope of his employment. See 28 U.S.C. §§ 2674 and 2679(b). A majority of courts examining similar contract language under similar circumstances have held that the United States qualifies as an additional insured. See, e.g., United States v. Myers, 363 F.2d 615, 618 (5th Cir. 1966) ("an unbroken line of cases, presenting this very question and involving

the same or very similar contract language, has definitively answered the question in favor of the United States."). The policy language in this case differs from that found in *Myers* because it provides that an organization will not qualify as an additional insured if the organization "owned or hired" the auto. There is no evidence, however, that the USPS owned Parker's vehicle or hired the vehicle. Therefore, the court finds that the United States qualifies as an additional insured under the policy.

Allstate argues that, even if the United States is an additional insured under the policy, an applicable exclusion bars coverage. The exclusion at issue provides, in pertinent part,

This coverage does not apply to liability for:

(1) your Insured auto while used to carry persons or property for a charge[.]

\*2 Third-Party Compl. Ex. B at p. 6. Allstate argues that this language bars coverage because, at the time of the accident involving Plaintiffs, Parker was carrying property, i.e., the mail, and was being compensated to do so.

Allstate's position finds support in the decision of the Eighth Circuit Court of Appeals in *United States v. Milwaukee Guardian Ins. Co.*, 966 F.2d 1246 (8th Cir. 1992). In that case, a rural letter carrier, Goltz, was delivering phone books at the time of an accident. An exclusion in an automobile insurance policy issued by Milwaukee Guardian to Goltz excluded coverage for "bodily injury or property damage arising out of the ownership, maintenance or use of a vehicle when used to carry persons or property for a charge." *Id.* at 1247. In holding the exclusion barred coverage, the court reasoned,

The postal service ... is paid a fee by whoever uses its delivery service. The fee paid covers the cost of delivery of the mailed material. The postal employee, here a rural mail carrier, carries out the deliveries. The employee is not divorced from, but is a part of, the postal service. Clearly, the employee is carrying property for a charge. Thus, the policy clause in question applies to exclude insurance coverage for the accident arising out of the use of Goltz's vehicle to deliver mail.

*Id.*

Other courts confronting nearly identical factual scenarios have reached contrary results. For example, in *Richards v. Office of Postal Inspector*, No. C 88-7379, 1989 WL 319835 (N.D. Ohio Feb. 21, 1989), language in a rural letter carrier's personal automobile insurance policy excluded coverage for liability "arising out of the ownership or operation of a vehicle while it is being used to carry persons or property for a fee." *Id.* at \*3. In holding the exclusion did not bar coverage to the United States, the court reasoned,

No money was paid directly to Mr. Hout [a rural letter carrier] for the use of his vehicle. Given the best possible scenario, Mr. Hout received compensation only indirectly through the cost of postal charges. Individuals wishing to mail a letter or parcel pay their money to the postal center, not Mr. Hout. In other words, Mr. Hout does not charge a fee to individuals to deliver their mail.

*Id.* at \*5.

Significantly, the court's analysis in *Richards* was influenced by the "universal rule that insurance policies are to be construed in favor of the insured." *Id.* Several courts have found that exclusions like the one involved in this case are ambiguous and therefore must be construed against the insurer. See, e.g., *Cincinnati Ins. Co. v. West American Ins. Co.*, 112 F.Supp.2d 718, 721 (C.D. Ill. 2000) (listing decisions finding "for a fee" and "for a charge" language is ambiguous); *Oziubakowski v. United States*, No. CIV-2-94-47, 1994 WL 914019, at \*5 (E.D. Tenn. Dec. 2, 1994) (noting that the "weight of authority" finds similar exclusionary language is ambiguous).

\*3 The court finds the exclusionary language at issue is ambiguous. Specifically, the language "for a charge" is ambiguous because it is unclear whether it refers only to a per-trip charge, or to any wages paid to an employee whose duties include delivering property. In South Carolina, where

language used in an insurance contract is capable of two reasonable interpretations, the construction which is most favorable to the insured should be adopted. Edens v. S.C. Farm Bureau Mut. Ins. Co., 308 S.E.2d 670, 671 (1983). Accordingly, the court holds that the exclusion does not bar coverage to the United States as an additional insured.

#### Conclusion

For the foregoing reasons, the United States' motion for summary judgment is granted and Allstate's motion for summary judgment is denied.

IT IS SO ORDERED.

D.S.C., 2001.

Way v. U.S.

Not Reported in F.Supp.2d, 2001 WL 1854501 (D.S.C.)

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Judges

• **Seymour, Hon. Margaret B.**

United States District Court, South Carolina  
South Carolina

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STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT  
CASE NO.: 2010-CP-10-7647

Victoria Fire & Casualty Insurance )  
Company, )

Plaintiff, )

v. )

Charles P. Singleton and Delissa )  
Singleton, )

Defendants. )

**MEMORANDUM OF LAW IN SUPPORT OF  
DEFENDANTS' MOTION FOR SUMMARY  
JUDGMENT AND IN OPPOSITION TO  
PLAINTIFF'S MOTION FOR SUMMARY  
SUMMARY JUDGMENT**

Defendants Charles P. Singleton and Delissa Singleton (hereinafter "Singleton"), submit this Memorandum of Law in support of their motion for summary judgment and in opposition to Plaintiff's motion for summary judgment.

**INTRODUCTION**

The material facts are undisputed. On June 5, 2009 and January 29, 2010, Delissa Singleton (hereinafter "Singleton") was involved in automobile accidents while driving a CARTA bus. Neither accident was deemed to be her fault. Singleton suffered significant injuries in these accidents. She has undergone neck surgery and continues to receive medical treatment relative to her back condition. Her medical expenses relative to these accidents exceed the sum of \$100,000.00. Singleton has settled her liability claims with the respective at-fault drivers and their insurance carriers who tendered the full limits of their policies.

At the time of these accidents, the Singletons were insured under a policy of automobile liability insurance issued by Victoria Fire & Casualty Insurance Company (hereinafter "Victoria"). The Singletons' policy [62379093-3] includes underinsured

motorist coverage (hereinafter "UIM") containing limits of \$25,000.00 per person and \$50,000.00 per accident. Singleton has demanded that Victoria pay policy limits of \$25,000.00 per accident for a total of \$50,000.00 relative to her two UIM claims.

Victoria denied Singleton's UIM claims based on the following policy exclusion:

*Coverage Exclusions*

*Coverage does not apply:*

\*\*\*

7. *To use of any motor vehicle by an insured:*

- a) *to carry persons or property for a fee; or*
- b) *for retail or wholesale delivery, including but not limited to pizza, magazine, newspaper and mail delivery. [Emphasis Added.]*

*This exclusion does not apply to motor vehicles used in shared-expense car pools.*

On September 17, 2009, Victoria filed a Declaratory Judgment Complaint seeking a declaration that the above exclusion bars Singleton's UIM claims. Victoria alleged that this exclusion applies as Singleton was driving a bus for CARTA at the time of the accidents and that passengers riding the bus must pay a fee to ride. Singleton answered the Complaint, denied that the exclusion applied and sought a declaration that coverage applies to her UIM claims.

**FACTUAL BACKGROUND**

Singleton's employment with Veolia Transportation, Inc., the operator of CARTA, began in 2005. Prior to and at the time of the accidents, Singleton worked approximately forty hours per week and was paid hourly. Pay stubs from the time of the two accidents were attached to Singleton's motion for summary judgment and reflect hourly rates of pay of \$17.00 and \$17.43 per hour respectively. Singleton received no bonus or additional compensation beyond her hourly rate. Her pay was not associated

with passenger volume or limited to periods when passengers were occupying the bus which she was operating.

In addition to driving, Singleton had additional job responsibilities for which she was compensated at the same hourly rate of pay. These responsibilities included the following:

- a) inspecting and verifying the bus's tire pressure;
- b) checking the bus's brake and tail lights;
- c) verifying adequate fuel supply;
- d) stocking the bus with route maps and CARTA promotional materials;
- e) ensuring passenger notification system was operable;
- f) inspecting wheelchair ramp;
- g) inspecting bicycle ramp; and
- h) changing route display.

CARTA drivers are not involved in the payment of fees or fares. Fare paying passengers insert \$1.50 into an automated box located at the entrance of the bus. Drivers carry no change and retain no record of fare payment. If a passenger does not have exact change, they are unable to ride. Lowcountry schools have entered into agreements with CARTA where students ride for free. A copy of an article published in the Post and Courier on June 11, 2011 is attached hereto as Exhibit A and reflects that the College of Charleston and Medical University of South Carolina entered into agreements with CARTA in 2003, 2007 and 2011 under which students can ride for free.

Singleton's bus was nearly empty at the time of both accidents. The student riding Singleton's bus at the time of the June 5, 2009 accident paid no fare. As for the

January 29, 2010 accident, Singleton's bus was occupied by two passengers who had personally inserted the \$1.50 fare into the bus's fare box.

### LAW

Contrary to Victoria's assertion, identical and similar exclusions have been considered by numerous courts, including courts in South Carolina, who have determined that such exclusions do not bar coverage to hourly employees involved in motor vehicle accidents while working. In United States of America v. Allstate Insurance Company, 2001 WL 1854501 (D.S.C. 2001) *Allstate* sought a declaration that coverage did not apply to a rural letter carrier for the U.S. Postal Service who caused an accident in South Carolina while delivering the mail in his own car. The policy language that *Allstate* contended excluded coverage reads as follows:

*This coverage does not apply to liability for:*

(1) *your insured auto while used to carry persons or property for a charge[.]*

*Allstate* maintained that its insured, a rural letter carrier, was carrying property, the mail, for a charge, thus, excluding coverage. In this case, Victoria maintains that it's insured, Singleton, was carrying persons for a charge, thus, excluding coverage.

Judge Seymour found that *Allstate's* exclusion did not bar coverage and reasoned that *Allstate's* "for a charge" language is ambiguous in that it is unclear as to whether it referred to a per trip charge or any wage paid to an employee whose duties included delivering persons or property. Judge Seymour's focus on the distinction between a specific fee and general compensation is noteworthy in that most courts considering such exclusionary language scrutinize such terms in their analysis. As a result, many carriers

have amended their policies to address the inherent ambiguity in the meaning of the term "fee."

In denying the relief sought by *Allstate* and in determining that coverage applied, Judge Seymour restated the general rule in South Carolina that, "*where language used in an insurance contract is capable of two reasonable interpretations, the construction that is most favorable to the insured should be adopted.*" *Edens v. S.C. Farm Bureau Mut. Ins. Co.*, 308 S.E.2d 670, 671 (1983) and 279 S.C. 377, 378 (1983).

Judge Seymour also cited *Richards v. Office of Postal Inspector*, 1989 WL 319835 (N.D. Ohio Feb. 21, 1989). In *Richards*, the Court also considered an exclusion to coverage "*arising out of the ownership or operation of a vehicle while it is being used to carry persons or property for a fee.*" In finding the exclusion inapplicable, the Court reasoned that the driver did not charge a fee to individuals to deliver their mail and that those wishing to mail a letter or parcel made payment to the postal center not the letter carrier. Judge Seymour noted that "*several courts have found that exclusions like the one at issue in this case are ambiguous and, therefore, must be construed against the insurer.*" See E.G. *Cincinnati Ins. Co. v. West American Insurance Company*, 112 F. Supp.2d 718, 721 (C.D.Ill.2000) (listing decisions finding "for a fee" and "for a charge" language is ambiguous); *Dziubakowski v. United States*, No. CIV-2-94-47, 1994 WL 914019, at \*5 (E.D.Tenn. December 2, 1994) (noting that the "weight of authority" finds similar exclusionary language is ambiguous.)

In *Progressive Gulf Insurance Co. v. We Care Daycare Center, Inc., et al.*, 953 S.2d 250 (2006), the Mississippi Court of Appeals considered the following more expansive exclusion which *Progressive* maintained barred coverage:

"liability coverage did not apply to:

- '1. *bodily injury or property damage arising out of the ownership, maintenance or use of a vehicle while being used to carry persons or property for compensation or a fee, including, but not limited to, delivery of magazines, newspapers, food, or any other products.*" [Emphasis Added.]

Progressive maintained that the driver of an adult daycare center who was involved in an accident while utilizing his personal vehicle to transport residents was not entitled to coverage. The Court found that the exclusion was ambiguous and construed the exclusionary language in favor of the insured and determined that coverage existed. The Court noted that the driver received no payment from his employer based on the number of patients transported and did not receive any payment from the passengers themselves. Unlike the exclusion in the present case, the *Progressive* exclusion included the term "*compensation*." *Progressive* admitted that the term "*fee*" was ambiguous but argued that the term "*compensation*" cured the inherent ambiguity in "*fee*." *Progressive* contended that, "the term '*compensation*' has a broader meaning than '*fee*' and clearly signifies any payment of money from any source whatsoever." After careful consideration, the Court construed *Progressive's* exclusion against the insurer and in favor of their insured.

In *RPM Pizza, Inc. and National Union Insurance Company v. Automotive Casualty Insurance Company*, 601 So. 2d 1366 (1992), the Louisiana Supreme Court considered an automobile liability clause which stated:

*"we do not provide liability coverage for any persons covered under the policy...*

*For that person's liability arising out of the ownership or operation of a vehicle while it is being used to carry persons or property for a fee."*

In *RPM*, drivers were using their own cars to deliver pizza. Automotive Casualty denied coverage and argued that said drivers were carrying property for a fee. As in the present case, drivers were receiving an hourly wage and were not paid on a piece meal or per delivery basis.

The exclusion considered by the Court in *RPM* is identical to the exclusion at issue in this case. In *RPM*, the Court focused on the different meanings of the term "fee" and referenced Webster's Ninth New Collegiate Dictionary (1988) which defines the term 'fee' as "a fixed charge...a charge for a professional service" and Black's Law Dictionary which contains several different definitions of 'fee' including "a recompense for an official or professional service or a charge or emolument or compensation for a particular act or service. A fixed charge or a perquisite charged as recompense for labor; reward, compensation, or wage given to a person for performance of services or something done or to be done."

In *RPM*, the Court interpreted the policy exclusion referring to "fee" as a fixed charge rather than as wages or compensation generally. According to the Court, to interpret "fee" so broadly as to include any compensation paid to the driver by his employer would impermissibly destroy coverage for all such uses. The Court concluded that the exclusion was not implicated merely by the paying of any form of compensation such as hourly wages to a driver.

In support of its decision, the Court noted that its interpretation was in accord with that of the majority of other jurisdictions which have considered such exclusions, including courts in Tennessee, Arkansas, Georgia and Ohio, United Services Automobile Association v. Couch, 643 S.W. 2d 668 (Tenn.App.1982), Pizza Hut of America, Inc. v.

West General Insurance Co., 36 Ark.App. 16, 816 S.W.2d 638 (1991), First Georgia Insurance Co. v. Goodrum, 187 Ga.App. 314, 370 S.E.2d 162 (1988) and Nationwide Insurance Co. v. Thorley, 1991 WL 6137 Ohio App. Lexis 210 (Ohio.App. January 16, 1991).

In *Thorley*, the Court considered the following exclusion:

*"This Uninsured Motorists insurance does not apply as follows:*

1. *It does not apply to the use of any vehicle by an insured to carry persons or property for a fee."*

Nationwide contended that this exclusion barred coverage relative to a motor vehicle accident involving a commercial truck driver who was carrying goods and being paid for driving. The Court disagreed and found the exclusion to be ambiguous as the driver's pay was unrelated to whether he was, in fact, carrying goods in his truck. The Court noted that the driver was paid for time spent and distance traveled regardless of whether goods were carried or not. As in South Carolina, the Court cited the rule that ambiguities in insurance contracts are to be construed strictly against the insurer and due to the ambiguity of this language, coverage was not excluded.

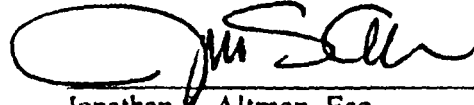
The above cases, which find that this type of exclusion is ambiguous, are consistent with South Carolina law and Judge Seymour's reasoning in *Allstate*. For the reasons set forth above, Victoria's exclusion does not bar coverage to Singletons' claims.

#### CONCLUSION

For the reasons stated above, Singleton respectfully requests that summary judgment be granted in their favor as there is no genuine issue as to material fact and that coverage applies to Singletons' claims.

Respectfully submitted,

Date: July 22, 2011



Jonathan S. Altman, Esq.  
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*Attorney for the Defendants Charles  
P. Singleton and Delissa Singleton*

# **EXHIBIT A**

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Monday, July 11, 2011 Good Morning!

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## Downtown colleges renew bus deals

BY CAITLIN O'DONNELL  
[codonnell@postandcourier.com](mailto:codonnell@postandcourier.com)  
Sunday, July 10, 2011

Buzz

7

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The Charleston Area Regional Transportation Authority has renewed partnerships with the College of Charleston and Medical University of South Carolina, providing services to students, faculty and staff at the schools' costs.

Representatives at MUSC and College of Charleston said they entered the partnership in 2007 and 2003, respectively, due to limited parking and with the goal of decreasing traffic on the peninsula.

It also demonstrates the benefits of the transit system to those who might not use it, said Christine Wilkinson, interim executive director at CARTA. About 25 percent of the ridership comes from the two schools.

"When you get someone who finds that transit works for them, it opens other people to the possibility and overall it encourages ridership," she said.

Students, faculty and staff particularly love that the service is on the university's dime, said Jan Brewton, director of auxiliary services at the College of Charleston. Parking on campus or in downtown garages can cost between \$700 and \$800 a year.

For the 2010-2011 school year, College of Charleston paid CARTA \$150,000, which includes a fee for both a shuttle from the aquarium to campus and 90 cents each for the 80,000 single rides taken.

"In rough budget times especially, it's a wonderful thing to provide," Brewton said. "It's a win-win for everyone. It enables us to walk the walk when talking about being a green and sustainable campus."

At MUSC, the partnership coincided with the increase in gas prices, leading to a higher ridership, and the numbers have been directly related ever since, according to John

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Runyon, director of business services at MUSC. A total of about 25,000 trips are taken by MUSC ID holders each month.

Through the partnership, CARTA also augmented an existing shuttle system to move people to and from the campus more effectively during rush-hour traffic. At a cost of about \$750,000 a year, Runyon said paying for the CARTA service is more beneficial cost-wise than building more garages.

"It's a good deal for employees, the state, visitors or anyone with a stake in Charleston traffic," he said.

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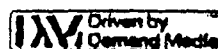
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(Cite as: 2001 WL 1854501 (D.S.C.))

**C**  
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John Douglas Barnett, U.S. Attorneys Office, Columbia, for USA, defendants.

#### ORDER

SEYMOUR, District J.

\*1 Plaintiffs Howard and Diedra Way brought this action under the Federal Tort Claims Act, 28 U.S.C. §§ 2671-2680, (FTCA) to recover damages for personal injuries and property damage they suffered as a result of an automobile accident allegedly caused by the negligence of Randy E. Parker, a United States Postal Service (USPS) employee. The matter is before the court on cross-motions for summary judgment filed by the United States and Allstate Insurance Company (Allstate).

#### Factual Background

Parker is a rural letter carrier for the USPS. He drives his own car to deliver the mail. On August 8, 1997, while Parker was delivering the mail, his vehicle collided with Plaintiffs' vehicle. After Plaintiffs brought suit under the FTCA, the United States sought indemnity as an additional insured under an automobile insurance policy issued by Allstate to Parker. Allstate denied coverage to the United States, citing an exclusion in the policy.

#### Discussion

In its memorandum in support of its motion for summary judgment, Allstate argues that coverage is barred by an applicable exclusion. At the hearing on these motions, Allstate raised the additional argument that the United States is not an additional insured under the policy. The court addresses these arguments separately.

The court first considers whether the United States is a additional insured under the policy issued by Allstate to Parker. The policy defines "Insured Persons" to include:

Any other person or organization liable for the use of an insured auto if the auto is not owned or hired by this person or organization.

Third-Party Compl. Ex. B at p. 5.

The parties do not dispute that the United States is liable for damages caused by the negligence of one of its employees while acting within the scope of his employment. See 28 U.S.C. §§ 2674 and 2679(b). A majority of courts examining similar contract language under similar circumstances have held that the United States qualifies as an additional insured. See, e.g., *United States v. Myers*, 363 F.2d 613, 618 (5th Cir. 1966) ("an unbroken line of cases, presenting this very question and involving the same or very similar contract language, has definitively answered the question in favor of the United States."). The policy language in this case differs from that found in *Myers* because it provides that an organization will not qualify as an additional insured if the organization "owned or hired" the auto. There is no evidence, however, that the USPS owned Parker's vehicle or hired the vehicle. Therefore, the court finds that the United States qualifies as an additional insured under the policy.

Allstate argues that, even if the United States is an additional insured under the policy, an applicable exclusion bars coverage. The exclusion at issue provides, in pertinent part,

This coverage does not apply to liability for:

Not Reported in F.Supp.2d, 2001 WL 1854501 (D.S.C.)  
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\*2 Third-Party Compl. Ex. B at p. 6. Allstate argues that this language bars coverage because, at the time of the accident involving Plaintiffs, Parker was carrying property, i.e., the mail, and was being compensated to do so.

Allstate's position finds support in the decision of the Eighth Circuit Court of Appeals in United States v. Milwaukee Guardian Ins. Co., 966 F.2d 1246 (8th Cir. 1992). In that case, a rural letter carrier, Goltz, was delivering phone books at the time of an accident. An exclusion in an automobile insurance policy issued by Milwaukee Guardian to Goltz excluded coverage for "bodily injury or property damage arising out of the ownership, maintenance or use of a vehicle when used to carry persons or property for a charge." *Id.* at 1247. In holding the exclusion barred coverage, the court reasoned,

The postal service ... is paid a fee by whoever uses its delivery service. The fee paid covers the cost of delivery of the mailed material. The postal employee, here a rural mail carrier, carries out the deliveries. The employee is not divorced from, but is a part of, the postal service. Clearly, the employee is carrying property for a charge. Thus, the policy clause in question applies to exclude insurance coverage for the accident arising out of the use of Goltz's vehicle to deliver mail.

*Id.*

Other courts confronting nearly identical factual scenarios have reached contrary results. For example, in Richards v. Office of Postal Inspector, No. C 88-7379, 1989 WL 319835 (N.D. Ohio Feb. 21, 1989), language in a rural letter carrier's personal automobile insurance policy excluded coverage for liability "arising out of the ownership or operation of a vehicle while it is being used to carry persons or property for a fee." *Id.* at \*3. In holding the exclusion did not bar coverage to the United States, the court reasoned,

No money was paid directly to Mr. Hout [a rural letter carrier] for the use of his vehicle. Given the best possible scenario, Mr. Hout received compensa-

tion only indirectly through the cost of postal charges. Individuals wishing to mail a letter or parcel pay their money to the postal center, not Mr. Hout. In other words, Mr. Hout does not charge a fee to individuals to deliver their mail.

*Id.* at \*5.

Significantly, the court's analysis in Richards was influenced by the "universal rule that insurance policies are to be construed in favor of the insured." *Id.* Several courts have found that exclusions like the one involved in this case are ambiguous and therefore must be construed against the insurer. See, e.g., Cincinnati Ins. Co. v. West American Ins. Co., 112 F.Supp.2d 718, 721 (C.D. Ill. 2000) (listing decisions finding "for a fee" and "for a charge" language is ambiguous); Dzlibakowski v. United States, No. CIV-2-94-47, 1994 WL 914019, at \*5 (E.D. Tenn. Dec. 2, 1994) (noting that the "weight of authority" finds similar exclusionary language is ambiguous).

\*3 The court finds the exclusionary language at issue is ambiguous. Specifically, the language "for a charge" is ambiguous because it is unclear whether it refers only to a per-trip charge, or to any wages paid to an employee whose duties include delivering property. In South Carolina, where language used in an insurance contract is capable of two reasonable interpretations, the construction which is most favorable to the insured should be adopted. Edens v. S.C. Farm Bureau Mut. Ins. Co., 308 S.E.2d 670, 671 (1983). Accordingly, the court holds that the exclusion does not bar coverage to the United States as an additional insured.

#### Conclusion

For the foregoing reasons, the United States' motion for summary judgment is granted and Allstate's motion for summary judgment is denied.

IT IS SO ORDERED.

D.S.C., 2001.  
Way v. U.S.  
Not Reported in F.Supp.2d, 2001 WL 1854501  
(D.S.C.)

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(Cite as: 2001 WL 1854501 (D.S.C.))

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Westlaw.

308 S.E.2d 670  
279 S.C. 377, 308 S.E.2d 670, 40 A.L.R.4th 862  
(Cite as: 279 S.C. 377, 308 S.E.2d 670)

Page 1

P

Supreme Court of South Carolina.  
J.M. EDENS, Jr., Appellant,  
v.  
SOUTH CAROLINA FARM BUREAU MUTUAL  
INSURANCE COMPANY, Respondent.

No. 21929.  
Oct. 19, 1983.

Insured brought action to recover under homeowner's policy after his home was destroyed by fire. The Court of Common Pleas, Sumter County, Ernest A. Finney, Jr., J., entered judgment in favor of insurer, and insured appealed. The Supreme Court, Gregory, J., held that insurer's cancellation of insured's policy allegedly sent by regular mail, rather than certified or registered, with no return receipt requested, was ineffective because insured never received notice.

Reversed and remanded.

Harwell, J., filed dissenting opinion, in which Littlejohn, J., joined.

West Headnotes

111 Insurance 217 ⇨ 1832(1)

217 Insurance

217XIII Contracts and Policies

217XIII(G) Rules of Construction

217k1830 Favoring Insureds or Beneficiaries; Disfavoring Insurers

217k1832 Ambiguity, Uncertainty or Conflict

217k1832(1) k. In General. Most

Cited Cases

(Formerly 217k146.7(1))

Where language used in insurance contract is ambiguous, or where it is capable of two reasonable interpretations, that construction which is most favorable to insured will be adopted.

121 Insurance 217 ⇨ 1929(7)

217 Insurance

217XIII Contracts and Policies

217XIII(N) Cancellation or Revocation by Insurer

217k1927 Procedure for Cancellation

217k1929 Notice

217k1929(6) Service or Mailing

217k1929(7) k. In General. Most

Cited Cases

(Formerly 217k229(2.1), 217k229(2))

Provision for cancellation of homeowner's policy by giving insured five days' written notice of cancellation was clearly ambiguous as to method of giving notice, and ambiguity had to be resolved in favor of insured and construed to mean some method of notice other than perfunctorily dropping letter in regular mail.

131 Insurance 217 ⇨ 1929(7)

217 Insurance

217XIII Contracts and Policies

217XIII(N) Cancellation or Revocation by Insurer

217k1927 Procedure for Cancellation

217k1929 Notice

217k1929(6) Service or Mailing

217k1929(7) k. In General. Most

Cited Cases

(Formerly 217k229(2.3))

Where cancellation clause provides that insurer may cancel by mailing notice to insured's address, or where it contains substantially similar language, mere mailing is sufficient to effect cancellation.

141 Insurance 217 ⇨ 1929(2)

217 Insurance

217XIII Contracts and Policies

217XIII(N) Cancellation or Revocation by Insurer

217k1927 Procedure for Cancellation

217k1929 Notice  
217k1929(2) k. Sufficiency in Gen-  
eral. Most Cited Cases  
(Formerly 217k229(2.2))

Term "giving written notice" in insurance policy means that insured shall personally receive notice in such manner that insured becomes aware of having received it, and actual receipt is condition precedent to cancellation of such policy.

151 Insurance 217 1935

217 Insurance  
217XIII Contracts and Policies  
217XIII(N) Cancellation or Revocation by  
Insurer  
217k1935 k. Evidence. Most Cited Cases  
(Formerly 217k235)

Cancellation of insurance policy is affirmative defense which must be proved by preponderance of evidence.

161 Insurance 217 1929(7)

217 Insurance  
217XIII Contracts and Policies  
217XIII(N) Cancellation or Revocation by  
Insurer  
217k1927 Procedure for Cancellation  
217k1929 Notice  
217k1929(6) Service or Mailing  
217k1929(7) k. In General. Most  
Cited Cases  
(Formerly 217k235, 217k229(2.2))

Insurer failed, as matter of law, to offer proof of any probative value that insured received alleged notice of homeowner's policy cancellation which insurer allegedly sent by regular mail, not registered or certified, with no return receipt requested, and thus cancellation of policy, which required five days' written notice of cancellation, was ineffective because insured never received notice.

\*\*670 \*378 David W. Goldman, Bryan, Bahnmuller, King, Goldman & McElveen, Sumter, for appellant.

M.M. Weinberg, Jr., Weinberg, Brown & McDou-

gall, Sumter, for respondent.

We granted a Petition for Rehearing in this case. Upon reconsideration, the Opinion of this Court, Number 21929, filed May 25, 1983, is withdrawn and the following Opinion substituted therefor.

GREGORY, Justice:

Appellant J.M. Edens, Jr. brought this action to recover proceeds allegedly due under a homeowner's insurance policy issued by respondent South Carolina Farm Bureau Mutual Insurance Company. A jury returned a verdict for respondent. Appellant appeals, alleging the trial court erred in refusing to direct a verdict in appellant's favor or grant a judgment n.o.v. We agree \*\*671 and reverse and remand for entry of judgment in favor of appellant.

\*379 Appellant had in force for approximately twenty (20) years a policy of homeowner's insurance issued by respondent. Appellant's home, valued at Seventy Thousand (\$70,000) Dollars, and its contents, valued at Thirty Five Thousand (\$35,000) Dollars, were completely destroyed by fire. Respondent denied liability alleging it cancelled the policy two months prior to the fire.

Appellant contends the cancellation was ineffective because he never received the notice. We agree.

The notice of cancellation in this case was allegedly sent by *regular* mail, rather than certified or registered, and no return receipt was requested. Appellant denied receiving the notice. The policy did not specify the method for giving notice other than to state that cancellation by respondent could be effected "by giving to the insured a five days' written notice of cancellation."

[1][2] Where language used in an insurance contract is ambiguous, or where it is capable of two reasonable interpretations, that construction which is most favorable to the insured will be adopted. See cases collected in 11A West's South Carolina Digest, Insurance Key No. 146.7(1). The provision for cancellation "by giving to the insured a five days' written notice of cancellation" was clearly ambiguous as to the method of giving notice. This ambiguity should be resolved in favor of the insured and construed to mean some method of notice other than perfunctorily dropping a letter in the regular mail.

[3] Where a cancellation clause provides that the insurer may cancel by mailing the notice to the insured's address or where it contains substantially similar language, the mere mailing is sufficient to effect cancellation. Moore v. Palmetto Bank, 238 S.C. 341, 120 S.E.2d 231 (1961). Respondent's reliance on Moore to defeat recovery under this policy is misplaced. <sup>ENL</sup> No authority has been cited which holds the terms "mailing written notice" and "giving written notice" are necessarily synonymous or substantially similar.

ENL. The cancellation clause of the insurance policy in Moore read:

This policy may be canceled by the company by mailing to the insured named in Item 1 of the declarations at the address shown in this policy written notice stating when not less than ten days thereafter such shall be effective. *The mailing of notice as aforesaid shall be sufficient proof of notice.* (Emphasis added) 238 S.C. at 344, 120 S.E.2d 231.

\*380 [4] The term "giving written notice" means that the insured shall personally receive the notice in such manner that the insured becomes aware of having received it. "The provision involves a physical delivery to the insured of a document of which he becomes personally aware. This cannot be accomplished by depositing a document in the mail which he may or may not receive." Selken v. Northland Insurance Company, 249 Iowa 1046, 90 N.W.2d 29 (1958).

Moreover, courts universally have held that where a policy provides for cancellation by giving notice to the insured of a specified number of days, actual receipt of cancellation by the insured is a precondition to cancellation. Aunt., 64 A.L.R.2d 982 (1959). The policy we are dealing with calls for the giving of notice; thus, actual receipt is a condition precedent to a cancellation of the policy by the insurer.

[5][6] Cancellation of an insurance policy is an affirmative defense which must be proved by a preponderance of the evidence. We are of the opinion respondent failed, as a matter of law, to offer proof of

any probative value that appellant received the alleged notice of cancellation. Therefore, we hold the trial judge erred in failing to direct a verdict for appellant.

Because of our disposition of this issue, we need not address appellant's remaining exceptions.

Accordingly, we reverse and remand for entry of judgment in favor of appellant.

REVERSED and REMANDED.

\*\*672 LEWIS, C.J., and NESS, J., concur.  
LITTLEJOHN and HARWELL, JJ., dissent.

HARWELL, Justice (dissenting):

The evidence in the case at bar was ample to submit to the jury the issue of whether the insured received the cancellation notice. In ruling on a motion for a directed verdict, the judge views all the evidence and reasonable inferences from the evidence in the light most favorable to the party resisting the motion. Jones v. Broome, 277 S.C. 295, 286 S.E.2d 664 (1982).

Respondent's agents testified at trial that on August 13, \*381 1974 a cancellation notice and a refund check for the unearned premium were sent to appellant by its normal cancellation procedure. That procedure included entering appellant's name and address in respondent's mailing book, taking appellant's cancellation notice and refund check to the post office, paying the postage, giving the envelope to the post office, and receiving a post office receipt for the envelope. Respondent's mailing book contained appellant's correct address.

Although appellant testified he never received the cancellation notice or check and respondent's records reflect that the refund check has not cleared the bank, two mortgage holders on the premises received notices of cancellation. Agents of the Federal Land Bank and the National Bank of South Carolina testified that they received the cancellation notices.

The trial court adequately charged the law of this state to the jury. The trial court presented the issue as two equally weighted questions for the jury: (1) whether the insured mailed the notice properly ad-

dressed with postage prepaid, and (2) whether the insurer received the notice. The jury charge correctly stated the law as espoused in Glenn v. Western Union Telegraph Co., 84 S.C. 155, 163, 65 S.E. 1024, 1027 (1909). This Court stated in that decision:

Evidence that (it was) mailed, properly addressed with postage prepaid, raises a presumption that (it was) received by the addressees, but when receipt of (it) is denied, it raises as strong a presumption that (it was) never mailed, and *it was for the jury to say whether they were or not.* (Emphasis added)

The jury in the case at bar found that appellant had received the cancellation notice. Moreover, our law does not require an insurer to prove the insured received a cancellation notice; it merely requires the insurer to prove it properly mailed the notice to the insured's address. The policy in question provides that it may be cancelled by giving the insured a five days' written notice. This court has held that where a cancellation clause provides that the insurer may cancel by mailing the notice to the insured's address or where the clause contains substantially similar language, the mere mailing is sufficient to effect a cancellation. The actual receipt\*382 is not a condition precedent to cancellation. Moore v. Palmetto Bank, 238 S.C. 341, 120 S.E.2d 231 (1961).

Admittedly, respondent could have alleviated the problem by sending the notice by registered or certified mail. However, our legislature does not require fire insurers to use any particular medium for notifying insureds that their policies have been cancelled.<sup>EN1</sup> The policy of construing ambiguities in favor of the insured does not allow us to legislate.

EN1. Our legislature has addressed cancellation of accident and health insurance (S.C.Code Ann. § 38-35-110 (1976)) and automobile insurance (Code § 38-37-1450). In neither area does our legislature require the use of registered or certified mail. Written notice mailed to the insured's last known address is sufficient.

Accordingly, I would affirm.

LITTLEJOHN, J., concurs.

S.C., 1983.

Edens v. South Carolina Farm Bureau Mut. Ins. Co.  
279 S.C. 377, 308 S.E.2d 670, 40 A.L.R.4th 862

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(Cite as: 1989 WL 319835 (N.D. Ohio))

**C**

Only the Westlaw citation is currently available.

United States District Court, N.D. Ohio, Western  
Division.

Wayne W. RICHARDS, et al., Plaintiff(s),

v.

OFFICE OF POSTAL INSPECTOR IN CHARGE, et  
al., Defendant(s).

No. C 88-7379  
Feb. 21, 1989

David A. Rodabaugh, Lima, Ohio, for plaintiffs.

Thomas A. Karol, Asst. U.S. Atty., Toledo, Ohio, for  
Office of Postal Inspector in Charge, Edwin Meese,  
Patrick M. McLaughlin.

Timothy James, Ritter, Boesel & Robinson, Toledo,  
Ohio, for Calvin Houts, and National Mut. Group  
Ins., Inc.

**MEMORANDUM AND ORDER**

\*1 This cause is before the Court on third-party defendant's, National Mutual Group Insurance, Inc., (hereinafter "National"), motion for summary judgment, third-party plaintiff, United States of America's response thereto, and third-party plaintiff's motion for summary judgment.<sup>ENL</sup> Jurisdiction is based upon 28 U.S.C. § 1346(b). For the foregoing reasons third-party defendant's motion is denied and third-party plaintiff's motion is granted.

**FACTS**

On or about September 5, 1986 a car operated by Calvin Hout collided with a car occupied and operated by plaintiffs, the Richards. Calvin Hout is an employee of the third-party plaintiff. Further, Mr. Hout was driving his own car at the time of the accident.

Pursuant to the Federal Tort Claim Act, 28 U.S.C. § 2679(b), the Richards brought suit against the United States, claiming that the accident was caused by Mr. Hout's negligence, while acting in the scope of his employment.

At the time of the accident Mr. Hout was covered by an automobile liability insurance policy. Third-party defendant had issued said policy, which was approved by the insurance laws of the State of Ohio. The policy also had an "omnibus" clause, which extends coverage to persons using the automobile owned by the named insured. The United States claims that it is an additional insured under National's policy. National, however, believes that the United States does not qualify as an additional insured. National further alleges that even if the United States is an additional insured it is excluded, specifically, from coverage, in this instance.

**DISCUSSION**

Rule 56, Fed.R.Civ.P., directs the disposition of a motion for summary judgment. In relevant part Rule 56(c) states:

The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

The Court's function in ruling on a motion for summary judgment is to determine if any genuine issue exists for trial, not to resolve any factual issues, and to deny summary judgment if material facts are in dispute. *United States v. Articles of Device*, 527 F.2d 1008, 1011 (6th Cir.1976); *Tee-Pak, Inc. v. St. Regis Paper Co.*, 491 F.2d 1193, 1195 (6th Cir.1974). Further, "[i]n ruling on a motion for summary judgment, the evidence must be viewed in a light most favorable to the party opposing the motion." *Bouldis v. U.S. Suzuki Motor Corp.*, 711 F.2d 1319, 1324 (6th Cir.1983). To summarize, summary judgment is only appropriate when no genuine issue of material fact remains to be decided, and when the undisputed facts, viewed in a light most favorable to the non-moving party, entitle the moving party to judgment as a matter of law. *Smith v. Pan Am World Airways*, 706 F.2d 771, 773 (6th Cir.1983).

A principle purpose of summary judgment "is to

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isolate and dispose of factually unsupported claims or defenses." Celotex Corp. v. Catrett, 477 U.S. 317, 323-24 (1986). Rule 56(e) places responsibility on the party against whom summary judgment is sought to demonstrate that summary judgment is improper, either by showing the existence of a material question of fact or that the underlying substantive law does not permit such a decision. In relevant part the provision states:

\*2 When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

Rule 56(e), Fed.R.Civ.P. Rule 56(e) requires the nonmoving party to go beyond the pleadings, and by affidavits, depositions, answers to interrogatories, or admissions on file, designate specific facts showing a genuine issue for trial. Celotex Corp. v. Catrett, 477 U.S. at 324.

The parties do not dispute the fact that, under the Federal Tort Claims Act ("FTCA") the United States has full legal responsibility for any damages sustained to others as a result of Mr. Hout's negligence while acting within the scope of his employment, 28 U.S.C. § 2679(b).<sup>FN2</sup> Consequently, Mr. Hout enjoys absolute immunity. The issues thus become twofold. First, we must decide whether, under National's policy the United States qualifies as an additional insured. Second, we must decide whether, for purposes of the policy in issue, a postal carrier, during the scope of his employment, is engaged in the operation of a vehicle while it is being used to carry "property for a fee."

An "omnibus clause," in an insurance contract, extends coverage thereunder to persons using an auto owned by the named insured with express or implied permission of the latter. Black's Law Dictionary, (5th ed. 1981). Mr. Hout's contract had such a clause which read: "[f]or your covered auto, [a covered person is] 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." An omnibus clause may extend coverage to a

number of different types of persons, including "an employer, in whose business the driver was engaged at the time of the accident, ..." Appleman, Insurance Law and Practice, § 4355. National claims that since Mr. Hout is not personally liable under 28 U.S.C. § 2679, the insurance company is also insulated from liability. We disagree. Section 2679(b) has been held to have no effect on the status of the United States as an additional insured under an automobile insurance policy. Therefore, Mr. Hout's immunity is irrelevant.

In a case very similar to the present one, United States v. Meyers, 363 F.2d 615 (5th Cir. 1966), the United States Court of Appeals for the Fifth Circuit addressed precisely the same issue. There, a government employee, while acting within the scope of his employment, was involved in an automobile accident with an auto owned and operated by said United States employee. Pursuant to the Federal Tort Claims Act the plaintiff brought a suit against the United States. The government, in turn, filed a third-party complaint against the employee's insurance company, claiming they were an additional insured under the policy. The employee's insurance contract contained a clause covering additional parties which read: [a covered person is any] "person or organization legally responsible for the use of the insured automobile." Meyers, 363 F.2d at 617.

\*3 In reversing the district court's opinion, the court reasoned that "an unbroken line of cases, presenting this very question and involving the same or very similar contract language, has definitively answered the question in favor of the United States." Meyers, 363 F.2d at 618.<sup>FN3</sup>

In addition, the court addressed whether 28 U.S.C. § 2679(b) had any effect on such a clause. The court stated

... these amendments had as their purpose the protection of Government employees from personal liability arising from automobile accidents negligently caused by them; they were not designed to, and should not be held to, affect the rights created by and existing by virtue of insurance contracts taken out by Government employees.

Meyers, 363 F.2d at 620.

The facts of the Meyers case closely parallel the

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facts of the case *sub judice*. Further, the court in *Meyer* conducted a fine analysis on this very issue, in that it reviewed numerous cases on the subject, seeking a majority opinion. We, therefore, in agreeing with the logic and conclusion in *Meyer*, also endorse over thirty years of jurisprudence when we find that the United States qualifies as an additional insured, under the National policy.

To support its position National brings to this Court's attention the case of *Gibson v. Shelby*, 219 F.Supp. 915 (E.D. Tenn. 1963). In *Gibson* the court excluded the government as an additional insured after interpreting a clause similar to that in the present case. However, we do not find that single case convincing. The case, instead, represents but a small deviation from an overwhelming majority of cases which find the United States as an additional insured pursuant to similar facts. Therefore, National is required to defend the government, as an additional insured, as "[t]he obligation to defend extends to omnibus insureds as well as the named insured under a policy." *Hayden Newport Chemical Corp. v. Southern General Ins. Co.*, 387 S.W.2d 22 (Tex. 1965); See also 7 Am.Jur.2d § 389.

We now must decide whether there is a specific exclusion which precludes coverage in the underlying action. The Hout's policy contains the following exclusion:

#### EXCLUSIONS

A. We do not provide liability coverage for any person:

5. For that person's liability arising out of the ownership or operation of a vehicle while it is being used to carry persons or property for a fee.

National asserts that the above mentioned exclusion refers to a postal carrier delivering the United States mail. The third-party defendant's refer to the case of *Searight v. Slokes*, 44 U.S. 157 (1845), as authority supporting their position. However, *Searight* is a case which has nothing to do with insurance. Instead, *Searight* dealt with a law for the preservation and repair of the United State's roads. The

court, in *Searight*, does refer to the United States mail as property when it states: "[t]he United States have unquestionably a property in the mails." *Searight*, 44 U.S. at 169. Nonetheless, this Court finds those words in their context hardly persuasive. In general, we do not feel that the plain meaning of the clause leads one to believe the parties were referring to the United States mail, when they excluded "property carried for a fee." It would have been very simple for the parties to just exclude Mr. Hout's automobile while it was used during the course of his business. However, no such clause exists. Instead, National is attempting to construe a very ambiguous clause to fit this particular situation. Nonetheless, our common sense, as well as the outstanding legal authority, does not suggest such a result.

\*4 Even if the Court did have some doubt as to the parties intended meaning of "property", it becomes irrelevant, as we do not believe the mail is carried "for a fee", in accordance with the expected meaning of the clause. National cites numerous cases in which the courts define comparable exclusions. However, none of those cases have facts that are similar enough to the present case to find them binding.

In *Martin v. Colonial Ins. Co. of California*, 644 F.Supp. 399 (D.Del. 1986), the court dealt with an indentially worded exclusion. Nevertheless, that is where the similarity ends. The issue in that case was whether a truck was carrying "property for a fee", when it collided with another vehicle without its cargo loaded trailer. The court held that the truck was carrying "property for a fee", and thus excluded from coverage. Obviously, the issue in *Martin* is much different than the issue in the case at bar. Therefore, *Martin* is distinguishable.

National also relies upon two other cases in its effort to convince the Court that the relevant exclusion is meant to apply to the present situation. See *Blake v. Hamburg-Bremen F. Ins. Co.*, 2 S.W. 368 (Tex. 1940); *United Parcel Service v. United States Postal Service*, 604 F.2d 1370 (3rd Cir. 1979). However, both these cases merely refer to postage as fee in a passing manner. They do not deal with the interpretation of a specific contract clause; nor do they deal with insurance coverage. Thus, they shed very little light on the issues in the present case.

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(Cite as: 1989 WL 319835 (N.D. Ohio))

This Court believes that the exclusion was meant to apply in a situation where a fee is paid to the owner of the vehicle in return for transportation of the person or property. This explanation would logically flow from the Ohio law which forbids this type of policy from insuring passengers or property for a rental. Ohio Revised Code Ann. § 3937.30(c) defines an automobile insurance policy as one which "insures only private passenger motor vehicles or other four-wheeled motor vehicles which are classified or rated as private passenger vehicles and are not used as public or private livery, or rental conveyances." Thus the exclusion in question serves a common sense purpose of bringing the policy within legal limits.

Furthermore, most cases that have dealt with such an exclusion involve the paying of money to the driver of the vehicle, either voluntarily or pursuant to an agreement. See, State Farm Mut. Auto Ins. Co. v. Self, 93 F.2d 139; Beer v. Beer, 134 Ohio St. 271, 16 N.E.2d 413 (1938); Travelers Ins. Co. v. State Farm Mut. Auto Ins. Co., 175 F.Supp. 673 (E.D.La.1959). Therefore, a fee paid directly to the owner/insured of the automobile in return for transportation would fall squarely within the exclusion. This was the case in Johnson v. Allstate Ins. Co., 505 So.2d 362 (Ala.1987). There, the insured's policy contained an exclusion almost identical to the one at issue. It excluded coverage while the vehicle was "used to carry persons or property for a charge ... or while the vehicle was being used to carry persons or property for a fee." *Id.* The owner of a day care provided transportation to and from the day care for a fee of \$1.00 per trip. This money was distinct from the cost of the day care, permitting application of the exclusion. The court stated:

\*5 [w]hat is central to this appeal is whether the amount charged was a definite amount, whether it was proportionate to the actual expenses of the trip, whether it was voluntary, or rather was paid as consideration to the driver.

Johnson, 505 So.2d at 367. On the other hand, if the insured in Johnson had only collected tuition, and not the separate transportation fee, the court would have reasoned differently.

We are convinced that is the case here. No money was paid directly to Mr. Hout for the use of his vehicle. Given the best possible scenario, Mr.

Hout received compensation only indirectly through the cost of postal charges. Individuals wishing to mail a letter or parcel pay their money to the postal center, not Mr. Hout. In other words, Mr. Hout does not charge a fee to individuals to deliver their mail. Thus, this Court does not believe that Mr. Hout was carrying "property for a fee."

Also persuasive is the universal rule that insurance policies are to be construed strictly in favor of the insured. Float-a-way Door Co. v. Continental Casualty Co., 372 F.2d 701 (5th Cir.1966); Ohio Farmers Ins. Co. v. Wright, 17 Ohio St.2d 73, 246 N.E.2d 552 (1969); West v. McNamara, 159 Ohio St. 187, 111 N.E.2d 909 (1953). *See also*, 58 O.Jur.3d § 901. The Ohio Court of Appeals stated: "[a]ny doubts as to the meaning and interpretation of such [a] policy must be resolved in favor of the insured. Buckeye Union Ins. Co. v. Bradley, 293 N.E.2d 109 (Ohio App.1972).

In the present case, there exists an exclusionary clause which is unclear as to its intended meaning. Therefore, we must give it the interpretation which is most favorable to the insured, not the insurance company. Any doubt in our mind must be resolved in favor of the United States and against National.

As such, this Court finds that the United States is an additional insured under the policy. Furthermore, we find that the government is not excluded by the more specified clause, as Mr. Hout was not carrying "property for a fee." Since there are no genuine issues of material fact the United States is entitled to judgment as a matter of law.

Accordingly,

IT IS ORDERED that third-party plaintiff's motion for summary judgment is granted.

IT IS FURTHER ORDERED that third-party defendant's motion for summary judgment is denied.

#### MEMORANDUM and ORDER

#### ON MOTION FOR RECONSIDERATION

This cause is before the Court on third party defendant, Mutual Insurance Company's, (hereinafter "National") motion for reconsideration.

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(Cite as: 1989 WL 319835 (N.D. Ohio))

On February 21, 1989, this Court denied third party defendant's motion for summary judgment, while in the same order granting third party plaintiff, United States of America's, motion for summary judgment.

National asserts that this Court should not have deemed its motion in opposition untimely. In turn, National claims that its motion should be rightly considered. We agree. National had thirty days in which to file a motion in opposition, which it timely did. Therefore, it is proper for this Court to consider National's motion. However, after such consideration, we find no reason to change our prior motion. Thus, the order granting the United States of America summary judgment and denying National's summary judgment is reaffirmed.

\*6 It is therefore,

ORDERED that the motion for reconsideration of third party defendant's motion for summary judgment is hereby denied.

FN1. Third-party defendant filed an untimely memorandum in opposition to the third-party plaintiff's motion for summary judgment. See Rule 3.01(3) of the Rules of the United States District Court, Northern District of Ohio. Therefore, that memorandum was not considered by this Court.

FN2. 28 U.S.C. § 2679(b). The remedy by suit against the United States as provided by Section 1346(b) of this title for damage to property or for personal injury, including death, resulting from the operation by any employee of the Government of any motor vehicle while acting within the scope of his office or employment, shall hereafter be exclusive of any other civil action or proceeding by reason of the same subject matter against the employee or his estate whose act or omission gave rise to the claim.

FN3. Government Employees Ins. Co. v. United States, 349 F.2d 83 (10th Cir.1965); Adams v. United States, 241 F.Supp. 183 (S.D.Ill.1965); Purcell v. United States, 242 F.Supp. 739 (D.Minn.1965); United States v. State Farm Mut. Auto Ins. Co., 245 F.Supp.

58 (D.Ore.1965); Barker v. United States, 233 F.Supp. 455 (N.D.Ga.1964); Gahagan v. State Farm Mut. Auto Ins. Co., 233 F.Supp. 171 (W.D.La.1964); Nistendirk v. United States, 225 F.Supp. 884 (W.D.Mo.1964); McCrary v. United States, 235 F.Supp. 33 (E.D.Tenn.1964); Patterson v. United States, 233 F.Supp. 447; Vaughn v. United States, 225 F.Supp. 890 (E.D.Tenn.1964); Nistendirk v. McGee, 225 F.Supp. (W.D.Mo.1963); Irvin v. United States, 148 F.Supp. 25 (D.S.D.1957); Rowley v. United States, 140 F.Supp. 295 (D. Utah 1956).

WALINSKI, J.

Upon consideration, the Court having been informed that the above entitled cause of action has been settled between the parties,

IT IS ORDERED that the docket for this cause be marked "Settled and dismissed without prejudice." Counsel granted leave to file additional settlement stipulation.

N.D. Ohio, 1989.

Richards v. U.S.

Not Reported in F.Supp., 1989 WL 319835 (N.D. Ohio)

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H

Court of Appeals of Mississippi.  
PROGRESSIVE GULF INSURANCE COMPANY,  
Appellant  
v.  
WE CARE DAY CARE CENTER, INC., Nathan A.  
Bonner, Nancy G. Deese and Jessie Deese, A Minor,  
Appellees.

No. 2005-CA-00905-COA.  
Oct. 10, 2006.  
Rehearing Denied March 20, 2007.

**Background:** Automobile insurer brought action for declaratory judgment that driver was using insured vehicle to carry persons for compensation or a fee when she was transporting client to adult daycare center and that personal automobile policy provided no liability coverage. The Circuit Court, Wayne County, Robert Walter Bailey, J., entered summary judgment in favor of daycare center. Insurer appealed.

**Holding:** The Court of Appeals, Chandler, J., held as a matter of first impression that driver was not using her mother's vehicle to carry persons for compensation or a fee, and, thus, exclusion did not bar coverage.

Affirmed.

West Headnotes

[1] Insurance 217 ⇨ 1810

217 Insurance  
217XIII Contracts and Policies  
217XIII(G) Rules of Construction  
217k1810 k. Construction as a Whole.  
Most Cited Cases

Insurance 217 ⇨ 1816

217 Insurance  
217XIII Contracts and Policies

217XIII(G) Rules of Construction  
217k1815 Reasonableness  
217k1816 k. In General. Most Cited

Cases

Courts read insurance policy as a whole, considering all relevant portions together and, whenever possible, should give operable effect to every provision in order to reach a reasonable overall result.

[2] Insurance 217 ⇨ 1831

217 Insurance  
217XIII Contracts and Policies  
217XIII(G) Rules of Construction  
217k1830 Favoring Insureds or Beneficiaries; Disfavoring Insurers  
217k1831 k. In General. Most Cited  
Cases

An insurance policy is construed most strongly against the insurer as the drafter of the policy.

[3] Insurance 217 ⇨ 1809

217 Insurance  
217XIII Contracts and Policies  
217XIII(G) Rules of Construction  
217k1809 k. Construction or Enforcement as Written. Most Cited Cases

Like other contracts, when an insurance contract is plain and unambiguous, it will be enforced as written.

[4] Insurance 217 ⇨ 1808

217 Insurance  
217XIII Contracts and Policies  
217XIII(G) Rules of Construction  
217k1808 k. Ambiguity in General. Most Cited Cases

Ambiguity is present when insurance policy language is susceptible of two or more reasonable interpretations.

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**[5] Insurance 217 ⇨ 1813**

**217 Insurance**  
217XIII Contracts and Policies  
217XIII(G) Rules of Construction  
217k1811 Intention  
217k1813 k. Language of Policies.  
Most Cited Cases

**Insurance 217 ⇨ 1818**

**217 Insurance**  
217XIII Contracts and Policies  
217XIII(G) Rules of Construction  
217k1815 Reasonableness  
217k1818 k. Reasonable Persons. Most  
Cited Cases

**Insurance 217 ⇨ 1832(1)**

**217 Insurance**  
217XIII Contracts and Policies  
217XIII(G) Rules of Construction  
217k1830 Favoring Insureds or Beneficiaries; Disfavoring Insurers  
217k1832 Ambiguity, Uncertainty or Conflict  
217k1832(1) k. In General. Most  
Cited Cases

In the case of insurance policy ambiguity, a court will apply the interpretation favoring the insured and will determine the intent of the parties to the insurance contract with reference to what a reasonable person in the insured's position would have understood the terms to mean.

**[6] Insurance 217 ⇨ 1822**

**217 Insurance**  
217XIII Contracts and Policies  
217XIII(G) Rules of Construction  
217k1822 k. Plain, Ordinary or Popular Sense of Language. Most Cited Cases

When interpreting ambiguous insurance policy language, courts will give to the words their plain, ordinary, and popular meaning, not a philosophical or scientific meaning.

**[7] Insurance 217 ⇨ 1832(1)**

**217 Insurance**  
217XIII Contracts and Policies  
217XIII(G) Rules of Construction  
217k1830 Favoring Insureds or Beneficiaries; Disfavoring Insurers  
217k1832 Ambiguity, Uncertainty or Conflict  
217k1832(1) k. In General. Most  
Cited Cases

When there is no practical difficulty in making the language of an insurance contract free from doubt, any doubtful provision in the policy should be construed against the insurer.

**[8] Insurance 217 ⇨ 1827**

**217 Insurance**  
217XIII Contracts and Policies  
217XIII(G) Rules of Construction  
217k1827 k. Construction to Be Unstrained. Most Cited Cases

Where the policy is free from ambiguity, courts will not adopt a strained interpretation of the policy for the purpose of preventing hardship to the insured.

**[9] Insurance 217 ⇨ 1823**

**217 Insurance**  
217XIII Contracts and Policies  
217XIII(G) Rules of Construction  
217k1823 k. Exceptions, Exclusions or Limitations. Most Cited Cases

**Insurance 217 ⇨ 2098**

**217 Insurance**  
217XY Coverage--in General  
217k2096 Risks Covered and Exclusions  
217k2098 k. Exclusions and Limitations in General. Most Cited Cases

Insurance policy clauses seeking to limit coverage must be written in clear and unmistakable language and are strictly construed.

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[10] Insurance 217 2098

217 Insurance

217XV Coverage--in General

217k2096 Risks Covered and Exclusions

217k2098 k. Exclusions and Limitations in General. Most Cited Cases

When stated without uncertainty or ambiguity, exclusionary language in an insurance policy is binding upon the insured.

[11] Insurance 217 2686

217 Insurance

217XXII Coverage--Automobile Insurance

217XXII(A) In General

217k2682 Purpose and Manner of Use

217k2686 k. Carrying Passengers for Consideration. Most Cited Cases

Vehicle transporting client of driver's employer to adult daycare center was not used to carry persons or property for compensation or a fee, and, thus, personal automobile policy issued to driver's parent did not exclude liability coverage; driver received an hourly wage for transporting clients, did not receive mileage reimbursement or payment from clients, and was not paid on a per-client or a per-trip basis, and the exclusion was ambiguous as to whether it applied if any money was paid to the insured in connection with transporting a person or only where money was paid by the passenger on a per-trip basis.

\*251 Charles Cameron Auerswald, Richard L. Kimmel, Steven Caviit Cookston, Greenwood, attorneys for appellant.

Robin L. Roberts, Hattiesburg, Brandon L. Brooks, Charles Martin Leggett, Waynesboro, attorneys for appellees.

Before LEE, P.J., CHANDLER and GRIFFIS, JJ.

CHANDLER, J., for the Court.

¶ 1. In this appeal, we are asked to determine whether an automobile insurance policy issued by Progressive Gulf Insurance Company to Bessie Mullins afforded liability coverage for a vehicular acci-

dent that occurred on January 15, 2002. Progressive instigated this declaratory judgment action in the Circuit Court of Wayne County against Mullins, Genevieve Lee, We Care Day Care Center, Inc., Nathan Bonner, Nancy Deese, and Jessie Deese, a minor (collectively, We Care). Progressive moved for summary judgment, arguing that an exclusion in the policy defeated coverage. The circuit court found that the exclusion was ambiguous and that coverage existed. The court entered summary judgment in favor of We Care; Progressive appeals.

¶ 2. We find that the exclusion was ambiguous and that, construing the exclusionary language in favor of the insured, coverage existed under the Mullins policy. Therefore, we affirm the grant of summary judgment in favor of We Care.

**FACTS**

¶ 3. The parties agree that the material facts in this case are undisputed. Bessie Mullins owned a 1993 GMC van insured by \*252 Progressive. Genevieve Lee, Mullins's daughter, was a listed driver on Mullins's policy. The policy included bodily injury and property damage liability coverage with limits of \$10,000 each person and \$20,000 each accident for bodily injury and \$10,000 each accident for property damage.

¶ 4. We Care Day Care Center, Inc. provided day care services for the elderly. As a regular part of its operations, We Care provided transportation for its clients to and from the day care facility located in Richton, Mississippi. On or about January 15, 2002, We Care hired Lee to drive We Care's clients. Lee entered into a contract with We Care. The contract stated that Lee was to be paid hourly at minimum wage by We Care for providing transportation services. The evidence established that no mileage reimbursement was contemplated by We Care. Lee received no payment from We Care based on the number of passengers she transported, nor did Lee receive any payment from the passengers themselves. There is no evidence of if or how the passengers whom Lee transported paid We Care for the driving service.

¶ 5. On January 15, 2002, one of We Care's vehicles was in the auto shop for repair and Oma Hibbler, We Care's program director, asked Lee to use Mullins's 1993 GMC van to transport clients. <sup>1</sup> Ac-

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cordingly, Lee used the GMC van in the course and scope of her employment to drive one of We Care's clients, Eunice Bonner, from Richton, Mississippi to Waynesboro, Mississippi. En route, the GMC van struck a vehicle driven by Nancy Deese in which Jessie Deese, Nancy's minor son, was a passenger. We Care paid Lee, at her hourly wage rate, a total of twenty-eight dollars for the day's work.

**FNL.** This fact was included in the trial court's opinion but was not apparent from those portions of the lower court record designated on appeal. Neither party disputes the lower court's statement of the facts. For the purposes of this appeal, we assume that this fact was apparent from the evidence properly before the trial court. M.R.C.P. 56(c).

¶ 6. Nathan Bonner commenced an action against Mullins, Lee and We Care for the wrongful death of Eunice Bonner from her injuries sustained in the accident. On July 30, 2003, Progressive filed a "Complaint for Declaratory Judgment" against We Care, Lee, Mullins, Bonner, and Nancy and Jessie Deese. We Care counterclaimed, arguing that, under the Mullins policy, Progressive had a duty to defend and indemnify We Care. Nancy Deese, herself and on behalf of Jessie Deese, asserted a counterclaim against Progressive for damages and a cross-claim against We Care, Lee, and Mullins.

¶ 7. In its complaint, Progressive sought a judgment declaring that there was no coverage under the Mullins policy for any claims arising from the January 15, 2002 accident. Progressive relied upon an exclusion from coverage clause in the Mullins policy, which stated that liability coverage did not apply to:

1. bodily injury or property damage arising out of the ownership, maintenance, or use of a vehicle while being used to carry persons or property for compensation or a fee, including, but not limited to, delivery of magazines, newspapers, food, or any other products. This exclusion does not apply to shared-expense car pools;

On February 7, 2005, Progressive filed a motion for summary judgment arguing that, at the time of the accident, Lee was using the insured vehicle to carry a person for compensation or a fee, an activity excluded from coverage under the above clause.

\*253 ¶ 8. The trial court observed that no Mississippi court has construed the exclusionary clause at issue in this case. After examining two cases construing similar exclusionary language, the trial court found that the language was ambiguous as applied to the facts of this case. The court stated:

There was no fee per person per trip charged to this court's knowledge. There is no real definition of compensation or fee to this court's knowledge. Who is compensating the driver and who is compensating the owner of the day care for the service of the transportation[?] Is the fee for the service included in the day care fee? The court is of the opinion that if the court cannot determine what the terminology of the contract means, then it must be ambiguous. As the court has found that the terminology is ambiguous, then it will be construed in favor of the insured. State Farm Mutual Automobile Ins. Co. v. Seitz, 394 So.2d 1371, 1372 (Miss.1981).

¶ 9. Progressive appeals, arguing that the exclusionary clause was unambiguous as applied to this case. For the reasons articulated below, we affirm.

#### STANDARD OF REVIEW

¶ 10. Under Rule 56(c) of the Mississippi Rules of Civil Procedure, a party is entitled to summary judgment if the evidentiary matters before the court, including pleadings, depositions, answers to interrogatories, admissions on file, affidavits, etc., demonstrate that there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law. This Court reviews the grant or denial of a summary judgment motion de novo. Mass. Bay Ins. Co. v. Joyner, 763 So.2d 877, 878(¶ 5) (Miss.2002).

#### LAW AND ANALYSIS

I. DID THE TRIAL COURT ERR IN DETERMINING THAT THE EXCLUSIONARY LANGUAGE WAS AMBIGUOUS WHEN APPLIED TO THE UNDISPUTED FACTS OF THIS CASE?

111121131141151161171181 ¶ 11. The interpretation of insurance policy language presents a question of law. Lewis v. Allstate Ins. Co., 730 So.2d 65, 68(¶ 12) (Miss.1998). This Court adheres to well-established rules of construction of insurance contracts. State Farm, 394 So.2d at 1372. We read the policy as a

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whole, considering all the relevant portions together and, "whenever possible, should give operable effect to every provision in order to reach a reasonable overall result." J & W Foods Corp. v. State Farm Mut. Auto. Ins. Co., 723 So.2d 550, 552(¶ 8) (Miss.1998). The policy is construed most strongly against the insurer as the drafter of the policy. State Farm, 394 So.2d at 1372; J & W Foods, 723 So.2d at 552(¶ 8). Like other contracts, when an insurance contract is plain and unambiguous, it will be enforced as written. State Farm, 394 So.2d at 1372. Ambiguity is present when policy language is susceptible of two or more reasonable interpretations. Miss. Farm Bureau Cas. Ins. v. Britt, 826 So.2d 1261, 1263(¶ 14) (Miss.2002). In the case of ambiguity, this Court will apply the interpretation favoring the insured, and will determine the intent of the parties to the insurance contract with reference to what a reasonable person in the insured's position would have understood the terms to mean. J & W Foods, 723 So.2d at 552(¶ 9). When interpreting ambiguous policy language, we will give the words their plain, ordinary, and popular meaning, not a philosophical or scientific meaning. Blackledge v. Omega Ins. Co., 740 So.2d 295, 298(¶ 7) (Miss.1999). When \*254 "there is no practical difficulty in making the language of an insurance contract free from doubt, any doubtful provision in the policy should be construed against the insurer." State Farm, 394 So.2d at 1372. Nonetheless, where the policy is free from ambiguity, this Court will not adopt a strained interpretation of the policy for the purpose of preventing hardship to the insured. Titan Indem. Co. v. Estes, 825 So.2d 651, 656 (¶¶ 17-18) (Miss.2002).

[9][10] ¶ 12. Additional considerations are implicated when we are confronted with exclusions and limitations to coverage. Our supreme court has pronounced that, while clear and unambiguous policy language will be enforced according to its terms, "recovery cannot be limited by an insurer for benefits for which a premium is paid by an insured, notwithstanding clear and unambiguous language of attempted limitation by the insurer." Gov't Employees Ins. Co. v. Brown, 446 So.2d 1002, 1006 (Miss.1984). Clauses in a policy seeking to limit coverage "must be written in clear and unmistakable language" and are strictly construed. Miss. Farm Bureau Mut. Ins. Co. v. Jones, 754 So.2d 1203, 1204(¶ 8) (Miss.2000). But, when stated without uncertainty or ambiguity, exclusionary language is binding upon the insured. Lewis v. Allstate Ins. Co., 730 So.2d 65,

70(¶ 25) (Miss.1998).

[11] ¶ 13. Progressive contends that the "carrying persons for compensation or a fee" exclusion in the Mullins policy was free from ambiguity. Progressive argues that the January 15, 2002 accident was specifically excluded from liability coverage because the accident occurred while Lee was using the van to carry a person, Bonner, "for compensation or a fee" in the form of Lee's wages from We Care. We Care argues that the exclusion was ambiguous because it could signify that there is no coverage anytime payment is received by the insured, or it could signify that there is no coverage only when the passenger provides compensation or a fee in exchange for transportation. Both parties also discuss the meaning and clarity of the words "fee" and "compensation." As no Mississippi court has construed the "used to carry persons or property for compensation or a fee" exclusion, we have turned to other jurisdictions for guidance. We conclude that the exclusion is capable of two equally reasonable interpretations. Consequently, we give the clause the reading most favorable to the insured and affirm the grant of summary judgment in favor of We Care.

¶ 14. There are numerous cases from other jurisdictions considering similar exclusionary language, especially the more pervasive "used to carry persons or property for a fee" and "used to carry persons or property for a charge" exclusions. See Pizza Hut of America, Inc. v. West Gen. Ins. Co., 36 Ark.App. 16, 816 S.W.2d 638, 639 (1991) (for a fee); U.S. v. Milwaukee Guardian Ins. Co., 966 F.2d 1246, 1247 (8th Cir.1992) (for a charge).<sup>182</sup> We begin our discussion with the two cases relied upon by the trial court. The earlier of these, Travelers Insurance Co. v. State Farm Mutual Automobile Insurance Co., 175 F.Supp. 673 (E.D.La.1959), *aff'd*, 274 F.2d 208 (5th Cir.1960), is the sole case that has applied Mississippi law to this type of exclusion. In Travelers, the exclusion provided that State Farm's policy did not apply while the insured vehicle was being " 'used for carrying persons for a \*255 charge' ... 'but the transportation on a share expense basis in a private passenger automobile of friends, neighbors, fellow employees or school children shall not be deemed carrying persons for a charge.' " *Id.* at 673. State Farm argued that there was no coverage for an accident that had occurred while the insured was using the vehicle to transport co-employees to a job site. *Id.* The em-

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ployer was paying the insured a mileage allowance of \$15 for the first seventy-five miles and ten cents per mile thereafter, and State Farm argued that the mileage allowance constituted a "charge" for carrying the passengers. *Id.* at 674, 675. State Farm argued that the exclusion applied because the mileage allowance was paid by the employer, not by the insured's co-employees on a shared expense basis. *Id.* at 675.

FN2. A wealth of caselaw on the "carrying persons or property for a fee" and similarly worded exclusions is to be found at Randy J. Sutton, Annotation, What Constitutes Use of Automobile "To Carry Persons or Property for Fee" Within Exclusion of Automobile Insurance Policy, 57 A.L.R. 5th 591 (1998).

¶ 15. The district court disagreed. The court reasoned that the "carrying persons for a charge" and similar exclusions had no application where a car owner was being reimbursed for the use from the employer on a mileage basis; therefore, the fact that the car owner was carrying co-employees while being reimbursed from the employer for mileage should not trigger the exclusion. *Id.* at 676 (citing *Johnson v. Cont'l Cas. Co.*, 167 So. 114 (La.Ct.App.1936)). In so holding, the district court observed that the "carrying persons for a charge" exclusion was intended to apply to situations where the insured vehicle was being used as a temporary taxi, since several courts had found the "public livery or conveyance" exclusion inapplicable to the vehicle's use as a temporary taxi. *Id.* The court further stated:

It is true that there are some other cases interpreting provisions similar to the one here, which exclude coverage where passengers are carried on a casual or informal basis for a charge. But in each of those cases, each passenger paid a specific amount for his carriage. Moreover, even in those cases the authorities are by no means uniform. If the courts cannot with any degree of assurance, or unanimity, interpret exclusion provisions of this kind, that fact alone weighs heavily against the insurer because the fine print of the policy, where ambiguous, is construed in favor of the assured.

*Id.* (citations omitted).

¶ 16. In the second case, *Johnson v. Allstate Ins. Co.*, 505 So.2d 362 (Ala.1987), Alabama's supreme

court construed similar exclusions contained in the personal automobile insurance policy issued to a day care center operator, Johnson. The day care center, Kiddie Kollege, provided a daily pick-up service to transport children between their homes and the day care center. *Id.* at 363. Parents desiring to use the service signed a form and paid one dollar each way for the transportation. *Id.* Johnson provided the use of his van, insured under the personal automobile policy, for the transportation service. *Id.* During its rounds, the van was involved in an accident and several children were injured. *Id.* The policy contained an exclusion from liability coverage stating: "This coverage does not apply to liability for (1) your insured auto while used to carry persons or property for a charge, or any auto you are driving while available for hire by the public. This exclusion does not apply to shared expense car pools." *Id.* at 363-64. The policy also had an exclusion from collision and other coverage stating the coverage did not apply to "any auto used for the transportation of people or property for a fee" and that "[t]his exclusion does not apply to shared expense car pools." *Id.* at 364.

¶ 17. Johnson argued that the van was not used to carry persons for a charge or for a fee because the one dollar per child \*256 each way was used to defray the expenses of operating the van. *Id.* at 367. The court found that it was irrelevant how the money collected from the passengers was used. *Id.* The court found four factors to be of central importance: (1) whether the amount charged was definite; (2) whether the amount charged was proportionate to the actual expenses of the trip; (3) whether the amount charged was voluntary as opposed to being paid as consideration to the driver; and (4) whether the driver and passengers were engaged in a common enterprise. *Id.* The court found that the one dollar per child each way was paid as consideration to Johnson, was unrelated to Johnson's actual expenses, and that the payment was not made to further any common enterprise between Johnson and the students. *Id.* Therefore, the court concluded, Johnson was transporting paying passengers for a set fee, an activity within the scope of the policy exclusions. *Id.*

¶ 18. We Care distinguishes *Johnson* from this case because, in *Johnson*, the passengers paid a set fee for transportation to and from the day care center and here there is no evidence that We Care's elderly clients paid anything for the transportation service.

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We Care argues that this case is more like Travelers, where the "for a charge" exclusion was held ambiguous when the employer paid an employee for using his own car to drive himself and others. Progressive contends that Travelers is distinguishable from this case because, in Travelers, the policy excluded from coverage carrying persons "for a charge," while the Mullins policy excluded from coverage carrying "persons for compensation or a fee." Progressive argues that the "compensation or a fee" language unambiguously excludes from coverage the insured's transportation of persons while being paid any money, including an hourly wage.

¶ 19. The facts before us are that Lee was paid an hourly wage for driving We Care's clients. She did not receive a mileage reimbursement. We Care's clients did not pay anything for the transportation. Nor was Lee paid by We Care on a per-client or a per-trip basis. These facts parallel neither Travelers, where the insured was paid a mileage reimbursement from the employer to transport co-employees to a job site, nor Johnson, where the insured received one dollar per trip from each passenger. Here, Lee's employer paid her an hourly wage to transport We Care's non-paying clients. To resolve the quandary presented by the "used to carry persons or property for compensation or a fee" exclusion as applied to this case, we find helpful the precedent construing this type of exclusion in the context of pizza delivery, which sometimes involves an hourly wage earned by the deliverer and no set delivery charge.

¶ 20. In the typical pizza delivery case, an employee of a pizza seller is involved in an automobile accident while delivering pizzas and the question presented is whether the accident was covered under the employee's personal automobile insurance policy, or whether an exclusion similar to the one sub judice applies. In some cases, the delivery driver or the pizza seller receives a per-delivery charge; in some cases, the delivery driver receives an hourly wage and no per-delivery charge is levied. Several courts have considered the exclusion as applied to the employee's receipt of wages and/or a mileage reimbursement during pizza delivery, with conflicting results. These cases provide perspective on the exclusion as applied to the hourly wage driver.

¶ 21. In Amerisure Ins. Co. v. Gruft Chevrolet, Inc., 257 Mich.App. 585, 669 N.W.2d 304, 109-10

(2003), *rev'd on other grounds*, \*257469 Mich. 1003, 674 N.W.2d 379 (2004), the court found that an exclusion in a car rental contract for "carrying people or property for consideration, express or implied" applied to an accident that occurred while a pizza delivery driver received hourly wages from the employer and tips from customers for delivering pizzas. The court recognized that other courts had found similar exclusions to be ambiguous as to whether the exclusions were intended to apply to hourly wages. *Id.* at 310 n. 8 (citing Randy J. Sutton, Annotation, What Constitutes Use of Automobile "To Carry Persons or Property for Fee" Within Exclusion of Automobile Insurance Policy, 57 A.L.R. 5th 591, 603 (1998)). The court rejected this contention, stating:

Threehouse was employed by Hungry Howie's to make and deliver pizzas. He was paid the minimum wage and was not reimbursed for his mileage, although he did receive tips. In our view, because Threehouse was hired for the purpose of delivering pizzas, his transportation of those pizzas was for consideration. When he borrowed his fiancée's car, he did so with the intent to use the car to deliver pizzas so that he could fulfill the conditions of his employment and receive payment in return—if he refused to deliver the pizzas, he would not be paid. He did not simply intend to use the car to drive to work and back.

*Id.* at 310.

¶ 22. A different result was reached in Progressive Casualty Ins. Co. v. Metcalf, 501 N.W.2d 690, 692 (Minn.Ct.App. 1993). In Metcalf, a pizza delivery driver had an accident during his rounds. *Id.* at 691. The delivery driver was paid an hourly wage, eighteen cents per mile, and received customer tips seventy to seventy-five percent of the time. *Id.* The hourly wage compensated the delivery driver for his duties at the restaurant as well as for making deliveries. *Id.* The pizza seller did not charge for delivery. *Id.* The delivery driver's personal automobile insurance policy excluded coverage for "the ownership or operation of a vehicle while it is being used to carry persons or property for a fee." *Id.* The court's analysis focused on the ambiguous meaning of the word "fee." The court observed that "fee" could refer to a per-trip charge. *Id.* at 692. The court rejected the proposition that "fee" could refer to the wages paid to the employee for driving because the

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employee received wages for duties in addition to driving. *Id.* Therefore, the court found that the word "fee" was ambiguous and that coverage existed. *Id.*

¶ 23. In *RPM Pizza, Inc. v. Automotive Casualty Insurance Co.*, 601 So.2d 1366, 1367 (La.1992), two pizza delivery drivers were involved in separate accidents. They were compensated by wages. *Id.* No per-delivery charge was levied on customers by the pizza seller or by the delivery drivers. *Id.* The drivers' automobile insurance policies excluded liability coverage when the insured used a vehicle "to carry persons or property for a fee." *Id.* at 1368. The court discussed the meaning of the word, "fee," which was undefined by the policies. *Id.* at 1368-69. The court stated that "fee" could "encompass only specific contracts of carriage such as when a person makes a definite payment to another to carry a specific piece of property, such as hauling trash or moving furniture, or when a passenger pays a taxi fare to carry him from one point to another." *Id.* at 1368. Or, "fee" could signify compensation for labor. *Id.* The policy also had a business-use exclusion with a savings provision for an automobile owned by the insured. *Id.* Because the broader interpretation of "fee" conflicted with the savings provision, the court concluded that "carrying property for a fee" signified a fixed charge and "258 not wages or compensation generally." *Id.* at 1369.

¶ 24. Another approach was taken by the court in *U.S. Fidelity & Guaranty Co. v. Lightning Rod Mutual Insurance Co.*, 80 Ohio St.3d 584, 687 N.E.2d 717 (1997). Again, a pizza delivery driver had an accident while being paid an hourly wage plus mileage for delivering pizza; no per-delivery charge was levied. *Id.* at 718. The operation of a vehicle carrying property for a fee was excluded from coverage under the delivery driver's automobile insurance policy. *Id.* The court cited various definitions of the word "fee," and found that coverage would depend on whether "fee" signified any compensation or wage for the performance of services or had to be for a particular act or service. *Id.* at 719. The court then stated:

Thus, Lightning Rod's policy can be read two ways: first, as excluding from coverage use of a vehicle to transport property when there is any kind of payment to the insured, and second, as excluding coverage only when a fee is paid specifically for the particular act of transporting property. Un-

der the first reading, Spurlock's use of her car to deliver pizza would be excluded from coverage because Domino's was paying her an hourly wage. Under the second reading, however, this use would not be excluded by the Lightning Rod policy, since neither Domino's nor its customers paid Spurlock a fee specifically for delivering the pizza. Under either reading, the policy excludes taxicabs transporting people specifically for a fee or moving vans transporting property specifically for a fee. Only the first reading, however, excludes Spurlock's errands on behalf of her employer.

*Id.* The court pointed out that the broader reading would include any incidental transport of items by an insured while "on the clock." *Id.* Having found that the exclusion was susceptible of two readings, one favorable to the insured, the court found that the exclusion was ambiguous and that coverage existed. *Id.*

¶ 25. A recent case from the Supreme Court of Pennsylvania provides further illumination. *Prudential Property and Cas. Ins. Co. v. Sartno*, 903 A.2d 1170 (Pa.2006). In that case, the court considered the following exclusion:

#### Cars for Hire:

We will not pay for bodily injury or property damage caused by anyone using a car covered under this part to carry people or property for a fee.

This does include a car pool.

But you and a resident relative are covered if either of you cause [sic] an accident while a passenger in a non-owned car for hire.

*Id.* at 1172. Sartno, the insured, had an accident while delivering pizzas for his employer, the Pizzeria. *Id.* Sartno received a per-delivery wage and tips; there was no per-delivery charge. *Id.* Prudential filed a declaratory judgment action, arguing that because Sartno earned an hourly wage, his car was a "car for hire" used to "carry property for a fee" within the scope of the exclusion. *Id.* at 1172. The question before the supreme court on appeal from the superior court was "whether or not Sartno carried 'property

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for a fee' when he delivered pizza for free as a paid employee of the Pizzeria." *Id.* at 1173.

¶ 26. The court found the exclusion to be ambiguous and reversed the contrary holding of the superior court. *Id.* at 1173. The superior court, relying on *Brosovic v. Nationwide Mut. Ins. Co.*, 841 A.2d 1071 (Pa.Super.2004), had reasoned that "[t]he focus of our inquiry should not be on what a customer paid for the pizza or what the [Pizzeria] charged or did not charge for the delivery. Rather, our focus should be \*259 on the benefit that accrued to [Sartno], who is the insured, for delivering the pizzas." *Id.* at 1173. In *Brosovic*, the insured drove a delivery van owned by a delivery service that charged its customers per delivery. *Id.* at 1176. The insured was paid a wage for making the deliveries. *Id.* *Brosovic* held that the exclusion applied because "[a] delivery van is certainly a vehicle used to carry property for a fee. It is of no consequence that the fee was paid to [the driver's] employer rather than to [the driver] himself." *Id.* (quoting *Brosovic*, 841 A.2d at 1074).

¶ 27. The Pennsylvania supreme court found that *Brosovic* was "inapposite because the holding in that case that the property was being carried for a fee arose from the fact that the company imposed a charge for delivery." *Id.* at 1177. The court held that the superior court had improperly focused on the benefit that accrued to Sartno from delivering the pizzas. *Id.* That analysis had sanctioned Prudential's own broad reading of its exclusionary clause. Citing *Lightning Rod*, the supreme court rejected that this broad reading was the only reasonable one, holding that

at least two perspectives ... are reasonable: (1) using a broad interpretation, Sartno did carry property for a fee because his deliveries occurred during the course of his employment, for which he received wages; or (2) under a narrower interpretation, Sartno did not carry property for a fee because there was no delivery charge. The instant matter is a prime example of language in a policy that can be understood in more than one way.

*Id.* at 1177. The court concluded the exclusion was ambiguous and construed it against the insurer and in favor of coverage. *Id.* at 1177.

¶ 28. *Lightning Rod's* analysis began with the

various definitions of the word "fee." *Prudential* also involved a "for a fee" exclusion. Progressive admits that the word "fee" may be ambiguous. Arguing that the disjunctive use of the term "compensation" cures any ambiguity inherent in the word "fee," Progressive contends that none of the cases that have found the "for a fee" exclusion to be ambiguous are applicable here. Progressive argues that the word "compensation" has a broader meaning than "fee" and clearly signifies any payment of money from any source whatsoever.

¶ 29. After careful consideration of the policy language, we disagree. The alternate readings of the "for a fee" exclusion articulated in *Lightning Rod* and the similar alternate readings in *Prudential* are analytically relevant to determining the meaning of the "compensation or a fee" exclusion sub judice. As Progressive argues, one definition of the word "compensation" is "payment or remuneration." *Webster's Ninth New Collegiate Dictionary* (1991). Adopting this definition favoring Progressive arguendo, the exclusion would bar from coverage the use of the vehicle to carry a person for payment or remuneration. However, the ambiguity identified in *Lightning Rod* still exists because it is unclear what acts constitute using a vehicle to carry persons "for" payment or remuneration. If "compensation" signifies payment or remuneration, the question remains whether the exclusion for "use of a vehicle to carry persons or property for compensation or a fee" encompasses (1) any situation where money is paid to the insured in connection with transporting a person, or (2) is intended to capture only those situations where money is paid by the passenger on a per-trip basis. In a case like this one, an employee transporting a person while receiving an hourly wage would have no coverage if the \*260 clause were read to exclude the use of the vehicle to transport a person anytime the employee earns wages while making the trip. But, the employee would have coverage if "used to carry persons or property for compensation or a fee" were read more narrowly to exclude only those situations where compensation was paid on a per-trip basis, in other words, where the passenger or someone on the passenger's behalf paid the employee, the employer, or an interested third party specifically in exchange for the passenger's transportation. Both of these meanings of "used to carry persons for compensation or a fee" are equally reasonable from the standpoint of the insured; therefore, the exclusion is ambiguous. Having identified two equally reasonable meanings of the

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exclusion, one favorable to the insured, we cease our analysis without discussing any other possible interpretations of the exclusionary language.

¶ 30. There is no evidence that Bonner or anyone on her behalf paid Lee, We Care, or anyone else for Lee's transportation of Bonner to Waynesboro. Rather, Lee was paid an hourly wage representing payment for all of her driving duties for We Care. Thus, Lee's activities were not encompassed by the narrower reading of the exclusion. Because we have found the exclusion to be ambiguous, we give the exclusion the meaning favorable to the insured, We Care. Certainly, Progressive could have drafted "clear and unmistakable" language that would have unambiguously excluded Lee's conduct from coverage; yet, it did not do so. We affirm the grant of summary judgment in favor of We Care.

**¶ 31. THE JUDGMENT OF THE CIRCUIT COURT OF WAYNE COUNTY IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE ASSESSED TO THE APPELLANT.**

KING, C.J., LEE AND MYERS, P.JJ.,  
SOUTHWICK, IRVING, GRIFFIS, BARNES AND  
ISHEE, JJ., CONCUR. ROBERTS, J., NOT PARTICIPATING.

Miss.App.,2006.  
Progressive Gulf Ins. Co. v. We Care Day Care Center, Inc.  
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Supreme Court of Louisiana.  
RPM PIZZA, INC. and National Union Insurance  
Company  
v.  
AUTOMOTIVE CASUALTY INSURANCE COM-  
PANY.

No. 92-C-0086.  
June 26, 1992.  
Rehearing Denied Sept. 3, 1992.

Judgment against insurer was entered by the 24th Judicial District Court, Parish of Jefferson, Ernest Richards, IV, J., and appeal was taken. The Court of Appeal, 590 So.2d 1349, affirmed, and certiorari was granted. The Supreme Court, Dennis, J., held that automobile liability policy clause excluding coverage while the automobile was being used to carry property for a fee did not eliminate coverage while the vehicle owner was using car to deliver pizza as wage earner employed by a pizza company.

Affirmed.

Watson, J., concurred and assigned reasons.

Cole, J., dissented and assigned reasons.

Watson and Cole, JJ., would grant rehearing.

West Headnotes

[1] Insurance 217 1836

217 Insurance

217XXII Coverage--Automobile Insurance

217XXII(A) In General

217k2682 Purpose and Manner of Use

217k2684 k. Business Use in General.

Most Cited Cases

(Formerly 217k435.4)

Automobile liability policy clause excluding coverage while the automobile was being used to

carry property for a fee did not eliminate coverage while the vehicle owner was using car to deliver pizza as wage earner employed by a pizza company.

[2] Insurance 217 1836

217 Insurance

217XIII Contracts and Policies

217XIII(G) Rules of Construction

217k1836 k. Favoring Coverage or Indemnity; Disfavoring Forfeiture. Most Cited Cases  
(Formerly 217k146.8)

Insurance policies must be liberally construed in favor of coverage, and provisions susceptible of different meanings must be interpreted with meaning that renders coverage effective and not with one that renders it ineffective.

\*1367 Steven John Koehler, Leefe, Gibbs & Koehler, Metairie, for applicant.

George J. Nalley, Jr., New Orleans, for respondent.

DENNIS, Justice.

[1] The issue genuinely raised by this case is whether an automobile liability policy clause excluding coverage "while [the auto] is being used to carry [ ] property for a fee" eliminates coverage while the vehicle owner is using the car to deliver pizza as a wage-earner employed by a pizza company. We conclude that the policy exclusion clause does not preclude coverage under these circumstances and affirm the judgments of the trial and appellate courts which reached this correct result below. 590 So.2d 1349 (La.App. 5th Cir.1991). Although we granted a writ to review the decisions below that the insurance policy exclusion clause was contrary to public policy, that question is pretermitted as having been prematurely reached by the trial and appellate courts.

The parties stipulated to findings of fact as a basis for the judgment of the trial court. Thor Schmidt ("Schmidt") and Ricky Daigle ("Daigle") were employees of RPM Pizza, Inc. ("RPM"). They were hired as pizza delivery persons and required to furnish their own transportation. The stipulated findings

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of fact do not state precisely how the employees were paid. However, the totality of circumstances agreed to by the parties clearly indicates that a master-servant, rather than a principal-independent contractor, relationship existed between RPM and the delivery persons. Furthermore, there is no indication that a delivery charge was levied by RPM or the individual drivers upon the customer for delivery of pizza. Consequently, the most reasonable conclusion that may be derived from the stipulated facts is that the employees were compensated by wages for their hours or time employed and not by fees on a piecemeal or per delivery basis.

Schmidt and Daigle were operating their own vehicles when they were involved in separate accidents, while delivering pizza for RPM. There seems to be little dispute as to the negligence and liability of the pizza deliverers. As part of each employee's employment agreement with RPM, he was required to carry automobile liability insurance with at least the minimum statutory limits. At the time of the accident each employee maintained such a policy with Automotive Casualty Insurance Company ("Automotive Casualty").

Automotive Casualty denied coverage in both accidents arguing that commercial or business use of vehicles is not covered under the policies. The policies issued herein by Automotive Casualty are standardized personal liability policies. They provide coverage for personal liability of an insured unless otherwise prevented by law or contractual exclusion. The exclusions relative \*1368 to business or commercial use in the policies at issue are:

"A. We do not provide liability coverage for any person covered under the policy ...

(5) For that person's liability arising out of the ownership or operation of a vehicle while it is being used to carry persons or property for a fee. This exclusion does not apply to a share-the-expense car pool.

(6) While employed or otherwise engaged in the business or occupation of: a) selling, b) repairing, c) servicing, d) storing, or e) parking, vehicles designed for use on many 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.

(7) Maintaining or using any vehicle while that person is employed or otherwise engaged in any business or occupation not described in Exclusion 6. This exclusion does not apply to the maintenance or use of: a) private passenger auto, b) pickup, panel truck or van that you own, or c) trailer used with a vehicle described in a) or b) above."

As a result of denying coverage, RPM and its at-risk excess carrier, National Union Fire Insurance Company of Pittsburgh ("National Union"), paid the sum of \$14,204.49 for the physical and property damage sustained as a result of the accident involving Schmidt, and the sum of \$9,413.00 for the physical and property damage sustained as a result of the accident involving Daigle. RPM and National Union now seek to recover those sums under the personal liability policies issued by Automotive Casualty to Schmidt and Daigle.

The lower courts concluded, without articulating reasons, that the policy provision excluding coverage for use in carrying persons or property for a fee would preclude coverage in the instances presented here, if it were not contrary to public policy. We disagree with this basic conclusion that the policy exclusion clause eliminates coverage for the accidents involved.

Neither the policy, nor the exclusion, prescribes the exact meaning of the term "fee" in the policy exclusion clause. Standing alone, the word "fee" is capable of being understood in two or more possible senses. For example, Webster's Ninth New Collegiate Dictionary (1988) defines the term "fee" as "a fixed charge ... a charge for a professional service." Black's Law Dictionary defines "fee" as

"A recompense for an official or professional service or a charge or emolument or compensation for a particular act or service. A fixed charge or requisite charged as recompense for labor; reward, compensation, or wage given to a person for performance of services or something done or to be done."

Thus the meaning of "fee" may be construed nar-

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rowly to encompass only specific contracts of carriage such as when a person makes a definite payment to another to carry a specific piece of property, such as hauling trash or moving furniture, or when a passenger pays a taxi fare to carry him from one point to another. On the other hand, the meaning sometimes might contemplate that a "fee" could be compensation for labor.

Interpretation of the policy provisions in light of each other so that each is given the meaning suggested by the insurance contract as a whole reveals that the term "fee" in exclusion A(5) refers to a fixed charge rather than to wages or compensation generally. La.C.C. art. 2050; Central Louisiana Electric Company, Inc. v. Westinghouse Electric Corp., 579 So.2d 981, 983 (La.1991). The exception to exclusion A(7) insures that coverage is extended to vehicles owned by the insured, regardless of their use in commercial or business situations. See generally W. McKenzie & H. Johnson, *Insurance Law and Practice*, 15 La. Civil Law Treatise § 81, at 206-208 (1986 & Supp.1991). Under this provision a traveling salesperson, a floating employee, or any other employee required to use his own vehicle in the course of his employ would be covered under exclusion A(7) of \*1369 the policy. Therefore, to interpret "fee" in exclusion A(5) so broadly as to include any compensation paid to the owner of the vehicle by his employer would impermissibly destroy coverage for all such uses of the vehicle in direct conflict with the saving provision of exclusion A(7). See La.C.C. art. 2046. The exclusion from coverage for certain vehicle uses contemplated by exclusion A(5) is properly characterized as prohibiting coverage for activities similar to those involving livery conveyances or common carriers, i.e., contracts for carriage or hire where a per trip or per excursion charge is paid for the carriage of property or persons. Compare McKenzie & Johnson, *supra*, § 76, at 191-193. Therefore, we conclude that exclusion A(5) is not implicated merely by the paying of any form of compensation, such as wages. La.C.C. art. 2049; Garcia v. St. Bernard Parish School Board, 576 So.2d 975, 976 (La.1991); Carney v. American Fire & Indemnity Co., 371 So.2d 815 (La.1979); W. McKenzie & H. Johnson, *Insurance Law and Practice*, 15 La. Civil Law Treatise § 4, at 7 (1986 & Supp.1991).

[2] Alternatively, even if the exclusion is deemed ambiguous, insurance policies must be liberally con-

strued in favor of coverage, and provisions susceptible of different meanings must be interpreted with a meaning that renders coverage effective and not with one that renders it ineffective. La.C.C. art. 2042; Capital Bank & Trust Co. v. The Equitable Life Assurance Society, 542 So.2d 494, 496 (La.1989). See also Breland v. Schilling, 550 So.2d 609, 610 (La.1989). Consequently, even if our interpretation is not the only reasonable view of the exclusion proviso, any ambiguity must be construed against the insurance company and in favor of the reasonable construction that affords coverage.

Further, our interpretation is in accord with that of the majority of other jurisdictions which have considered this exclusion. In United Services Automobile Association v. Couch, 643 S.W.2d 668 (Tenn.App.1982), the Court of Appeals of Tennessee found that the exclusion ("a vehicle while it is being used to carry persons or property for a fee") is not applicable to use by an hourly wage earning pizza delivery driver. In Couch, a delivery charge was added to the cost of the pizza when an order was placed. The court of appeal found, however, that this was not germane to the issue of exclusion under the policy because any charge for delivery inured only to the benefit of the employer and not to the insured. Thus, the court found that the delivery driver was not being paid a "fee", merely wages. This rationale of course extends with equal force to this case where the record suggests that delivery of the pizza was without extra charge to the customer, and thus there was no delivery fee which could inure to the benefit of the driver.

Similarly, the Arkansas Court of Appeal in Pizza Hut of America, Inc. v. West General Insurance Co., 36 Ark.App. 16, 816 S.W.2d 638 (1991), found that the exclusion was ambiguous when applied to a pizza delivery person. The court of appeal vacated a determination by the trial court that the policy exclusion was clear and unambiguous and remanded the matter for a new trial. But see Dhillon v. General Accident Insurance Co., 789 S.W.2d 293 (Tex.App.-Houston [14th Dist.] 1990) (assuming without discussion that delivery of pizza is carrying property for a fee); Krauss v. Derocilli, Civil No. 36C-NO-60, 1988 WL 90532 1988 Del.Super. Lexis 276 (Del.Super. August 2, 1988) (exception is clear and excludes coverage for pizza delivery).

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In First Georgia Insurance Co. v. Goodrum, 187 Ga.App. 314, 370 S.E.2d 162 (1988), the Court of Appeals of Georgia held that the insured's use of her vehicle for an hourly wage to transport two of her co-employees from their home to their jobs and back did not constitute use of the vehicle for carrying people or property for a fee. In particular the Georgia court found that "[i]n the case at hand it is ambiguous whether the exclusion for carriage of persons 'for a fee' covers only the situation where passengers pay an amount for their own transport or whether the exclusion also covers the situation where ... an employee is being paid by his employer to \*1370 carry other employees and receives only an hourly rate plus mileage reimbursement." Finding the policy language to be ambiguous, the court of appeal construed the policy language in favor of coverage.

In Nationwide Insurance Co. v. Thorley, Civil No. 14,658, 1991 WL 6137 1991 Ohio App. Lexis 210 (Ohio App. January 16, 1991), the Ohio Court of Appeal found that the exclusion was ambiguous. It recognized that the insurers' reading of the exclusion to prohibit coverage whenever any fee or payment to the insured is involved was reasonable. However, it also noted that the exclusion could also be reasonably interpreted to exclude from coverage only the use of a vehicle to carry property for a fee; the distinction being only if the vehicle was used for the specific purpose of obtaining a fee, as opposed to ordinary wages, for carrying goods. In Thorley, the court of appeal specifically found that there was no evidence in the record that a fee, other than ordinary wages, was paid to Thorley. Accord Johnson v. Allstate Insurance Co., 505 So.2d 362 (Ala.1987) (van used to transport children from home to school for \$1 per day constituted use of vehicle for a fee); Kurz v. Balboa Insurance Co., Civil No. 88-6246, 1990 WL 20219 1990 U.S. Dist. Lexis 2301 (E.D.Penn. March 1, 1990) (a taxi cab is clearly contemplated as coming within exclusion of vehicles used to carry persons or property for a fee).

Other courts have found coverage by determining that the provision was void for public policy reasons while assuming coverage would be prohibited. See, e.g., Atlanta Casualty Company v. Salyer, No. 17,251, 1991 WL 216277, 1991 Mo.App. Lexis 1610 (Mo.App. October 25, 1991); Nationwide Mutual Ins. Co. v. Swisher, 731 F.Supp. 691 (E.D.Penn.1989) (exclusion of carrying property for a fee is void as in

conflict with the public policy behind the Pennsylvania Uninsured Motorist Act). But see Kurz v. Balboa Insurance Co., Civil No. 88-6246, 1990 WL 20219 1990 U.S. Dist. Lexis 2301 (E.D.Penn. March 1, 1990) (exclusion does not violate public policy of Pennsylvania Financial Responsibility Law). Because any decision on the issue of whether the exclusion would violate public policy would be merely advisory at this point, we express no opinion as to whether or not the exclusion asserted herein in a case appropriate for its application would violate the public policy of this State. St. Charles Parish School Board v. GAF Corporation, 512 So.2d 1165, 1171 (La.1987) (on rehearing). We leave that question for another day.

Finally, Automotive Casualty argues that we should not review the lower court's interpretation of the contract exclusion because the argument now asserted was not expressly passed on by the trial and appellate courts. It is well established that a party who is satisfied with a judgment, even if he does not file a notice of appeal or an application for review, may present in support of the judgment in his favor any argument supported by the record, whether it was overlooked or flatly rejected by the court below. La.C.C.P. art. 2133(B). Roger v. Estate of Moulton, 513 So.2d 1126, 1136 (La.1987) (on rehearing); Caldwell v. Second Judicial District Indigent Defender Board, 475 So.2d 96, 100 (La.App. 2d Cir.1985). See also United States v. American Railway Express Co., 265 U.S. 425, 44 S.Ct. 560, 68 L.Ed. 1087 (1924).

#### CONCLUSION

For the reasons assigned, we affirm the judgments of the trial and appellate courts because we conclude that the policy exclusion clause does not preclude coverage under the circumstances of the present case. We pretermitt as having been prematurely reached by the trial and appellate courts the question of whether the insurance policy exclusion clause is in derogation of laws enacted for the protection of the public interest.

#### AFFIRMED.

WATSON, J., concurs in the result and assigns reasons.

COLE, J., dissents and will assign reasons.

\*1371 WATSON, Justice, concurring.

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The majority errs in premitting the real issue in this case. A writ was granted to decide if an insurance policy provision excluding automobile liability coverage when persons or property are carried for a fee violates the public policy of Louisiana's Motor Vehicle Safety Responsibility Law. LSA-R.S. 12:851-1043.

LSA-R.S. 12:861 and 12:900 require that every motor vehicle registered in Louisiana have a minimum amount of automobile liability insurance or an equivalent. There are some exceptions, not pertinent here. See LSA-R.S. 12:1041.

LSA-R.S. 12:900(F)(1) provides:

The liability of the insurance carrier with respect to the insurance required by this Chapter shall become absolute whenever injury or damage covered by said motor vehicle liability policy occurs; said policy may not be cancelled or annulled as to such liability by an agreement between the insurance carrier and the insured after the occurrence of the injury or damage; no statement made by the insured or on his behalf and no violation of said policy shall defeat or void said policy;

LSA-R.S. 12:900(G) states:

Any policy which grants the coverage required for a motor vehicle liability policy may also grant any lawful coverage in excess of or in addition to the coverage specified for a motor vehicle liability policy and such excess or additional coverage shall not be subject to the provisions of this Chapter. With respect to a policy which grants such excess or additional coverage the term "motor vehicle liability policy" shall apply only to that part of the coverage which is required by this Section.

Financial responsibility laws are a legislative response to the problem of assuring compensation to traffic accident victims. 12A M. Rhodes, *Couch on Insurance* 2d, § 45:721 (1981). They are designed to protect innocent members of the public injured by the negligent operation of automobiles. *Id.* at § 45:723.

Morris v. American Sur. & Fidelity Ins., 573

So.2d 1227 (La.App. 4th Cir.1991), also involved a pizza delivery driver for RPM Pizza, Inc. *Morris* held that a policy exclusion for business use did not conflict with Louisiana's compulsory insurance law but recognized a conflict with Stanfel v. Shelton, 363 So.2d 410 (La.App. 1st Cir.1990). *Stanfel* decided that a minor's permissive operation of his mother's vehicle to deliver pizza was covered by her liability insurance policy because the statutory mandate of compulsory insurance for permissive drivers prevailed over a policy exclusion for business use.

With the exception of *Morris*, Louisiana courts have consistently held that an automobile business use exclusion is contrary to the public policy of Louisiana's compulsory liability law. See Rudison v. Richard, 526 So.2d 369 (La.App. 4th Cir.1988); Louisiana Farm Bur. Cas. Ins. v. Darleau, 554 So.2d 1376 (La.App. 1st Cir.1989), writ denied, 558 So.2d 571 (1990); and Arnaud v. Commercial Union Ins. Co., 594 So.2d 992 (La.App. 3d Cir.1992). The *Morris* decision conflicts with the purpose of the Motor Vehicle Safety Responsibility Law and is contrary to the prevailing rule in the United States.

Louisiana's omnibus provision supersedes a conflicting insurance policy exclusion of a named driver. Fields v. Western Preferred Cas. Co., 437 So.2d 144 (La.App.2d Cir.), writs denied, 440 So.2d 528, 754 (1983). Louisiana's public policy prohibits a permissive use exclusion of fellow employees. Akers v. Avis Rent-A-Car, 587 So.2d 831 (La.App.4th Cir.1991), writ denied, 592 So.2d 1299 (1992). Any exclusions contrary to the statutory policy are void. Thomas v. Petrolane Gas Service Ltd., 588 So.2d 711 (La.App.2d Cir.1991), writ denied, 590 So.2d 1201 (1992).

Policy provisions which conflict with financial responsibility laws have also been uniformly nullified in other states. The minimum coverage required by South Carolina's financial responsibility statute cannot be limited by an automobile business exclusion. \*1372 Farmland Mut. Ins. Co. v. Jim Moore Cadillac, 281 S.C. 33, 320 S.E.2d 719 (App.1984); American Mut. Fire Ins. Co. v. Aetna, 303 S.C. 301, 400 S.E.2d 147 (1991). Excluding coverage for vehicles used in business or commerce also contravenes South Carolina's financial responsibility law. Pennsylvania Nat. Mut. Cas. Ins. Co. v. Parker, 282 S.C. 516, 320 S.E.2d 458 (App.1984). A coverage exclusion for

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hired vehicles is invalid in Florida. Lewis v. Allstate Ins. Co., 425 So.2d 100 (Fla. 1st DCA 1982). An "escape clause" which excludes coverage for persons with other insurance is void, being contrary to the public policy of Michigan's financial responsibility act. Tahash v. Flint Dodge Co., 115 Mich.App. 471, 321 N.W.2d 698 (1982). A clause which violates the public policy of Michigan's financial responsibility act by excluding an entire class, such as those under 21, is unenforceable. League Gen. Ins. v. Budget Rent-A-Car, 172 Mich.App. 802, 432 N.W.2d 751 (1988). An exclusion for injury sustained loading or unloading a vehicle violates Pennsylvania's financial responsibility law. Omodio v. Aetna Life and Cas., 384 Pa.Super. 544, 559 A.2d 570 (1989). Exclusion of vehicle maintenance activities also violates Pennsylvania's financial responsibility law. Rimba v. Erie Ins. Exchange, 404 Pa.Super. 287, 590 A.2d 784 (1991). A coverage exclusion while an insured is trying to avoid arrest is against Georgia public policy and unenforceable. Cotton States Mut. Ins. Co. v. Neese, 254 Ga. 335, 329 S.E.2d 136 (1985).

Since compulsory automobile insurance protects victims, not tortious drivers, an exclusion for a driver's intentional acts cannot prevent a victim's recovery under Hawaii law. State Farm Fire & Cas. Co. v. Tringali, 686 F.2d 821 (9th Cir.1982). In Georgia, after an accident, a compulsory policy cannot be voided because of misrepresentations in the insurance application. Pearce v. Southern Guaranty Ins. Co., 246 Ga. 33, 268 S.E.2d 623 (1980); Sentry Indem. Co. v. Sharif, 248 Ga. 395, 282 S.E.2d 907 (1981).

Under a "household clause," a wife's recovery against her husband's insurer can be limited to the amount required by Maryland's financial responsibility law. Walther v. Allstate Ins. Co., 83 Md.App. 405, 575 A.2d 339, cert. denied, 320 Md. 801, 580 A.2d 219 (1990).

LSA-R.S. 32:861 and 32:900 mandate minimum liability insurance coverage on all motor vehicles registered in the state. That coverage cannot be defeated or voided by a violation of the policy. LSA-R.S. 32:900(F)(1). A policy exclusion when persons or property are carried for a fee violates Louisiana's Motor Vehicle Safety Responsibility Law, as to the required minimum liability coverage.

Some other states have distinguished pizza delivery cases where drivers worked for fees and for wages. Although the record is not specific, these drivers probably worked for fees. If this fact is to be decisive, counsel is correct that remand should be ordered. By avoiding the conflict between *Morris* and the other Louisiana cases, the majority gives no guidance to the lower courts and fails to execute the proper role of this court. The majority should decide the conflict between *Morris* and the other Louisiana cases.

I respectfully concur in the result reached by the majority.

COLE, Justice, dissenting.

The majority concludes that the policy exclusion clause does not preclude coverage under the circumstances of this case. Because I believe the exclusion is clear and free of ambiguity, I dissent from the majority's conclusion. Furthermore, I would reach the question of whether a business use exclusion violates the public policy of this state and would conclude such exclusions do not violate any expressed legislative policy. I would therefore reverse the judgment of the court of appeal and render judgment in favor of defendant Automotive Casualty Insurance Company.

# I.

As the majority indicates, the applicable exclusion in the policies at issue provides that defendant does "not provide liability coverage for any person covered under the policy ... (5) [f]or that person's liability arising out of the ownership or operation of \*1373 a vehicle while it is being used to carry persons or property for a fee." Insurance companies have the right to limit coverage if the restrictions are clear and are not in conflict with constitutional, statutory, or public policy provisions. Purell v. Sentry Indem. Co., 536 So.2d 417, 421 (La.1988); Oceanonics, Inc. v. Petroleum Distributing Co., 292 So.2d 190, 192 (La.1974).

Both the trial court and the court of appeal assumed the exclusion, if not void for public policy reasons, would effectively preclude coverage. They were correct. The majority goes out of its way to ascribe a multitude of meanings to the word "fee" with the result that the language of the exclusion is rendered imprecise. "Courts have no authority to alter the terms of policies under the guise of contractual

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(Cite as: 601 So.2d 1366)

interpretation when the policy provisions are couched in unambiguous language." *Parett, supra*, at 420. I believe the exclusion stands fairly by itself and indicates that defendant had no intention of underwriting coverage for the type of conduct involved in this case, i.e., the rapid-paced, continuous, home delivery of pizzas to customers for remuneration. This activity stands in contradistinction to the gratuitous act of, for example, one who agrees to travel to a pizza parlor, purchase a pizza for a neighbor, deliver it to that neighbor, and collect the cost of the pizza from the neighbor on delivery.

To say the activity in this case is not the carrying of property for a fee is to ignore economic reality. Even if a specified delivery charge is not added separately, on the invoice, to the price of the delivered pizza, and ignoring the question whether gratuities paid to the delivery drivers might constitute a separate fee, it defies logic and common business practice to assume plaintiff RPM has not factored the cost of the delivery into its per unit price for the pizza.<sup>FN1</sup>

**FN1.** It may well be that customers who choose to visit an RPM shop and pick up their own pizzas ultimately subsidize those who have them home delivered, but that is not relevant to the outcome of this case.

Although I believe the exclusion is clear and unambiguous standing alone, it becomes clearer still when the testimony of defendant's underwriting supervisor is consulted.<sup>FN2</sup> He indicated defendant does not write business automobile liability policies, has neither sought nor received authority from the state Insurance Commissioner to write such a policy, and, had the insured answered truthfully the question on the insurance application as to whether he would be using the car for business, defendant would have declined to issue the policy. Under the circumstances of this case, the clear exclusionary clause operates to preclude coverage.

**FN2.** The fact of this testimony was stipulated to by the parties in the trial court.

## II.

The majority pretermits consideration of whether business use exclusions are in violation of the public policy of this state because it held the exclusion did not preclude coverage. Because I believe the exclu-

sion is effective, I would resolve the public policy issue.

I note, initially, that the courts of this state have long recognized the so-called "business use" exclusions of liability policies. *E.g., Redden v. Liberty Mutual Insurance Company*, 327 So.2d 474 (La.App. 2d Cir.), writ denied, 331 So.2d 493 (La.1976); *Lee v. Allstate Insurance Company*, 274 So.2d 433 (La.App. 1st Cir.1973). Rather than being a means of escaping the liability for which the insurer has legitimately contracted, a business use exclusion is merely a recognition of the differences in the types of risks to which the insurer is willing to be exposed. Just as insurers are free to calculate premiums based upon risk factors, which, in other contexts, might constitute offensive or even unlawful classifications,<sup>FN3</sup> discriminating among various types of uses of the insured vehicle, e.g., business or pleasure, is simply the means by which the insured pays his fair share for the risk he contractually shifts to his insurer. *Cf. Legendre v. Hill*, 262 La. 249, 257-58, 258 n. 4, 263 So.2d 25, 27-28, 28 n. 4 (1972) (recognition "1374 that tort claim exposure increases, with corresponding increase in premium charge, for persons using vehicle regularly in business versus those who may only occasionally, or never, operate a vehicle in the course of business").

**FN3.** Categories such as age, gender, and marital status, come readily to mind, as does an insured's place of residence.

The legislature has expressed the policy of the state that each vehicle registered shall be insured to at least certain minimum levels of liability coverage. See LA.REV.STAT. § 32:900(B). This pronouncement cannot reasonably be taken to suggest insurers are not permitted to differentiate among the better and the poorer risks in calculating premiums, in accepting or rejecting individuals outright, or in assessing different premiums for different classes of use.

"The liability of the insurance carrier with respect to the insurance required by this Chapter shall become absolute whenever injury or damage covered by said motor vehicle liability policy occurs...." LA.REV.STAT. § 32:900(F)(1). The "insurance required by this Chapter" is more specifically defined in § 32:900(B), (C), (D), and (E). Nowhere in the statute is an insurer prohibited from setting forth in

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the required insurance policy the types of risk it has contractually agreed to assume.

Extending the trial court and court of appeal opinions to their logical ends, each automobile liability policy would become a non-differentiated "all risks" policy. An insurer would then be required to spread the cost of "all risks" to every policy holder in the state irrespective of the individualized use of the vehicle. I discern no legislative intent compelling such a result. I would hold, as did the court in Morris v. American Sur. & Fidel. Ins. Co., 573 So.2d 1227, 1230 (La.App. 4th Cir.1991), that where a policy excludes a specified risk rather than excluding omnibus permissive users, there is no conflict with the compulsory insurance laws of this state.

Because the court fails to give effect to the policy exclusion and fails to resolve the public policy issue, I dissent.

La.,1992.  
RPM Pizza, Inc. v. Automotive Cas. Ins. Co.  
601 So.2d 1366, 57 A.L.R.5th 841

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Not Reported in N.E.2d, 1991 WL 6137 (Ohio App. 9 Dist.)  
(Cite as: 1991 WL 6137 (Ohio App. 9 Dist.))

Only the Westlaw citation is currently available.

CHECK OHIO SUPREME COURT RULES FOR  
REPORTING OF OPINIONS AND WEIGHT OF  
LEGAL AUTHORITY.

Court of Appeals of Ohio, Ninth District, Summit  
County.

NATIONWIDE INS. CO., Plaintiff-Appellant,

v.

Dean THORLEY, Defendant-Appellee.

No. 14658.  
Jan. 16, 1991.

Appeal from Judgment Entered in the Common Pleas  
Court, County of Summit, No. CV 89 6 1957.  
Paul R. Garlock, Akron, for plaintiff.

Dean A. Young, Akron, for defendant.

DECISION AND JOURNAL ENTRY

\*1 This cause was heard upon the record in the  
trial court. Each error assigned has been reviewed  
and the following disposition is made:

BAIRD, Judge

This cause comes before the court upon the ap-  
peal of plaintiff Nationwide Insurance Co. (Nation-  
wide) from the judgment of the Summit County  
Court of Common Pleas in favor of defendant Dean  
M. Thorley in Nationwide's declaratory judgment  
action.

On December 9, 1986, Thorley was injured in a  
truck-automobile collision caused by the other motor-  
ist. Thorley claimed damages in excess of the insur-  
ance policy limits of the responsible motorist, and  
sought further compensation from Nationwide, his  
own insurer, pursuant to the uninsured/underinsured  
motorist provisions of his policy.

At the time of the collision, Thorley was driving  
a truck in the normal course of his employment with  
Roadway Express, Inc. The truck was loaded with

goods that belonged to a customer of Roadway. Thor-  
ley was not an independent contractor, and received  
wages for his driving, which were calculated accord-  
ing to the time and distance travelled, and the type  
and weight of the vehicle driven.

The cause was submitted to the trial court on the  
briefs of the parties and an agreed statement of facts  
and issues. Though two issues were so presented, the  
trial court's determination was based on the single  
issue of whether, under the facts of this case, Thorley  
is excluded from uninsured/underinsured motorist  
coverage under a coverage exclusion provision of the  
policy that reads:

"This Uninsured Motorists insurance does not  
apply as follows:

"1. It does not apply to the use of any vehicle by  
an insured to carry persons or property for a fee."

The trial court found that the language of the ex-  
clusion clause was ambiguous, in that it did not  
clearly exclude Thorley from coverage for accidents  
that occurred in the course and scope of his employ-  
ment, and rendered judgment in favor of Thorley.<sup>ENL</sup>

We agree with the trial court's judgment. The ex-  
clusion clause can be read, as Nationwide would have  
it, to exclude from coverage any use of a vehicle to  
carry property whenever any fee or payment to the  
insured is involved. By this reading, Thorley's em-  
ployment-related use of the vehicle in the present  
case would be excluded from coverage, as he was  
carrying goods and was being paid for driving.

However, the exclusion clause can also be read  
to exclude from coverage only the use of a vehicle to  
"carry property for a fee". By this reading, Thor-  
ley's use of the vehicle would be excluded from cov-  
erage only if Thorley was using the vehicle for the  
specific purpose of obtaining a fee for carrying  
goods. There is no evidence in the record that a fee  
for carrying goods in this sense was paid to Thorley,  
or even to his employer. There is no evidence that  
Thorley's pay in the present case was dependent upon  
the fact that he was carrying goods. Indeed, the evi-

Not Reported in N.E.2d, 1991 WL 6137 (Ohio App. 9 Dist.)  
(Cite as: 1991 WL 6137 (Ohio App. 9 Dist.))

dence indicates that Thorley was paid for time spent and distance travelled driving a truck, regardless of whether goods were carried or not.

\*2 Ambiguities in an insurance contract are to be construed strictly against the insurer. King v. Nationwide Ins. Co. (1988), 35 Ohio St.3d 208, syllabus. Clauses in an insurance contract that purport to exclude certain types of coverage must do so clearly and unambiguously. See Moorman v. Prudential Ins. Co. (1983), 4 Ohio St.3d 20, 22.

As the exclusion clause is ambiguous, and Thorley's use of the vehicle in the present case is thus not clearly excluded from coverage, we affirm the judgment of the trial court.

The Court finds that there were reasonable grounds for this appeal.

We order that a special mandate issue out of this court, directing the County of Summit Common Pleas Court to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E).

Costs taxed to appellant.

Exceptions.

REECE, P.J., and CIRIGLIANO, J., concur.

ENL The second issue-whether such an exclusion is enforceable under Ohio law and public policy-was rendered moot by the trial court's ruling on the first issue.

Ohio App., 1991.  
Nationwide Ins. Co. v. Thorley  
Not Reported in N.E.2d, 1991 WL 6137 (Ohio App. 9 Dist.)

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STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

Victoria Fire & Casualty Insurance Company,  
Plaintiff,

vs.

Charles P. Singleton and Delissa Singleton  
Defendants.

IN THE COURT OF COMMON PLEAS  
CIVIL ACTION NO: 2010-CP-10-7647

**MOTION FOR SUMMARY JUDGMENT**

**TO: JONATHAN ALTMAN, ATTORNEY FOR THE DEFENDANTS, AND THE  
DEFENDANTS NAMED ABOVE:**

**YOU WILL PLEASE TAKE NOTICE** that the undersigned, as attorneys for the Plaintiff, Victoria Fire & Casualty Insurance Company, will move before the presiding judge of the Charleston County Court of Common Pleas at the Charleston County Courthouse at 10:00 a.m. on the tenth (10th) day after service hereof, or as soon thereafter as counsel may conveniently be heard, for an Order granting summary judgment in favor of the Plaintiff, Victoria Fire & Casualty Insurance Company, on grounds that it is undisputed that the Defendant was driving a bus for the Charleston Area Regional Transit Authority at the time of the accident. All passengers riding the bus must pay a fee of some sort to ride the bus. Either these passengers pay a "per ride" fee or, if a student, they may pay for a semester long bus pass. (See Exhibit "A")

The Victoria policy at issue in this matter contains the following provision:

**COVERAGE EXCLUSIONS**

Coverage does not apply:

\* \* \*

7. To use of any **motor vehicle** by an insured:
  - a) to carry persons or property for a fee; or

b) for retail or wholesale delivery, including but not limited to pizza, magazine, newspaper and mail delivery.

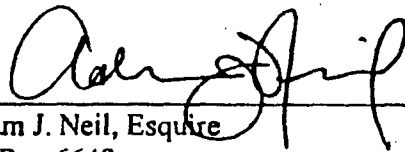
This exclusion does not apply to **motor vehicles** used in shared-expense car pools.

This provision is unambiguous in its application in that there is no limitation in the exclusion concerning who receives the fee. Therefore, the fact that Singleton received no fee directly when passengers ride her bus is not material to this dispute because each passenger paid a fee to CARTA.

Therefore, there is no dispute of material fact and Victoria Fire & Casualty Insurance Company is entitled to judgment as a matter of law.

This Motion is made pursuant to Rule 56 of the South Carolina Rules of Civil Procedure and will be supplemented and supported by such affidavits, depositions, discovery responses, memoranda of law, and such other documents as appropriate.

MURPHY & GRANTLAND, P.A.



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(803) 782-4100  
Attorneys for the Plaintiff

Columbia, South Carolina  
March 16, 2011

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

Victoria Fire & Casualty Insurance Company,

Plaintiffs,

vs.

Charles P. Singleton and Delissa Singleton

Defendants.

IN THE COURT OF COMMON PLEAS  
CIVIL ACTION NO: 2010-CP-10-7647

**CERTIFICATE OF SERVICE**

I, the undersigned employee of the law offices of Murphy & Grantland, P.A., Attorneys for the Plaintiffs, Victoria Fire & Casualty Insurance Company, do hereby certify that I served a copy of the foregoing, Motion for Summary Judgment, in connection with the above-referenced case placing same in the U.S. mail, postage paid to:

Jonathan Altman  
Derfner Altman & Wilborn, LLC  
P.O. Box 600  
Charleston SC 29402

  
Kelly Beliveau Douglas

March 16, 2011

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And when it comes to getting around downtown, nothing is quicker than hopping on a Downtown Charleston trolley. Click here for more information on how to purchase your student pass, or a map of our downtown area shuttle.

**BEST VALUE PASS!!** Student passes are available and are good for an entire semester (6 months: Jan-July; July-Dec), all for only \$70 per semester. Passes can be purchased at the CARTA offices located at 36 John Street, downtown Charleston. There are also programs set-up with several area schools. To find out if your school participates in a program and for more information please call (843) 724-7420.

**843-724-7420**

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STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

Victoria Fire & Casualty Insurance Company,  
Plaintiff,

vs.

Charles P. Singleton and Delissa Singleton  
Defendants.

IN THE COURT OF COMMON PLEAS  
CIVIL ACTION NO: 2010-CP-10-7647

**MEMORANDUM IN SUPPORT OF  
PLAINTIFF'S MOTION FOR SUMMARY  
JUDGMENT AND IN OPPOSITION TO  
DEFENDANTS' MOTION FOR SUMMARY  
JUDGMENT**

Plaintiff Victoria Fire & Casualty Company ("Victoria") submits this memorandum in support of its own Motion for Summary Judgment and in opposition to Defendants' Motion for Summary Judgment.

**FACTUAL BACKGROUND**

In the course of her employment as a Coach Operator with Veolia Transportation, Inc., Defendant Delissa Singleton was injured as a result of two automobile accidents occurring in or about June of 2009 and again in January of 2010, which occurred while she was operating a Charleston Area Regional Transportation Authority ("CARTA") bus. Neither accident was deemed to be her fault. As a result of these two automobile accidents, Delissa Singleton has settled her liability claims with the respective at-fault drivers and their liability insurance carriers, receiving the full liability policy limits in exchange for signed covenants not to execute in favor of the two allegedly at fault drivers.

Mrs. Singleton is an insured person under a policy of automobile liability insurance issued to Charles P. Singleton as the Named Insured by Victoria (hereinafter "The Policy"). The

Policy was in effect at the time of both accidents. In addition to providing liability coverage, The Policy, number 62379093-3, also includes Underinsured Motorist ("UIM") coverage. The policy limit for the UIM coverage is \$25,000 per person and \$50,000 per accident. Delissa Singleton has demanded that Victoria pay her the policy limit of \$25,000.00 for each accident – a total of \$50,000.00.

Victoria has denied Delissa Singleton's claim based on the following policy exclusion (hereinafter "The Exclusion") that appears in the UIM coverage terms (Ex. A; p. 12):

**COVERAGE EXCLUSIONS**

Coverage does not apply:

\* \* \*

7. To use of any **motor vehicle** by an **insured**:
- a) to carry persons or property for a fee; or
  - b) for retail or wholesale delivery, including but not limited to pizza, magazine, newspaper and mail delivery.

This exclusion does not apply to **motor vehicles** used in shared-expense car pools.

The policy also defines those terms that appear in bold-face type above as follows:

“‘MOTOR VEHICLE’ means land motor vehicle designed primarily to be driven on public roads. This does not include vehicles operated on rails or crawler treads;” “‘INSURED’ means one who is described as entitled to protection under each coverage.”

At the time of both the June 2009 and January 2010 accidents, Mrs. Singleton was an “insured” using a “motor vehicle”, specifically a CARTA bus, which was carrying persons who paid a fee to ride thereon. The passengers being transported by Mrs. Singleton either paid a “per ride” fee or, if a student, paid for a semester-long bus pass.<sup>1</sup> (Singleton Depo. p. 20-21; see Exhibit A filed with Victoria’s Motion for Summary Judgment) Standard passengers paid \$1.50

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<sup>1</sup> The Court should take judicial notice of the fee paid for a student pass under the provisions of SCRE 201 based upon the information provided in Exhibit A attached to Victoria’s motion for summary judgment.

per ride. (Singleton Depo. p.18) Singleton was earning an hourly wage at the time of both the June 2009 and January 2010 accidents.

## ARGUMENT

### **I. Summary Judgment Standard**

"Summary judgment is appropriate when it is clear that there are no genuine issues of material fact, and the moving party is entitled to judgment as a matter of law." Miletic v. Wal-Mart Stores, Inc., 339 S.C. 327, 329, 529 S.E.2d 68, 69 (Ct. App. 2000). "When a motion for summary judgment is made and supported as provided for in this rule, an adverse party may not rest on the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial." Rule 56(e) SCRPC. If the party opposing summary judgment fails to demonstrate, with admissible evidence, that a genuine issue for trial exists, the moving party is entitled to summary judgment. Id.

### **II. The unambiguous policy exclusion applies because Singleton was using a motor vehicle to carry persons for a fee.**

Under the plain and unambiguous terms of the policy, Singleton is not entitled to UIM coverage and, therefore, Victoria is entitled to summary judgment. The policy of insurance issued by Victoria to Charles Singleton states:

#### **COVERAGE EXCLUSIONS**

Coverage does not apply:

\* \* \*

7. To use of any **motor vehicle** by an insured:
  - a) to carry persons or property for a fee; or
  - b) for retail or wholesale delivery, including but not limited to pizza, magazine, newspaper and mail delivery.

This exclusion does not apply to **motor vehicles** used in shared-expense car pools.

The cardinal rule of contract interpretation is to ascertain and give legal effect to the parties' intentions as determined by the contract language. United Dominion Realty Trust, Inc. v. Wal-Mart Stores, Inc., 307 S.C. 102, 413 S.E.2d 866 (Ct. App. 1992). 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. Gambrell v. Travelers Ins. Cos., 280 S.C. 69, 310 S.E.2d 814 (1983). If the contract's language is clear and unambiguous, the language alone determines the contract's force and effect. Schulmeyer v. State Farm Fire and Cas. Co., 353 S.C. 491, 495, 579 S.E.2d 132, 134 (2003).

Extensive research has not revealed a reported South Carolina case analyzing this exclusion or an exclusion like it. However, courts from across the country have interpreted this exclusion as valid and enforceable and effective to bar the payment of UIM benefits in situations that are virtually identical to those in this case. In Almendral v. Security National Insurance Co., 704 So.2d 728 (Fla. Dist. Ct. App. 1998), the Florida court upheld the exclusion of uninsured coverage for passengers in a van being used to transport Medicaid patients. Like Singleton, the driver in Almendral (Valdes) received a weekly salary from his employer (Red Top Transportation) for transporting Medicaid passengers to doctors' offices for their appointments. Almendral, 704 So.2d at 728. He did not receive any compensation directly from the passengers. Mr. and Mrs. Almendral were passengers in the van and were injured when it was involved in an accident with an uninsured vehicle. They sought UM benefits from Valdes' personal insurance policy (issued by defendant Security National) which provided UM coverage, but excluded it when the driver was operating the van "to carry persons or property for a fee." Id. The Almendrals apparently conceded that the coverage was not available to Mrs. Almendral because she was the fare-paying Medicaid patient. However, because Mr. Almendral was simply

escorting his wife to her doctor's appointment he did not pay a fare. Thus, he claimed the exclusion was inapplicable to him. *Id.* at 729. Rejecting this argument, the court held:

By the *clear and unambiguous* terms of the business exclusionary provision, except for car pool expenses, [the driver] had no uninsured motorist coverage whenever his van was being used to transport any persons or property for a fee. The identity of the person(s) paying the fee or the status of the occupants in the van at the time are simply irrelevant.

*Id.* at 730 (emphasis added).

Similarly, Singleton was driving a vehicle being used to transport persons for a fee. The fact that she may have been transporting a student who did not pay a fee directly to her but paid at the time he boarded the bus (though he must have paid the student semester fee of \$70<sup>2</sup>) is of no consequence because the "identity of the person(s) paying the fee or the status of the occupants in the [vehicle] are simply irrelevant." *Id.* Of course, we also know that in the other accident two "normal" fare paying passengers were on the bus. Accordingly, the exclusion is applicable and Victoria is entitled to summary judgment that no UM benefits are owed to Singleton under the Victoria policy.

This conclusion is further supported by the Superior Court of Pennsylvania's opinion in Ratush v. Nationwide Mutual Insurance Co., 619 A.2d 733 (Pa. Super. Ct. 1992). In Ratush, a taxi cab driver was injured in an accident and submitted a claim under his wife's insurance policy which excluded coverage for a vehicle which was being "used to carry persons or property for a fee." Ratush, 619 A.2d at 733. The driver argued the policy exclusion was inapplicable to his accident because the taxi which he had been driving was not carrying a passenger at the exact moment of the accident. *Id.* Rejecting this argument, the court held:

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<sup>2</sup> Singleton maintains that no bus rider paid a fee to ride the bus at the time of the first accident because the only passenger was a student. This is incorrect and not supported by her own testimony. As noted above that student had purchased a \$70 pass to ride CARTA transportation for the semester. Mrs. Singleton specifically recalled that the student on the bus used a pass. (Singleton dep., p. 18.) This is important because, according to her testimony, only College of Charleston students did not require a pass and paid no fee.

Thus, in the instant case, *the language of the policy was clear*. A distinction was created between vehicles owned and operated privately, including vehicles used for car pooling purposes, and vehicles being used to carry passengers for hire. The vehicle being operated by [the driver] at the time of his accident was a taxicab whose purpose was to carry passengers for compensation. Applicability of the policy's exclusion did not vary according to whether the taxi was occupied or unoccupied at any given moment or whether its driver, at that time, did or did not intend to pick up passengers.

*Id.* at 734 (emphasis added).<sup>3</sup>

Notably, the taxi driver in Ratush was not receiving a fee when the accident occurred. There was no one occupying the tax cab, so there was no payment to the driver. However, the court recognized that the policy created an intentional distinction between private vehicles and vehicles like taxi cabs and buses which are used to carry passengers for hire. It does not matter who receives payment or whether payment is even received when the purpose of the vehicle is to carry passengers for compensation. See also, Nationwide Assurance Co. v. Easley, 960 A.2d 843, 848 (Pa. Super. Ct. 2008) (holding fact that taxi driver did not have a passenger when the accident occurred does not render the exclusion invalid); Farmers Insurance Exchange v. Knopp, 50 Cal.App.4<sup>th</sup> 1415, 1421 (Cal. Dist. Ct. App. 1996) (finding that a very similar exclusion was *unambiguous* and upholding its application against a limousine driver even though not carrying passengers at time of accident because the use of the limosine lasted "during the entire process, from dispatch through return").

Whether the passengers being transported by Singleton at the time of the accident paid fee (which they did) or whether there were even passengers in the bus at the time of the accident is irrelevant. The key fact is that the purpose of the bus was to carry persons for a fee.

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<sup>3</sup> The Pennsylvania court also acknowledged the legitimate public policy behind the exclusion: "It is a matter of common knowledge that the premium rate of insurance upon automobiles used for commercial purposes is higher than on cars used for pleasure. The obvious reason for this is the increased hazard. The rate charged is based upon the terms of the contract. No reason is advanced for disregarding the contract." *Id.* at 734.

Therefore, it also does not matter that Singleton herself was not paid for the journey. In Johnson v. Allstate Insurance Co., 505 So.2d 362 (Ala. 1987), the Supreme Court of Alabama upheld the applicability of a similar exclusion against the driver of a day care van being used to transport day care students. The day care provided a daily pick-up service and charged \$1.00 each way for each child transported to and from the center. Johnson, 505 So.2d at 363. The Alabama court evaluated cases from a myriad of jurisdictions<sup>4</sup> and determined that there are several factors in determining whether particular use of a vehicle falls within the exclusion. Factors include: "whether the amount charged was a definite amount, whether it was proportionate to the actual expense of the trip, whether it was voluntary or, rather, was paid as consideration to the driver, and whether the driver and passengers were engaged in a common enterprise." Id. at 367. The driver in Johnson argued that the fee charged to transport the students was not actually a "fee" because it was used to defray the expenses of operating the van and was inadequate to support the operation of the van. Id. The court held that the amount paid and the use of the amount collected was immaterial. The court also held that it was not important whether the *driver* is paid for the journey. Id.

Analyzing the factors enumerated by the Alabama court, it is clear that Singleton's passengers were charged a definite amount (\$1.50/trip or \$70/semester) unrelated to the actual expense of the journey. This amount was paid as consideration for transporting passengers who were not engaged in a common enterprise with Singleton. Moreover, Singleton did not actually make a profit on the specific trips as she was simply paid weekly wages. Therefore, the Victoria

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<sup>4</sup> The court relied on Myers v. Ocean Accident & Guarantee Corp., 99 F.2d 485 (4th Cir. 1938) (exclusion turns on whether the amount paid by the passengers was only proportionate part of the expenses of the journey or was definite sum paid as consideration or profit and not directly related to expenses of trip); State Farm Mut. Auto. Ins. v. Self, 93 F.2d 139 (5th Cir. 1937) (considering relationship of parties, existence or lack of a common interest, pleasure or benefit in making journey, relationship of amount paid to actual cost of journey); Sleeper v. Mass. Bonding & Ins. Co., 186 N.E.778 (Mass. 1933) (looking to nature of contribution paid and determining commercial adequacy or inadequacy of consideration, or want of profit to driver, is immaterial).

exclusion applies to bar coverage.

Based on cases analyzing similar facts, as opposed to cases involving mail carriers, pizza deliverymen, and the like, this exclusion applies here to bar the payment of UM benefits to Mrs. Singleton. Because the sole purpose of the bus Singleton was operating was transporting people for a fee, the applicability of the exclusion does not depend on who was or was not riding the bus or whether any benefit inured directly to Singleton. The validity and applicability of the exclusion is especially true when considering the purpose of the exclusion:

The duty owed by the operator to a person being transported for hire is much higher than that owed to a person who is not being transported for hire; and the risk assumed by the insurer where a car is being so used is much greater than in the case of an automobile which is being used for pleasure and ordinary business purposes.

Cartos v. Hartford Acc. & Indem. Co., 160 Va. 505, 505, 169 S.E. 594 (1933). The *unambiguous* terms of the policy exclude underinsured coverage and, therefore, Victoria is entitled to judgment as a matter of law.

Defendants urge this Court to rely on the unreported decision of the Federal District Court in United States v. Allstate Insurance Co., 2001 WL 1854501 (D.S.C. 2001), in which the court held that similar exclusionary language was ambiguous. This decision is not persuasive for two reasons. First, the District Court's decision conflicts with a variety of cases noted above that have found the exclusion to be clear and unambiguous.

Moreover, the facts before the District Court were quite different from the facts at issue here. The individual seeking coverage in United States was a rural mail carrier for the United States Postal Service who was driving his own vehicle to deliver mail when he was involved in an accident. The ambiguity in the policy as described by the District Court was "because it is unclear whether it refers only to a per-trip charge, or to any wages paid to an employee whose duties include delivering property." *Id.* at \*3. *Importantly, the ambiguity was not about who*

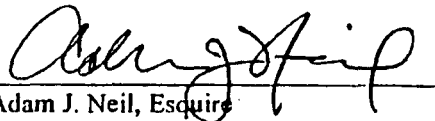
received the fee. Singleton urges that the Victoria policy exclusion does not apply because Singleton did not receive the fee. This is not correct. In the situation before the Court there was both a "per-trip charge" and "wages paid to an employee". Thus, the ambiguity, if any, is not material to the coverage dispute between Singleton and Victoria because under either interpretation the exclusion is applicable.

Thus, although the exclusionary language is similar to the instant case,<sup>5</sup> the facts are vastly different. The cases cited above, which find that the exclusion is unambiguous and that it applies anytime the vehicle involved in the accident is one where passengers must pay to ride, are more persuasive than the unreported decision of the Federal District Court.

#### CONCLUSION

For the reasons stated above, Victoria respectfully requests that summary judgment be granted in its favor when there is no genuine issue as to material fact that the unambiguous terms of the policy exclude underinsured coverage for the accidents that occurred when Singleton was carrying persons for a fee.

MURPHY & GRANTLAND, P.A.



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Columbia, South Carolina  
July 21, 2011

<sup>5</sup> The language in the Allstate policy was different. First, it applied to liability coverage instead of UIM coverage. This is significant because it is questionable whether this exclusion would be valid in light of S.C. Code Ann. § 56-9-20(5)(c), which sets forth the allowable exclusions in an automobile liability insurance policy. Second, the Allstate policy language was "This coverage does not apply to liability for: (1) your insured auto while used to carry persons or property for a charge."

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

Victoria Fire & Casualty Insurance Company,  
Plaintiffs,

vs.

Charles P. Singleton and Delissa Singleton  
Defendants.

IN THE COURT OF COMMON PLEAS  
CIVIL ACTION NO: 2010-CP-10-7647

**CERTIFICATE OF SERVICE**

I, the undersigned employee of the law offices of Murphy & Grantland, P.A., Attorneys for the Plaintiffs, Victoria Fire & Casualty Insurance Company, do hereby certify that I served a copy of the foregoing, Memorandum in Support of Plaintiff's Motion for Summary Judgment and Opposition to Defendants' Motion for Summary Judgment, in connection with the above-referenced case placing same in the U.S. mail, postage paid to:

Altman  
Denner & Wilborn, LLC  
P.O. Box 600  
Charleston SC 29402

  
Kelly Benveau Douglas

July 21, 2011



**South Carolina  
Personal  
Automobile Policy**

**VICTORIA FIRE & CASUALTY COMPANY**  
5915 Landerbrook Drive, Cleveland, OH 44124-4058  
1-800-888-8424

*These Policy Provisions, together with  
the declaration page and any applicable endorsements,  
complete your policy.*

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### **INSURING AGREEMENT**

For the policyholder's payment of premiums and fees in amounts we require and subject to all of the terms and conditions of this policy, we agree to provide the coverages the policyholder has selected. These selections are shown in the enclosed Declarations, which are a part of this policy contract. The selected coverages in this policy apply only to occurrences while this policy is in force. Renewal premiums must be paid in advance.

### **DEFINITIONS**

This policy uses certain common words for easy reading. They are defined as follows:

1. "POLICYHOLDER" means the first person named in the Declarations. The policyholder is the named insured under this policy but does not include the policyholder's spouse.
2. "YOU" and "YOUR" mean the policyholder and spouse if living in the same household.
3. "RELATIVE" means one who regularly resides in your household and who is related to you by blood, marriage or adoption (including a ward or foster child).
4. "RESIDENT" means a person, other than a relative, living in your household.
5. "INSURED" means one who is described as entitled to protection under each coverage.
6. "WE," "US," "OUR," and "THE COMPANY" mean or refer to the company issuing the policy.
7. "YOUR AUTO" means the vehicle(s) described in the Declarations.
8. "MOTORVEHICLE" means a land motor vehicle designed primarily to be driven on public roads. This does not include vehicles operated on rails or crawler treads.
9. "PRIVATE PASSENGER AUTO" means a licensed and registered four-wheel motor vehicle designed for private passenger use, including a:
  - a) van; or
  - b) pick-up truck having four or six wheels.The gross vehicle weight of the motor vehicle must be 12,000 pounds or less.
10. "DEDUCTIBLE" means the amount of loss to be paid by the insured. We pay for covered loss above the deductible amount shown in the Declarations.
11. "OCCUPYING" means in, upon, entering, or alighting from.
12. "BODILY INJURY" means:
  - a) physical injury;
  - b) sickness;
  - c) disease; or
  - d) resultant death;of any person which results directly from a motor vehicle accident.

13. "PROPERTY DAMAGE" means:

- a) destruction of tangible property;
- b) damage or injury to it; and
- c) loss of its use.

14. "BIOLOGICAL DETERIORATION OR DAMAGE" means damage or decomposition, breakdown, and/or decay of man-made or natural material due to the presence of fungi, algae, lichens, slime, mold, bacteria, wet or dry rot, and any scents or by-products of these organisms, however produced. Fungi as used above include, but are not limited to any type or form of fungus, yeasts, mold, mildew, mycotoxins, spores, rust, smuts, or fleshy fungi such as mushrooms, puffballs, and coral fungi.

Other words are also defined. All defined words are in bold print.

### **INSURED PERSONS' DUTIES AFTER AN ACCIDENT OR LOSS**

The insured will:

1. give us or our agent prompt notice of all losses and provide written proof of claim if required.
2. notify the police of all theft and vandalism losses as soon as practicable.
3. promptly deliver to us all papers dealing with any claims or suits.
4. submit to an examination under oath, as often as reasonably requested by us, while not in the presence of any other insured or person making a claim for any coverage under this policy, at a time and place designated by us before an individual or individuals chosen by us.
5. assist us and, if applicable, the defense counsel chosen for you by us, with any claim or suit.
6. if injured, submit to examinations by company-selected physicians as often as the company reasonably requires. The injured person must grant us authority, at our request, to obtain copies of all wage and medical, dental or other health care provider records.
7. protect damaged property insured under this policy and make it available to us for inspection before its repair or disposal.
8. provide access to any data and/or records, from any source and/or recorded by any method or means, that we reasonably request for use in the evaluation or defense of any claim or suit and permit us to make copies of such data or records.

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#### **Territory**

The policy applies in Canada, the United States of America and its territories or possessions, or between their ports. This policy does not apply in any territory except as stated in this provision.

**NOTE:** You will need to buy auto insurance from a Mexican insurance company before driving in Mexico. Otherwise, you may be subject to jail detention, auto impoundment, and other legal complications in case of an accident.

#### **PHYSICAL DAMAGE**

(damage to your auto)

#### **ADDITIONAL DEFINITIONS APPLICABLE TO THESE COVERAGES**

For purposes of these coverages only:

1. "LOSS" means direct and accidental loss or damage to your auto. Your auto includes its equipment.
2. "EQUIPMENT" means anything usual and incidental to the use of a motor vehicle as a motor vehicle. Any type of trailer is not equipment.

#### **COVERAGE AGREEMENTS**

##### **COMPREHENSIVE COVERAGE**

1. We will pay for loss to your auto not caused by collision or upset. We will pay for the loss less your deductible. Coverage is included for:
  - a) damage from contact with:
    - (1) animals; or
    - (2) falling or flying objects.
  - b) broken glass:
    - (1) even if caused by collision or upset; and
    - (2) if you do not have Collision coverage.However, no deductible will apply to auto safety glass.
2. For damage to your auto's windshield, we may offer to have it repaired in lieu of replacement. We will not apply a deductible for the repair of the windshield. However, if the repair is not satisfactory, we will replace the windshield.
3. Also, if your auto has a loss under this coverage we will repay your travel costs after your auto is stolen. Maximum payment is \$15 per day - not to exceed \$450 per occurrence. These costs must be incurred within a certain time. It starts 48 hours the theft. It ends when the whereabouts of your auto become known to you or us or when we have paid or offered to pay the loss.

##### **COLLISION COVERAGE**

We will pay for loss to your auto caused by collision or upset. We will pay for the loss less your deductible. However, no deductible will apply to auto safety glass

#### **TOWING AND LABOR COSTS COVERAGE**

If a separate premium has been paid, as shown in your Declarations page, we will pay towing and labor costs if your auto is disabled. We will pay only for labor costs at the place where your auto is disabled. Our maximum payment per disablement is shown in the Declarations. We will not pay for more than 2 occurrences per vehicle in a 6-month period.

#### **COVERAGE EXTENSIONS**

##### **USE OF OTHER MOTOR VEHICLES**

1. The insurance on your auto also covers a private passenger auto newly acquired by you. You must ask us to insure the vehicle within 30 days of acquiring it. This coverage extension does not apply after this 30 day period. If the newly acquired vehicle does not replace your auto, all household vehicles owned by you must be insured by us or an affiliate for this extension of coverage to apply.
2. A rented private passenger auto:
  - a) This applies only:
    - (1) while such auto is rented by you; and
    - (2) if such auto is rented from a rental company for 30 days or less.
  - b) We will not pay for loss involving a private passenger auto rented or leased by anyone for or on behalf of the employer of an insured.

##### **COVERAGE EXCLUSIONS**

We will not pay for loss:

1. To any:
  - a) recording tape;
  - b) compact disc; or
  - c) other recording media.
2. To a container to be used for storing or carrying:
  - a) recording tapes;
  - b) compact discs; or
  - c) other recording media.
3. To any device which is a:
  - a) tape player;
  - b) compact disc player or recorder;
  - c) digital video disc player or recorder;
  - d) video cassette player or recorder;
  - e) television;
  - f) electronic navigational system;
  - g) citizens band radio;
  - h) two-way mobile radio;
  - i) telephone; or
  - j) any other device which records, emits, amplifies, receives and/or transmits sound, pictures, or data.

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However, this exclusion (3.) does not apply, up to the first \$500 of actual cash value, to such a device, its antenna or its other parts or accessories if permanently installed. Payment shall not exceed the actual cash value of the insured vehicle in which the devices are installed. Permanently installed means installed, using bolts, brackets, or welding, in a location designated by an auto manufacturer for such a device. A device attached only by wires is not "permanently installed." No coverage will be provided for any item that is not permanently installed. No coverage will be provided for the devices designed to detect or deter speed monitoring equipment excluded in exclusion (4.) below, whether permanently installed or not.

4. To scanning monitor receivers used for radar detection, or any other device designed to detect or deter the monitoring of speed.
5. To a camper or living quarters unit which can be mounted on or attached to a vehicle.
6. To any tools or repair equipment.
7. Caused by and limited to:
  - a) wear and tear;
  - b) freezing;
  - c) mechanical or electrical breakdown or failure;
  - d) negligent repair or service;
  - e) road damage to tires.

However, this exclusion (7.) does not apply if the loss results from the total theft of your auto.

8. To any motor vehicle while used:
  - a) to carry persons or property for a fee; or
  - b) for retail or wholesale delivery, including but not limited to pizza, magazine, newspaper and mail delivery.

This exclusion does not apply to your auto used in shared-expense car pools.

9. To any motor vehicle due to an act of war, including insurrection, rebellion or revolution.
10. To any motor vehicle which occurs:
  - a) while your auto is being used in any illegal trade or transportation by:
    - (1) you;
    - (2) a relative; or
    - (3) anyone else with your knowledge or permission; or
  - b) due to confiscation of your auto by any law enforcement agency because of your auto's use in such activities; or
  - c) To the loss of your auto while it is being used by you, a relative, or any person with your permission on a temporary or permanent basis, for the transportation of, or in exchange for, any illegal substance, or in connection with any criminal trade or transaction.

11. Caused intentionally by or at the direction of you or a relative, including willful acts the result of which that person knows or ought to know will follow from their conduct.
12. To your auto while rented, leased, or sold to others. Sale means any type of legal conveyance of ownership including but not limited to a conditional sale, contract for sale, or rent to own, regardless of whether title has been transferred.
13. To any motor vehicle while used in any competitive event, including but not limited to drag racing, or in practice or preparation for such an event.
14. To your auto due to conversion, embezzlement, or secretion by any person in lawful possession of your auto under a bailment lease, mortgage, conditional sale or other encumbrance.
15. To "Special Equipment," which means parts or accessories:
  - a) other than those addressed in exclusions 1 through 4 above; and
  - b) that were added by anyone, other than by the vehicle manufacturer, unless they were added prior to the vehicle's original sale.

Coverage for items of Special Equipment can be obtained by declaring these items on the policy application and paying a premium charge as determined by us. Special Equipment coverage is subject to any applicable deductible as shown on the Declarations page.

16. To custom paint work.
17. Arising out of the use of your auto by anyone other than you or a relative in the operation of an auto:
  - a) repair shop;
  - b) public garage or parking place;
  - c) sales or leasing agency; or
  - d) service or maintenance facility.
18. Arising out of the use of your auto in the business or occupation of you or a relative unless business use has been declared by you and the required premium has been paid.
19. Caused by or resulting from nuclear hazard, meaning any:
  - a) nuclear reaction;
  - b) nuclear discharge;
  - c) radiation; or
  - d) radioactive contamination;
 whether controlled or uncontrolled or however caused, or as a consequence of any of these. Loss caused by nuclear hazard is not considered loss caused by fire, smoke, or explosion.
20. To your auto or any other motor vehicle for diminution in value or depreciation.

21. Caused directly or indirectly by biological deterioration or damage. Such loss is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.
22. To your auto while it is pulling or pushing another motor vehicle or is being pulled or pushed by a motor vehicle.

#### LIMITS AND CONDITIONS OF PAYMENT

##### ACTUAL CASH VALUE

The limit of our coverage is the actual cash value of your auto or its damaged parts at the time of loss. To determine actual cash value, we will consider:

1. fair market value;
  2. age; and
  3. condition of the property;
- at the time of loss.

The limit of coverage as stated on the Declaration page shall not:

- a) be increased if your auto is altered after its purchase resulting in an increase in value unless you notify us of such alterations in writing and an additional charge is paid.
- b) be increased for Special Equipment unless such Special Equipment has been specifically declared to us and an additional charge is paid.

In no event shall our coverage exceed \$750 for damage or destruction to one or more items of sound reproduction equipment as a result of one loss unless a separate premium is paid.

In addition to our payment of the loss, necessary and reasonable towing and storage will be paid to protect the auto from further damage. Covered storage costs are not to exceed four days of storage charges incurred prior to the date you report the loss to us.

##### LOSS SETTLEMENT

At our option, we may:

1. pay you directly for a loss;
2. pay to repair or replace your auto or its damaged parts with the parts furnished either by original equipment manufacturers or non-original equipment manufacturers;
3. return stolen property at our expense and pay for any damage.

You may not require us to pay for any loss or damage until 30 days after you have complied with all the terms of this policy.

##### AMOUNTS PAYABLE FOR TOWING AND LABOR COSTS

The limit of our coverage for a loss is limited to the amount shown in the Declarations. Limits apply as stated in the Declarations per occurrence. We will pay for a maximum of 2 occurrences per vehicle in a 6-month period. Insuring more than one person or vehicle under this policy does not increase our limits.

##### APPRAISAL

If we and the insured fail to agree on the amount payable under the Comprehensive or Collision Coverage, either party may demand appraisal for the loss.

Each will:

1. appoint and pay a competent and disinterested appraiser; and
  2. equally share other appraisal expenses.
- Any fees of expert witnesses or attorneys will be paid by the party who hires them.

The appraisers, or a judge of a court having jurisdiction, will select an umpire to decide any differences. Each appraiser will state separately the actual cash value and the amount of the loss.

An award in writing by any two appraisers will determine the amount payable.

##### OTHER INSURANCE

If there is other insurance that covers any loss, we will pay only our share of the loss. Our share is our proportion of the total insurance collectible for the loss. For loss to motor vehicles other than your auto, we will pay only the insured loss not covered by other insurance or self insurance.

##### COVERAGE CONDITIONS

##### AUTO RECOVERY

When an insured auto which has been stolen or abandoned is located, we have the right to take it into our care and custody.

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#### LOSS PAYABLE CLAUSE

This clause applies to the Comprehensive and Collision coverages provided by this policy. It protects the lienholder named in the policy Declarations. Payment for loss will be made according to the interest of the policyholder and lienholder. At our option, payment may be made to both jointly, or to either separately. Either way, the company will protect the interests of both. Protection of the lienholder's interest will not be affected by any change in ownership of the vehicle insured, nor by any act or omission by any person entitled to coverage under this policy. However, protection under this clause does not apply:

1. In any case of:
  - a) fraud;
  - b) misrepresentation, either in the application process or in the presentation of the claim;
  - c) material omission;
  - d) conversion;
  - e) embezzlement;
  - f) secretion; or
  - g) willfully damaging or destruction of your auto committed by or at the direction of you or a relative.
2. To the loss of your auto while it is being used by you, a relative, or any person with your permission on a temporary or permanent basis, for the transportation of, or in exchange for, any illegal substance, or in connection with any criminal trade or transaction.
3. Where the loss is otherwise not covered under the terms of this policy.

The company will not notify the lienholder each time you renew this policy, and we may cancel this policy according to the terms. We will give notice of cancellation to both the lienholder and the policyholder shown on the declaration page. The company will also notify the lienholder if coverage under the policy is excluded for any named driver. The lienholder shall notify the company upon learning of any change in ownership of the vehicle.

To the extent of payment to the lienholder, the company will be entitled to the lienholder's right of recovery. The company will do nothing to impair the right to the lienholder to recover the full amount of its claim.

IF WE BECOME OBLIGATED TO REIMBURSE A LIENHOLDER UNDER THIS COVERAGE DUE TO YOUR FAILURE TO MEET THE POLICY REQUIREMENTS OR THROUGH YOUR FAILING TO MAKE YOUR PREMIUM PAYMENTS, WE HAVE THE RIGHT TO RECOVER FROM YOU ANY MONEY WE PAY

#### ASSIGNABILITY

No interest in these coverages can be transferred without our written consent. However, if the policyholder dies, this coverage will stay in force for the rest of the policy period. It will apply for the deceased's legal representative and those persons protected on the date of death.

#### AUTO LIABILITY

(for damage or injury to others caused by your auto)

#### COVERAGE AGREEMENT

#### PROPERTY DAMAGE AND BODILY INJURY LIABILITY COVERAGE

1. We will pay for damages for which you are legally liable as a result of an accident arising out of the:
  - a) ownership;
  - b) maintenance or use; or
  - c) loading or unloading;of your auto. A relative also has this protection while using your auto. So does any person who is liable for use of your auto while used with your permission.
2. Damages must involve:
  - a) property damage; or
  - b) bodily injury.
3. We will pay such liability losses up to the limits stated in the Declarations. In addition to our limit of liability and as to any covered damages, we will:
  - a) defend at our expense, with attorneys of our choice, any suit against the insured. We may settle or defend any claim or suit as we think proper.
  - b) pay:
    - (1) all expense incurred by us; and
    - (2) all costs levied against the insured; in any such suit.
  - c) pay premiums:
    - (1) of not more than \$100 per insured for bail bonds required because of an accident or traffic violation.
    - (2) for appeal bonds in defended suits and for bonds to release attached property. The amount of such bonds shall not be more than the limits of liability shown in the Declarations. Although paying such premiums, we are not required to apply for or furnish any bonds
  - d) pay post-judgment interest on all damages awarded. We will not pay interest that accrues after such time as we have:
    - (1) paid;
    - (2) formally offered; or
    - (3) deposited in court;the amount for which we were liable under this policy.

- e) pay expenses, up to a maximum \$1000, incurred by an insured for emergency medical aid to others at the time of accident.
- f) pay all reasonable expenses incurred by an insured at our request, other than loss of earnings.
- 4. After the limits of this coverage have been paid, we will not defend any suit or pay any claim or judgment.

#### COVERAGE EXTENSIONS

##### USE OF TRAILERS

- 1. This coverage applies to the use of a trailer by:
  - a) you;
  - b) a relative; or
  - c) someone else with your permission.
- 2. The trailer must be:
  - a) designed for use with a private passenger auto; and
  - b) used with a vehicle that is insured under this coverage.
- 3. The trailer must not be used for business purposes with a vehicle that's not a private passenger auto.

##### USE OF OTHER MOTOR VEHICLES

This coverage also applies to certain other motor vehicles as follows:

- 1. A private passenger auto you do not own, while it is used as a temporary substitute for your auto. Your auto must be out of use because of:
  - a) breakdown;
  - b) repair;
  - c) servicing; or
  - d) loss.
- 2. A private passenger auto newly acquired by you. This coverage applies only during the first 30 days you own the vehicle unless it replaces your auto. If the newly acquired vehicle does not replace your auto, all household vehicles owned by you must be insured by us or an affiliate for this extension of coverage to apply. We provide this coverage only if you do not have other collectible insurance. You must pay any added premium resulting from this coverage extension.
- 3. A private passenger auto owned by a non-member of your household and not covered in item 1. of this section.
  - a) This applies only while the vehicle is being operated by you.
  - b) This does not apply to losses involving a private passenger auto
    - (1) used in the business or occupation of you or a relative,
    - (2) owned, rented or leased by an employer of an insured;

- (3) rented or leased by anyone for or on behalf of an employer of an insured; or
- (4) furnished or available to you, relative or resident for regular use. Furnished for regular use does not include a private passenger auto rented from a rental company for less than 30 days.
- (5) which is a non-owned motorcycle.

##### FINANCIAL RESPONSIBILITY

We will adjust this policy to comply:

- 1. With the financial responsibility law of any state or province which requires higher liability limits than those provided by this policy.
- 2. With the kinds and limits of coverage required of non-residents by any compulsory motor vehicle insurance law, or similar law.

However, any loss payment under this coverage will be made only over and above any other collectible motor vehicle insurance. In no case will anyone be entitled to duplicate payments for the same loss.

When we certify this policy as proof under any financial responsibility law, it will comply with the law to the extent of the coverage required by the law. The insured agrees to reimburse us for any payment which we would not have been obligated to make under the terms of this policy except for the agreement outlined in this paragraph.

##### COVERAGE EXCLUSIONS

A. This coverage does not apply to:

- 1. Use of any motor vehicle:
  - a) to carry persons or property for a fee; or
  - b) for retail or wholesale delivery, including but not limited to pizza, magazine, newspaper and mail delivery.

This exclusion does not apply to motor vehicles used in shared-expense car pools.
- 2. Property damage caused by any insured:
  - a) to a motor vehicle that is owned or operated by, or in the custody of, any insured; or
  - b) to any other property that is owned by or in the custody of any insured or anyone occupying your auto. This exclusion does not apply to:
    - (1) rented home; or
    - (2) rented private garage.

- 3. Bodily injury to any person eligible to receive any benefits required to be provided or voluntarily provided by any insured under a workers' compensation law

4. **Bodily injury** to an employee of any insured while engaged in employment. However, it does cover an employee at your home who is not, or is not required to be, covered by any workers' compensation law.
  5. Any person protected under nuclear energy liability insurance. This exclusion applies even if that insurance has been exhausted.
  6. The United States of America or any of its agencies. It also does not apply to any employee of the United States of America or any of its agencies while such person is acting within the scope of his or her office or employment and the provisions of the Federal Tort Claims Act apply.
  7. **Bodily injury or property damage** assumed by an insured under any contract or agreement.
  8. For any **bodily injury** to:
    - a) you; or
    - b) a relative
 arising out of the use of any motor vehicle which is not owned by you which is neither a temporary substitute nor a newly acquired vehicle as described under "Use of Other Motor Vehicles"
  9. **Bodily injury or property damage** arising out of the ownership, maintenance or use of any motor vehicle while rented, or leased, or sold to others by any insured.  
 Sale means any type of legal conveyance of ownership including but not limited to a conditional sale, contract for sale, or rent to own, regardless of whether title has been transferred.
  10. **Property damage** caused directly or indirectly by biological deterioration or damage. Such loss is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.
  11. **Bodily injury** arising directly or indirectly from the inhalation of, ingestion of, contact with, exposure to, existence of or presence of any fungi, algae, lichens, slime, mold, bacteria, wet or dry rot and any scents or by-products of these organisms, however produced. Fungi as used above include, but are not limited to: any type or form of fungus, yeasts, mold, mildew, mycotoxins, spores, rust, smuts or fleshy fungi such as mushrooms, puffballs, and coral fungi.
- B. This coverage does not apply, with regard to any amounts above the minimum limits required by the South Carolina Financial Responsibility Law as of the date of the loss, to:
1. **Property damage or bodily injury** caused intentionally by or at the direction of an insured, including willful acts the result of which the insured knows or ought to know will follow from the insured's conduct.
2. a) Any person for any occurrence arising out of the operation of an auto:
    - (1) repair shop;
    - (2) public garage or parking place;
    - (3) sales or leasing agency; or
    - (4) service or maintenance facility.
 b) However, this exclusion does not apply to:
    - (1) you;
    - (2) a relative; or
    - (3) a partner, employee, or agent of you or a relative;
 with regard to the use of your auto.
  3. **Bodily injury** to any person eligible to receive any benefits required to be provided or voluntarily provided by any insured under an:
    - a) unemployment compensation;
    - b) non-occupational or occupational disease;
    - c) disability benefits;
 or any similar law.
  4. **Bodily injury** to:
    - a) you; or
    - b) a relative;
 arising out of the use of your auto, a temporary substitute or a newly acquired private passenger auto as described in the coverage agreement under "Use of Other Motor Vehicles".
  5. **Bodily injury or property damage** arising out of the ownership, maintenance or use of any motor vehicle while used in any competitive event, including but not limited to drag racing, or in practice or preparation for such an event.
  6. **Bodily injury** to any fellow employee of an insured person injured in the course of his employment if such injury arises out of the use of a motor vehicle in the business of the employer.
  7. **Bodily injury or property damage** arising out of the use of your auto in the business or occupation of you or a relative unless business use has been declared by you and the required premium has been paid.
  8. **Bodily injury and property damage** while your auto is operated by any one person under the minimum age required to obtain a license to operate a motor vehicle in the state, federal district, territory or province in which your auto is registered.

SC98GEP0010209

## LIMITS AND CONDITIONS OF PAYMENT

### AMOUNTS PAYABLE FOR LIABILITY LOSSES

Our obligation to pay **Property Damage** or **Bodily Injury** Liability losses is limited to the amounts per person and per occurrence stated in the Declarations. The following conditions apply to these limits:

1. The limit shown:
  - a) for **Property Damage** Liability is for all property damage in one occurrence.
  - b) for **Bodily Injury** Liability for any one person applies to one person's **bodily injury**, including death, and includes all claims resulting from or arising out of that one person's **bodily injury**, including death. This per person policy limit shall be enforceable regardless of the number of insureds, claims made, vehicles or premiums shown in the Declarations or policy, or vehicles involved in the accident.
  - c) for **Bodily Injury** Liability for each occurrence is, subject to the per person limit described in paragraph b above, the total limit of our liability for all legal damages when two or more persons sustain **bodily injury**, including death, as a result of one occurrence. The per occurrence policy limit shall be enforceable regardless of the number of insureds, claims made, vehicles or premiums shown in the Declarations or policy, or vehicles involved in the accident.
2. Liability limits apply as stated in the Declarations. The insuring of more than one person or vehicle under this policy does not increase our liability limits.
3. In any loss covered under items 2. and 3. of "USE OF OTHER MOTOR VEHICLES," the highest liability limit applicable to any one vehicle on this policy will apply.
4. A motor vehicle and attached trailer are considered one vehicle for Auto Liability coverage.

### OTHER INSURANCE

1. In any loss involving the use of your auto by you, we will be liable for only our share of the loss if there is other collectible liability insurance. Our share is our proportion of the total insurance limits for the loss. Any insurance we provide while your auto is being operated by someone other than you with your permission shall be excess over any other collectible liability insurance.
2. For losses covered under "USE OF OTHER MOTOR VEHICLES," our coverage is excess over any other collectible:
  - a) insurance,
  - b) self insurance;
  - c) proceeds from a governmental entity; or
  - d) sources of recoveryIf more than one policy issued by us or a company affiliated with us applies on an excess basis to the same loss, we will pay only up to the highest limit of any one of them

## ASSIGNABILITY

No interest in this coverage can be transferred without our written consent. However, if the policyholder dies, the liability coverage will stay in force for the rest of the policy period. It will apply for the deceased's legal representative and those persons protected on the date of death.

## MEDICAL PAYMENTS

(medical expenses payable regardless of fault)

### Additional Definitions Applicable To This Coverage For purposes of this coverage only:

1. "EXPERIMENTAL TREATMENT" means medical treatment that is experimental in nature which is not accepted as effective therapy by:
  - a) the state medical association or board;
  - b) an appropriate medical specialty board;
  - c) the American Medical Association;
  - d) the Surgeon General; or
  - e) the Federal Food and Drug Administration.
2. "USUAL, CUSTOMARY AND REASONABLE CHARGES" means charges for services or supplies covered under this policy, which are:
  - a) usual and customary in the place where provided; and
  - b) not more than what would have been charged if the injured person had no insurance; and
  - c) not Experimental Treatment.
3. "MEDICALLY NECESSARY" means a service or procedure which is necessary, appropriate and consistent for the symptoms, diagnosis or treatment of a condition of injury or sickness within generally accepted current standards of good medical practice. The fact that any particular doctor may prescribe, order, recommend, or approve a service or procedure does not, in itself, make the service or procedure medically necessary.
4. "UTILIZATION MANAGEMENT OR REVIEW" means cost and utilization containment activities designed to determine usual, customary and reasonable charges for medically necessary services provided to an insured. These activities include, but are not limited to, medical bill auditing and case management.

## COVERAGE AGREEMENT

We will pay usual, customary and reasonable charges:

1. for expenses incurred for:
  - a) medically necessary services; or
  - b) funeral costs;due to accidental **bodily injury** suffered by you or a relative while occupying your auto
2. incurred within one year after the accident.
3. up to the limit stated in the policy Declarations
4. regardless of who is at fault in the accident.

We may apply utilization management or review to determine:

1. usual, customary and reasonable charges; and/or
2. medically necessary services.

### COVERAGE EXTENSIONS

#### YOU AND A RELATIVE

In addition, you and a relative are covered:

1. While occupying a private passenger auto you do not own, while it is used as a temporary substitute for your auto. Your auto must be out of use because of:
  - a) breakdown;
  - b) repair;
  - c) servicing; or
  - d) loss.
2. While occupying a private passenger auto newly acquired by you. This coverage applies only during the first 30 days you own the vehicle, unless it replaces your auto. If the newly acquired vehicle does not replace your auto, all household vehicles owned by you must be insured by us or an affiliate for this extension of coverage to apply.
3. While occupying any other private passenger auto not owned by or furnished or available for the regular use of you, a relative or a resident.
4. As pedestrians, if hit by any motor vehicle or trailer, which is not owned by or furnished or available for regular use by you, a relative or a resident other than your auto.

#### OTHER PERSONS

Persons other than you and a relative are protected under this coverage while occupying:

1. your auto when it is being used by:
  - a) you;
  - b) a relative; or
  - c) anyone else with your permission.
2. a private passenger auto you do not own, while it is used as a temporary substitute for your auto. Your auto must be out of use because of:
  - a) breakdown;
  - b) repair;
  - c) servicing; or
  - d) loss.
3. a private passenger auto newly acquired by you. This coverage applies only during the first 30 days you own the vehicle, unless it replaces your auto. If the newly acquired vehicle does not replace your auto, all household vehicles owned by you must be insured by us or an affiliate for this extension of coverage to apply.

4. a private passenger auto that belongs to someone who is not a member of your household.
  - a) This protection applies only when the vehicle is being used by you or a relative.
  - b) This protection does not apply to use of:
    - (1) any vehicle in the business or occupation of you or a relative.
    - (2) a motor vehicle furnished to you or a relative for regular use.

#### USE OF TRAILERS

1. This coverage applies to use of a trailer by:
  - a) you;
  - b) a relative;regardless of who owns it.
2. The trailer must be:
  - a) designed for use with a private passenger auto; and
  - b) used with a vehicle that is insured under this coverage.
3. The trailer must not be used for business purposes.
4. A motor vehicle and attached trailer are one vehicle as respects limits.

#### COVERAGE EXCLUSIONS

This coverage does not apply to:

1. Use of any motor vehicle by an insured:
  - a) to carry persons or property for a fee; or
  - b) for retail or wholesale delivery, including but not limited to pizza, magazine, newspaper and mail delivery.This exclusion does not apply to motor vehicles used in the shared-expense car pools.
2. a) Any person for any occurrence arising out of the operation of an auto:
  - (1) repair shop;
  - (2) public garage or parking place;
  - (3) sales or leasing agency; or
  - (4) service or maintenance facility.
3. Use of any motor vehicle when rented, leased, or sold to others by an insured. Sale means any type of legal conveyance of ownership including but not limited to a conditional sale, contract for sale, or rent to own, regardless of whether title has been transferred.
4. Use of any motor vehicle in a competitive event, including but not limited to drag racing, or in practice or preparation for such an event.

5. Any person occupying, maintaining, or struck by:
  - a) any vehicle or trailer designed mainly for use off public roads;
  - b) any vehicle or trailer located for use as a residence or premises;
  - c) any vehicle or trailer that runs on rails or crawler treads; or
  - d) any motorcycle, moped or other 2- or 3-wheeled motorized vehicle not listed on the Declarations page.
6. Bodily injury to any person occurring during the course of employment if benefits are payable or must be provided under a workers' compensation law or similar law.
7. Bodily injury caused by an act of war, including insurrection, rebellion or revolution.
8. That amount of any expense for medical services which is paid or payable under any other:
  - a) automobile or premises medical payments insurance expenses;
  - b) individual, or group accident, disability or hospitalization insurance;
  - c) medical or surgical reimbursement plan; or
  - d) personal injury protection coverage.
9. Use of your auto in the business or occupation of you or a relative unless business use has been declared by you and the required premium has been paid.
10. Bodily injury caused by or resulting from nuclear hazard, meaning any:
  - a) nuclear reaction;
  - b) nuclear discharge;
  - c) radiation; or
  - d) radioactive contamination;
 whether controlled or uncontrolled or however caused, or as a consequence of any of these.
11. Any expenses incurred for:
  - a) the use of thermography or other related procedures of similar nature;
  - 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.
12. Expenses, charges or costs arising directly or indirectly from bodily injury caused by or resulting from the inhalation of, ingestion of, contact with, exposure to, existence of or presence of any fungi, algae, lichens, slime, mold, bacteria, wet or dry rot, scents or by-products of these organisms, however produced. Fungi as used above include, but are not limited to: any type or form of fungus, yeasts, mold, mildew, mycotoxins, spores, rust, smuts or fleshy fungi such as mushrooms, puffballs and coral fungi.

#### ARBITRATION

If we and the insured do not agree about the amount due and upon written demand of either party, the dispute will be settled by binding arbitration as follows:

1. Each will select a competent arbitrator. The two so selected will select a third.
2. If the third arbitrator is not agreed upon 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 the expenses of the third, and half of all other expenses of arbitration. Any fees of expert of the third, and half of all other expenses of arbitration. Any fees of expert witnesses or attorneys will be paid by the party who hires them.
4. A written decision on which two arbitrators agree 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 medically necessary services.
5. The arbitrators' decision shall be limited to whether or not the medical expenses were usual, customary and reasonable charges and/or medically necessary. The arbitrators may not award punitive or other noncompensatory damages.
6. Unless it is agreed otherwise, arbitration will take place in the county and state in which the insured lives at the time of the accident. Arbitration will be subject to the usual rules of procedure and evidence in such county and state.

#### LIMITS AND CONDITIONS OF PAYMENT

##### BENEFITS PAYABLE

1. The amount payable under this coverage to or for one person in one accident is limited as stated in the policy Declarations. Limits apply to each insured vehicle as stated in the Declarations. The stated limit is not increased by the insuring of more than one person or vehicle under this policy or any other policy issued by us.
2. In any loss covered under "COVERAGE EXTENSIONS" and not involving your auto, the highest liability limit applicable to any one vehicle in this policy will apply.

##### OTHER INSURANCE

We will pay only the insured benefit over and above the amount of other collectible auto Medical Payments insurance in any loss involving:

1. Use of a motor vehicle you do not own; or
2. Being hit by any motor vehicle or trailer.
3. Bodily injury to any insured other than you or a relative.

#### DUPLICATE PAYMENTS

We will make no duplicate payment to or for any insured for the same element of loss.

#### OTHER CLAIMS AND JUDGMENTS

Any loss payment under this coverage will apply toward payment of any claim or judgment relating to the same loss under the Bodily Injury Liability coverage of this policy. The company will require written agreement to this condition before payment of a Medical Payments loss.

#### ADDITIONAL DUTIES

In addition to the Insured Persons' Duties listed in the policy for submitting proof of loss, the insured will provide us with original documents, bills and reports to verify any medical expense claimed.

#### ASSIGNABILITY

No interest in this coverage can be transferred without our written consent. However, if the policyholder dies, the Medical Payments coverage will stay in force for the rest of the policy period. It will apply for the deceased's legal representative and those persons protected on the date of death.

#### UNINSURED AND UNDERINSURED MOTORISTS COVERAGE

(for bodily injury and property damage caused by uninsured or underinsured motorists)

#### ADDITIONAL DEFINITIONS APPLICABLE TO THESE COVERAGES ONLY

"UNINSURED MOTOR VEHICLE" — See definition in COVERAGE AGREEMENT section.

"UNDERINSURED MOTOR VEHICLE" — See definition in COVERAGE AGREEMENT section.

#### COVERAGE AGREEMENT

##### YOU AND A RELATIVE

We will pay damages, including derivative claims, because of bodily injury suffered by you or a relative, and because of property damage. Such damages must be due by law to you or a relative from the owner or driver of:

1. an uninsured motor vehicle; or
2. an underinsured motor vehicle if the policyholder has selected Underinsured Motorists coverage, as shown in the Declarations and has paid the required premium for such coverage.

Damages must result from an accident arising out of the ownership, maintenance, or use of the uninsured motor vehicle or underinsured motor vehicle.

#### OTHER PERSONS

For the elected coverages, we will also pay damages, including derivative claims, which are due by law to other persons who suffer bodily injury while using or occupying with your permission:

1. your auto.
2. a motor vehicle you do not own, while it is used as a temporary substitute for your auto. Your auto must be out of use because of:
  - a) breakdown;
  - b) repair;
  - c) servicing; or
  - d) loss.
3. a four-wheel motor vehicle newly acquired by you to which the Auto Liability coverage of this policy applies. The coverage applies only during the first 30 days you own the vehicle, unless it replaces your auto.
4. a trailer designed to be used with a motor vehicle, while used with one of the vehicles described in items 1. through 3. above.

#### RECOVERY

1. Before recovery, we and the insured must agree on two points:
  - a) whether there is a legal right to recover damages from the owner or driver of an uninsured motor vehicle or underinsured motor vehicle; and if so,
  - b) the amount of such damages.
2. Any judgment against the uninsured or underinsured will be binding on us only if copies of the pleadings in any such action have been served on us in the manner provided by law.

#### DEFINITIONS

For purposes of these coverages only:

1. a) An uninsured motor vehicle is:
  - (1) one for which there is no auto liability bond, insurance or other security in effect, applicable to the vehicle owner, operator, or any other liable person or organization, at the time of the accident, in at least the amounts required by the financial responsibility law where your auto is principally garaged.
  - (2) one for which the insuring company denies coverage or is or becomes insolvent.
  - (3) one for which the owner has not qualified as a self-insurer in accordance with the applicable provisions of law.

- 1-1) a "hit-and-run" motor vehicle whose owner or driver remains unknown and which physically strikes:

- (i) the insured; or
- (ii) the vehicle the insured is occupying and causes bodily injury to the insured or property damage.

The insured must attempt to identify the other driver or owner. Physical contact is not required if the facts of an accident are confirmed by an eyewitness to the occurrence and the eyewitness signs an affidavit attesting to the truth of the facts of the accident. The eyewitness cannot be the owner or operator of the insured vehicle.

In all cases, the insured or someone on the insured's behalf must report the accident to the police within a reasonable time after its occurrence.

- b) We will not consider as an uninsured motor vehicle:
  - (1) any motor vehicle owned by a government unit or agency. However, any motor vehicle owned by the State or any of its political subdivisions is considered an uninsured motor vehicle when the vehicle is operated by a person without proper authorization.
  - (2) any motor vehicle owned by an insured but not insured under the liability coverage of any policy.
  - (3) a vehicle that is defined as an underinsured motor vehicle.
- 2. a) An underinsured motor vehicle is one for which liability coverage, bonds, or other securities are in effect, applicable to the vehicle owner, operator, or any other liable person or organization, in at least an amount required by the Financial Responsibility law, and their total amount:
  - (1) is less than; or
  - (2) has been reduced by payments to persons injured in the accident, other than an insured, to an amount less than; the insured's damages.
- b) We will not consider as an underinsured motor vehicle a vehicle that is defined as an uninsured motor vehicle.
- 3. We will not consider as either an uninsured motor vehicle or underinsured motor vehicle:
  - a) any vehicle in use as a residence or premises; nor
  - b) any equipment or vehicle designed for use mainly off public roads and not subject to vehicle registration, even while on public roads.

## COVERAGE EXCLUSIONS

Coverage does not apply:

1. For any insured who enters suit (legal action) against a responsible party without having copies of the pleadings in any such action served on us in the manner provided by law.
2. Under Uninsured Motorists coverage for any insured who, without our written consent, settles with any person or organization who may be liable for the bodily injury or property damage and thereby impairs our right to recover our payments.
3. Indirectly or indirectly benefit any workers' compensation or disability benefits carrier, or any person or organization qualifying as a "self-insurer" under a workers' compensation, disability benefits or similar laws.
4. For property damage for which the insured has been paid.
5. Under Uninsured Motorists coverage, for the first \$200 of property damage sustained.
6. To directly or indirectly benefit any insurer of property.
7. To use of any motor vehicle by an insured:
  - a) to carry persons or property for a fee; or
  - b) for retail or wholesale delivery, including but not limited to pizza, magazine, newspaper and mail delivery.

This exclusion does not apply to motor vehicles used in shared-expense car pools.

8. To use of any motor vehicle by an insured without the owner's permission.

## INSURED PERSONS' DUTIES

1. In making a claim under these coverages, the insured must submit written proof of the claim to us as soon as practicable.
2. If an insured or the insured's legal representative brings legal action for accidental bodily injury or property damage against any party legally responsible for use of a motor vehicle involved in the accident, a copy of the summons and complaint or other process must be served immediately upon us. Service must be made according to statutory requirements.

## LIMITS AND CONDITIONS OF PAYMENT

### AMOUNTS PAYABLE FOR UNINSURED OR UNDERINSURED MOTORISTS LOSSES

Our obligation to pay losses is limited to the amounts per person and per occurrence stated in the Declarations. The following conditions apply to these limits:

1. The limit shown:
  - a) for Bodily Injury for any one person is for all covered damages, including all derivative claims, claimed by anyone arising out of and due to bodily injury to one person as a result of one occurrence

The per-person limit is the total amount available when one person sustains **bodily injury**, including death, as a result of one occurrence. No separate limits are available to anyone for derivative claims, statutory claims, or any other claims made by anyone arising out of **bodily injury**, including death, to one person as a result of one occurrence.

- b) for **Bodily Injury** for each occurrence is the total limit of our liability for all covered damages when two or more persons sustain **bodily injury**, including death, as a result of one occurrence. No separate limits are available to anyone for derivative claims, statutory claims, or any other claims arising out of **bodily injury**, including death, to two or more persons as a result of one occurrence. This total limit is subject to the limit for any one person.
  - c) for **Property Damage** is for all covered damages claimed by one or more **Insureds** for **property damage** as a result of one occurrence.
2. Coverage applies as stated in the Declarations. The insuring of more than one person or vehicle under any policy issued by us or an affiliated company does not increase our payment limits.
  3. Any amount payable under these coverages shall be reduced by any amounts paid or payable under any workers' compensation, disability benefits or similar law. This does not reduce the limits of this coverage.
  4. The most we will pay for **bodily injury** will be the lesser of:
    - a) the difference between:
      - (1) the amount of the **Insured's** damages; and
      - (2) the amount paid to the **Insured** by or for any person or organization who is or may be held legally liable for the **bodily injury**; or
    - b) the limit of this coverage.
  5. The damages payable for **property damage** under this coverage, will be reduced by any amounts:
    - a) paid by or for any liable party, including all sums paid under the Auto Liability coverage of this policy.
    - b) paid or payable under any Physical Damage coverage of this policy.
  6. No payment for Underinsured Motorists coverage will be made until the limits of all other liability insurance and bonds that apply have been exhausted by payments or judgments.

#### OTHER INSURANCE

1. If no vehicle owned by you or a **relative** is involved in an accident in which you or a **relative** sustains **bodily injury** or **property damage** while occupying a motor vehicle or otherwise:
  - a) coverage under this policy applies as excess to any coverage which applies to the vehicle involved in the accident as primary coverage.

- b) if coverage from more than one policy issued to you or a **relative** applies as excess, then the one policy with the highest limit shall set the maximum recovery. We will pay our share of the loss not to exceed our share of the maximum recovery. Our share will be that percentage our coverage bears to all like coverage (Uninsured Motorists coverage or Underinsured Motorists coverage) applicable as excess.

2. If an **Insured** sustains **bodily injury** or **property damage** while occupying your auto, and your auto is also described on the Declarations page of another policy providing applicable coverage, we are liable for only our share. Our share is that percent of damages that the coverage from this policy bears to the total of all coverage applicable to the occurrence.
3. If a vehicle owned by you or a **relative** is involved in an accident where you or a **relative** sustains **bodily injury** or **property damage**, this policy shall:
  - a) be primary if the involved vehicle is your auto described on this policy; or
  - b) be excess if the involved vehicle is not your auto described on this policy. The amount of coverage applicable under this policy shall be the lesser of the coverage limits under this policy or the coverage limits on the vehicle involved in the accident. Subject to the above, if other policies apply as excess, we are liable only for our share. Our share is that percent of the damages that the coverage applicable from this policy bears to the total of all like coverage (Uninsured Motorists coverage or Underinsured Motorists coverage) which is applicable as excess to the occurrence.

#### DUPLICATE PAYMENT

We will make no duplicate payment to or for any **Insured** for the same element of loss.

#### ASSIGNABILITY

No interest in these coverages can be transferred without our written consent. However, if the policyholder dies, these coverages will continue in force for the rest of the policy period. It will apply for the deceased's legal representative and those persons protected on the date of death.

#### GENERAL POLICY CONDITIONS

We, you, and anyone **Insured** by this policy must do certain things in order for the provisions of the policy to apply. The following are policy conditions:

1. HOW YOUR POLICY MAY BE CHANGED
  - a) Any terms of this policy which may be in conflict with statutes of the state in which the policy is issued are hereby amended to conform.

- b) Any insured will automatically have the benefit of any extension or broadening of coverage in this policy, as of the effective date of the change, provided it does not require more premium.
  - c) No other changes may be made in the terms of this policy except by endorsement or policy revision.
  - d) The premium for each coverage is based on information in our possession. Any change or correction in this information will allow us to make an adjustment of the premium as of the date the change is effective.
  - e) The policyholder has a duty to notify us as soon as possible of any change which may affect the premium or the risk under this policy. This includes, but is not limited to, changes in:
    - (1) the principal garaging address of the insured vehicle(s), which must be reported to us within 30 days of the date the address change becomes effective;
    - (2) drivers;
    - (3) use of the insured vehicle(s); or
    - (4) desired coverages, deductibles, or limits.
2. **OPTIONAL PAYMENT OF PREMIUM IN INSTALLMENTS**  
 The policyholder may pay the premium for this policy in installments, under terms and conditions approved where required by the Department of Insurance. For each separate installment payment there is an installment service charge. Your agent can provide more information. We will provide, on request, additional information about installment payment.
3. **RENEWAL**  
 We will issue a policy for successive policy periods, following conditions:
- a) Premiums will be in accordance with policy forms, rules, rates and rating plans in use by us at the time.
  - b) All premiums in installment payments, and interest, must be paid when due. If the insured has not had his or her driver's license suspended or revoked during the policy period.
- Prior to the expiration of a policy term for which premium has been paid, we will mail a notice to the policyholder for the premium required to renew or maintain the policy in effect. We will mail this notice to the address last known to us.
4. **NON-RENEWAL**
- a) At the end of each policy period after the effective date of this policy, we will have the right to refuse to renew the entire policy or any of its coverages.
    - b) If we elect not to renew, we will mail written notice to the policyholder 15 days in advance of the date our action will take effect. Mailing of this notice to the last known address will be considered proof of notice.
    - c) For nonpayment of renewal premium, coverage will terminate at the end of the last policy period for which premium was paid.
5. **CANCELLATION DURING POLICY PERIOD**
- a) The policyholder may cancel this policy or any of its coverages by mailing notice to us of the future date of cancellation desired. We will calculate any returned premium according to the rules, rates, fees and forms in effect and on file if required, for our use in your state.
  - b) Up to the time this policy or any coverage has been in effect 90 days, we have unlimited right of cancellation. We may cancel by mailing notice to the policyholder 15 days prior to the effective date of cancellation. While the date we mail this notice must be within 90 days, the date of cancellation need not be.
  - c) After any coverage of this policy has been in force 90 days, our right to cancel such coverage during the policy period is limited.
    - (1) We may cancel:
      - (a) if premiums, premium installment payments, or fees are not paid when due, whether payable directly to us or through any premium finance plan.
      - (b) if you or anyone who lives in your household or who customarily operates your auto has had his or her driver's license suspended or revoked during the policy period.
      - (c) for any other reason permitted by South Carolina law.
    - (2) We must mail notice to the policyholder 15 days prior to the effective date of cancellation.
  - d) In any case of cancellation by us not requested by the policyholder, our mailing of notice to the policyholder's last known address will constitute proof of notice as of the date we mail it. We will retain premium for days covered during the policy period.
  - e) Premium refund, if any due, will be made as soon as practicable after the date of cancellation. Mailing or delivery of our check will constitute tender of refund.

6. **AUTOMATIC TERMINATION**

Coverage under this policy on a covered motor vehicle will automatically terminate when:

- a) your vehicle becomes insured under another policy, such as Liability, Medical Payments/No-Fault, Uninsured Motorists, Underinsured Motorists, and Comprehensive or Collision Coverages, regardless of limits purchased.
- b) your vehicle is sold and or title is transferred to another person or organization.

At the time of renewal, if you or your representative fail to accept our renewal offer, this policy will terminate at the end of the current policy period. Non-payment of renewal or continuation premium will serve as a rejection of our continuation or renewal offer.

7. **IF YOU BECOME BANKRUPT**

Bankruptcy or insolvency of any insured will not relieve us of any obligation under the terms of this policy.

8. **UNAUTHORIZED USE OF OTHER MOTOR VEHICLES**

Protection in this policy does not apply to other motor vehicles which any insured:

- a) uses without a reasonable belief that the insured is entitled to do so.
- b) has stolen.
- c) knows to have been stolen.

9. **FRAUD AND MISREPRESENTATION**

- a) This policy was issued in reliance on the information you provided at the time of your application for insurance coverage. We may void this policy, deny coverage under this policy, or, at our election, assert any other remedy available under applicable law, if you, or any insured person seeking coverage under this policy, knowingly, or unknowingly concealed, misrepresented or omitted any material fact or engaged in fraudulent conduct at the time the application was made or at any time during the policy period.

- b) We may void this policy, deny coverage for an accident or loss, or at our election, assert any other remedy available under applicable law, if any insured person or any other person seeking coverage under this policy has knowingly or unknowingly concealed or misrepresented any material fact or engaged in fraudulent conduct in connection with the filing or settlement of any claim.

- c) If we void this policy, this shall not affect the liability coverage of this policy up to the minimum limits required by the financial responsibility law of the state of South Carolina, if we have certified your policy as proof of financial responsibility to the registrar of motor vehicles of the state of South Carolina, and if the accident occurs before we notify the named insured that the policy is void. If we void this policy, you must reimburse us if we make a payment.

- d) No person or organization who engages in fraudulent conduct in connection with the application process, an accident or filing a claim, or engages in any material misrepresentation regarding the issuance of this policy shall be entitled to receive any payment under this policy at any time.

10. **LEGAL ACTION LIMITATIONS**

No legal action may be brought against the company concerning any of the coverages provided in this policy until the insured has fully complied with all terms of the policy.

Under the auto liability coverages of this policy, no legal action may be brought against the company until judgment against the insured has been finally determined after trial. This policy does not give anyone the right to make us a party to any action to determine the liability of an insured.

11. **SUBROGATION**

We have the right of subrogation under any:

- a) Physical Damage; and
- b) Uninsured Motorists, subject to the limitations outlined below;

coverages in this policy and its endorsements. This means that after paying a loss to you or others under this policy, we will have the insured's right to sue for or otherwise recover such loss from anyone else who may be held liable. Also, we may require reimbursement from the insured out of any settlement or judgment that duplicates our payments. These provisions will be applied in accordance with state law. Any insured will sign such papers, and do whatever else is necessary to transfer these rights to us, and will do nothing to prejudice them.

Uninsured Motorists coverage is subject to subrogation only:

- a) up to the limits specified in the Financial Responsibility Act; or
- b) if an uninsured motorist has selected the option to be uninsured by paying the fee specified in the Financial Security provisions of the South Carolina Motor Vehicle Code.

There is no right of subrogation applicable to Underinsured Motorists coverage.

12. NON-SUFFICIENT FUNDS AND LATE PAYMENTS

The company reserves the right to impose a fee for any premium payment that is unable to be processed due to non-sufficient funds, or if there are non-sufficient funds in an account that is being utilized for electronic funds transfer (EFT) payments, or if the premium is not paid by the due date. This is under the terms and conditions approved where required by the Department of Insurance.

If the initial premium payment for this policy is unable to be processed due to non-sufficient funds as indicated above, we reserve the right to void the policy back to the date of inception. When we void the policy, we will not be liable for any claims which occurred during the policy period. This includes any claims reported to us prior to receiving notice of the non-sufficient funds payment.



**SOUTH CAROLINA ENDORSEMENT  
PACKAGE**

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**LOSS OF USE COMPREHENSIVE OR COLLISION  
COVERAGES (SC98GEE0050506)**

**(Auto Rental)**

Please attach this important addition to your auto policy. Loss of Use Coverage is subject to the provisions of the policy that apply to the Comprehensive and/or Collision coverages. The most we will pay under this coverage for all Covered Expenses incurred as a result of one accident is shown in the Declarations. Coverage applies only if this endorsement was in effect at the time of a covered Comprehensive or Collision loss.

In the event your stolen auto is recovered and requires repairs covered by Comprehensive and/or Collision coverages, this coverage is effective when the policy coverage for travel costs end. Any applicable waiting period will apply. Any expense payable under this coverage shall be reduced to the extent it is payable under the Comprehensive or Collision coverages of the policy.

**COVERED EXPENSES are:**

**AUTO RENTAL EXPENSE**

We will pay you for auto rental expense incurred by you if unable to use your auto because of a covered Comprehensive or Collision loss.

Auto rental expense is the cost of renting one vehicle from a rental agency or garage. Subject to the coverage limit, reimbursement is limited to a maximum daily payment. The coverage limit and daily payment amounts are shown in the Declarations. This expense must be incurred within a certain time period. It begins when your auto cannot run for more than 24 hours due to a covered loss, or if your auto can run, it begins when it is left for more than 24 hours at a shop ready to begin agreed repairs. It continues:

- a) for 30 consecutive days; or
- b) until your auto is repaired; or
- c) until a total settlement is agreed to;  
whichever comes first.

This endorsement is issued by the company shown in the Declarations as the issuing company.

**NON-OWNER POLICY (SC98GEE0110506)**

This endorsement extends the coverages shown on the Declarations to your use of any private passenger auto. However, such auto must not be owned by you or any member of your household.

Coverage is provided according to the terms of the policy, but with the following modifying conditions:

- 1 The definitions of you and your are deleted and replaced as follows. you and your means the policyholder.
- 2 This endorsement does not apply to a private passenger auto used in your business or occupation.

**3. Coverage for:**

- a) Auto Liability (for Bodily Injury and Property Damage);
- b) Medical Payments; and
- c) Uninsured Motorists and/or Underinsured Motorists;

under this endorsement will apply only to you.

4. The insurance provided by the policy and endorsement will be excess to any other collectible insurance.

This endorsement applies as stated in the policy Declarations.

This endorsement is issued by the company shown in the Declarations as the issuing company.

**LEASED AUTO - ADDITIONAL INTEREST AND LOSS  
PAYABLE PROVISIONS (SC98GEE0090506)**

This clause applies to Comprehensive and Collision coverages provided by this policy. It protects the loss payee named in the policy Declarations. Payment for loss will be made according to the interest of the policyholder and loss payee. At our option, payment may be made to both jointly, or to either separately. Either way, the company will protect the interests of both. Protection of the loss payee's interest will not be affected by any change in ownership of the vehicle insured, nor by any act or omission by any person entitled to coverage under this policy. However, protection under this clause does not apply:

**1. In any case of:**

- a) fraud;
- b) misrepresentation, either in the application process or in the presentation of the claim;
- c) material omission;
- d) conversion;
- e) embezzlement;
- f) secretion; or
- g) willfully damaging or destruction of your auto committed by or at the direction of you or a relative.

2. To the loss of your auto while it is being used by you, a relative, or any person with your permission on a temporary or permanent basis, for the transportation of, or in exchange for, any illegal substance, or in connection with any criminal trade or transaction.

3. Where the loss is otherwise not covered under the terms of this policy.

SC98GEP0010209

The company will not notify the loss payee each time you renew this policy, and we may cancel this policy according to the terms. We will give notice of cancellation to both the loss payee and the policyholder shown on the Declaration page. The company will also notify the loss payee if coverage under the policy is excluded for any named insured. The loss payee shall notify the company upon learning of any change in ownership of the vehicle.

To the extent of payment to the loss payee, the company will be entitled to the loss payee's right of recovery. The company will do nothing to impair the right to the loss payee to recover the full amount of its claim.

IF WE BECOME OBLIGATED TO REIMBURSE A LOSS PAYEE UNDER THIS COVERAGE DUE TO YOUR FAILURE TO MEET THE POLICY REQUIREMENTS OR THROUGH YOUR FAILING TO MAKE YOUR PREMIUM PAYMENTS, WE HAVE THE RIGHT TO RECOVER FROM YOU AND ANY MONEY WE PAY.

**ADDITIONAL COVERAGE FOR SPECIAL EQUIPMENT**  
**(SC98GEE0070506)**

Coverage is subject to all terms and conditions of the policy, except as changed by this endorsement.

With this endorsement, we agree to provide:

1. additional coverage, above the \$750 policy limit, for any and all sound, picture or data devices, their antennas, or other parts and accessories that are permanently installed; and
2. coverage for special equipment.

This endorsement does not include coverage for the following items or their accessories: telephones; radar detectors; televisions; two-way mobile radios; scanning monitor receivers used for radar detection; or any other device designed to detect or deter the monitoring of speed

Coverage is subject to the following conditions:

1. It applies only to such items declared to us and owned by you.
2. It applies while such items are in or upon any motor vehicle:
  - a) the policy Declarations indicates is covered by this endorsement.
  - b) newly-acquired by you and covered under the "Use of Other Motor Vehicles" provisions of the Physical Damage insurance for your auto

3. Our obligation to pay for loss under this coverage is limited to the lesser of:

- a) the limit of this coverage shown on the Declarations for any one occurrence; or
- b) the actual cash value of all such insured items suffering loss in the same occurrence. The determination of actual cash value will include consideration of fair market value, age, and condition of the device at the time of loss.

However, if the policyholder elected the optional coverage for original equipment manufacturer parts for this vehicle, as indicated in the Declarations, that coverage will apply to this endorsement as well. Any loss under this endorsement will be settled on a replacement cost basis subject to the limit of coverage the policyholder has elected.

Any loss under this endorsement will be subject to the same deductible that applies to the Physical Damage coverage under which loss is claimed.

This endorsement applies as stated in the policy Declarations.

The endorsement is issued by the company shown in the Declarations as the issuing company.

**LOSS SETTLEMENT ENDORSEMENT -**  
**ORIGINAL EQUIPMENT MANUFACTURER PARTS**  
**(SC98GEE0640506)**

When the policyholder selects this endorsement to apply to a vehicle, in exchange for added premium for Physical Damage coverage, it is agreed that the Loss Settlement provisions for Physical Damage coverage on that vehicle will be amended to read:

At our option, we may:

1. pay you directly for a loss;
2. pay the amount necessary to repair or replace your auto or its damaged parts;
3. return stolen property at our expense and pay for any damage.

Whenever available, we will use new parts furnished by an original equipment manufacturer to repair or replace any damaged parts of your auto

This endorsement applies as stated in the policy Declarations.

This endorsement is issued by the company shown in the Declarations as the issuing company.

SC98GEP0010209

**NAMED DRIVER EXCLUSION (SC98GEE0450506)**

If the policyholder has made a request for us to exclude any person from coverage under this policy, then we will not provide any coverage, including any defense, or pay any claims, arising from an accident, which occurs while any motor vehicle to which the terms of this policy may apply is being operated by the excluded driver. This includes any claims for negligent entrustment or similar claims brought against you, a relative, or another person or organization that is vicariously liable for an accident arising out of the operation of a motor vehicle when operated by the excluded driver.

If we are required to pay a claim under your policy, for any reason, for an accident which occurs while any motor vehicle is operated by the excluded driver, you must repay us for any and all payments, costs and expenses.

**ACCIDENTAL DEATH OR DISMEMBERMENT BENEFITS ENDORSEMENT (SC98GEE0910209)**

We will pay Accidental Death or Dismemberment Benefits to you or a relative due to accidental bodily injury resulting from the ownership, maintenance or use of a motor vehicle. We will pay regardless of fault in the accident.

Accidental Death or Dismemberment Benefits are payable as follows:

For a covered loss resulting in:

- a. the death of the insured or;
- b. loss of both hands, feet, or eyes; or
- c. loss of one hand and one foot;

the benefit shall be the full amount shown on the declarations page. If a covered loss results in the death of the insured, the amount payable will be increased by 20% if the insured's seat belt was properly fastened at the time of the accident.

For a covered loss resulting in:

- a. loss of either hand or foot;
- b. loss of sight of one eye; or
- c. loss of the thumb and index finger of the same hand;

the benefit shall be one half the amount shown on the declarations page.

Death or dismemberment must occur within ninety (90) days of the accident.

1 STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS  
 2 COUNTY OF CHARLELSTON CASE NO. 2010-CP-10-7647  
 3

---

4  
 5 VICTORIA FIRE & CASUALTY )  
 INSURANCE COMPANY )

6 Plaintiff, )  
 7 )

8 -vs- )  
 9 )

9 CHARLES P. SINGLETON and )  
 DELISSA SINGLETON, )

10 Defendants. )  
 11

---

12  
 13  
 14  
 15  
 16  
 17 The deposition of DELISSA K. SINGLETON,  
 18 taken before Sally J. Rossmann, Court Reporter and  
 19 Notary Public, at the law offices of Derfner, Altman &  
 20 Wilborne, 575 King Street, Charleston, South Carolina,  
 21 on February 22, 2011, commencing at 10:30 a.m.  
 22  
 23  
 24  
 25

1           A     We're talking about other students, like  
2     Trident Technical students and students that go to Burke  
3     and different other schools in the area.

---

4           Q     Okay. What about The Citadel; did they have a  
5     special program for guys at The Citadel?

6           A     No, not that I can remember.

7           Q     Just regular Joe citizen, if I got on your  
8     bus, would I have to pay a fee to ride?

9           A     Yes.

10          Q     How is the fee determined?

11          A     It's \$1.50.

12          Q     So I can go anywhere in the city for \$1.50?

13          A     Well --

14          Q     Anywhere the bus goes?

15          A     Well, it goes from -- okay. Say you got on at  
16     The Citadel. You would ride to the end of the line,  
17     which was on Calhoun, and you would have to get out or  
18     pay another fee of \$1.50.

19          Q     So if I rode from The Citadel to Calhoun and  
20     got off, the next time I get on the bus I have to pay  
21     another \$1.50?

22          A     Yes.

23          Q     What if I -- and I don't know why anybody  
24     would do this but I'm just curious. If I got on the bus  
25     and rode from The Citadel to Calhoun and decided I

1 one of the students who had a pass or was it a College  
2 of Charleston student?

3 A It's a student that had a pass.

---

4 Q How do I get one of those passes?

5 A Visitor's Center.

6 Q You don't know whether you have to pay for  
7 those or anything about them?

8 A No.

9 Q All right. How about in January 2010, how  
10 many folks were on your bus then?

11 A Two ladies.

12 Q Do you recall if they were students or paying  
13 customers?

14 A Paying customers.

15 Q This seems obvious -- and I'm not trying to  
16 patronize you -- but you were transporting those two  
17 ladies from one place to another on your bus; is that  
18 true?

19 A Yes.

20 Q Do you remember where they were coming from or  
21 where they were going to?

22 A I picked them up at the Super Stop. The Super  
23 Stop is on Rivers Avenue by the DSS building, and one  
24 young lady was going to work. I don't know where the  
25 other young lady was going.

1 Q And the same is true for the student that was  
2 on the bus in June; you were transporting him from one  
3 point to another?

---

4 A Yes.

5 Q Do you remember where from and to?

6 A He was going from home to the Super Stop.

7 Q Both of the ladies who were on the bus in  
8 January of 2010 had actually paid the fee, correct?

9 A Yes.

10 Q I understand you worked for Veolia, but you  
11 were driving the bus for the Charleston Area Regional  
12 Transit Authority, I think is what it's called, CARTA;  
13 is that true?

14 A Yes.

15 Q Does CARTA have any kind of a program where  
16 indigent people or poor folks can ride the bus without  
17 having to pay the \$1.50 fee that you know of?

18 A You're asking if they have like a low fee or a  
19 senior citizen?

20 Q Right. Well, senior citizens or people who  
21 just are not able to afford the fee. Is there a way you  
22 can get a reduced fee or a free fare?

23 A Yes. There's a way that you can get a card  
24 and you can get a low fare.

25 Q Do you recall whether either one of the ladies

COURT OF COMMON PLEAS  
2010-CP-10-7647

Defendant.

Charleston, South Carolina

The Honorable Roger M. Young, Sr., Judge.

Adam J. Neil, Esquire.  
Attorney for the Defendant

112

1 (July 25, 2011.)

2 MR. ALTMAN: Your Honor, this is a dec  
3 actions. There are cross motions for summary judgment.

4 THE COURT: All right. Well, a cross motion  
5 for summary judgment? Who filed first?

6 MR. ALTMAN: I believe Ms. Singleton did,  
7 Your Honor.

8 THE COURT: Then you got the floor. Go  
9 ahead.

10 MR. ALTMAN: Judge, I represent  
11 Ms. Singleton, who is to my right. This arises out of  
12 two motor vehicle accidents. The first occurred on June  
13 5, 2009; the second on January 29, 2010. The facts in  
14 the case are -- certainly, the material facts, I believe,  
15 aren't in dispute. I don't believe opposing counsel  
16 would disagree with that.

17 Ms. Singleton was a driver for CARTA at the  
18 time of both accidents. She was an hourly employee. I  
19 believe first she was making \$17 an hour; the second time  
20 she was making \$17.43 per hour. Neither accident was her  
21 fault. The at-fault drivers had minimum limits under  
22 South Carolina law, and both have tendered those limits.

23 The case arises out of Ms. Singleton filing  
24 underinsured motorists' claims as to both accidents. Her  
25 medical expenses well exceed the sum of \$100,000 arising

1 out of those accidents.

2 Victoria is her insurance company. They  
3 denied both those claims, and they cited an exclusion Ms.  
4 Singleton's insurance policy, and it's a very, very  
5 common exclusion. In fact, it's been addressed by South  
6 Carolina Courts in the Victoria exclusion that is set  
7 forth in the complaint, as well as both sides'  
8 memorandum, states that coverage does not apply when an  
9 insured is carrying persons or property for a fee in the  
10 use of a motor vehicle.

11 And the relevant language is clearly the  
12 words fee in carrying persons or property. Both sides  
13 have submitted detailed memorandums in support of their  
14 motions. The only issue with regard to the slight  
15 factual dispute is to who was on these buses at the time  
16 of the accident. The second accident, there was no  
17 question, there was a passenger that paid a fare, and a  
18 CARTA fair is \$1.50.

19 Now, CARTA, the way it works with fare  
20 payments, drivers have nothing to do with the payment of  
21 fare. There is a coin box, or fare box, on the bus.  
22 Ms. Singleton and CARTA drivers have nothing to do with  
23 that exchange. The passenger inserts the money into the  
24 fare box. If they don't have the proper change, they  
25 can't ride the bus.

4  
1 By the way, the undisputed testimony --  
2 relative to accident number two. There was one fare  
3 paying passenger on the bus at the time.

4 Relative to the first accident, there was a  
5 student on the bus, and students can ride CARTA buses a  
6 number of different ways. There is an article attached  
7 to Ms. Singleton's memorandum in support --

8 THE COURT: Let me see if I got this right.  
9 She's a CARTA driver?

10 MR. ALTMAN: Yes, sir.

11 THE COURT: And she was driving a bus at the  
12 time the accident happened?

13 MR. ALTMAN: At the time of both the  
14 accidents.

15 THE COURT: And she's making a claim under  
16 her own personal policy for underinsured?

17 MR. ALTMAN: That's correct. The first  
18 accident, there was a student. It's undisputed that the  
19 student did not pay a fare that day. It's a little  
20 uncertain as to whether or not the student had purchased  
21 a pass earlier. There is an article attached to  
22 defendant's memorandum that indicates College of  
23 Charleston students and MUSC students ride for free,  
24 period, due to an arrangement between those two  
25 universities.

1                   Now, believe it or not, there is a South  
2     Carolina case that addresses this specific exclusion.  
3     It's a district Court case from 2001 involving an  
4     Allstate exclusion that is the identical exclusion. It  
5     excludes the carrying of persons or property for a  
6     charge. Our case involves carrying persons or property  
7     for a fee, and I'll submit to the Court the fee and  
8     charge were equivalent, identical legal terms in Black's  
9     as well as in Webster's.

10                  In a case Judge Seymour decided, the case  
11     involved a postman who was driving his own vehicle and  
12     was involved in an accident. It was his fault, and the  
13     victims of that accident brought a claim against his  
14     insurance, and Allstate denied it and filed a declaratory  
15     judgment action in federal court, and Judge Seymour went  
16     through a lengthy discussion about how insurance  
17     contracts are interpreted and how that exclusion has been  
18     interpreted nationally because a bunch of Courts have  
19     touched on this particular exclusion, as you would  
20     expect.

21                  What Judge Seymour focussed on is, what does  
22     the term charge or fee mean? Because a fare, the way  
23     it's interpreted, is payment to an individual for doing a  
24     specific act. She's an hourly employee. She gets paid  
25     whether or not people are on the bus or off the bus. She

1 gets paid whether or not -- she gets paid the identical  
2 amount whether or not there is a lot of volume or whether  
3 nobody rides her particular route. She's paid the same  
4 thing. She's got nothing to do with that fee. Same with  
5 all CARTA drivers.

6 Now, relative to the Allstate case, the  
7 postal worker was paid the same way. He's paid an hourly  
8 rate for delivering the mail. Nobody pays him to deliver  
9 the package. That is an exchange separate and apart from  
10 what that postal worker does, and Judge Seymour, in  
11 falling back on the general rule in South Carolina that  
12 when there is confusion or ambiguity in the meaning of an  
13 insurance contract, it's interpreted in favor of the  
14 insured and against the insurance company who's got the  
15 ability to clarify it.

16 Now, this exclusion has caused a whole line  
17 of cases, and, frankly, cost a number of insurance  
18 companies to revise their policies to clarify this  
19 ambiguity, and one of the cases that I cited was the case  
20 involving Progressive, and what Progressive did is they  
21 changed the exclusion to deal not just with fees  
22 excluding coverage when somebody is transporting persons  
23 or property for a fee, but also with regard to general  
24 compensation.

25 Compensation has a much, much broader

1 significance. It could be a wage paid; it could be  
2 hourly, an hourly rate of pay, as opposed to the term  
3 fee, which can be just a specific act. A delivery of  
4 furniture would be a fee as opposed to what somebody  
5 generally makes, and what's significant about the  
6 Progressive case, and it's attempted to defendant's  
7 memorandum, is Progressive conceded in their argument  
8 that the term fee in and of it self is ambiguous, it is  
9 confusing, but argued to the Court that any ambiguity in  
10 the term fee is cured by Progressive's insertion of the  
11 term compensation in their exclusion.

12 So you've got another carrier conceding in a  
13 very, very identical case that the fee is confusing, and  
14 we know any ambiguity is going to be construed against  
15 us, so we went ahead and started an additional term to  
16 cure that ambiguity. Now, what the Court ultimately  
17 decided in that case was he didn't do it. The exclusion  
18 still doesn't apply because he's an hourly employee, has  
19 nothing to do with transporting persons or property for a  
20 fee.

21 They're paid to drive a vehicle. Their  
22 payment has nothing to do with whether or not persons or  
23 property are in that vehicle. There is no bonuses, no  
24 additional compensation, and we're sorry, that is not the  
25 intent.

1           So there is a whole line of cases on this,  
2 and Judge Seymour goes into it, but there is only a  
3 single South Carolina case that looks at this particular  
4 type of exclusion, slightly different in that it's  
5 dealing with transporting property instead of persons,  
6 but the intent is the same, and Judge Seymour goes  
7 through a lengthy analysis of it and cites five or six  
8 cases.

9           I've cited probably another half dozen in  
10 support of Ms. Singleton's argument that coverage applies  
11 to both of these accidents, and I'm not going to spend  
12 too much time going through each of those cases, but we  
13 have one South Carolina case. There is no issue  
14 regarding what the general rule is. When there is an  
15 ambiguity and an insurance contract, it's construed in  
16 favor of the insured. We got one case in South Carolina,  
17 and I would submit that that case governs this particular  
18 case.

19           THE COURT: All right. You want to respond?

20           MR. NEIL: I would like to, Your Honor. May  
21 it please Court, Adam Neil, again, on behalf of Victoria.  
22 I agree with Mr. Altman on the lack of any disputed fact.  
23 I did want to clarify this issue with regard to the  
24 student.

25           Ms. Singleton testified in her deposition at

1 page 17, and I think this is attached to my memorandum,  
2 that all students, 17 and 18, I guess, carries over, that  
3 all students with the exception of College of Charleston  
4 students were required to pay a per semester fee, and  
5 we've actually attached to our memorandum a printout from  
6 the web site that shows how that fee is paid.

7 It's a \$70 fee that each student pays per  
8 semester-- I think that's attached to the original  
9 motion, but in any event, College of Charleston students,  
10 she says were different. They didn't have to pay. She  
11 said that the bus drivers had to enter a special code,  
12 code number three. I don't know precisely what that  
13 means, when College of Charleston students rode the bus.  
14 Every other student would have paid the \$70 other fee and  
15 they receive a pass.

16 She specifically remembered that this student  
17 who was on the bus presented the pass, which would mean  
18 that this was not a College of Charleston student that  
19 we're dealing with, even if we were -- even if there is  
20 some dispute, I suppose, about whether or not it was a  
21 College of Charleston student, what we know from the  
22 article Mr. Altman attached to his memorandum is that  
23 CARTA receives \$150,000 a year from Charleston to allow  
24 their students to ride CARTA buses.

25 So we've got a fee. It may be a \$70 per

1 semester fee; it may be \$150,000 fee paid by the College  
2 of Charleston to CARTA to be paid. Your Honor, we have  
3 cited cases from various jurisdictions, Florida,  
4 Pennsylvania, California, and Alabama. I know off the  
5 top of my head that have all found this exclusion to be  
6 unambiguous and enforceable in situations that are  
7 virtually identical to this case, and the reason that  
8 this exclusion is unambiguous is because everybody agrees  
9 that Singleton was being paid at the time.

10 She was on the clock, so to speak, and  
11 everyone agrees that the passengers who were on the bus  
12 were on the bus pursuant to the payment of some sort of a  
13 fee. Nobody was on the bus riding for free, and she  
14 testified in her deposition that nobody can just ride for  
15 nothing.

16 Ambiguity, to the extent there is one, as  
17 recognized by Judge Seymour and every Court that has  
18 found there is an ambiguity, is whether there is a fee  
19 paid at the time of transportation or whether there is  
20 compensation paid to the driver. So if that is the  
21 ambiguity, in either case, that ambiguity would not save  
22 coverage for Ms. Singleton in this case, because we have  
23 both of those.

24 There was somebody paying for the particular  
25 ride, and she was receiving her general wages that she's

1 being paid for driving the bus at the time. So  
2 regardless of which way you go in this case, either one  
3 would apply so that the exclusion bars her ability to  
4 collect benefits.

5 I want to point out a case that is cited by  
6 Judge Seymour. It's also cited by Singleton in her  
7 memorandum, and it's a case that makes the exact  
8 distinction that this Court should make between the  
9 Allstate case and the situation that we're dealing with  
10 today. The case is the Richards case. It is I think the  
11 second case or maybe the third case attached to  
12 Mr. Altman's memorandum, and it is a mail carrier case,  
13 just like the Allstate case, and in that case, the Court  
14 said that they did not believe that the mail, where you  
15 purchase a stamp as opposed to paying the driver or  
16 paying somebody as you load your letter on to the bus, or  
17 on to the mail truck, we do not believe that the mail is  
18 carried for a fee. That's on page three of the opinion.

19 And then if you flip over to the following  
20 page, the Court there says this Court believes that the  
21 exclusion was meant to apply in a situation where a fee  
22 is paid to the owner of the vehicle in return for  
23 transportation of the person or property. It's the very  
24 first sentence on the fourth page of that opinion.

25 That's precisely the situation that we have

1 here. We have a situation where a fee was paid to the  
2 owner, that is CARTA, either \$1.50, \$70 a semester or \$1  
3 50,000 for the school year, and they receive that fee for  
4 the ability for those people to ride the bus.

5 The Court goes on to cite Johnson versus  
6 Allstate, which is an Alabama case we cite, which holds  
7 precisely what we're asking the Court to hold here, and  
8 that is that when the owner receives a fee, then it  
9 doesn't matter whether the driver receives a fee, whether  
10 the driver is being compensated.

11 That particular case, the Johnson case, is a  
12 case where it was a day care and kids were riding in a  
13 van. Parents paid \$1 each way for the child to be able  
14 to ride in the van to and from the day care, and the  
15 Court found in that situation the for fees exclusion  
16 applies. We belief in that case, and in particular the  
17 distinction the Court draws between mail carriers and  
18 hauling the mail and people who are riding on a vehicle,  
19 in that case a van or, in our case, a bus, for the  
20 purpose of being transported and are paying, then in that  
21 situation the for fee exclusion applies.

22 So for those reasons, particularly in light  
23 of the fact that we don't believe the exclusion is  
24 ambiguous, but if it is, either interpretation applies  
25 here, we believe that our motion should be granted in the

1 Singleton.

2 THE COURT: All right. Well, there's nothing  
3 I enjoy reading more than insurance coverage cases, so  
4 I'll read this and let you know what I decide. All  
5 right?

6 - - -

7 (Whereupon, the proceedings were concluded.)

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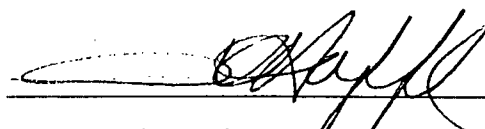
24

25

I, the undersigned Amanda K. Haffenden, RPR, CRR, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Charleston County, South Carolina, on the 25th of July 2011.

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

November 17, 2011

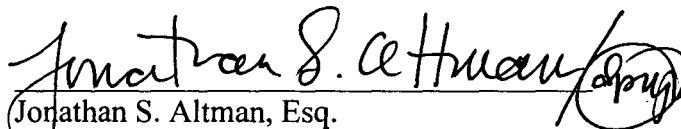
  
\_\_\_\_\_  
Circuit Court Reporter

Certificate of Counsel

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

March 30, 2012

Respectfully submitted,

A handwritten signature in cursive script, reading "Jonathan S. Altman", followed by a circled "dpu" or similar initials.

Jonathan S. Altman, Esq.  
Dorfner, Altman & Wilborn, LLC  
P.O. Box 600  
Charleston, SC 29402  
Telephone: (843) 723-9804

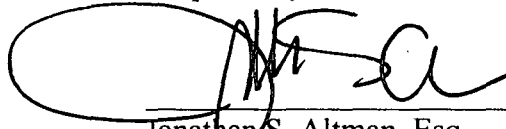
*Attorney for Appellants*

Certificate of Counsel

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

March 30, 2012

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'J. Altman', is written over a horizontal line.

Jonathan S. Altman, Esq.  
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Telephone: (843) 723-9804

*Attorney for Appellants*

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Roger M. Young, Circuit Court Judge

Case No.: 2010-CP-10-7647

RECEIVED  
APR 02 2012  
SC Court of Appeals

Victoria Fire & Casualty Insurance Company,.....Respondent,

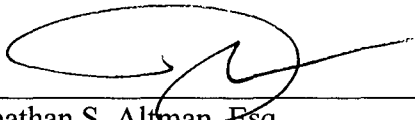
v.

Charles P. Singleton and Delissa Singleton,.....Appellants.

**PROOF OF SERVICE**

I certify that I have served Appellants' Record on Appeal on Respondent Victoria Fire & Casualty Insurance Company by depositing a copy of it in the United States Mail, postage prepaid, on March 30, 2012, addressed to its attorney of record, Adam J. Neil, Esq.

March 30, 2012



Jonathan S. Altman, Esq.  
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Telephone: (843) 723-9804

*Attorney for the Appellants*