

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM WILLIAMSBURG COUNTY
Court of Common Pleas

S.C. SUPREME COURT

George C. James, Jr., Circuit Court Judge

Civil Action Common Pleas Case No. 2014-CP-45-00644
Unpublished Opinion No. 2018-UP-050 (S.C. Ct. App. filed January 31, 2018)

Larry Brand.....^{Petitioner}
~~Appellant~~

v.

Allstate Insurance CompanyRespondent.

APPENDIX

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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM WILLIAMSBURG COUNTY
COURT OF COMMON PLEAS

George C. James, Jr., Circuit Court Judge

Case No. 2014-CP-45-00644

Larry BrandAppellant,

v.

Allstate Insurance CompanyRespondent.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG

LARRY BRAND,

Plaintiff,

vs.

ALLSTATE INSURANCE COMPANY,

Defendant.

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

Civil Action No. 2014CP4500644

ORDER DENYING PLAINTIFF'S MOTION
FOR RECONSIDERATION

By order filed on August 31, 2016, this court granted in part and denied in part the defendant's motion for summary judgment. The plaintiff timely moved for reconsideration. The court has reviewed the motion and has considered the arguments raised by the plaintiff. Based on this review, the court respectfully denies the motion.

END OF ORDER. TO BE ELECTRONICALLY SIGNED AND FILED.

gcj



Williamsburg Common Pleas

Case Caption: Larry Brand VS Allstate Insurance Company

Case Number: 2014CP4500644

Type: Order/Other

SO ORDERED

s/ George C. James, Jr. 2143

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STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

Civil Action No. 2014CP4500644

LARRY BRAND,

Plaintiff,

vs.

ORDER

ALLSTATE INSURANCE COMPANY,

Defendant.

THIS MATTER is before the court on Motion for Summary Judgment filed by Defendant, Allstate Insurance Company (hereinafter referred to as "Allstate" or "Defendant"). The court, having reviewed the motion, the pleadings, and the memoranda of law filed by the parties and having considered the arguments of counsel, grants Defendant's motion.

UNDISPUTED FACTS RELATED TO THE UNDERLYING TORT ACTION

On January 27, 2010, Plaintiff Larry Brand (hereinafter "Plaintiff" or "Brand") was the operator of a 2001 Volvo truck owned by his employer, Evergreen Turf Corporation (hereinafter "Evergreen"), when he was involved in a collision with Cassandra Olivia Stone (hereinafter "Stone"), who was operating a 1998 Ford vehicle owned by Stevenson M. Stone. As a result, Stone filed suit against Brand in the Williamsburg County Court of Common Pleas seeking damages for her injuries.

Stone was insured under a policy of liability insurance issued by Progressive Northern Insurance Company (hereinafter "Progressive") with applicable liability limits of \$25,000.00. The vehicle Brand was operating was owned by his employer and was covered under a policy of insurance issued by Westfield which provides underinsured motorist coverage to Brand as an

insured driver, with limits of \$1,000,000.00. Brand is also an insured under an Allstate policy covering his at-home vehicle. This policy provides underinsured motorist coverage in the amount of \$25,000.00.

After the accident, Brand instituted a workers' compensation claim captioned Larry Brand v. Evergreen Turf Corp., (WCC# 1002789) against his employer. The workers' compensation claim has been resolved for a total payment of compensation and medical benefits of \$354,750.75.

Brand also instituted a third-party lawsuit captioned Larry Brand v. Cassandra Olivia Stone (Civil Action No.: 2012-CP-45-657) in the Court of Common Pleas for Williamsburg County. Progressive paid its liability limits of \$25,000.00, and Plaintiff settled with his employer's underinsured motorist coverage carrier for \$450,000.00. This tort action is still pending but is stayed by consent order pending resolution of this declaratory judgment action.

DECLARATORY JUDGMENT ACTION

Plaintiff filed this declaratory judgment action claiming entitlement to Allstate's underinsured motorist coverage under the theory that Allstate, as the underinsured motorist carrier for the employee, is not entitled to reduce UIM benefits by the amount of the worker's compensation benefits as provided in the policy. Plaintiff contends that the value of his claim exceeds the total amount of his settlement with the liability carrier and the employer's underinsured carrier (for less than its limits) and that Allstate's underinsured motorist coverage should partially fund that difference. The Defendant filed an Answer and Counterclaim and an Amended Answer and Counterclaim to which Plaintiff replied.

Allstate's policy provides that all other UIM benefits available to Plaintiff must be exhausted before Plaintiff will be eligible for benefits under the policy. The policy further

provides that the damages payable will be reduced by the amount of worker's compensation benefits received by Plaintiff.

SUMMARY JUDGMENT STANDARD

A motion for summary judgment should be granted where it is clear there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. Rule 56(c), SCRCP; *State Farm Fire & Cas. Co. v. Breazell*, 324 S.C. 228, 478 S.E.2d 831 (1996). A party opposing a properly supported motion for summary judgment may not rest on the mere allegations or denials of the pleading, but must set forth or point to specific facts showing that there is a genuine issue of material fact. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A party's response to the motion must set forth specific facts, admissible in evidence, showing there is a genuine issue for trial. If he does not so respond, summary judgment should be entered against him. *Moody v. McLellan*, 295 S.C. 157, 367 S.E.2d 449 (Ct. App. 1988). The nonmoving party need only set forth a mere scintilla of evidence in order to defeat a motion for summary judgment. *Hancock v. Mid-South Management Co., Inc.*, 381 S.C. 326, 673 S.E. 2d 801 (2009).

ARGUMENTS OF THE PARTIES

Allstate's arguments:

1. Plaintiff lacks standing to assert a claim to benefits under the Allstate policy because Plaintiff has not yet established entitlement to recover amounts in excess of the \$25,000.00 liability coverage and the primary underinsured motorist coverage on the vehicle he was operating at the time of the accident,

2. Payment made as demanded by Plaintiff would violate the terms of the insurance contract between the parties by granting Plaintiff a double recovery. Any recovery under the

policy must be reduced by any amount recovered from another underinsured motorist policy, another liability policy, and the amount of any workers' compensation benefits received by plaintiff. The policy provides in Part 3 Section II as follows:

However, no one will be entitled to receive duplicate benefits for the same elements of loss. Subject to the ... limits of liability, damages payable will be reduced by:

1. all amounts paid or payable by or on behalf of the owner of operator of the underinsured auto or anyone else responsible. This includes all sums paid or payable under the bodily injury liability coverage or property damage liability coverage of this or any other auto policy... and
3. all amounts payable under any workers' compensation law...

* * *

No injured person will recover duplicate benefits for the same elements of loss under this or any other underinsured motorists insurance, including approved plans of self-insurance.

3. Underinsured motorist benefits under the Allstate policy are only recoverable once Plaintiff has exhausted the funds available to him under all other applicable policies. Allstate asserts that the employer's underinsured motorist coverage must be fully exhausted before Allstate's coverage becomes applicable. The policy limits on the underlying employer's policy are \$1,000,000.00, and Allstate contends Plaintiff must exhaust this entire amount, plus the liability limits of \$25,000.00, before its policy becomes applicable. Part 3, Section II of the policy provides as follows:

If the insured person was in... a vehicle which is insured for this coverage under another policy, coverage under this policy will be excess. This means that when the insured person is legally entitled to recover damages in excess of the other policy limit, we will pay only the amount by which the damages exceed the limit of liability of that policy up to the limit of liability of this policy.

Plaintiff's arguments:

1. South Carolina law prohibits application of the Allstate policy provisions in a manner that would limit the recovery of underinsured motorist coverage as proposed by Allstate.

2. Since the Allstate policy provisions limiting recovery are invalid as a matter of law, and since the primary underinsured motorist coverage carrier on the employer's vehicle is permitted to set off workers' compensation benefits, Allstate's coverage should "fill the doughnut hole" created by the set off, up to the limits of the Allstate policy.

DISCUSSION

After consideration of these relative positions, the court concludes that summary judgment is appropriate and accordingly declares the rights and responsibilities of the parties as set forth herein. There is no genuine issue of material fact and the pertinent issues can be resolved as a matter of law.

Ripeness

The court rejects Allstate's threshold position that the matter is not ripe. While there is not yet any judgment in the underlying action upon which to determine the total value of the tort claim, that is not an impediment to the court's power to declare the rights and obligations of the parties. Once these rights and obligations have been declared, the underlying tort action can be tried and the amount of Plaintiff's damages can be ascertained by a jury. Further, Allstate consented to an order staying the underlying action and cannot now be heard to complain that the stay prohibits resolution of the issues joined in this declaratory judgment action.

Policy Provisions

Plaintiff asserts that South Carolina law prohibits application of the Allstate policy provisions in a manner that would limit the recovery of underinsured motorist coverage.

Plaintiff cites *Ferguson v. State Farm Mut. Auto Ins. Co.*, 261 S.C. 96, 198 S.E.2d 522 (1973), *Williamson v. United States Fire Ins. Co.*, 314 S.C. 215, 442 S.E.2d 587 (1994), and *Sweetser v. S.C. Dep't of Ins. Reserve Fund*, 390 S.C. 632.703 S.E.2d 509 (2010) in support of his position. As will be discussed further, the court concludes the Allstate provisions are enforceable and are binding on Plaintiff.

In *Ferguson*, our Supreme Court struck down a provision in an employee's own automobile policy which purported to offset workers compensation benefits against the employee's uninsured motorist coverage (UM) recovery. In *State Farm Mut. Auto. Ins. Co. v. Calcutt*, 340 S.C. 231, 235-36, 530 S.E.2d 896 (Ct. App. 2000), the Court of Appeals held that when an employee purchases underinsured motorist coverage (UIM), a policy provision providing that UIM benefits can be reduced by the amount of workers' compensation benefits received does not conflict with our insurance laws. The Court also concluded that such a provision does not violate public policy.

Plaintiff contends that the Supreme Court in *Sweetser, supra*, overruled *Calcutt* in this context. Allstate does not rely upon *Calcutt* because Allstate claims its policy provision is a reduction of damages provision rather than a set-off provision. However, since Plaintiff argues *Calcutt* was overruled by *Sweetser, supra*, and since Plaintiff maintains that the overruling of *Calcutt* is dispositive of the issues in this case, the court must address the continuing validity of *Calcutt*. Again, in *Calcutt*, the Court of Appeals held that employee-purchased UIM is subject to a workers' compensation offset. The *Calcutt* Court determined that the public policy rationale of *Ferguson* did not apply to employee-purchased UIM coverage because UIM coverage is not mandatory. The *Calcutt* Court therefore concluded that a policy provision allowing an offset of

workers' compensation coverage violated neither §38-77-160 nor the public policy of South Carolina.

In *Sweetser*, the plaintiff was a passenger in his employer's vehicle when it collided with an uninsured driver. He collected workers' compensation benefits and sued the uninsured driver. His employer's carrier's policy provided UM coverage but had an offset provision for workers' compensation benefits. The Supreme Court held that the offset provision was valid under S.C. Code §38-77-220, which provides that auto policies need not insure any liability under the workers' compensation act. The *Sweetser* Court reviewed *Williamson, supra*, and *Ferguson* and noted that the statutory predecessor to §38-77-220 had no application to *Ferguson*, because §38-77-220 "applies only to employers who are purchasing automobile insurance policies." 390 S.C. at 636. In a footnote to that quote, the *Sweetser* Court stated that "[t]o the extent [*Calcutt*] conflicts with this interpretation of §38-77-220, it is overruled." In my view, the holding in *Calcutt* that employee-purchased UIM is subject to a workers' compensation offset was not overruled by *Sweetser*. The footnoted quote in *Sweetser* and the footnote itself simply clarify that §38-77-220 applies only to employers who purchase automobile coverage. Therefore, since the Allstate policy in the instant case was purchased by the employee-plaintiff, §38-77-220 does not apply. Since §38-77-220 does not apply to employee-purchased UIM, the holding in *Calcutt* remains good law as applied to employee-purchased UIM. In the instant case, the UIM coverage afforded by Allstate is employee-purchase UIM; therefore, a set-off provision would be valid.

Allstate claims that its policy provision is not a set-off provision but rather a reduction of damages payable provision. Allstate argues that the application of such a policy provision does not reduce the amount of coverage available to the insured, but simply reduces the amount of damages payable by the amount of the workers' compensation recovery. If the value of the

bodily injury claim is ultimately determined to exceed the amount of (a) liability coverage, (b) primary underinsured motorist coverage limits, and (c) workers' compensation benefits paid, the Allstate policy will respond to those damages. Whether the provision is a deemed to be a set-off provision or a reduction of damages payable provision, the court concludes the result is the same; the Allstate policy provisions are neither contrary to statute nor void as against public policy and should be enforced according to their terms. Under South Carolina law, the language of Allstate's reduction provision is clear and unambiguous and should be enforced. See *Harrington v. Edwards*, 262 S.C. 263, 203 S.E.2d 691 (1974) (upholding reduction of liability coverage by medpay coverage pursuant to policy provision). See also *Rowzie v. Allstate*, 556 F.3d 165 (2009) (upholding against a similar challenge the identical provision in an Allstate policy relating to reduction of damages by amounts recovered in personal injury protection benefits).

The Westfield UIM coverage purchased by Plaintiff's employer was also subject to a workers' compensation set-off pursuant to the terms of the Westfield policy. See, *Williamson v. United States Fire Ins. Co.*, 314 S.C. 215, 442 S.E.2d 587 (1994) The workers' compensation carrier has paid benefits totaling \$354,750.75, thereby reducing by operation of law the amount of Westfield's UIM coverage payable to Plaintiff from \$1,000,000.00 to \$645,249.25, of which \$450,000.00 has been paid to Mr. Brand.

Brand asserts that Allstate's UIM coverage should be required to fill the "doughnut hole" created by the application of the Westfield set-off. He argues that to allow Allstate to offset the Westfield coverage would result in the Allstate policy being rendered practically worthless and would result in him being "uncovered" for \$354,750.75 in damages represented by his workers'

compensation recovery.¹ The court concludes that the Allstate policy will not be triggered unless Brand's damages exceed the total of the liability coverage, workers' compensation recovery, and the remaining Westfield coverage; these sums total \$1,025,000.00. The Allstate coverage is not "worthless"; it has simply not yet been triggered by a judgment exceeding \$1,025,000.00.

Again, Plaintiff argues he is "uncovered" for \$354,750.75 in damages, but that is simply not the case. Part 3, Section III of the Allstate policy provides that the UIM from the occupied automobile is primary and that the Allstate UIM is excess. Plaintiff does not appear to dispute that Allstate's UIM coverage is secondary to Westfield's. Part 3, Section II also provides that Allstate is obligated to pay only the amount by which Plaintiff's damages exceed the limit of liability of the primary UIM policy. By operation of law, the limit of the Westfield policy is now \$645,249.25. Plaintiff accepted \$450,000.00 from Westfield and has released Westfield from any further UIM obligations; however, the amount of UIM set-off to which Allstate is entitled is still \$645,249.25. In *Cobb v. Benjamin*, 325 S.C. 573, 482 S.E.2d 589 (1997), the Supreme Court held that when a plaintiff settles with the primary liability carrier for less than the policy limits, the UIM carrier is entitled to credit for the full amount of the liability coverage before UIM coverage becomes payable. The court concludes that such a result is warranted with regard to primary and excess UIM coverage.

There is no dispute that Allstate is entitled to an offset of the \$25,000.00 paid by Progressive, the liability carrier. As noted above, the court concludes that the workers' compensation reduction provision in the Allstate policy is valid; consequently, Allstate is entitled to a credit in the amount of \$354,750.75. Even though Plaintiff settled with Westfield for less than the maximum amount of UIM coverage remaining on the Westfield policy, Allstate is also

¹ In fact, recovery of Allstate's UIM coverage for damages for which the Plaintiff has already been compensated in workers' compensation benefits would offend Allstate's policy provision and sound public policy prohibiting a double recovery.

entitled to a credit of \$645,249.25 in the remaining Westfield UIM coverage before its underinsured motorist coverage becomes applicable to this loss.

Allstate does not assert that its UIM coverage is not applicable simply because the Plaintiff has recovered workers' compensation benefits in an amount in excess of its UIM policy limits. In the event the Plaintiff's claim is ultimately resolved in an amount sufficient to trigger Allstate's UIM coverage as set forth herein, the UIM coverage will be recoverable to the extent Plaintiff's damages exceed this threshold. This is consistent with Allstate's policy language, public policy, and applicable law.

Allstate cites a portion of Part 3, Section II of its policy, entitled "Limits of Liability." This part of the policy states that with regard to UIM coverage, no one will be entitled to receive duplicate benefits for the same elements of loss, and that subject to the limits of liability, damages payable will be reduced by (a) amounts paid or payable on behalf of the owner or operator of the underinsured auto or anyone else responsible and (b) all amounts payable under any workers' compensation law. The court agrees. In the instant case, (a) is the sum of \$25,000.00 in liability coverage paid by Progressive, and (b) is the sum of "payable" workers' compensation coverage, i.e., \$354,750.75.

Allstate cites another part of Part 3, Section II of the policy entitled "Non-Duplication of Benefits. This section provides that no injured person will recover duplicate benefits for the same elements of loss under this or any other underinsured motorist insurance. Allstate argues that any payment of its UIM would violate the terms of its contract unless and until the plaintiff demonstrates entitlement to recover in excess of the primary UIM coverage. The court agrees. The sum contemplated by this section of the policy and by the "other insurance" provision in Part 3, Section II of the policy is \$645,249.25.

Whether considered in terms of reduction of benefits or a set-off, the pertinent policy provisions are not prohibited by statute and do not violate any public policy of this state. The provisions are enforceable. Otherwise, Plaintiff would conceivably be permitted to obtain double recovery, which is certainly contrary to public policy and in violation of these clear and unambiguous policy provisions.

CONCLUSION

THEREFORE, it is ORDERED and ADJUDGED that:

As a matter of law, Defendant Allstate Insurance Company's UIM coverage is payable only to the extent that Plaintiff Brand receives a verdict in the underlying action exceeding \$1,025,000.00.

END OF ORDER-ELECTRONIC SIGNATURE PAGE TO FOLLOW



Williamsburg Common Pleas

Case Caption: Larry Brand VS Allstate Insurance Company
Case Number: 2014CP4500644
Type: Order/Summary Judgment

SO ORDERED

s/ George C. James, Jr. 2143

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STATE OF SOUTH CAROLINA)

COUNTY OF WILLIAMSBURG)

Larry Brand,)

Plaintiff(s))

vs.)

Allstate Insurance Company,)

Defendant(s))

Submitted By: Patrick J. McLaughlin

Address: Wukela Law Firm, P.O. Box 13057, Florence, SC 29504-3057

IN THE COURT OF COMMON PLEAS

17

CIVIL ACTION COVERSHEET

2014-CP- 45-

14 CP45 64 4

FILED 2014 DEC 15 PM 2:45 SHARON W. STAGGERS CLERK OF COURT WILLIAMSBURG COUNTY S.C.

SC Bar #: 73675 Telephone #: 843-669-5634 Fax #: 843-669-5150 Other: E-mail: patrick@wukelalaw.com

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

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

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

NATURE OF ACTION (Check One Box Below)

- Contracts: Constructions (100), Debt Collection (110), Employment (120), General (130), Breach of Contract (140), Other (199)
Torts - Professional Malpractice: Dental Malpractice (200), Legal Malpractice (210), Medical Malpractice (220), Previous Notice of Intent Case # 20 -NI-, Notice/ File Med Mal (230), Other (299)
Torts - Personal Injury: Assault/Slander/Libel (300), Conversion (310), Motor Vehicle Accident (320), Premises Liability (330), Products Liability (340), Personal Injury (350), Wrongful Death (360), Other (399)
Real Property: Claim & Delivery (400), Condemnation (410), Foreclosure (420), Mechanic's Lien (430), Partition (440), Possession (450), Building Code Violation (460), Other (499)
Inmate Petitions: PCR (500), Mandamus (520), Habeas Corpus (530), Other (599)
Administrative Law/Relief: Reinstate Drv. License (800), Judicial Review (810), Relief (820), Permanent Injunction (830), Forfeiture-Petition (840), Forfeiture-Consent Order (850), Other (899)
Judgments/Settlements: Death Settlement (700), Foreign Judgment (710), Magistrate's Judgment (720), Minor Settlement (730), Transcript Judgment (740), Lis Pendens (750), Transfer of Structured Settlement Payment-Rights Application (760), Confession of Judgment (770), Petition for Workers Compensation Settlement Approval (780), Other (799)
Appeals: Arbitration (900), Magistrate-Civil (910), Magistrate-Criminal (920), Municipal (930), Probate Court (940), SCDOT (950), Worker's Comp (960), Zoning Board (970), Public Service Comm. (990), Employment Security Comm (991), Other (999)
Special/Complex /Other: Environmental (600), Automobile Arb. (610), Medical (620), Other (699), Declaratory Judgment, Pharmaceuticals (630), Unfair Trade Practices (640), Out-of State Depositions (650), Motion to Quash Subpoena in an Out-of-County Action (660), Sexual Predator (510)

Submitting Party Signature: [Signature]

A CERTIFIED TRUE COPY Sharon W. Staggers CLERK OF COURT WILLIAMSBURG COUNTY Date: December 12, 2014

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

STATE OF SOUTH CAROLINA)
)
 COUNTY OF WILLIAMSBURG)
)
 Larry Brand,)
)
 Plaintiff,)
)
 vs.)
)
 Allstate Insurance Company,)
)
 Defendant.)
 _____)

IN THE COURT OF COMMON PLEAS
 THIRD JUDICIAL CIRCUIT
 CIVIL ACTION NO. 2014-CP-45-_____

14 CP45 64 4

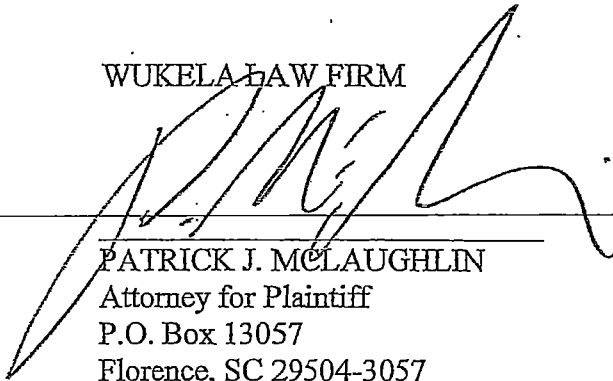
SUMMONS FOR RELIEF
 COMPLAINT SERVED

2014 DEC 15 PM 2:45
 FILED
 W. ROY H. STAGGERS
 CLERK OF COURT
 WILLIAMSBURG, S.C.

TO THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, of which a copy is hereby served upon you, and to serve a copy of your answer to the said Complaint on the subscribers at their offices at 403 Second Loop Road, Florence, South Carolina within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint and judgment by default will be rendered against you.

WUKELA LAW FIRM



PATRICK J. MCLAUGHLIN
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 P.O. Box 13057
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 Facsimile: 843-669-5634
 Email: patrick@wukelalaw.com

Florence, South Carolina

December 14, 2014

STATE OF SOUTH CAROLINA)
)
 COUNTY OF WILLIAMSBURG)
)
 Larry Brand,)
) Plaintiff,)
)
 vs.)
)
 Allstate Insurance Company,)
)
) Defendant.)
 _____)

IN THE COURT OF COMMON PLEAS
 THIRD JUDICIAL CIRCUIT
 CIVIL ACTION NO. 2014-CP-45-_____

14 CP45 64 4

**COMPLAINT FOR
 DECLARATORY JUDGMENT**

FILED
 2014 DEC 15 PM 2:14
 SHARON H. STAGGER
 CLERK OF COURT
 KINGSTREE, S.C.

The Plaintiff, complaining of the Defendant, would respectfully show unto the Court as follows:

THE PARTIES

1. That the Plaintiff Larry Brand (hereinafter "BRAND") is a resident of the County of Florence, State of South Carolina.
2. That the Plaintiff is informed and believes that the Defendant (hereinafter "ALLSTATE") is an insurance company organized under the laws of a state other than South Carolina, but transacts business in South Carolina.
3. The Plaintiff files this Complaint seeking declaratory judgment pursuant to South Carolina Code Section 15-53-10 *et. seq.* for the purpose of determining a question of actual controversy between the parties as further described in this Complaint.

FACTUAL ALLEGATIONS

4. That on January 27, 2010, BRAND was the operator of a 2001 Volvo truck owned by his employer, Evergreen Turf Corporation (hereinafter "EVERGREEN").
5. The at-fault driver in that accident, Casandra Olivia Stone (hereinafter "STONE"),

was operating a 1998 Ford vehicle owned by Stevenson M. Stone.

6. That on January 27, 2010, BRAND was traveling north on S.C. 375, in the Town of Greelyville, South Carolina, when STONE, who was entering the roadway from Bloody Bucket Road, collided with BRAND, further causing BRAND injuries and damages.
7. That STONE's actions, and failures to act, amount to negligence, carelessness, recklessness, gross negligence, and willful and wanton conduct in the following particulars, to-wit:
 - a. Failing to exercise the degree of caution a reasonable or prudent person would have used under the circumstances then and there existing;
 - b. Failing to keep a proper lookout;
 - c. Failing to yield right of way;
 - d. Failing to maintain proper control;
 - e. Failing to maintain adequate brakes on the vehicle she was driving, or if the vehicle had adequate brakes, in failing to apply the same;
 - f. Failing to maintain an adequate steering mechanism on the vehicle she was driving, or if the vehicle had an adequate steering mechanism, in failing to properly utilize the same;
 - g. Failing to warn the Plaintiff of the impending danger.

All of the above being in violation of the statute and case law of the State of South Carolina.

8. That as a direct and proximate result of STONE's negligence, carelessness, recklessness, gross negligence, and willful and wanton conduct, BRAND suffered injuries and damages in the following particulars:
 - a. Actual and Consequential damages resulting from personal injury, to-wit:

- i. Disability, past and future;
 - ii. Pain and suffering, past and future;
 - iii. Stress, anguish and anxiety, past and future;
 - iv. Medical costs, past and future;
 - v. Lost wages, past and future.
- b. That, in addition, BRAND is informed and believes that he is entitled to an award of punitive damages in an amount to be determined by a jury.
9. That STONE is covered under a policy of liability coverage in an amount of \$25,000.00 provided by Progressive Northern Insurance Company (hereinafter "PROGRESSIVE").
10. That subsequent to the accident, BRAND instituted a Workers' Compensation claim captioned Larry Brand v. Evergreen Turf Corp., (WCC# 1002789) against his employer, EVERGREEN. EVERGREEN's Worker's Compensation Carrier is Chartis Casualty Company (hereinafter "CHARTIS"). That Evergreen has accepted the Worker's Compensation claim, and as of December 13, 2014 has paid \$110,507.80 in compensation and \$34,040.93 in medical benefits, and continues to pay such benefits.
-
11. That PROGRESSIVE has tendered their liability limits of \$25,000.00 to the Plaintiff.
12. That BRAND is insured under a policy of underinsured motorist coverage purchased by employer EVERGREEN on the 2001 Volvo truck involved in the accident and said policy contains a \$1,000,000.00 coverage limit.
13. That the WESTFIELD underinsured motorist policy contains an offset excluding coverage for any amounts paid by the employer or Worker's Compensation carrier.

14. That BRAND is insured under a policy of underinsured coverage issued by Allstate and purchased by BRAND on an at-home vehicle, and said policy contains a \$25,000.00 coverage limit.
15. That the at-home ALLSTATE underinsured motorist policy contains an offset excluding coverage for any amounts paid by the Employer or Worker's Compensation carrier arising from the instant accident.
16. That as of December 3, 2014, the worker's compensation carrier has paid a minimum total amount of benefits of \$144,548.01 (\$110,507.08 in compensation plus \$34,040.93 in medical). See *Exhibit A*, WCC Form #18 dated December 3, 2014.
17. That subsequent to the accident, BRAND instituted a third-party lawsuit captioned Larry Brand v. Casandra Olivia Stone. That suit was filed on December 5, 2012, Civil Action No.: 2012-CP-45-657 in the Court of Common Pleas for Williamsburg County.
18. Both Westfield and Allstate were served as underinsured motorist carrier in that action. The parties have mediated the third-party lawsuit. That mediation resulted in an agreement by WESTFIELD to pay \$450,000.00 to the Plaintiff in exchange for a release of WESTFIELD from the action.

- ~~19. The case against ALLSTATE was not resolved and the Plaintiff continues to maintain a claim for underinsured motorist benefits coverage with ALLSTATE.~~
20. That Plaintiff contends that the Worker's Compensation offset contained in the ALLSTATE policy is ineffective as a matter of law; whereas, Allstate contends that their Worker's Compensation offset is effective.

FOR A FIRST CAUSE OF ACTION
(DECLARATORY JUDGMENT)

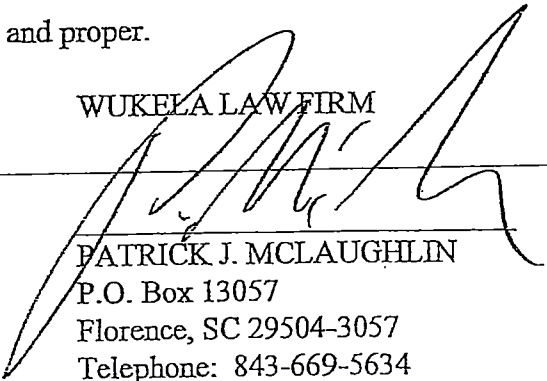
21. That paragraphs 1-20 are hereby reiterated as if set out herein verbatim.
22. That a justiciable controversy exists as to the amount of coverage available and the effectiveness of the Worker's Compensation coverage offset under the at-home ALLSTATE policy.
23. That PROGRESSIVE's liability policy covered damages arising from bodily injury to Plaintiff proximately caused by STONE in amounts from \$0.01 through \$25,000.00.
24. That the employer-provided underinsured motorist coverage policy issued by WESTFIELD:
- a. provides for \$1,000,000.00 in total coverage limits;
 - b. provides for an offset for liability coverage paid by Progressive in the amount of \$25,000.00
 - c. contained effective coverage offset language for the amount of worker's compensation benefits paid; and as of December 3, 2014, the worker's compensation carrier has paid \$144,548.01 in worker's compensation benefits, and continues to pay additional benefits weekly.
 - d. Therefore, the WESTFIELD underinsured motorist policy contains an effective coverage offset totaling \$169,548.01 as of December 3, 2014. (\$25,000.00 in liability coverage along with \$144,548.01 in Worker's Compensation benefits), and WESTFIELD's policy provides no coverage at all for bodily injury to Plaintiff proximately caused by STONE in any amount below \$169,548.01.

25. That the at-home underinsured motorist coverage policy purchased by BRAND and issued by ALLSTATE:

- a. Provides \$25,000.00 in total coverage limits;
- b. Provides for an offset for liability coverage paid by PROGRESSIVE in the amount of \$25,000.00.
- c. Contains worker's compensation offset language that is ineffective as a matter of law pursuant to S.C. Code 38-77-220 as interpreted by Sweetser v. S.C. Dep't of Ins. Reserve Fund, 390 S.C. 632, 703 S.E.2d 509 (2010).
- d. Therefore, the ALLSTATE underinsured motorist policy provides coverage for any bodily injury to Plaintiff proximately caused by STONE in amounts from \$25,000.01 through \$50,000.01.

WHEREFORE, having filed this declaratory judgment action, the Plaintiff prays that the Court issue an order declaring that the ALLSTATE party provides coverage for bodily injury damages to Plaintiff proximately caused by Defendant STONE in amounts from \$25,000.01 through \$169,548.01, and further granting the relief sought above and for such other relief as the Court may deem just and proper.

WUKELA LAW FIRM



PATRICK J. MCLAUGHLIN
P.O. Box 13057
Florence, SC 29504-3057
Telephone: 843-669-5634
Facsimile: 843-669-5150
Email: patrick@wukelalaw.com

Florence, South Carolina

December 10, 2014

Exhibit A



South Carolina Workers' Compensation Commission
126 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5723

WCC File #: 1002789
Carrier File #: 709-836242
Carrier Code #: 1023
Employer FEIN #: 911680858

Claimant's Name: LARRY BRAND SSN: _____
Address: _____
City: LAKE CITY State: SC Zip: 29560
Home Phone: _____ Work Phone: _____
Preparer's Name: TRACY DEAN Law Firm: _____
Employer's Name: EVERGREEN TURF CORP
Address: 1512 BOB WHITE ROAD
City: TURBEVILLE State: SC Zip: 29162
Insurance Carrier: AIG ASSURANCE COMPANY
Preparer's Phone #: (704) 553 - 5141

1. Date of injury: 01/27/2010 (m/d/yyyy)
2. Total Weeks Compensation Paid: 209 3/7

3. Type of Compensation Paid (TP or TT)/Periods of Payment

Type: <u>TT</u>	From: <u>01/28/2010</u>	To: <u>05/17/2010</u>
Type: <u>TT</u>	From: <u>03/23/2011</u>	To: <u>12/07/2014</u>
Type: _____	From: _____	To: _____
Type: _____	From: _____	To: _____
Type: _____	From: _____	To: _____

FILED
2014 DEC 15 PM 2:45
SHARON W. STANGERS
CLERK OF COURT
KINGS TREE, S.C.

4. Date of First Payment: 05/06/2010 (m/d/yyyy)

5. Total Amount Paid (a) Compensation: \$ 110,507.08

(b) Medical (Include Nursing, Hospital, Drugs, Etc.): \$ 34,040.93

6. Informal Conference is Requested: Yes No (check one)

Use these lines to send a memo to the Commission: PLEASE ACCEPT PERIODIC FORM 18 WCC#1002789 FOR ALL

TRACY DEAN
Employer's Representative (704) 553 - 5141 12/3/2014
Phone Date

Print all information. File this form six months after the alleged injury date and each six months until the Commission's File is closed. Form 8 must be filed whether or not compensation is ongoing. Check "yes" after Number 6 to request an informal conference. Refer to R.67-67-507, and R.67-804 for further information.

STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG

IN THE COURT OF COMMON PLEAS
Civil Action No. 2014-CP-45-00644

LARRY BRAND,
Plaintiff,
v.
ALLSTATE INSURANCE COMPANY,
Defendant.

**AMENDED ANSWER
AND COUNTERCLAIM
(Jury Trial Demanded)**

Defendant, Allstate Insurance Company, amends its answer to the Plaintiff's Complaint and respectfully shows unto the Court as follows:

FOR A FIRST DEFENSE

1. Upon information and belief, Defendant admits the allegations of Paragraph 1.
2. Defendant admits the allegations of Paragraph 2.
3. Defendant admits the allegations of Paragraph 3.
4. Upon information and belief, Defendant admits the allegations of Paragraph 4.
5. Upon information and belief, Defendant admits the allegations of Paragraph 5.
6. In response to Paragraph 6 of the Complaint, Defendant admits that an accident occurred on January 27, 2010 resulting in the underlying lawsuit. Defendant denies the remaining allegations in Paragraph 6 of the Complaint

7. Defendant denies the allegations of Paragraph 7 of the Complaint.
8. Defendant denies the allegations of Paragraph 8 of the Complaint.
9. Upon information and belief, Defendant admits the allegations of Paragraph 9.
10. Upon information and belief, Defendant admits the allegations of Paragraph 10.
11. Defendant admits the allegations of Paragraph 11.
12. Defendant admits the allegations of Paragraph 12.
13. Defendant admits the allegations of Paragraph 13.
14. Defendant admits the allegations of Paragraph 14.
15. Defendant denies that the Allstate policy contains "an offset excluding coverage for any amounts paid by the Employer or Worker's Compensation carrier arising from the instant accident." Defendant further denies the remaining allegations of Paragraph 15 of the Complaint and craves reference to the language of the Allstate policy (Exhibit A hereto), the terms, conditions and language of which speaks for itself.
16. Defendant admits the allegations of Paragraph 16.
17. Defendant admits the allegations of Paragraph 17.
18. Defendant admits the allegations of Paragraph 18.
19. Defendant admits the allegations of Paragraph 19.
20. Defendant admits only so much of the allegations of Paragraph 20 as may be construed to allege that Plaintiff initiated the present lawsuit seeking benefits to which he is not entitled under the Allstate policy. Defendant denies that

the Allstate policy contains "a Worker's Compensation offset." Defendant further denies the remaining allegations of Paragraph 20 of the Complaint and craves reference to the language of the Allstate policy (Exhibit A hereto), the terms, conditions and language of which speaks for itself.

21. In response to Paragraph 21 of the Complaint, Defendant reaffirms and re-alleges the contents of Paragraphs 1-20 above fully as if repeated herein verbatim.

22. In response to Paragraph 22 of the Complaint, Defendant denies that a justiciable controversy exists and further denies that the Allstate policy contains a "Worker's Compensation offset".

23. Defendant admits the allegations of Paragraph 23.

24. Defendant admits the allegations of Paragraph 24.

25. In response to Paragraph 25 of the Complaint, Defendant admits only so much as may be construed to allege that the Allstate policy provides \$25,000 in total coverage limits. Defendant denies the remaining allegations contained in Paragraph 25 as stated in the Complaint and craves reference to the Allstate policy, (Exhibit A hereto), conditions and language of which speaks for itself. Defendant denies any conclusions of law contained in Paragraph 25, and craves reference to the statutes and applicable judicial determinations, the language of which speak for themselves.

26. Defendant denies the remaining allegations in the Complaint not heretofore admitted, and denies that Plaintiff is entitled to the relief sought in his Prayer for Relief.

FOR A SECOND DEFENSE

27. Plaintiff's claim against Defendant are governed and restricted by the terms, conditions, and exclusions contained in the relevant policy and applicable law, which preclude coverage for the amount stated in Plaintiff's Complaint.

FOR A THIRD DEFENSE

28. Plaintiff's Complaint does not state a claim upon which relief may be granted as to some or all of the claims asserted, and must therefore be dismissed.

FOR A FOURTH DEFENSE

29. At all times pertinent hereto, Defendant exercised good faith and reasonable care in handling Plaintiff's underinsured motorist claim and is therefore, not liable to Plaintiff.

THE ALLSTATE POLICY

30. The Allstate Policy provides that the named insureds are Estelle and Larry Brand.

31. Pursuant to the Declarations Page of the Allstate Policy, the insured is provided with underinsured motorists benefits coverage of Twenty-Five Thousand and no/100 Dollars (\$25,000.00) per person and Fifty Thousand and no/100 Dollars (\$50,000.00) per accident because of bodily injury.

32. Pursuant to the Insuring Agreements:

[Allstate] will pay those damages that an insured person is legally entitled to recover from the owner or operator of an underinsured auto because of: (1) **bodily injury sustained** by an insured person; and (2) **property damage**. [Allstate] will pay under this coverage only after the limits of liability under any applicable liability bonds or policies, or any applicable uninsured

motorists coverage have been exhausted by payment of judgments or settlements.

33. The Allstate Policy defines an **Insured** as:

(1) [Estelle or Larry Brand] and any resident relative.

34. The Allstate Policy defines **Bodily Injury** to mean bodily injury, sickness, disease, or death.

35. The Allstate Policy defines **Property Damage** to mean damage to or destruction of property of an insured person.

36. The Allstate Policy defines an **Insured Auto** to mean a motor vehicle:

(4) not owned by [Estelle or Larry Brand] or a resident relative, if being operated by [Estelle or Larry Brand] or a resident relative with the owner's permission. The motor vehicle cannot be furnished for the regular use of [Estelle or Larry Brand] or resident relative.

37. Pursuant to the **Exclusions-What is Not Covered** section of the Allstate Policy:

[Allstate] will not pay any damages an insured person is legally entitled to recover because:

(3) **bodily injury or property damage** to the extent that benefits are paid, payable, or required to be provided under any workers' compensation or disability benefits law.

38. Defendant disputes that Plaintiff is entitled to underinsured motorists coverage as a result of claims made in the underlying action and would show that at all times relevant hereto, Plaintiff's remedies and recovery were subject to S.C. Worker's Compensation Act, and therefore, precluded under the Allstate Policy in question.

39. Pursuant to the **Limits of Liability** section of the Allstate Policy:

The limits shown on the Policy Declarations are the maximum [Allstate] will pay for any single accident involving an insured auto.

Subject to the above limits of liability, damages payable will be reduced by:

(3) all amounts payable under any workers' compensation law, disability benefits law, or similar law, Medical Expense Benefit Coverage of this policy, or any similar automobile medical payments coverage.

(4) all amounts paid or payable under any Underinsured Motorists Coverage applicable to a vehicle, other than [Estelle or Larry Brand] insured auto, which the insured person was in, on, getting into, or out of at the time of the accident.

40. Defendant disputes that Plaintiff is entitled to underinsured motorists coverage as a result of claims made in the underlying action and would show that at all times relevant hereto, Plaintiff's remedies and recovery under the Allstate Policy in question were subject to S.C. Worker's Compensation Act, should be reduced by the worker's compensation benefits received in the amount of \$144,548.01, and therefore, did not warrant any recovery under the Allstate Policy in question.

41. Defendant disputes that Plaintiff is entitled to underinsured motorists coverage as a result of claims made in the underlying action and would show that at all times relevant hereto, Plaintiff's remedies and recovery under the Allstate Policy in question should be reduced by the \$1,000,000 underinsured motorists coverage for the vehicle Plaintiff was in at the time of the accident, and therefore, did not warrant any recovery under the Allstate Policy in question

42. Pursuant to the If There Other Insurance section of the Allstate

Policy:

If the insured person was in, on, getting into, or out of a vehicle which insured for this coverage under another policy, coverage under this policy will be excess. This means that when the insured person is legally entitled to recover damages in excess of the other policy limit, [Allstate] will pay the amount by which the damages exceed the limit of liability of that policy up to the limit of liability of this policy.

43. Defendant disputes that Plaintiff is entitled to underinsured motorists coverage as a result of claims made in the underlying action and would show that at all times relevant hereto, Plaintiff's remedies and recovery under the Allstate Policy in question should be held to be excess underinsured motorists coverage of the \$1,000,000 underinsured motorists coverage for the vehicle Plaintiff was in at the time of the accident from which Plaintiff received a settlement for \$450,000, and therefore, did not warrant any recovery under the Allstate Policy in question.

FOR A FIFTH DEFENSE AND
BY WAY OF COUNTERCLAIM AGAINST PLAINTIFF

44. Defendant incorporates the allegations from the above paragraphs.

45. Defendant denies all of the substantive allegations against it made by Plaintiff.

46. Plaintiff sued Defendant seeking a declaratory judgment for the Court to issue an order declaring Defendant to provide coverage for bodily injury damages to Plaintiff proximately caused by the defendant in the underlying action and in the amounts from \$25,000.01 through \$169,548.01 as stated in the Complaint.

47. Defendant additionally requests that the Court declare that the Allstate Insurance policy excludes coverage for the allegations contained in the

Complaint and issue an Order finding that Defendant is not liable to Plaintiff for underinsured motorists benefits as set forth in the Complaint and the underlying action, Larry Brand v. Cassandra Olivia Stone, filed December 5, 2012, Civil Action No.: 2012-CP-45-657 in the Court of Common Pleas for Williamsburg County.

FOR A SIXTH DEFENSE
AND BY WAY OF COUNTERCLAIM AGAINST PLAINTIFF

48. Defendant incorporates the allegations from the above paragraphs.

49. Plaintiff sued Defendant seeking a declaratory judgment for the Court to issue an order declaring Defendant to provide coverage for bodily injury damages to Plaintiff proximately caused by the defendant in the underlying action and in the amounts from \$25,000.01 through \$169,548.01 as stated in the Complaint.

50. Defendant additionally requests that the Court declare that the Allstate Insurance policy for underinsured motorists coverage should be reduced per the worker's compensation settlement contained in the Complaint and issue an Order finding that Defendant is not liable to Plaintiff for underinsured motorists benefits as set forth in the Complaint and the underlying action, Larry Brand v. Cassandra Olivia Stone.

51. Defendant additionally requests that the Court declare that the Allstate Insurance policy for underinsured motorists coverage should be reduced per the \$1,000,000 underinsured motorists coverage for the vehicle Plaintiff was operating at the time of the accident and issue an Order finding that Defendant is not liable to Plaintiff for underinsured motorists benefits as set forth in the Complaint and the underlying action, Larry Brand v. Cassandra Olivia Stone.

FOR A SEVENTH DEFENSE
AND BY WAY OF COUNTERCLAIM AGAINST PLAINTIFF

52. Defendant incorporates the allegations from the above paragraphs.

53. Plaintiff sued Defendant seeking a declaratory judgment for the Court to issue an order declaring Defendant to provide coverage for bodily injury damages to Plaintiff proximately caused by the defendant in the underlying action and in the amounts from \$25,000.01 through \$169,548.01 as stated in the Complaint.

54. Defendant additionally requests that the Court declare that the Allstate Insurance policy is excess underinsured coverage as to the \$1,000,000 underinsured motorists for the vehicle Plaintiff was operating at the time of the accident and issue an Order finding that Defendant is not liable to Plaintiff for underinsured motorists benefits as set forth in the Complaint and the underlying action, Larry Brand v. Cassandra Olivia Stone.

WHEREFORE, the Defendant prays:

(a) that the Court inquire into the matter and issue its declaratory judgment, declaring that the Allstate policy excludes coverage for all of the allegations contained in the amended Underlying Action;

(b) that in the alternative, the Court inquire into the matter and issue its declaratory judgment, declaring that the underinsured coverage is reduced based on Allstate policy with regard to the allegations contained in the amended Underlying Action;

(c) that in the alternative, the Court inquire into the matter and issue its declaratory judgment, declaring that the Allstate policy with regards

to underinsured coverage is excess coverage based on the allegations contained in the amended Underlying Action;

(d) that the Court declare all parties to this action to be bound by the Court's determination of the respective rights, duties, and obligations between the parties;

(e) that the Court award the Defendant their costs and fees for this action; and

(f) that the Court award such other relief as it deems just and proper.

TURNER PADGET GRAHAM & LANEY



John S. Wilkerson
Rhame B. Cannon, Jr.
Post Office Box 22129
Charleston, South Carolina 29413-2129
Direct: (843) 576-2801
Fax: (843) 577-1649
Email: jwilkerson@turnerpadget.com
ccannon@turnerpadget.com

ATTORNEYS FOR DEFENDANT

March 3, 2015
Charleston, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG

IN THE COURT OF COMMON PLEAS
Civil Action No. 2014-CP-45-00644

LARRY BRAND,

Plaintiff,

v.

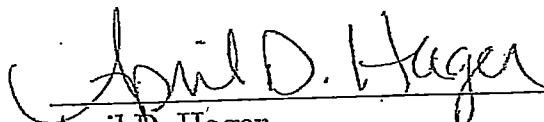
ALLSTATE INSURANCE COMPANY,

Defendant.

CERTIFICATE OF SERVICE

I hereby certify that this 3rd day of March, 2015, a copy of *Amended Answer and Counterclaim* has been served upon other counsel of record by placing same in the United States Mail, postage prepaid, to:

Patrick J. McLaughlin
Wukela Law Firm
P.O. Box 13057
Florence, SC 29504-3057



April D. Hager



CLAIM# 0211146030

To Whom It May Concern:

I, Patricia Torres, employee of Allstate Insurance Company Irving, Texas, do certify that the enclosed is a copy of policy and or declaration page for the above claim number, showing the coverages that were on the policy at the time of loss of 01/27/2010. The enclosed copy of policy and or declaration page was printed and mailed through Allstate's Output Processing Center.

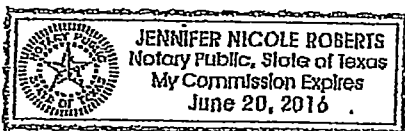
Patricia Torres
Claim Support

State of Texas, County of Dallas


On this 26th day of June 2014, before me personally

appeared Patricia Torres to me known to be the person who executed the foregoing instrument and acknowledged that he/she executed the same as a free act and deed.

Jennifer Nicole Roberts
Notary Public



*E Clarendon Ins Agc
1546 Main St Pcb 441
Turbeville SC 29162*


 Estelle Brand
 Or Larry Brand

Your Quick Insurance Check

- ✓ Verify the vehicles and drivers listed on the Policy Declarations and ID cards.
- ✓ Check the vehicle identification number (VIN) listed on these documents; its accuracy could affect your premium.
- ✓ Now you can pay your premium even before your bill is issued - visit allstate.com or call 1-800-Allstate®.

Important: Please note that this mailing is our policy renewal offer. Your coverage won't continue unless we receive the required payment before the policy effective date and time listed on the enclosed Policy Declarations.

Thank you for being a loyal Allstate customer — we're delighted to have you with us!

Here's Your Allstate Auto Insurance Renewal Offer

We're pleased to offer to continue your Allstate Indemnity Company auto policy for another six months, so you can continue getting:

- Quality coverage at competitive prices
- Access to our knowledgeable, helpful agent network
- The peace of mind of knowing your insurance provider is one of the most experienced in the industry

What's In This Package?

This mailing package contains your insurance documents, including your Renewal Policy Declarations—which lists your coverages, coverage limits, premiums and any discounts you're receiving. You'll want to review the Policy Declarations to make sure you're comfortable with the coverage choices you've made. Please store all of these documents with your other important papers.

Your Insurance Identification Cards, Billing And Renewing

Be sure to replace the Insurance Identification cards you currently have with the enclosed cards no later than your policy's effective date. Your bill will be sent separately. But note that if you're enrolled in the Allstate Easy Pay Plan, you won't receive a bill. Instead, we'll send you a statement detailing your payment withdrawal schedule.

Renewing your coverage is simple—just make sure we receive the required premium payment when it's due.

(over)

AUTO *010103909121603829590501* Information as of December 15, 2009 000000863790355 819 050 55



RA719

Have Questions? Please Contact Us

Give me a call at 1-800-4-A-ALLSTATE® if you have any questions or if you see something that needs updating—coverages, limits, deductibles, drivers, vehicles. For online services, such as making a payment or viewing policy information, you can register at the Customer Care Center on *allstate.com*. And for 24-hour-a-day, 7-day-a-week service and information, just call 1-800-4-A-ALLSTATE® 1-800-900-4700.

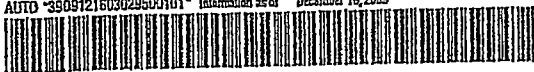
We Appreciate Your Business

Thanks again for choosing Allstate — where you get more than great coverage and service. You get Allstate's 70 years of business experience behind you, plus the freedom to manage your policy your way.

W. H. Cousar

E Clarendon Ins Agc
Your Allstate Agent

AUTO *3909121603029500101* Information used December 15, 2009



Allstate Automobile Insurance

A Quick Guide to This Package

PROOF OF INSURANCE CARD

Attached at the right is one Proof of Insurance Card for each vehicle with liability coverage. Please keep this card with you at all times as evidence of insurance.

POLICY DECLARATIONS

The Policy Declarations section contains detailed information about your policy such as drivers, vehicles, coverages, limits, and premiums. Please take a moment to check this information.

IMPORTANT NOTICE

The Important Notice section provides you with explanations about insurance issues or any other policy information that we think may be helpful to you.

QUESTIONS

Do you have any questions about this package? Just call your Allstate agent - or call the Allstate-Customer Information Center at 1-800-ALLSTATE (1-800-255-7828).

Please use the printed Insurance Card(s) below.

Please use the printed Insurance Card(s) below.

South Carolina Automobile Insurance Identification Card

Allstate Indemnity Company

Estelle Brand
Or Larry Brand

POLICY NUMBER
8 63 790356 01/22
EFFECTIVE DATE
01/22/10
EXPIRATION DATE
07/22/10

YEAR / MAKE / MODEL
99 Ford Truck F150
VEHICLE ID NUMBER
1FTRX18LXXNB08808

Keep this card with you at all times as evidence of insurance.

South Carolina Automobile Insurance Identification Card

Allstate Indemnity Company

Estelle Brand
Or Larry Brand

POLICY NUMBER
8 63 790356 01/22
EFFECTIVE DATE
01/22/10
EXPIRATION DATE
07/22/10

YEAR / MAKE / MODEL
05 Buick Rendezvous
VEHICLE ID NUMBER
3G5DA03E25S565458

Keep this card with you at all times as evidence of insurance.

This is not a bill.

IDSC

If you have an accident or loss:

- Get medical attention if needed.
- Notify the police immediately.
- Obtain names, addresses, phone numbers (work & home) and license plate numbers of all persons involved including passengers and witnesses.
- Call 1-800-ALLSTATE [®](1-800-255-7828), logon to *allstate.com* or contact your agent or producer as soon as possible.

E Clarendon Ins Agc
(843) 659-8501
1546 Main St Pcb 441
Turbeville SC 29162

- The coverage provided by your policy meets South Carolina's minimum financial responsibility requirements.

If you have an accident or loss:

- Get medical attention if needed.
- Notify the police immediately.
- Obtain names, addresses, phone numbers (work & home) and license plate numbers of all persons involved including passengers and witnesses.
- Call 1-800-ALLSTATE [®](1-800-255-7828), logon to *allstate.com* or contact your agent or producer as soon as possible.

E Clarendon Ins Agc
(843) 659-8501
1546 Main St Pcb 441
Turbeville SC 29162

- The coverage provided by your policy meets South Carolina's minimum financial responsibility requirements.

Allstate Indemnity Company

RENEWAL Auto Policy Declarations

The company issuing the policy is:

Allstate Indemnity Company
2775 Sanders Road
Northbrook, IL 60062-6127
1-800-ALLSTATE[®] (1-800-255-7828)

Summary

NAMED INSURED(S) Estelle Brand Or Larry Brand Lake City SC	YOUR ALLSTATE AGENT IS E Clarendon Ins Agc (843) 659-8501 1546 Main St Pcb 441 Turbeville SC 29162	YOUR BILL lists your payment options.
--	---	---

POLICY NUMBER 8 63 790356 01/22	POLICY PERIOD Jan. 22, 2010 to July 22, 2010 at 12:01 a.m. standard time
---	--

DRIVER(S) LISTED* Estelle Larry	DRIVER(S) EXCLUDED None
--	-----------------------------------

VEHICLES COVERED	VEHICLE ID NUMBER	LIENHOLDER
1. 99 Ford Truck F150	1FTRX18LXXNB08808	Citifinancial Auto
2. 05 Buick Rendezvous	3G5DA03E25S565458	Capiton One Auto Fin

Total Premium

Premium for 99 Ford Truck F150	\$803.42
Premium for 05 Buick Rendezvous	\$921.93
TOTAL	\$1,725.35

✓ Your total premium reflects a combined discount of \$623.77
Your Policy Effective Date is Jan. 22, 2010

AUTO *010803908121603028500502*



Information as of
December 16, 2009

Page 1
SC019980

Allstate Indemnity Company

Policy Number: 8 63 790355 01/22
 Policy Effective Date: Jan. 22, 2010

Your Agent: E Clarendon Ins Agc (843) 659-8501

COVERAGE FOR VEHICLE # 1

1999 Ford Truck F150

COVERAGE	LIMITS		DEDUCTIBLE	PREMIUM
Automobile Liability Insurance				
• Bodily Injury	\$25,000	each person	Not Applicable	\$155.29
	\$50,000	each accident		
• Property Damage	\$25,000	each accident	Not Applicable	\$67.55
Uninsured Motorists Insurance				
• Bodily Injury	\$25,000	each person	Not Applicable	\$24.19
	\$50,000	each accident		
• Property Damage	\$25,000	each accident	\$200	
Underinsured Motorists Insurance				
• Bodily Injury	\$25,000	each person	Not Applicable	\$65.32
	\$50,000	each accident		
• Property Damage	\$25,000	each accident		
Auto Collision Insurance	Actual Cash Value		\$500	\$201.20
Auto Comprehensive Insurance	Actual Cash Value		\$250	\$201.57
Towing and Labor Costs Coverage	\$50	each disablement	Not Applicable	\$6.50
Rental Reimbursement Coverage	up to \$50 per day for a maximum of 30 days		Not Applicable	\$81.80
Total Premium for 99 Ford Truck F150				\$803.42

DISCOUNTS

Your premium for this vehicle reflects the following discounts:

Multiple Car	\$71.45	Antilock Brakes	\$47.10
Preferred Indemnity	\$110.39	Home Ownership	\$32.92
Loyalty	\$32.92		

RATING INFORMATION

This vehicle is driven 10 - 20 miles to work/school, adult age 56, with no unmarried driver under 25

Allstate Indemnity Company

Policy Number : 8 63 790356 01/22
 Policy Effective Date: Jan. 22, 2010

Your Agent: E Clarendon Ins Age (843) 659-8501

COVERAGE FOR VEHICLE # 2

2005 Buick Rendezvous

COVERAGE	LIMITS		DEDUCTIBLE	PREMIUM
Automobile Liability Insurance				\$162.21
• Bodily Injury	\$25,000	each person	Not Applicable	
	\$50,000	each accident		
• Property Damage	\$25,000	each accident	Not Applicable	\$70.51
Uninsured Motorists Insurance				\$24.19
• Bodily Injury	\$25,000	each person	Not Applicable	
	\$50,000	each accident		
• Property Damage	\$25,000	each accident	\$200	
Underinsured Motorists Insurance			Not Applicable	\$65.32
• Bodily Injury	\$25,000	each person		
	\$50,000	each accident		
• Property Damage	\$25,000	each accident		
Auto Collision Insurance	Actual Cash Value		\$500	\$221.26
Auto Comprehensive Insurance	Actual Cash Value		\$250	\$218.83
Towing and Labor Costs Coverage	\$50	each disablement	Not Applicable	\$6.50
Rental Reimbursement Coverage	up to \$50 per day for a maximum of 30 days		Not Applicable	\$120.76
Lease/Loan Gap Coverage			Not Applicable	\$32.35
Total Premium for 05 Buick Rendezvous				\$921.93

DISCOUNTS

Your premium for this vehicle reflects the following discounts:

Multiple Car	\$77.97	Antilock Brakes	\$52.33
Preferred Indemnity	\$124.45	Home Ownership	\$37.12
Loyalty	\$37.12		

RATING INFORMATION

This vehicle is driven 10 - 20 miles to work/school, unmarried female age 23, limited use

AUTO *010003909121603029500503*



Information as of
December 16, 2009

Page 3
SC015880

Allstate Indemnity Company

Policy Number: 8 63 790356 01/22
Policy Effective Date: Jan. 22, 2010

Your Agent: E Clarendon Ins Agc (843) 654-8501

Important Notice

Allstate's Privacy Policy

At Allstate, we value you as a customer and share your concerns about privacy. To help you understand how we treat the nonpublic personal information ("customer information") that we obtain from you or other sources in the course of providing you with products and services, this notice describes our use and protection of that information.

Whether you're doing business with us through your local agent or broker, our Customer Information Center, or allstate.com, we want you to know that Allstate respects your privacy and protects your information.

- We do not sell customer information.
- We do not share your customer information with persons, companies, or organizations outside of Allstate that would use that information to contact you about their own products and services.
- We expect persons or organizations that provide services on our behalf to keep customer information confidential and to use it only to provide the services we've asked them to perform.
- Within Allstate, we communicate to our employees regarding the need to protect customer information, and we've established physical, electronic, and procedural safeguards to protect customer information.

Below we've provided answers to questions that might be on your mind regarding privacy. You may be wondering...

What do we do with your customer information?

Allstate does not sell your customer information, or medical information, to anyone. Nor do we share it with companies or organizations outside of Allstate that would use that information to contact you about their own products and services. If that practice were ever to change, we would, of course, offer you the ability to opt out of this type of information sharing, and we would offer you the opt-out with time for you to respond before the change in our practice took place.

Your agent or broker may use customer information to help you with your overall insurance program. We may also communicate with you about products, features, and options you have expressed an interest in or that we believe may be of interest to you. We may, without authorization but only as permitted or required by law, provide customer information to persons or organizations both inside and outside of Allstate to fulfill a transaction you have requested, service your policy, market our products to you, investigate or handle claims, detect or prevent fraud, participate in insurance support organizations, or comply with lawful requests from regulatory and law enforcement authorities. These persons or organizations may include: our affiliated companies, companies that perform marketing services on our behalf, other financial institutions with which we have a joint marketing agreement for the sale of our own products, and your agent or broker.

What kind of customer information do we have, and where did we get it?

Much of the customer information that we have about you comes directly from you. When submitting your application or request for insurance or other products and services we offer, or requesting an insurance quote, you may give us information such as your name, address, and Social Security number. We keep information about your transactions with our affiliates, others or us—for example, the types of products and services you purchase from us, premiums, account balances, and payment history.

We also may collect information from outside sources, including consumer reporting agencies and health care providers. This information may include loss information reports, motor vehicle reports, credit reports, and medical information.

Page 1

AUTO *010003909121603029500504*



Brand001372

Allstate Indemnity Company

Policy Number: 8 63 790356 01/22 Your Agent: E Clarandon Ins Age (843) 659-8501
 Policy Effective Date: Jan. 22, 2010

How do we protect your customer information?

When we share customer information with companies working on Allstate's behalf, we expect those companies to use that information only to provide the service we have asked them to perform. Within Allstate, customer information is available to those individuals who may need to use it to fulfill and service the needs of Allstate customers. We communicate the need to protect customer information to all employees and agents, especially those individuals who have access to it. Plus, we've established physical, electronic, and procedural safeguards to protect customer information.

Finally, should your relationship with Allstate end, your customer information will remain protected in accordance with our privacy practices as outlined in this Important Notice.

How can you find out what information we have about you?

You may request to either see, or obtain from us by mail, the customer information about you in our records. If you believe that information is incomplete or inaccurate, you may request that we make any necessary corrections, additions or deletions to the disputed customer information. To fulfill your request, we may make arrangements with an insurance support organization or a consumer reporting agency to copy and disclose customer information to you on our behalf. You may also request a more complete description of the entities to which we disclose customer information, or the circumstances that might warrant such disclosures. Please send any of the requests listed above in writing to: Allstate Insurance Company, Customer Privacy Inquiries, P.O. Box 11904, Roanoke, VA 24022.

If you are an Internet user...

Our website, allstate.com, provides information about Allstate, our products, and the agencies and brokers that represent us. You may also perform certain transactions on the website. When accessing allstate.com, please be sure to read the Privacy Statement that appears there.

To learn more, the allstate.com Privacy Statement provides important information relating to your use of the website, including, for example, information regarding: 1) our use of online collecting devices known as "cookies"; 2) our collection of information such as IP address (the number assigned to your computer when you use the Internet), browser and platform types, domain names, access times, referral data, and your activity while using our site; 3) who should use our web site; 4) the security of information over the Internet and 5) links and co-branded sites.

We hope you have found this Important Notice helpful. If you have any questions or would like more information, please don't hesitate to contact your Allstate agent or call the Allstate Customer Information Center at 1-800-Allstate.

X66702-1v3

This notice is being provided on behalf of the following companies:

Allstate County Mutual Insurance Company
 Allstate Indemnity Company

Allstate Investment Management Company

Allstate New Jersey Insurance Company

Allstate Texas Lloyd's

Foresview Mortgage Insurance Company

Allstate New Jersey Property and Casualty Insurance Company

Allstate Fire and Casualty Insurance Company

Allstate Insurance Company

Allstate Motor Club, Inc.

Allstate Property and Casualty Insurance Company

Allstate Texas Lloyd's, Inc.

General Underwriters Agency, Inc.

Roadway Protection Auto Club, Inc.

(ed. 09/2006)

Allstate Indemnity Company

Policy Number: 8 63 790356 01/22
Policy Effective Date: Jan. 22, 2010

Your Agent: E Clarendon Ins Agc (843) 659-8501

Important Notice

Important Information About Your Allstate Policy

The enclosed Policy Declarations includes important information, such as your address, the coverages and coverage limits you've chosen, the names of insured persons — as well as other details pertinent to your policy. These details may include, for example, for motor vehicle policies, the drivers and vehicles you've insured, as well as the vehicle identification numbers (VIN) assigned to your insured vehicles; and, for property policies, the location of the insured property and mortgages information, if applicable. Your Policy Declarations also lists any discounts or surcharges applied to your policy.

Because much of the information found on your Policy Declarations is used to help us determine your premium, please be sure to review your Policy Declarations carefully each time you receive one. You may want to add coverage, delete coverage or change your coverage limits — or you may want to change other information relating to your policy, whether it be a motor vehicle, your home or other insured property. You may also want to contact your Allstate representative for information concerning discounts that may be available for your policy.

Making changes to your policy

If you need to make a change to any of the information listed on your Policy Declarations, please notify your Allstate representative of the change as soon as possible. With a few exceptions, any changes will be effective as of the date you notify us.

If you have any questions about this notice, or if you need to update any of the information listed on the enclosed Policy Declarations, please contact your Allstate agent or our Customer Information Center at 1-800-ALLSTATE (1-800-255-7828).

X57096

AUTO *010003909121603029500505*



Brand001374

Allstate Indemnity Company

Policy Number: 8 63 790356 01/22 Your Agent: E Clarendon Ins Agc (843) 659-8501
Policy Effective Date: Jan. 22, 2018

Important Notice

Coverage is available with certain affiliates of Allstate

Please keep in mind that you may be able to obtain a policy from certain Allstate affiliates that has different policy features and rates than those of your current policy.

However, be sure to note that any price difference between your current policy and policies offered through these Allstate affiliates can change significantly in future policy periods. Even if one company's rates are lower than the other's today, they may, in some cases, be higher than the other company's in the future. Similarly, policy features that are available today in one company may not be available in future policy periods, and features not available today may become available. In addition, the tenure you've earned with your current Allstate company will not carry over to the new company. In some cases, this could limit future renewal offers from the new company.

We want to help you understand your insurance options in any way that we can. If you'd like to know more about the information in this notice or about our other insurance products, just contact your local Allstate representative.

X68038-1

Policy Endorsement

The following endorsement changes your policy. Please read this document carefully and keep it with your policy.

South Carolina

Renewal Offer Guarantee Endorsement — AU12952

When the Policy Declarations indicates that the Renewal Offer Guarantee Endorsement applies, your policy is amended as follows:

A. In the General section of your policy, the following provision is added:

Renewal

Prior to the expiration of each policy period during which the Policy Declarations indicates that the Renewal Offer Guarantee Endorsement applies, we will offer to you the opportunity to renew this policy. We will offer to renew this policy with such coverages, policy terms, conditions, limits of liability, deductibles and premiums as we, in our discretion, elect to include in the offer of renewal to you on the date that the renewal offer is processed by us. You may elect to accept our renewal offer by complying with the terms and conditions of the offer and all applicable policy terms and conditions, including those relating to premium payment.

As a condition of our offer to renew this policy, we may, at our discretion and as permitted by law, require that any operator added to your policy after the Renewal Offer Guarantee Endorsement was first made a part of your policy be excluded from coverage under the policy.

If, at the time we offer you the opportunity to renew this policy, we have ceased to offer a Renewal Offer Guarantee Endorsement in South Carolina, we will notify you that the renewal policy we are offering will not include a Renewal Offer Guarantee Endorsement.

We are not required to offer to you the opportunity to renew this policy if this policy is cancelled pursuant to the Cancellation provision of this policy or if:

1. we intend to discontinue writing private passenger automobile insurance in South Carolina;
2. you no longer reside in South Carolina or the vehicles you insure under this policy are no longer principally garaged in South Carolina;
3. renewal of this policy would violate any law or regulation;
4. you obtained this policy through an independent agent or agency, and the relationship between us and that independent agent or agency is discontinued; or
5. you or any member of your household who operates an auto:
 - a. has had his or her drivers license suspended or revoked or otherwise fails to maintain a valid drivers license; or

- b. is convicted of driving while under the influence of alcohol or drugs, leaving the scene of an accident or any other violation considered to be a major violation as described in our rules that are in effect and on file (if required) for our use in South Carolina.

If any of the items numbered 1 through 5 above apply, or if the Policy Declarations does not indicate that the Renewal Offer Guarantee Endorsement applies, we may nonrenew this policy. If we intend to nonrenew this policy, we will mail notice to you at least 34 days before the end of the policy period. Our mailing of notice of nonrenewal to you at your last mailing address known to us shall be deemed proof of notice.

- B. In the General section of your policy, the provision titled Non-Renewal is deleted.

All other policy terms and conditions apply.

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The Company Named in the Policy Declarations
A Stock Company
Home Office: Northbrook, Illinois 60062

General

Agreements We Make With You

This policy is a legal contract between you and us. A coverage applies only when a premium for it is shown on the Policy Declarations. If more than one auto is insured, premiums will be shown for each auto. If you pay the premiums when due and comply with the policy terms, we, relying on the information you have given us, makes the following agreements with you.

When And Where The Policy Applies

Your policy applies only during the policy period. During this time, it applies to covered losses to the auto, accidents, and occurrences within the United States Of America, its territories or possessions or Canada, or between their ports. The policy period is shown on the Policy Declarations.

Insurance Coverage in Mexico

Prior to entering and driving in Mexico, you must check with the appropriate Mexican authorities regarding automobile insurance requirements.

Automobile accidents in Mexico are subject to the laws of Mexico, NOT the United States. In Mexico, an automobile accident can be considered a CRIMINAL OFFENSE as well as a civil matter.

In some cases, part or all of this policy may NOT be recognized by Mexican authorities and we may not be allowed to provide any insurance coverage at all in Mexico. For your protection, you should consider purchasing automobile insurance coverage from a licensed Mexican insurance company before driving into Mexico.

However, when permitted, protection will be afforded under those coverages for which a premium is shown on the Policy Declarations for an insured auto while that insured auto is within 75 miles of the United States border and only for a period not to exceed ten days after each separate entry into Mexico.

If loss or damage occurs which may require repair of the insured auto or replacement of any part (s) while the insured auto is in Mexico, the basis for adjustment of the claim will be as follows: Any amount payable resulting from any covered loss or damage occurring in Mexico shall be payable in the United States. We will not be liable for more than the cost of having the repairs made or parts replaced at the nearest point in the United States where repairs or replacements can be performed. The costs for towing, transportation, and salvage operations of the insured auto while within Mexico are not covered under this policy.

Definitions Used In This Section

1. **We, Us or Our** means the company shown on the Policy Declarations.
2. **Auto** means a land motor vehicle with at least four wheels designed for use on public roads.
3. **Resident** means a person who physically resides in your household with the intention of continuing residence there.
4. **You or Your** means the policyholder named on the Policy Declarations and that policyholder's resident spouse.

Changes

When we broaden coverage during the policy period without charge, you have the new features if you have the coverage. Otherwise, the policy can be changed only by endorsement.

The premium for each auto is based on information in our possession. Any change in this information will allow us to make an adjustment of the policy premium.

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

Duty To Report Policy Changes

You must tell us within 30 days when you acquire an additional or replacement auto. If you do not, certain coverages of this policy may not apply.

Combining Limits Of Two Or More Autos Prohibited

If you have two or more autos insured in your name and one of these autos is involved in an accident, only the coverage limits shown on the Policy Declarations for that auto will apply. When you have two or more autos insured in your name and none of them is involved in the accident, you may choose any single auto shown on the Policy Declarations and the coverage limits applicable to that auto will apply. The limits available for any other auto covered by the policy will not be added to the coverage for the involved or chosen auto.

Transfer

This policy cannot be transferred to anyone without our written consent. However, if you die, coverage will be provided until the end of the policy period for:

1. your legal representative while acting as such; and
2. persons covered on the date of your death.

Payment

If your initial premium payment for your first policy period is by check, draft, or any remittance other than cash, such payment is conditional upon the check, draft, or remittance being honored upon presentation. If such check, draft, or remittance is not honored upon presentation, this shall be deemed void from its inception. This means that we will not be liable under this policy for any claims or damages which would otherwise be covered had the check, draft, or remittance been honored upon presentation.

Conditional Reinstatement

If we mail a cancellation notice because you didn't pay the required premium when due and you then tender payment by check, draft, or other remittance which is not honored upon presentation, your policy will terminate on the date and time shown on the cancellation notice and any notice we issue which waives the cancellation to reinstates coverage is void. This means that we will not be liable under this policy for claims or damages after the date and time indicated on the cancellation notice.

Misrepresentation, Fraud or Concealment

We may void this policy if it was obtained by misrepresentation, fraud or concealment of material facts. If we determine that this policy is void, all premiums paid will be returned to you since there has been no coverage under this policy.

Cancellation

You may cancel this policy by writing us the future date you wish to stop coverage.

We may cancel part or all of this policy by mailing notice to you at your last known address. Our notice will include the specific reason(s) for cancellation. The date of cancellation will be at least 15 days after the date of mailing.

Proof of mailing the notice will be proof of notice. A refund, if due, will be in proportion to the time your policy has been in effect. Cancellation will be effective even if the refund is not made immediately.

We may cancel this policy for any reason during the first 90 days of the original policy period. After your original policy has been in effect 90 days, we will not cancel your policy during the policy period unless:

1. you do not pay the premium when it is due; or
2. you or any other operator who either resides in the same household or customarily operates a motor vehicle insured by the policy has had a driver's license suspended or revoked. This must have occurred during the policy period or, if this is a renewal, during its policy period or the 90 days immediately preceding the last anniversary of the effective date.

Any unearned premium amounts under \$2.00 will be refunded only upon your request.

We will not be liable for any claims or damages which would otherwise be covered, had there not been material misrepresentation, fraud, or concealment of material fact.

We do not cover any loss or occurrence in which any insured person has concealed or misrepresented any material fact or circumstance.

Non-Renewal

We will renew your policy, unless South Carolina law permits non-renewal and we decide not to renew. If we decide not to renew your policy, we will mail notice to you at your last known address. Our notice will include the specific reason(s) for nonrenewal. Notice will be mailed at least 15 days before the end of the policy period. Proof of mailing the notice will be proof of notice.

Charge For Insufficient Funds Or Closed Account

If at any time, your payment of any premium amount due is made by check, electronic transaction, or other remittance which is not honored because of insufficient funds or a closed account, you will be charged a fee.

What Law Will Apply

This policy is issued in accordance with the laws of South Carolina and covers property or risks principally located in South Carolina. Subject to the following paragraph, any and all claims or disputes in any way related to this policy shall be governed by the laws of South Carolina.

If a covered loss to the auto, a covered auto accident, or any other occurrence for which coverage applies under this policy happens outside South Carolina, claims or disputes regarding that covered loss to the auto, covered auto accident, or other covered occurrence may be governed by the laws of the jurisdiction in which that covered loss to the auto, covered auto accident, or other covered occurrence happened.

Where Lawsuits May Be Brought

Subject to the following two paragraphs, any and all lawsuits in any way related to this policy, shall be brought, heard, and decided only in a state or federal court located in South Carolina. Any and all lawsuits against persons not parties to this policy but involved in the sale, administration, performance, or alleged breach of this policy, or involved in any other way with this policy, shall be brought, heard, and decided only in a state or federal court located in South Carolina, provided that such persons are subject to or consent to suit in the courts specified in this paragraph.

If a covered loss to the auto, a covered auto accident, or any other occurrence for which coverage applies under this policy happens outside South Carolina, lawsuits regarding that covered loss to the auto, covered auto accident, or other covered occurrence may also be brought in the judicial district where that covered loss to the auto, covered auto accident, or other covered occurrence happened.

Nothing in this provision, **Where Lawsuits May Be Brought**, shall impair any party's right to remove a state court lawsuit to a federal court.

Action Against Us

No one may bring an action against us unless there is full compliance with all policy terms; and the action is commenced within one year of the date the cause of action accrues. However, if an action is in any way related to the existence or amount of coverage, or the amount of loss for which coverage is sought, under a particular coverage that is shown on the Policy Declarations, such action must be commenced within the time period specified in the **Action Against Us** provision of that particular coverage. If an action is brought asserting claims relating to the existence or amount of coverage, or the amount of loss for which coverage is sought, under different coverages of this policy, the claims relating to each coverage shall be treated as if they were separate actions for the purpose of the time limit to commence action.

Arbitration

Any claim or dispute in any way related to this policy, by an insured person under this policy against us or us against an insured person under this policy, may be resolved by arbitration only upon mutual consent of the parties. Arbitration pursuant to this provision shall be subject to the following:

1. no arbitrator shall have the authority to award punitive damages or attorney's fees;
2. neither of the parties shall be entitled to arbitrate any claims or disputes in a representative capacity or as a member of a class; and
3. no arbitrator shall have the authority, without the mutual consent of the parties, to consolidate claims or disputes in arbitration.

Part 1

Automobile Liability Insurance

Bodily Injury—Coverage AA

Property Damage—Coverage BB

Insuring Agreements

We will pay for damages an insured person is legally obligated to pay because of bodily injury or property damage meaning:

1. bodily injury to any person; and
2. damage to or destruction of property, including loss of use.

Under these coverages, your policy protects an insured person from claims for accidents arising out of the ownership, maintenance or use, loading or unloading of an insured auto. Damages include prejudgment interest awarded against an insured person.

We will defend an insured person sued as the result of an auto accident, even if the suit is groundless or false. We will choose the counsel. We may settle any claim or suit if we believe it is proper.

Additional Payments We Will Make

When we defend an insured person under this Part 1, we will pay:

1. up to \$50 a day for the loss of wages or salary if we ask that person to attend hearings or trials to defend against a bodily injury suit. We will not pay for loss of other income. We will pay other reasonable expenses incurred at our request.
2. court costs for defense.
3. interest accruing on a judgment entered against you, but only on that part of a judgment entered against you which do not exceed our limits of liability, until such time as we have paid, formally offered, or conditionally or unconditionally deposited in court, the amount for which we are liable under this policy. This means that under no circumstances will we pay interest on that part of a judgment entered against you which exceeds our stated limits of liability.

4. premiums on appeal bonds and on bonds to release attachments, but not in excess of our limit of liability. We have no obligation, however, to apply for or furnish these bonds.

We will repay an insured person for:

1. the cost of any bail bonds required because of an accident or traffic law violation involving the use of the insured auto. Payment will not exceed \$300 per bond. We have no obligation to apply for or furnish a bond.
2. reasonable expenses incurred by an insured person for first aid to other persons at the time of an auto accident involving the insured auto.

Insured Persons

1. While using your insured auto:
 - a. you,
 - b. any resident, and
 - c. any other person using it with your permission.
2. While using a non-owned auto:
 - a. you,
 - b. any resident relative using a four wheel private passenger auto or utility auto.

The following are not insured persons:

1. The United States of America or any of its agencies.
2. Any person with respect to bodily injury or property damage resulting from the operation of an auto by that person as an employee of the United States Government. This applies only if the provisions of Section 2679 of Title 28, United States Code as amended, require the Attorney General of the United States to defend that person in any civil action which may be brought for the bodily injury or property damage.

Insured Autos

1. Any auto described on the Policy Declarations. This includes the four wheel private passenger auto or utility auto you replace it with.

2. An additional private passenger auto or utility auto you become the owner of during the policy period provided we insure all other private passenger autos or utility autos you own. You must tell us within 30 days of acquiring the auto and you must pay any additional premium. We must agree to insure the auto. Coverage will not continue after 30 days if we are not notified of the additional auto.
3. A substitute four wheel private passenger auto or utility auto, not owned by you or a resident, being temporarily used while your insured auto is being serviced or repaired, or if your insured auto is stolen or destroyed.
4. A non-owned auto used by you or a resident relative with the owner's permission. This auto must not be available or furnished for the regular use of an insured person.
5. A trailer while attached to an insured auto. The trailer must be designed for use with a private passenger auto or utility auto. This trailer cannot be used for business purposes with other than a private passenger auto or utility auto.

Definitions Used In Part 1

1. We, Us, or Our means the company shown on the Policy Declarations.
2. Auto means a land motor vehicle with at least four wheels designed for use on public roads.
3. Bodily injury means bodily injury, sickness, disease or death.
4. Resident means the physical presence in your household with the intention to continue living there. Your unmarried dependent children while temporarily away from home will be considered residents, if they intend to continue to live in your household.
5. Utility auto means an auto of the pick-up body, sedan delivery or panel truck type. This auto must have a gross vehicle weight of

10,000 pounds or less, according to manufacturer's specifications.

6. **You or Your** means the policyholder named on the Policy Declarations and that policyholder's resident spouse.

Exclusions—What Is Not Covered

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.
2. auto business operations such as repairing, servicing, testing, washing, parking, storing or selling of autos or motor vehicles. This exclusion does not apply to the use of your insured auto by:
 - a. you, resident relatives, partners or employees of the partnership of you or a resident relative; or
 - b. any other insured person for damages up to the minimum limits required by the financial responsibility law of South Carolina.
3. a non-owned auto while being used in any business or occupation of an insured person. However, coverage does apply while you, your chauffeur, or domestic servant are using a private passenger auto or trailer.
4. **bodily injury** to an employee of any insured person arising in the course of employment. Coverage does apply to a domestic employee who is not required to be covered by workers' compensation law or similar law.
5. **bodily injury** or property damage arising out of the ownership, maintenance, or use of a motor vehicle with less than four wheels.
6. anyone other than you, for claims made by a co-worker injured in the course of employment.
7. damage to or destruction of property an insured person owns, is in charge of, or rents. However, a private residence or a garage rented by that person is covered.
8. **bodily injury** or property damage caused intentionally by or at the direction of an insured person. This exclusion applies only to damages in excess of the minimum limit required by the financial responsibility law of South Carolina.
9. **bodily injury** or property damage which would also be covered under nuclear energy liability insurance. This applies even if the limits of that insurance are exhausted.
10. **bodily injury** or property damage arising out of the participation in any prearranged, organized, or spontaneous:
 - a. racing contest;
 - b. speed contest; or
 - c. use of an auto at a track or course designed or used for racing or high performance driving,

or in practice or preparation for any contest or use of this type.

This exclusion does not apply up to the minimum limits required by the financial responsibility law of South Carolina.

Financial Responsibility

When this policy is certified as proof under any motor vehicle financial responsibility law, the insurance under this part of the policy will comply with the provisions of that law.

Limits Of Liability

The limits shown on the Policy Declarations are the maximum we will pay for any single accident involving an insured auto. The limit stated for each person for **bodily injury** is our total limit of liability for all damages because of **bodily injury** sustained by one person in any single accident involving an insured auto including all damages sustained by anyone else as a result of that **bodily injury**. Subject to the limit for each person, the limit stated for each

accident is our total limit of liability for all damages for bodily injury sustained by two or more persons in any single accident involving an insured auto. For property damage, the limit stated for each accident is our total limit of liability for property damage sustained in any single accident involving an insured auto.

The liability limits apply to each insured auto as shown on the Policy Declarations. The insuring of more than one person or auto under this policy will not increase our liability limits beyond the amount shown for any one auto, even though a separate premium is charged for each auto. The limits also will not be increased if you have other auto insurance policies that apply.

There will be no duplication of payments made under the Bodily Injury Liability and Uninsured Motorists Insurance or Underinsured Motorists Insurance of this policy.

An auto and attached trailer are considered one auto. Also, an auto and a mounted camper unit, topper, cap or canopy are considered one auto.

If There Is Other Insurance

If an insured person is using a substitute private passenger auto or non-owned auto, our liability insurance will be excess over other collectible insurance. If more than one policy applies to an accident involving your insured auto, we will bear our proportionate share with other collectible liability insurance.

Assistance And Cooperation

When we ask, an insured person must cooperate with us in the investigation, settlement and defense of any claim or lawsuit. If we ask, that person must also help us obtain payment from anyone who may be jointly responsible.

We can't be obligated if an insured person voluntarily takes any action or makes any payments other than for covered expenses for bail bonds or first aid to others.

Action Against Us

No insured person may bring an action against us in any way related to the existence or amount of coverage, or the amount of loss for which coverage is sought, under Part I—Automobile Liability Insurance, unless there is full compliance with all policy terms and such action is commenced no later than the last of the following to occur:

1. two years after the date of the accident; or
2. one year after entry of final judgment or other court order terminating a lawsuit against the insured to determine the insured's liability or the amount of the insured's liability arising out of the accident; or
3. one year after we agree to a settlement; or
4. if we have denied coverage and the insured person has thereafter settled with the claimant without any lawsuit being filed to determine the insured's liability or the amount of the insured's liability arising out of the accident, within one year after the denial of coverage.

If the insured person is subjected to claims arising out of the same accident by more than one person claiming bodily injury or property damage, the time for the insured person to bring an action against us shall be determined separately as to the coverage sought or provided with respect to the claims of each of those claiming against the insured person.

If liability has been determined by judgment after trial, or by written agreement among the insured, the other person, and us, then whoever obtains this judgment or agreement against an insured person may sue us up to the limits of this policy. However, no one has the right to join us in a suit to determine legal responsibility of an insured person.

Bankruptcy Or Insolvency

The bankruptcy or insolvency of an insured person will not relieve us of any obligation.

What To Do In Case Of An Auto Accident Or Claim

If an insured person has an auto accident, we must be informed promptly of all details. If an insured

person is sued as the result of an auto accident, we must be informed immediately.

Additional Interested Parties

If one or more additional interested parties are listed on the Policy Declarations, the Automobile Liability Insurance coverages of this policy will apply to those parties as insureds.

We will mail or deliver at least 15 days notice to an additional interested party if we cancel or make any changes to this policy which adversely affect that party's interest. Our notice will be considered properly given if mailed to the last known address of the additional interested party.

The naming of an additional interested party does not increase that party's right to recovery under this policy, nor does it impose an obligation for the payment of premiums under this policy.

Part 2

Medical Expense Benefits Coverage CC

Insuring Agreements

We will pay an injured person medical expense benefits. Payments will be made only when bodily injury, sickness, disease or death is caused by an accident arising from the use of a motor vehicle as a motor vehicle.

Medical Expense

All reasonable and necessary treatment expenses incurred within three years from the date of accident. This covers medical, surgical, x-ray, optical, dental, chiropractic and rehabilitative services, prosthetic devices, prescription drugs, ambulance, hospital, extended care and nursing services, and funeral services. Also covered are treatment and services rendered in accordance with a recognized religious or licensed method of healing.

Definitions Used in Part 2

1. We, Us, or Our means the company indicated on the Policy Declarations.
2. Injured Person means:

- a. You or a resident relative who sustains bodily injury, sickness, disease or death:
 - i. while in, on, getting into or out of a motor vehicle
 - ii. when struck as a pedestrian by a motor vehicle.
- b. any other person who sustains bodily injury, sickness, disease or death:
 - i. while in, on, getting into or out of the insured auto.
 - ii. while in, on, getting into or out of a motor vehicle operated by you or a resident relative.

3. Insured auto means a motor vehicle to which the insurance under this coverage applies, and for which a specific premium is charged.

4. Motor vehicle means a vehicle which is required to be registered under the South Carolina Motor Vehicle Registration and Licensing Act.

5. Resident relative means
- a. any person related to you and residing in your household, and
 - b. any minor residing in your household who is:
 - i. in your custody; or
 - ii. in the custody of any relative who resides in your household.

These persons will be considered resident relatives, even if temporarily living elsewhere.

6. You or Your means the policyholder named on the Policy Declarations.

Exclusions—What Is Not Covered

This coverage does not apply to bodily injury, sickness, disease or death:

1. to you or a resident relative while maintaining or using any motor vehicle you own which is not an insured auto.
2. to any resident relative while maintaining or using any motor vehicle owned by that relative.
3. to any person who intentionally causes the accident resulting in such injury.

4. to any person
 - a. while operating or voluntarily riding in a vehicle known by him to be stolen; or
 - b. while in the commission of a felony or while in violation of Section 56-5-750 of the South Carolina 1976 Code.
5. to any person while in, on, getting into or out of a motor vehicle, or while a pedestrian, as a result of an accident involving any motor vehicle (other than an insured auto) for which security is available under South Carolina law.
6. to any pedestrian, other than you or a resident relative, if the accident occurs outside the State of South Carolina.
7. to any person while maintaining or using a motor vehicle while located for use as a residence or premises.
8. to any person, arising out of the operation, maintenance, or use of a motorcycle by such person.
9. any person arising out of the participation in any prearranged, organized, or spontaneous:
 - a. racing contest;
 - b. speed contest; or
 - c. use of an auto at a track or course designed or used for racing or high performance driving,

or in practice or preparation for any contest or use of this type.

Limits Of Liability

The limit of our liability for Medical Expense Benefits, as stated on the Policy Declarations, is the maximum We will pay per any one injured person for any motor vehicle accident. This is the maximum we will pay regardless of the number of:

1. claims made;
2. vehicles shown on the Policy Declarations; or
3. vehicles involved in the accident.

Benefits will be reduced by any amounts paid or payable under any workers' compensation law.

Determination Of Reasonable And Necessary Medical Expenses

If the injured person incurs medical expenses which we deem not to be reasonable or necessary, we have no obligation to pay and may refuse to pay for those medical expenses.

If the injured person is sued by a health care provider because we refuse to pay medical expenses which we deem to be unreasonable or unnecessary, we will pay resulting defense costs, and pay any resulting judgment against the injured person, up to the Automobile Medical Expense Benefits policy limit. We will choose the counsel. The injured person must cooperate with us in the defense of any claim or lawsuit. If we ask the injured person to attend hearings or trials, we will pay up to \$50 per day for loss of wages or salary. We will also pay other reasonable expenses incurred at our request. If the injured person is threatened with or made the subject of collection activity by the medical care provider, we will defend the injured person as to such activity.

Action Against Us

No one may bring an action against us in any way related to the existence or amount of coverage, or the amount of loss for which coverage is sought, under Part II—Auto Medical Payments, Coverage CC, unless there is full compliance with all policy terms and such action is commenced within one year after the date the expenses for which coverage is sought were actually incurred by an insured person.

Notice To Us

As soon as possible, the injured person or someone on that person's behalf must give us written notice of the accident. This notice must include the time, place and circumstances of the accident and the identity of the injured person.

Proof Of Claim; Medical Reports

As soon as practicable, the injured person or someone on that person's behalf must give us written proof of claim. It must include all details reasonably required by us to determine the amounts payable. The injured person may be asked to take physical examinations by physicians we

choose, when and as often as we may reasonably require.

Non-Duplication Of Benefits; Priority Of Payments; Other Insurance

No injured person will recover duplicate benefits for the same loss under this and any similar insurance, including self-insurance. If the injured person is entitled to recover benefits under more than one policy, the maximum recovery under all policies will not exceed the amount payable under the provisions of the policy providing the highest dollar limit. We will not be liable for more than the proportion of any loss to which this coverage applies than our limit of liability bears to the sum of our limit of liability and that of any other applicable insurance.

Subrogation

Subject to the provisions of South Carolina law, no benefit payable under this coverage will be subject to subrogation or assignment.

Reimbursement And Trust Agreement

When we pay any person under this coverage:

1. We are entitled to repayment of amounts paid by us out of the proceeds of any settlement that person recovers from any legally responsible party or insurer.
2. All rights of recovery against any legally responsible party or insurer must be preserved for our benefit.

Our rights under this provision are subject to any applicable limitations provided under the laws of South Carolina.

Constitutionality Clause

The premium for and the coverages of the policy have been established in accordance with the laws of South Carolina. If a court of competent jurisdiction declares, or enters a judgment the effect of which is to render the provisions of those applicable laws invalid or unenforceable, in whole or in part, we will have the right to recompute the premium payable for this policy. These provisions will be voidable or

subject to amendment at our option in accordance with such declaration or judgment.

Part 3

Uninsured Motorists Insurance—

Coverage SS

Underinsured Motorists Insurance—

Coverage SU

Section I

Uninsured Motorists Insurance—

Coverage SS

Insuring Agreements

If a premium is shown on the Policy Declarations for Uninsured Motorists Insurance, we will pay those damages that an insured person is legally entitled to recover from the owner or operator of an uninsured auto because of:

1. bodily injury sustained by an insured person; and
2. property damage.

The bodily injury or property damage must be caused by accident and arise out of the ownership, maintenance or use of an uninsured auto. This coverage does not apply to the first \$200 of the total amount of all property damage as the result of any one accident.

Insured Persons

1. you and any resident relative.
2. any other person while in, on, or getting into or out of an insured auto with your permission.
3. any other person who is legally entitled to recover because of bodily injury to you, a resident relative or an occupant of your insured auto with your permission.

An Insured Auto Is A Motor Vehicle:

1. described on the Policy Declarations. This includes the motor vehicle you replace it with.

2. you become the owner of during the policy period. This additional motor vehicle will be covered if we insure all other private passenger motor vehicles you own. You must, however, tell us within 30 days after you acquire the motor vehicle. You must pay any additional premium. We must agree to insure the motor vehicle. Coverage will not continue after 30 days if we are not notified of the additional motor vehicle.
 3. not owned by you or a resident relative, if being temporarily used while your insured auto is being serviced or repaired, or if your insured auto is stolen or destroyed. The motor vehicle must be used with the owner's permission. It cannot be furnished for the regular use of you or any resident relative.
 4. not owned by you or a resident relative if being operated by you or a resident relative with the owner's permission. The motor vehicle cannot be furnished for the regular use of you or any resident relative.
- c. is in delinquency proceedings, suspension or receivership; or
 - d. is proven unable to respond to a judgment.
4. a hit-and-run motor vehicle which causes bodily injury to an insured person by physical contact with the insured person or with a vehicle occupied by that person or which causes property damage arising out of the physical contact with the damaged property. The identity of the operator or the owner of the vehicle must be unknown and the insured must not have been negligent in failing to determine the identification of the other vehicle and driver of the other vehicle at the time of the accident. The accident must be reported within 24 hours to some appropriate police authority. We must be notified within 30 days or as soon thereafter as practicable. If the insured person was occupying a vehicle at the time of the accident, we have a right to inspect it.

An insured auto is not a motor vehicle made available for public hire by an insured person.

An Uninsured Auto Is:

1. a motor vehicle which has
 - a. no bodily injury liability bond or insurance in effect; and
 - b. no cash or securities deposited with the State Treasurer;
 at the time of the accident.
2. a motor vehicle covered by insurance which doesn't provide at least the minimum limits specified by the South Carolina Financial Responsibility Act and for which there is no cash deposit or bond in lieu of such minimum insurance limits.
3. a motor vehicle for which the bonding or insuring company:
 - a. successfully denies coverage;
 - b. is or becomes insolvent;

5. a phantom motor vehicle which causes:
 - a. bodily injury to an insured person without physical contact with the insured person or with a motor vehicle occupied by that person.
 - b. property damage to the insured auto without physical contact between the vehicles.

The facts of the accident must have been witnessed by someone other than the owner or operator of the insured vehicle, provided, however, the witness must sign an affidavit attesting to the truth of the facts of the accident contained in the affidavit.

An Uninsured Auto Is Not:

1. a motor vehicle owned by any state or local government or agency, unless operated by a person without proper authorization.
2. a motor vehicle owned by any federal government or agency.
3. a motor vehicle that is lawfully self-insured.

4. a motor vehicle which is insured for Automobile Liability Insurance under Part 1 of this policy.

Definitions Used In Part 3—Section 1

1. We, Us, or Our means the company shown on the Policy Declarations.
2. Bodily injury means bodily injury, sickness, disease or death.
3. Motor vehicle means a land motor vehicle or trailer other than:
 - a. a vehicle or other equipment designed for use off public roads, while not on public roads;
 - b. a vehicle operated on rails or crawler-treads; or
 - c. a vehicle while used as a residence or premises.
4. Property damage means damage to or destruction of the property of an insured person.
5. Resident means a person who physically resides in your household with the intention of continuing residence there. Your unmarried dependent children while temporarily away from home will be considered residents if they intend to resume residing in your household.
6. You or Your means the policyholder named on the Policy Declarations and that policyholder's resident spouse.

Exclusions—What Is Not Covered

We will not pay any damages an insured person is legally entitled to recover because of:

1. bodily injury or property damage to any person who makes a settlement with the owner or operator of the uninsured auto without our written consent.
2. bodily injury or property damage to any person while in, on, getting into, or out of an insured auto while available for hire to the public. This exclusion does not apply to shared expense car pools.

3. bodily injury or property damage, to the extent that benefits are paid, payable or required to be provided under any workers' compensation or disability benefits law.
4. property damage if the payment would directly or indirectly benefit any insurer of property.
5. property damage to the extent that an insured person has been compensated by other property or physical damage insurance.
6. bodily injury or property damage arising out of the participation in any prearranged, organized, or spontaneous:
 - a. racing contest;
 - b. speed contest; or
 - c. use of a motor vehicle at a track or course designed or used for racing or high performance driving,
 or in practice or preparation for any contest or use of this type.

Limits Of Liability

The limits shown on the Policy Declarations are the maximum we will pay for any single accident involving an insured auto. The limit stated for each person for bodily injury is our total limit of liability for all damages because of bodily injury sustained by one person in any single accident involving an insured auto including all damages sustained by anyone else as a result of that bodily injury. Subject to the limit for each person, the limit stated for each accident is our total limit of liability for all damages for bodily injury sustained by two or more persons in any single accident involving an insured auto. For property damage, the limit stated for each accident is our total limit of liability for property damage sustained in any single accident involving an insured auto.

These limits are the maximum we will pay for any one motor vehicle accident regardless of the number of:

1. insured persons;
2. claims made;
3. vehicles or premiums shown on the Policy Declarations; or

4. vehicles involved in the accident.

The liability limits apply to each insured motor vehicle as shown on the Policy Declarations. The insuring of more than one person or auto under this policy will not increase our liability limits beyond the amount shown for any one auto, even though a separate premium is charged for each auto. The limits also will not be increased if you have other auto insurance policies that apply.

In addition to this limit, we will make an additional amount available to you or any resident relative if such person sustains bodily injury or property damage in an accident involving your insured auto. The additional amount is equal to the sum of that part of the limit on each additional insured auto shown on the Policy Declarations that does not exceed the limit provided for the insured auto involved in the accident. This additional amount is the most we will pay over the stated limit of liability regardless of the number of:

1. insured persons;
2. claims made; or
3. vehicles involved in the accident.

However, no one will be entitled to receive duplicate benefits for the same elements of loss.

Subject to the above limits of liability, damages payable will be reduced by:

1. all amounts paid or payable by or on behalf of the owner or operator of the uninsured auto, or anyone else responsible. This includes all sums paid under the bodily injury liability coverage or property damage liability coverage of this or any other auto policy.
2. all amounts paid or payable under any Uninsured Motorists Coverage applicable to the vehicle involved in the accident; and
3. all amounts paid because of the property damage under Part 4 of the policy or any similar coverage under any other policy.
4. all amounts payable under any workers' compensation law, disability benefits law, or similar law, Medical Expense Benefits Coverage under this policy or any similar automobile medical payments coverage.

Non-Duplication Of Benefits

No injured person will recover duplicate benefits for the same elements of loss under this or any other uninsured motorists insurance, including approved plans of self-insurance.

Proof Of Claim; Medical Reports

Any person making claim for bodily injury must give us written proof of claim as soon as practicable. Any person making claim for property damage must submit written proof of claim within 60 days, unless we extend this time in writing. All proof of claims must include all details we need to determine the amounts payable.

The insured person may be required to take physical examinations by physicians we choose, as often as we may reasonably require. The insured person or that person's representative must authorize us to obtain medical reports or copies of records. We may also require any person making claim to submit to questioning under oath and sign the transcript.

Any person making claim for property damage must allow us to inspect the damaged property.

Assistance And Cooperation

With respect to the minimum limits required by law, we may require the insured person to take proper action to preserve all rights to recover damages from anyone responsible for the bodily injury or property damage to the extent of our payment.

If There Is Other Insurance

If the insured person was in, on, getting into or out of a vehicle which is insured for this coverage under another policy, coverage under this policy will be excess. This means that when the insured person is legally entitled to recover damages in excess of the other policy limit, we will pay only the amount by which the damages exceed the limit of liability of that policy up to the limit of liability of this policy.

If more than one policy applies to the accident on a primary basis, the total benefits payable will not exceed the amount the insured person is legally entitled to recover. We will bear our proportionate share with other uninsured motorists benefits.

With respect to property damage, this coverage will apply only after the limit of any other collectible insurance applicable to the damaged property has been exhausted.

Our Rights Of Recovery

1. If an insured person has prosecuted to judgment any suit against any person responsible, we will be entitled to an assignment of the judgment to the extent of payment under this insurance.
2. We will pay our proportionate part of any reasonable costs and expenses incurred for any recovery to the extent of payment under this insurance, including reasonable attorneys' fees. However, we reserve the right to retain an attorney of our choice to pursue a claim to the extent that claim is not in excess of the minimum limits required by law.
3. If an insured person making a claim for property damage under this insurance is also entitled to other insurance or other compensation for the property damage, we will not be obligated to pay a claim until the insured person has assigned us the rights to the compensation, to the extent of payment under this insurance.
4. If we make a payment under this policy and the person to or for whom payment is made recovers damages from another, that person shall:
 - a. hold in trust for us the proceeds of the recovery; and
 - b. reimburse us to the extent of our payment.

Payment Of Loss By Us

Any amount due is payable to the insured person, to the parent or guardian of an injured minor, or to the spouse of any insured person who dies. However, we may pay any person lawfully entitled to recover damages.

Legal Actions

No one may sue us under this coverage unless there is full compliance with all the policy terms. No action attempting to establish the liability of the uninsured motorist may be brought under this coverage unless

we are served with copies of the pleadings in the manner prescribed by law. We have the right to appear and defend in the name of the uninsured motorist in any suit which may affect our liability.

Conformity With State Statute

These coverages are intended to be in full conformity with the South Carolina Uninsured Motorists Law. If any provision of this coverage is in conflict with such law, the provision is amended or eliminated to conform with such law.

Action Against Us

No one may bring an action against us in any way related to the existence or amount of coverage, or the amount of loss for which coverage is sought, under Part 3—Uninsured Motorists Insurance, Coverage SS, unless there is full compliance with all policy terms and, except as provided below, such action is commenced within two years after the date of the accident.

If an insured person commences a timely action against the owner or operator of an uninsured auto to recover damages for loss arising out of the accident and gives us written notice of such action within 30 days after such action is commenced, an action against us related to the existence or amount of coverage, or the amount of loss for which coverage is sought, may be brought more than two years after the date of the accident, but in no event later than the earliest of the following to occur:

1. one year after entry of a final judgment or other court order terminating such lawsuit against the owner or operator of an uninsured auto; or
2. one year after we deny coverage.

If any insured person sues a person believed responsible for the accident without our written consent, we are not bound by any resulting judgment.

Section II Underinsured Motorists Insurance Coverage SU

Insuring Agreements

We will pay those damages that an insured person is legally entitled to recover from the owner or operator of an underinsured auto because of:

1. bodily injury sustained by an insured person; and
2. property damage.

The bodily injury or property damage must be caused by accident and arise out of the ownership, maintenance or use of an underinsured auto.

We will pay under this coverage only after the limits of liability under any applicable liability bonds or policies, or any applicable uninsured motorists coverage have been exhausted by payment of judgments or settlements.

Insured Persons

1. you and any resident relative.
2. any other person while in, on, getting into or out of an insured auto with your permission.
3. any other person who is legally entitled to recover because of bodily injury to you, a resident relative or an occupant of your insured auto with your permission.

An insured auto is a motor vehicle:

1. described on the Policy Declarations. This includes the motor vehicle you replace it with.
2. you become the owner of during the policy period. This additional motor vehicle will be covered if we insure all other private passenger motor vehicles you own. You must, however, tell us within 30 days after you acquire the motor vehicle. You must pay any additional premium. We must agree to insure the additional motor vehicle. Coverage will not

continue after 30 days if we are not notified of the additional motor vehicle.

3. not owned by you or a resident relative if being temporarily used while your insured auto is being serviced or repaired, or if your insured auto is stolen or destroyed. The motor vehicle must be used with the owner's permission. It cannot be furnished or available for the regular use of you or any resident relative.
4. not owned by you or a resident relative, if being operated by you or a resident relative with the owner's permission. The motor vehicle cannot be furnished for the regular use of you or any resident relative.

An insured auto is not a motor vehicle made available for public hire by an insured person.

An underinsured auto is a motor vehicle which has liability insurance or a bond in effect at the time of the accident in an amount at least equal to the minimum limits required by the financial responsibility law of South Carolina, but its limit of liability is not enough to pay the full amount the insured is legally entitled to recover as damages.

An underinsured auto is not a motor vehicle which is owned by any state or local government or agency.

Definitions Used In Part 3--Section II

1. We, Us or Our means the company shown on the Policy Declarations.
2. Bodily injury means bodily injury, sickness, disease or death.
3. Motor vehicle means a land motor vehicle or trailer other than:
 - a. a vehicle or other equipment designed for use off public roads, while not on public roads;
 - b. a vehicle operated on rails or crawler treads; or
 - c. a vehicle while used as a residence or premises.

4. **Property damage** means damage to or destruction of property of an insured person.
5. **Resident** means a person who physically resides in your household with the intention of continuing residence there. Your unmarried dependent children while temporarily away from home will be considered residents if they intend to resume residing in your household.
6. **You or Your** means the policyholder named on the Policy Declarations and that policyholder's resident spouse.

Exclusions—What Is Not Covered

We will not pay any damages an insured person is legally entitled to recover because of:

1. **bodily injury** or **property damage** to any person who makes a settlement with the owner or operator of the underinsured auto without our written consent.
2. **bodily injury** or **property damage** to any person while in, on, getting into, or out of an insured auto while available for hire to the public. This exclusion does not apply to shared expense car pools.
3. **bodily injury** or **property damage** to the extent that benefits are paid, payable or required to be provided under any workers' compensation or disability benefits law.
4. **property damage** if the payment would directly or indirectly benefit any insurer of property.
5. **property damage** to the extent that an insured person has been compensated by other property or physical damage insurance.
6. **bodily injury** or **property damage** arising out of the participation in any prearranged, organized, or spontaneous:
 - a. racing contest;
 - b. speed contest; or
 - c. use of a motor vehicle at a track or course designed or used for racing or high performance driving,

or in practice or preparation for any contest or use of this type.

Limits Of Liability

The limits shown on the Policy Declarations are the maximum we will pay for any single accident involving an insured auto. The limit stated for each person for **bodily injury** is our total limit of liability for all damages because of **bodily injury** sustained by one person in any single accident involving an insured auto including all damages sustained by anyone else as a result of that **bodily injury**. Subject to the limit for each person, the limit stated for each accident is our total limit of liability for all damages for **bodily injury** sustained by two or more persons in any single accident involving an insured auto. For **property damage**, the limit stated for each accident is our total limit of liability for **property damage** sustained in any single accident involving an insured auto. This is the most we will pay regardless of the number of:

1. insured persons;
2. claims made;
3. vehicles or premiums shown on the Policy Declarations; or
4. vehicles involved in the accident.

The Underinsured Motorists Insurance limits apply to each insured motor vehicle as shown on the Policy Declarations. The insuring of more than one person or auto under this policy will not increase our liability limits beyond the amount shown for any one auto, even though a separate premium is charged for each auto. The limits also will not be increased if you have other auto insurance policies that apply.

In addition to this limit, we will make an additional amount available to you or any resident relative if such person sustains **bodily injury** or **property damage** in an accident involving your insured auto. The additional amount is equal to the sum of that part of the limit on each additional insured auto shown on the Policy Declarations that does not exceed the limit provided for the insured auto involved in the accident. This additional amount is the most we will

pay over the stated limit of liability regardless of the number of:

1. insured persons;
2. claims made; or
3. vehicles involved in the accident.

However, no one will be entitled to receive duplicate benefits for the same elements of loss.

Subject to the above limits of liability, damages payable will be reduced by:

1. all amounts paid or payable by or on behalf of the owner or operator of the underinsured auto or anyone else responsible. This includes all sums paid or payable under the bodily injury liability coverage or property damage liability coverage of this or any other auto policy.
2. all amounts paid or payable under any applicable uninsured motorists coverage. This includes all amounts paid under the Uninsured Motorists Insurance of this policy.
3. all amounts payable under any workers' compensation law, disability benefits law, or similar law, Medical Expense Benefits Coverage of this policy, or any similar automobile medical payments coverage.
4. all amounts paid or payable under any Underinsured Motorists Coverage applicable to a vehicle, other than your insured auto, which the insured person was in, on, getting into, or out of at the time of the accident.
5. all amounts paid under Part 4, Protection Against Loss To The Auto, of this policy or any similar coverage under any other policy.

Any payment under this coverage will reduce any amount that person is entitled to recover for the same damages under Part I of this policy.

Non-Duplication Of Benefits

No injured person will recover duplicate benefits for the same elements of loss under this or any other underinsured motorists insurance, including approved plans of self-insurance.

Proof Of Claim; Medical Reports

As soon as possible, any person making claim must give us written proof of claim. It must include all details we may need to determine the amounts payable.

The insured person may be required to take physical examinations by physicians we choose, as often as we may reasonably require. The insured person or that person's representative must authorize us to obtain medical reports or copies of records. We may also require any person making claim to submit to questioning under oath and sign the transcript.

Any person making claim for property damage must allow us to inspect the damaged property.

Our Rights Of Recovery

1. If an insured person has prosecuted to judgment any suit against any person responsible, we will be entitled to an assignment of the judgment to the extent of payment under this insurance. We will pay our proportionate part of any reasonable costs and expenses incurred for any recovery to the extent of payment under this insurance, including reasonable attorneys' fees.
2. If an insured person making a claim for property damage under this insurance is also entitled to other insurance or other compensation for the property damage, we will not be obligated to pay a claim until the insured person has assigned us the rights to the compensation, to the extent of payment under this insurance.
3. If we make a payment under this policy and the person to or for whom payment is made recovers damages from another, that person shall:
 - a. hold in trust for us the proceeds of the recovery; and
 - b. reimburse us to the extent of our payment.

If There Other Insurance

If the insured person was in, on, getting into or out of a vehicle which is insured for this coverage under another policy, coverage under this policy will be excess. This means that when the insured

person is legally entitled to recover damages in excess of the other policy limit, we will pay only the amount by which the damages exceed the limit of liability of that policy up to the limit of liability of this policy.

If more than one policy applies to the accident on a primary basis, the total benefits payable will not exceed the amount the insured person is legally entitled to recover. We will bear our proportionate share with other underinsured motorists benefits.

With respect to property damage, this coverage will apply only after the limit of any other collectible insurance applicable to the damaged property has been exhausted.

Payment of Loss by Us

Any amount due is payable to the insured person, to the parent or guardian of an injured minor, or to the spouse of any insured person who dies. However, we may pay any person lawfully entitled to recover damages.

Legal Actions

No one may sue us under this coverage unless there is full compliance with all the policy terms.

If, at any time before we pay for the loss, an insured person institutes a suit against anyone believed responsible for the accident, we must be given a copy of the summons and complaint or other process. If a suit is brought without our written consent, we are not bound by any resulting judgment.

Conformity To Statute

This coverage is intended to be in full compliance with the South Carolina Uninsured Motorists Law. If any provision of this endorsement conflicts with that law, it is amended or eliminated to comply with the law.

Action Against Us

No one may bring an action against us in any way related to the existence or amount of coverage, or the amount of loss for which coverage is sought, under Part 3—Underinsured Motorists Insurance, Coverage SU, unless there is full compliance with all

policy terms and, except as provided below, such action is commenced within two years after the date of the accident.

If an insured person commences a timely action against the owner or operator of an uninsured auto to recover damages for loss arising out of the accident and gives us written notice of such action within 30 days after such action is commenced, an action against us related to the existence or amount of coverage, or the amount of loss for which coverage is sought, may be brought more than two years after the date of the accident, but in no event later than the earliest of the following to occur:

1. one year after entry of a final judgment or other court order terminating such lawsuit against the owner or operator of an uninsured auto; or
2. one year after we deny coverage.

If any insured person sues a person believed responsible for the accident without our written consent, we are not bound by any resulting judgment.

Part 4

Protection Against Loss To The Auto

Insuring Agreements

The following coverages apply when indicated and a premium for them is shown on the Policy Declarations. Other information applicable to all these coverages appears after all the coverage descriptions.

Auto Collision Insurance

Coverage DD

We will pay for loss to your insured auto or a non-owned auto from a collision with another object or by upset of that auto or trailer. No deductible will apply to loss to automobile safety glass.

Auto Comprehensive Insurance

Coverage HH

We will pay for loss to an insured auto not caused by collision. Loss caused by missiles, falling objects, fire, theft or larceny, explosion, earthquake, windstorm, hail, water, flood, malicious mischief or vandalism, and riot or civil commotion is covered.

Glass breakage, whether or not caused by collision, and collision with a bird or animal is covered. Plastic or other materials used by the manufacturer as substitutes for glass will also be considered glass.

If by agreement between you and us, the glass is repaired rather than replaced, the deductible amount will not be subtracted from a glass breakage loss. No deductible will apply to loss to automobile safety glass.

Towing And Labor Costs

Coverage JJ

We will pay costs for labor performed at the initial place of disablement and for towing made necessary by the disablement of your insured auto or a non-owned auto. The total limit of our liability for towing and labor caused by a single loss is stated on the Policy Declarations.

Lease Or Loan Gap Coverage

Coverage LG

If a premium is shown on the Policy Declarations for Lease Or Loan Gap Coverage, and if the amount you owe under the terms of the auto lease or loan agreement on your auto exceeds the actual cash value of the auto, then we will pay the difference between these amounts in the event of a total loss due to physical damage or theft of that auto. We may pay you and the lessor or lienholder named on the Policy Declarations.

Lease Or Loan Gap Coverage applies only if you have both Auto Collision Insurance and Auto Comprehensive Insurance in effect under this policy and the loss is covered under either coverage. This coverage applies only to the original lease or loan written on your auto and applies only if your auto was not previously titled. If, according to the information you have given us, the lease or loan ends during the policy period, we will stop this coverage at the end of that policy period. However, you must tell us if you want this coverage to end at an earlier date.

Repair Or Replacement Cost Coverage

Coverage RC

If a premium is shown on the Policy Declarations for Repair Or Replacement Cost Coverage (Coverage RC),

it will be our option to pay to repair or replace the auto to which Repair Or Replacement Cost Coverage applies as shown on the Policy Declarations for a covered loss if you have purchased both Auto Collision Insurance and Auto Comprehensive Insurance and either coverage is applicable to the loss. This coverage does not apply to loss caused by fire, theft, larceny or flood.

This coverage will continue until the first policy renewal after the coverage has been in effect for three years. Repair Or Replacement Cost Coverage does not automatically transfer to any replacement auto or additional auto acquired during the policy period. This coverage does not apply to any other vehicle, including, but not limited to, additional autos, replacement autos, or substitute autos.

Rental Reimbursement Coverage

Coverage UU

If a premium is shown on the Policy Declarations for Rental Reimbursement Coverage, and if you have an auto accident, or the entire insured auto is stolen, we will reimburse you for your cost of renting an auto from a rental agency or garage. We will not pay more than the dollar amount per day shown on the Policy Declarations. We will not pay mileage charges or any collision damage waiver.

If an insured auto is disabled by a collision or comprehensive loss, coverage starts the day of the loss. If the entire insured auto is stolen, coverage begins the day you report the theft to us. If an insured auto is driveable, coverage starts the day the auto is taken to a garage for repairs.

Coverage ends when whichever of the following occurs first:

1. If an insured auto is disabled by a collision or comprehensive loss, completion of the repairs or replacement of the auto;
2. if an insured auto is stolen, when we offer settlement or your auto is returned to use; or
3. thirty full days of coverage.

Sound System Coverage Coverage ZA

If a premium is shown on the Policy Declarations for Sound System Coverage, we will pay for loss to a sound system.

Sound System Coverage applies only if Auto Comprehensive Insurance is in effect under this policy. This coverage makes sound systems, and antennas or other apparatus used specifically with them, insured properly under the terms of both Auto Collision Insurance and Auto Comprehensive Insurance. The limit of our liability for each loss is shown on the Policy Declarations.

Tape Coverage Coverage ZZ

If a premium is shown on the Policy Declarations for Tape Coverage, we will pay for loss to any tapes, compact discs or similar items used with auto sound systems. Coverage applies to property owned by you or a resident relative that is in or on your insured auto at the time of loss. The total limit of our liability for each loss is shown on the Policy Declarations.

This coverage applies only if you have Auto Comprehensive Insurance under this policy. Tape Coverage makes tapes, compact discs, or similar items insured properly under your Auto Comprehensive Insurance.

Additional Payments We Will Make Under Part 4

1. We will pay up to \$200 for loss of clothing and personal luggage, including its contents, belonging to you or a resident relative while it is in or upon your insured auto. This provision does not apply if the insured auto is a travel-trailer.

This coverage applies only when:

- a. the loss is caused by collision and you have purchased Auto Collision Insurance.
- b. the entire auto is stolen, and you have purchased Auto Comprehensive Insurance.

- c. physical damage is done to the auto and to the clothing and luggage caused by earthquake, explosion, falling objects, fire, lightning or flood and you have purchased Auto Comprehensive Insurance.

The amount stated under paragraph 1. Above is the maximum we will pay, regardless of the number of vehicles insured.

2. If you have purchased Auto Collision Insurance or Auto Comprehensive Insurance under this policy, we will pay general average and salvage charges imposed when your insured auto is being transported.

Insured Autos

1. Any auto described on the Policy Declarations. This includes the four wheel private passenger auto or utility auto you replace it with if you notify us within 30 days of the replacement and pay the additional premium.
2. An additional four wheel private passenger auto or utility auto you become the owner of during the policy period. This auto will be covered if we insure all other private passenger autos or utility autos you own. You must, however, tell us within 30 days of acquiring the auto. You must pay any additional premium. We must agree to insure the auto. Coverage will not continue after 30 days if we are not notified of the additional auto.
3. A substitute four wheel private passenger auto or utility auto, not owned by you or a resident, temporarily used with the permission of the owner while your insured auto is being serviced or repaired, or if your insured auto is stolen or destroyed.
4. A non-owned four wheel private passenger auto used by you or a resident relative with the owner's permission. This auto must not be available or furnished for the regular use of you or any resident.

5. A trailer while attached to an insured auto. This trailer must be designed for use with a private passenger auto. This trailer cannot be used for business purposes with other than a private passenger auto or utility auto. Home, office, store, display, or passenger trailers, travel-trailers or camper units are not covered unless described on the Policy Declarations.

Definitions Used In Part 4

1. **We, Us, or Our** the company as shown on the Policy Declarations.
2. **Auto** means a land motor vehicle with at least four wheels designed for use on public roads.
3. **Camper unit** means a demountable unit designed to be used as temporary living quarters, including all accessories built into and forming a permanent part of the unit. A camper unit includes caps, toppers, canopies and all equipment and accessories built into and forming a permanent part of the structure. However, a camper unit will not include radio or television antennas, awnings, cabanas, or equipment designed to create additional living facilities while off a highway.
4. **Motor home** means a self-propelled vehicle equipped, designed or used as a living quarters.
5. **Resident** means the physical presence in your household with the intention to continue living there. Unmarried dependent children temporarily away from home will be considered residents if they intend to continue to live in your household.
6. **Sound system** means any device permanently installed inside your insured auto by bolts, brackets, or other similar means designed for:
 - a. voice or video transmission, or for voice or video reception; or
 - b. recording or playing back recorded material; or
 - c. supplying power to cellular or similar telephone equipment,
 and which is permanently installed in a location other than the one designed by the auto's manufacturer for that device.

A sound system also includes antennas or other apparatus in or on your insured auto used specifically with that system, if permanently installed. Apparatus does not include sound reproducing media such as compact discs or cassette tapes. A sound system does not include any equipment that is externally exposed except for antennas.
7. **Travel-trailer** means a trailer of the house, cabin or camping type equipped or used as a living quarters.
8. **Utility auto** means an auto of the pick-up body, sedan delivery or panel truck type. This auto must have a gross vehicle weight of 10,000 pounds or less, according to manufacturer's specifications.
9. **You or Your** means the policyholder named on the Policy Declarations and that policyholder's resident spouse.
10. **Custom parts or equipment** means equipment, devices, accessories, enhancements, and changes, other than those offered by the manufacturer of the auto specifically for that model, or installed by the auto dealership when new as part of the original sale, which alter the appearance or performance of an auto. This does not include items designed for assisting disabled persons or items covered under Sound System Coverage.

Exclusions—What Is Not Covered

These coverages do not apply to:

1. loss caused intentionally by or at the direction of an insured person.
2. any auto used for the transportation of people or property for a fee. This exclusion does not apply to shared-expense car pools.
3. any damage or loss resulting from any act of war, insurrection, rebellion or revolution.

4. loss to any non-owned auto used in auto business operations such as repairing, servicing, testing, washing, parking, storing or selling of autos.
5. loss due to radioactive contamination.
6. damage resulting from wear and tear, freezing, mechanical or electrical breakdown unless the damage is the burning of wiring used to connect electrical components, or the result of other loss covered by this policy.
7. tires unless stolen or damaged by fire, malicious mischief or vandalism. Coverage is provided if the damage to tires occurs at the same time and from the same cause as other loss covered by this policy.
8. loss to any sound system within your auto. Coverages under this Part also will not apply to any apparatus in or on the auto designed for use with that system.

This exclusion will not apply if you have purchased Sound System Coverage.
9. damage or loss to any tapes, compact discs or similar items. This exclusion will not apply if you purchased Tape Coverage under this policy.
10. damage or loss to a camper unit whether or not mounted. This exclusion will not apply if the camper unit is described on the Policy Declarations.
11. damage or loss to appliances, furniture, equipment and accessories that are not built into or forming a permanent part of a motor home or a travel-trailer.
12. damage or loss to your motor home or your travel-trailer while rented to anyone else unless a specific premium is shown on the Policy Declarations for the rented vehicle.
13. loss or damage arising out of the participation in any prearranged, organized, or spontaneous:
 - a. racing contest;
 - b. speed contest; or
 - c. use of a motor vehicle at a track or course designed or used for racing or high performance driving,

or in practice or preparation for any contest or use of this type.
14. damage or loss to home, office, store, display, or passenger trailers, or travel-trailers. This exclusion will not apply if the item is described on the Policy Declarations.
15. damage or loss to any device that is designed for the detection of radar or laser.
16. damage or loss to any custom furnishings or equipment in or upon any auto or utility auto. Custom furnishings include, but are not limited to:
 - a. Special carpeting and insulation, furniture, bars or television receivers;
 - b. Facilities for cooking and sleeping;
 - c. Height extending roofs; or custom murals, paintings, or other decals or graphics.
17. loss to any custom parts or equipment designed for racing which is installed in or upon your insured auto. This includes, but is not limited to, nitrous oxide systems, roll cages, and air intake modifications.

Right To Appraisal

Both you and us have a right to demand an appraisal of the loss. Each will appoint and pay a qualified appraiser. Other appraisal expenses will be shared equally. The two appraisers, or a judge of a court of record, will choose an umpire. Each appraiser will state the actual cash value and the amount of loss. If they disagree, they will submit their differences to the umpire. A written decision by any two of these three persons will determine the amount of the loss.

Payment Of Loss By Us

We may pay for the loss in money, or may repair or replace the damaged or stolen property. We may, at any time before the loss is paid or the property is replaced, return at our own expense any stolen property, either to you or at our option to the address

shown on the Policy Declarations, with payment for any resulting damage. We may take all or part of the property at the agreed or appraised value. We may settle any claim or loss either with you or the owner of the property.

Limits Of Liability

Our limit of liability is the least of:

1. the actual cash value of the property or damaged part of the property at the time of the loss, which may include a deduction for depreciation; or
2. the cost to repair or replace the property or part to its physical condition at the time of loss using parts produced by or for the vehicle's manufacturer, or parts from other sources, including, but not limited to, non-original equipment manufacturers, subject to applicable state laws and regulations; or
3. \$500, if the loss is to a covered trailer not described on the Policy Declarations.

Any applicable deductible amount is then subtracted.

If we, at its option, elects to pay for the cost to repair or replace the property or part, our liability does not include any decrease in the property's value, however measured, resulting out of the loss and/or repair or replacement. If repair or replacement results in the betterment of the part, you may be responsible, subject to applicable state laws and regulations, for the amount of the betterment.

The maximum we will pay for a covered loss to any custom parts or equipment is \$1000.

An auto and attached trailer are considered separate autos, and you must pay the deductible, if any, on each. Only one deductible will apply to an auto with a mounted camper unit. If unmounted, a separate deductible will apply to the auto and camper unit.

When more than one coverage is applicable to the loss, you may recover under the broadest coverage but not both. However, any Sound System Coverage deductible will always apply.

Limits Of Liability Under Lease Or Loan Gap Coverage

If the Policy Declarations indicates a premium charge for Lease Or Loan Gap Coverage (Coverage LG), our limit of liability with respect to that coverage is the amount you owe under the terms of the auto lease or loan agreement to which the auto described on the Policy Declarations is subject. The amount payable will be reduced by:

1. overdue payments and the financial penalties associated with those payments;
2. the transfer or rollover of a previous outstanding lease or loan balance from another vehicle to the original lease or loan for the auto described on the Policy Declarations;
3. the dollar amount of unrepaired damage which occurred prior to the total loss of your auto, and
4. all refunds paid or payable to you as a result of the early termination of the lease or loan agreement or, to the extent financed, as a result of the early termination of any warranty or extended service agreement on your auto.

Limits Of Liability Under Repair Or Replacement Cost Coverage

If the Policy Declarations indicates a premium charge for Repair Or Replacement Cost Coverage (Coverage RC), it will be our option to pay to repair or replace the auto to which Repair Or Replacement Cost Coverage applies as shown on the Policy Declarations for a covered loss, subject to the applicable Auto Collision Insurance or Auto Comprehensive Insurance deductible, but without a deductible for depreciation. This coverage does not apply to loss caused by fire, theft, larceny or flood.

However, the most we will pay for the loss will be the lesser of the:

1. Cost of repair or replacement of the property or part using parts manufactured by or for the vehicle's manufacturer or parts from other sources, including, but not limited to, non-original equipment manufacturers as permitted by state laws and regulations.
2. Cost of a new auto of the same make and model with the same equipment. If an auto of the same make and model with the same

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equipment is not available, the new auto must be of similar size, class, body type and equipment. A new auto is an auto that has not been previously titled and is of the latest model year available at the time of the loss.

We reserve the right to repair, or to replace the damaged property, or to pay for the loss in money. If we, at its option elects to pay for the cost to repair or replace property or parts, Allstate's liability does not include any decrease in the property's value, however measured, resulting from the loss and/or repair or replacement.

In no event, shall an insured person be entitled to recover for the same element of loss under both Repair Or Replacement Cost Coverage and Auto Collision Insurance or Repair Or Replacement Cost Coverage and Auto Comprehensive Insurance.

If There Is Other Insurance

If there is other insurance covering the loss at the time of the accident, we will pay only our share of any damages. Our share is determined by adding the limits of this insurance to the limits of all other insurance that applies on the same basis and finding the percentage of the total that our limits represent.

When this insurance covers a substitute auto or non-owned auto, we will pay only after all other collectible insurance has been exhausted.

When this insurance covers a replacement auto or additional auto, this policy will not apply if you have other collectible insurance.

Lease Or Loan Gap Coverage is excess over any other collectible insurance.

Action Against Us

No one may bring an action against us in any way related to the existence or amount of coverage, or the amount of loss for which coverage is sought, under Part 4—Protection Against Loss to The Auto, unless there is full compliance with all policy terms and such action is commenced within one year after the date of loss.

Subrogation Rights

When we pay, your rights of recovery from anyone else become ours up to the amount we have paid. You must protect these rights and help us enforce them.

What You Must Do If There Is A Loss

1. As soon as possible any person making claim must give us written proof of loss. It must include all details reasonably required by us. We have the right to inspect the damaged property. We may require any person making claim to file with us a sworn proof of loss. We may also require that person to submit to examinations under oath.
2. Protect the auto from further loss. We will pay reasonable expenses to guard against further loss. If you do not protect the auto, further loss is not covered.
3. Report all theft losses promptly to the police.

Loss Payable Clause

If a Lienholder and/or Lessor are shown on the Policy Declarations, we may pay loss or damage under this policy to you and the Lienholder and/or Lessor as its interest may appear, except:

1. Where fraud, misrepresentation, material omission, or intentional damage has been committed by or at the direction of you.
2. When the vehicle(s) is intentionally damaged, destroyed or concealed by or at the direction of you or any owner.
3. When you or any owner makes fraudulent statement(s) or engages in fraudulent conduct in connection with any accident or loss for which coverage is sought.

The Lienholder and/or Lessor must notify us of any change in ownership or hazard that is known.

If you or any owner fails to render proof of loss within the time granted in the policy, the Lienholder and/or Lessor must do so within sixty days in the form and manner described in the policy. The Lienholder and/or Lessor are subject to the provisions of the

policy relating to appraisal, time of payment and bringing suit.

We may cancel this policy according to its terms. We will notify the Lienholder and/or Lessor at least ten days prior to the date of cancellation that the cancellation is effective as to the interest of the Lienholder and/or Lessor. Whenever we pay the Lienholder and/or Lessor any sum for loss or damage

under this policy, we will be subrogated to the extent of payment to the rights of the party to whom payment was made. However, these subrogation provisions must in no way impair the rights of the Lienholder and/or Lessor to recover the full amount of its claim from the Insured.

The Lienholder and/or Lessor have no greater rights under the provisions of the policy than the Insured.

Policy Endorsement

The following endorsement changes your policy. Please read this document carefully and keep it with your policy.

Dividend Provision—PDU79

You shall be entitled to participate in a distribution of any surplus of Allstate to the extent and upon the conditions fixed and determined from time to time by its Board of Directors in accordance with the provisions of any applicable laws and regulations.

ALLSTATE
POLICY

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	TWELFTH JUDICIAL CIRCUIT
COUNTY OF FLORENCE	)	Civil Action No. 2014-CP-21-45-644
Larry Brand,)	
)	
)	
Plaintiff,)	
)	
vs.)	
)	
Allstate Insurance Company,)	REPLY TO AMENDED
)	COUNTERCLAIM
)	
Defendant.)	

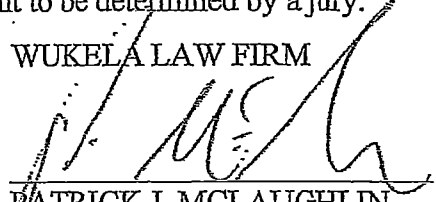
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 2015 MAR 25 PM 1:21
 SHARON L. KINGSTON
 CLERK OF COURT
 FLORENCE, S.C.

Now comes the Plaintiff, Larry Brand, by and through his undersigned counsel, hereby makes the following Reply to the Amended Counterclaim of the Defendant:

1. Any allegations not herein specifically admitted are hereby denied.
2. Plaintiff specifically denies the allegations in paragraphs No. 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, and 43 of The Allstate Policy and demands strict proof thereof.
3. Plaintiff specifically denies the allegations in paragraphs No. 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, and 54 of the Counterclaim and demands strict proof thereof.

WHEREFORE, the Plaintiff having fully answered the Counterclaim of the Defendant herein, Plaintiff prays judgment for actual, consequential, and punitive damages against the Defendants in an amount to be determined by a jury.

WUKELA LAW FIRM


 PATRICK J. MCLAUGHLIN
 Attorney for Plaintiff

P.O. Box 13057
 Florence, SC 29504-3057
 Telephone: 843-669-5634
 Facsimile: 843-669-5150
Patrick@wukelalaw.com

Florence, South Carolina

March 20, 2015

82 STATE OF SOUTH CAROLINA)
)
 COUNTY OF WILLIAMSBURG)

IN THE COURT OF COMMON PLEAS

Civil Action No. 2014-CP-45-00644

LARRY BRAND,

Plaintiff,

vs.

ALLSTATE INSURANCE COMPANY,

Defendant.

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

<p><u>Plaintiff's Attorney:</u> Patrick J. McLaughlin Wukela Law Firm P.O. Box 13057 Florence, SC 29504-3057 Phone: 843-669-5634 Fax: 843-669-5150 Email: patrick@wukelalaw.com Attorneys for Plaintiff</p>	<p><u>Defendant's Attorney:</u> John S. Wilkerson, III 40 Calhoun Street, Suite 200 (29401) P.O. Box 22129 Charleston, SC 29413 Phone: 843-576-2801 Fax: 843-577-1649 Email: jwilkerson@turnerpadget.com Attorneys for Defendant</p>
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- MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
 FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
 PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

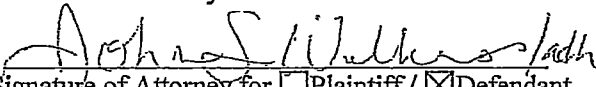
SECTION I: Hearing Information

Nature of Motion: Notice of Motion and Amended Motion for Summary Judgment
 Estimated Time Needed: 15 Minutes Court Reporter Needed: YES / NO

SECTION II: Motion/Order Type

- Written motion attached
 Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.


 Signature of Attorney for Plaintiff / Defendant

12/23/15
 Date submitted

SECTION III: Motion Fee

- PAID - AMOUNT: \$25.00
 EXEMPT: Rule to Show Cause in Child or Spousal Support
 (check reason) Domestic Abuse or Abuse and Neglect
 Indigent Status State Agency v. Indigent Party
 Sexually Violent Predator Act Post-Conviction Relief
 Motion for Stay in Bankruptcy
 Motion for Publication Motion for Execution (Rule 69, SCRPC)
 Proposed order submitted at request of the court; or,
 reduced to writing from motion made in open court per judge's instructions
 Name of Court Reporter:
 Other:

JUDGE'S SECTION

- Motion Fee to be paid upon filing of the attached order.
 Other:

JUDGE: _____
 CODE: _____ Date: _____

CLERK'S VERIFICATION

Date Filed: _____ Collected by: _____
 MOTION FEE COLLECTED: _____
 CONTESTED - AMOUNT DUE: _____

STATE OF SOUTH CAROLINA
 COUNTY OF WILLIAMSBURG

IN THE COURT OF COMMON PLEAS
 THIRD JUDICIAL CIRCUIT
 Civil Action No. 2014-CP-45-00644

LARRY BRAND,

Plaintiff,

vs.

ALLSTATE INSURANCE COMPANY,

Defendant.

**NOTICE OF MOTION
 AND AMENDED MOTION
 FOR SUMMARY JUDGMENT**

TO: PLAINTIFF ABOVE NAMED

YOU WILL PLEASE TAKE NOTICE that 10 days after service of this Notice upon you or as soon thereafter as counsel may be heard, the Defendant, Allstate Insurance Company will move before the presiding Judge of the Court of Common Pleas for Williamsburg County for an Order pursuant to Rule 56 of the South Carolina Rules of Civil Procedure granting defendant summary judgment in its favor, entering a declaratory judgment in its favor on the following grounds:

1. The policy at issue properly and lawfully provides that damages payable under the policy will be reduced by all amounts payable under any workers' compensation law.
2. The terms and conditions of the policy at issue provide that coverage under the policy will be excess over the underinsured motorist coverage provided for the vehicle Plaintiff was driving at the time of the accident. The policy further provides that Allstate "will pay the amount by which the damages exceed the limit of liability of that policy up to the limit of liability of this policy." Since the case was settled for an amount that clearly reflects that the damages sustained by the Plaintiff do not exceed the limits of underinsured motorist coverage

provided by the insure for the vehicle Plaintiff was driving at the time of his injury and damage, no underinsured motorist coverage is available to the Plaintiff in this case.

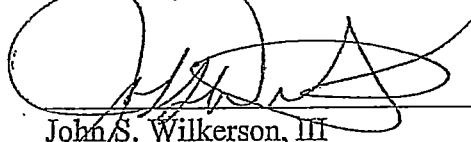
3. All other defenses set forth in the Defendant's Answer and Counterclaim.

4. This court lacks subject matter jurisdiction over the dispute as there is no justiciable case or controversy existing between the parties that his ripe for judicial action. The Plaintiff's assertion that the matter has a value in excess of the amount of the total settlement to date as set forth in the Complaint is totally speculative until a judgment has been obtained in the underlying action.

This motion will be based upon the Certified Copy of the Policy attached hereto as Exhibit A, the pleadings and discovery in this action, , and such affidavits and other evidence as may be presented to the court, and applicable law.

Respectfully submitted,

TURNER, PADGET, GRAHAM & LANEY, P.A.



John S. Wilkerson, III
 40 Calhoun Street, Suite 200
 Post Office Box 22129
 Charleston, South Carolina 29413-2129
 Telephone: 843-576-2801 (direct dial)
 Facsimile: 843-577-1649 (direct fax)
 Email: jwilkerson@turnerpadget.com

Charleston, SC
 December 23, 2015

STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT
Civil Action No. 2014-CP-45-00644

LARRY BRAND,

Plaintiff,

vs.

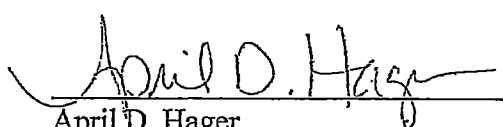
ALLSTATE INSURANCE COMPANY,

Defendant.

CERTIFICATE OF SERVICE

I hereby certify that this 23 day of December, 2015, a copy of *Notice of Motion and Amended Motion for Summary Judgment* have been served upon other counsel of record by placing same in the United States Mail, postage prepaid, to:

Mr. Patrick J. McLaughlin
Wukela Law Firm
P.O. Box 13057
Florence, SC 29504-3057



April D. Hager

“Exhibit A”



CLAIM# 0211146030

To Whom It May Concern:

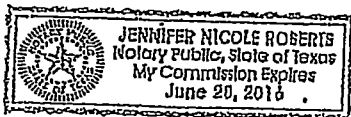
I, Patricia Torres, employee of Allstate Insurance Company Irving, Texas, do certify that the enclosed is a copy of policy and or declaration page for the above claim number, showing the coverages that were on the policy at the time of loss of 01/27/2010. The enclosed copy of policy and or declaration page was printed and mailed through Allstate's Output Processing Center.

Torres
Claim Support

State of Texas, County of Dallas

On this 26th day of June 2014, before me personally appeared Patricia Torres to me known to be the person who executed the foregoing instrument and acknowledged that he/she executed the same as a free act and deed.

Jennifer Nicole Roberts
Notary Public



E Clarendon Ins Age
1546 Main St.Pob 441
Turbeville SC 29162



Estelle Brand
Or Larry Brand

Your Quick Insurance Break

- ✓ Verify the vehicles and drivers listed on the Policy Declarations and ID cards.
- ✓ Check the vehicle identification number (VIN) listed on these documents; its accuracy could affect your premium.
- ✓ Now you can pay your premium even before your bill is issued - visit allstate.com or call 1-800-Allstate.

Important: Please note that this mailing is our policy renewal offer. Your coverage won't continue unless we receive the required payment before the policy effective date and time listed on the enclosed Policy Declarations.

Thank you for being a loyal Allstate customer — we're delighted to have you with us!

Here's Your Allstate Auto Insurance Renewal Offer

We're pleased to offer to continue your Allstate Indemnity Company auto policy for another six months, so you can continue getting:

- Quality coverage at competitive prices
- Access to our knowledgeable, helpful agent network
- The peace of mind of knowing your insurance provider is one of the most experienced in the industry

What's In This Package?

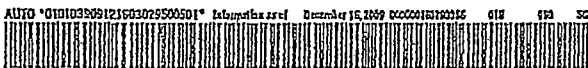
This mailing package contains your insurance documents, including your Renewal Policy Declarations—which lists your coverages, coverage limits, premiums and any discounts you're receiving. You'll want to review the Policy Declarations to make sure you're comfortable with the coverage choices you've made. Please store all of these documents with your other important papers.

Your Insurance Identification Cards, Billing And Renewing

Be sure to replace the Insurance Identification cards you currently have with the enclosed cards no later than your policy's effective date. Your bill will be sent separately. But note that if you're enrolled in the Allstate Easy Pay Plan, you won't receive a bill. Instead, we'll send you a statement detailing your payment withdrawal schedule.

Renewing your coverage is simple—just make sure we receive the required premium payment when it's due.

(over)



RA719

Brand001364

Have Questions? Please Contact Us

Dive me a call at 1-800-4-A-ALLSTATE if you have any questions or if you see something that needs updating—coverages, limits, deductibles, drivers, vehicles. For online services, such as making a payment or viewing policy information, you can register at the Customer Care Center on *allstate.com*. And for 24-hour-a-day, 7-day-a-week service and information, just call 1-800-4-A-ALLSTATE.

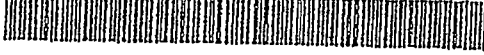
We Appreciate Your Business

Thanks again for choosing Allstate — where you get more than great coverage and service. You get Allstate's 70 years of business experience behind you, plus the freedom to manage your policy your way.

W. H. Cousar

E Clarendon Ins Age
Your Allstate Agent

AUTO *390912160026500101* Information card December 15, 2009



Allstate Automobile Insurance

A Quick Guide to This Package

Please use the printed Insurance Card(s) below.

• **PROOF OF INSURANCE CARD**

Attached at the right is one Proof of Insurance Card for each vehicle with liability coverage. Please keep this card with you at all times as evidence of insurance.

• **POLICY DECLARATIONS**

The Policy Declarations section contains detailed information about your policy such as drivers, vehicles, coverages, limits, and premiums. Please take a moment to check this information.

• **IMPORTANT NOTICE**

The Important Notice section provides you with explanations about insurance issues or any other policy information that we think may be helpful to you.

Please use the printed Insurance Card(s) below.

• **QUESTIONS**

Do you have any questions about this package? Just call your Allstate agent - or call the Allstate Customer Information Center at 1-800-ALLSTATE (1-800-255-7828).

South Carolina Automobile Insurance Identification Card

Allstate Indemnity Company
Estelle Brand
Or Larry Brand

POLICY NUMBER
8 53 790366 01/22
EFFECTIVE DATE
01/22/10
EXPIRATION DATE
07/22/10

YEAR / MAKE / MODEL
99 Ford Truck F150
VEHICLE ID NUMBER
1FTRX16LXXNB08808

Keep this card with you at all times as evidence of insurance.

South Carolina Automobile Insurance Identification Card

Allstate Indemnity Company
Estelle Brand
Or Larry Brand

POLICY NUMBER
8 53 790366 01/22
EFFECTIVE DATE
01/22/10
EXPIRATION DATE
07/22/10

YEAR / MAKE / MODEL
05 Buick Rendezvous
VEHICLE ID NUMBER
3GSDA03E25SS65458

Keep this card with you at all times as evidence of insurance.

This is not a bill.

IDSG

Brand001366

If you have an accident or loss:

- * Get medical attention if needed.
- * Notify the police immediately.
- * Obtain names, addresses, phone numbers (work & home) and license plate numbers of all persons involved including passengers and witnesses.
- * Call 1-800-ALLSTATE [®](1-800-255-7828), logon to allstate.com or contact your agent or producer as soon as possible.

E Clarendon Ins Age
 (843) 659-8501
 1546 Main St P.O. 441
 Yorkville SC 29162

- * The coverage provided by your policy meets South Carolina's minimum financial responsibility requirements.

If you have an accident or loss:

- * Get medical attention if needed.
- * Notify the police immediately.
- * Obtain names, addresses, phone numbers (work & home) and license plate numbers of all persons involved including passengers and witnesses.
- * Call 1-800-ALLSTATE [®](1-800-255-7828), logon to allstate.com or contact your agent or producer as soon as possible.

E Clarendon Ins Age
 (843) 659-8501
 1546 Main St P.O. 441
 Yorkville SC 29162

- * The coverage provided by your policy meets South Carolina's minimum financial responsibility requirements.

Allstate Indemnity Company

RENEWAL Auto Policy Declarations

The company issuing the policy is:

Allstate Indemnity Company
2775 Sanders Road
Northbrook, IL 60062-6127
1-800-ALLSTATE® (1-800-255-7828)

Summary

NAMED INSURED(S) Estelle Brand Or Larry Brand	YOUR ALLSTATE AGENT IS E Clarendon Ins Age (848) 659-8501 1546 Main St Pox 441 Turbeville SC 29162	YOUR BILL lists your payment options.
--	---	---

POLICY NUMBER 8 68 790356 01/22	POLICY PERIOD Jan. 22, 2010 to July 22, 2010 at 12:01 a.m. standard time
---	--

DRIVER(S) LISTED* Estelle Larry	DRIVER(S) EXCLUDED None
--	-----------------------------------

VEHICLES COVERED	VEHICLE ID NUMBER	LIENHOLDER
1. 99 Ford Truck F150	1FTRX18LXXNB08808	GM Financial Auto
2. 05 Buick Rendezvous	3G5DA03E25S565458	Capitol One Auto Fin

Total Premium

Premium for 99 Ford Truck F150	\$803.42
Premium for 05 Buick Rendezvous	\$921.93
TOTAL	\$1,725.35

✓ Your total premium reflects a combined discount of \$623.77
Your Policy Effective Date is Jan. 22, 2010

AUTO *010001909121503029500502*



Estimated 2007
December 18, 2007

Page 1
5019800

Allstate Indemnity Company

Policy Number: 8 68 790355 01/22
 Policy Effective Date: Jan. 22, 2010

Your Agent: E Clarendon Ins Age (848) 659-8501

COVERAGE FOR VEHICLE # 1 1999 Ford Truck F150

COVERAGE	LIMITS		DEDUCTIBLE	PREMIUM
Automobile Liability Insurance				\$155.29
• Bodily Injury	\$25,000	each person	Not Applicable	
	\$50,000	each accident		
• Property Damage	\$25,000	each accident	Not Applicable	\$67.55
Uninsured Motorists Insurance				\$24.19
• Bodily Injury	\$25,000	each person	Not Applicable	
	\$50,000	each accident		
• Property Damage	\$25,000	each accident	\$200	
Underinsured Motorists Insurance				\$65.32
• Bodily Injury	\$25,000	each person	Not Applicable	
	\$50,000	each accident		
• Property Damage	\$25,000	each accident		
Auto Collision Insurance	Actual Cash Value		\$500	\$201.20
Auto Comprehensive Insurance	Actual Cash Value		\$250	\$201.57
Towing and Labor Costs Coverage	\$50	each disablement	Not Applicable	\$6.50
Rental Reimbursement Coverage	up to \$50 per day for a maximum of 30 days		Not Applicable	\$81.80
Total Premium for 99 Ford Truck F150				\$803.42

DISCOUNTS Your premium for this vehicle reflects the following discounts:

Multiple Car	\$71.45	Anti-lock Brakes	\$47.10
Preferred Indemnity	\$110.39	Home Ownership	\$32.92
Loyalty	\$32.92		

RATING INFORMATION

This vehicle is driven 10 - 20 miles to work/school, adult age 56, with no unmarried driver under 25

Allstate Indemnity Company

Policy Number: 8 69 790856 01/22
 Policy Effective Date: Jan. 22, 2010

Your Agent: E Clarendon Ins Ago (843) 659-8501

COVERAGE FOR VEHICLE # 2

2005 Buick Rendezvous

COVERAGE	LIMITS		DEDUCTIBLE	PREMIUM
Automobile Liability Insurance				
• Bodily Injury	\$25,000	each person	Not Applicable	\$162.21
	\$50,000	each accident		
• Property Damage	\$25,000	each accident	Not Applicable	\$70.51
Uninsured Motorists Insurance				
• Bodily Injury	\$25,000	each person	Not Applicable	\$24.19
	\$50,000	each accident		
• Property Damage	\$25,000	each accident	\$200	
Underinsured Motorists Insurance				
• Bodily Injury	\$25,000	each person	Not Applicable	\$65.82
	\$50,000	each accident		
• Property Damage	\$25,000	each accident		
Auto Collision Insurance	Actual Cash Value		\$500	\$221.26
Auto Comprehensive Insurance	Actual Cash Value		\$250	\$218.83
Towing and Labor Costs Coverage	\$50	each disablement	Not Applicable	\$6.50
Rental Reimbursement Coverage	up to \$50 per day for a maximum of 30 days		Not Applicable	\$120.78
Lease/Loan Gap Coverage			Not Applicable	\$32.35
Total Premium for 05 Buick Rendezvous				\$921.93

DISCOUNTS

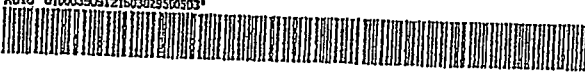
Your premium for this vehicle reflects the following discounts:

Multiple Car	\$77.97	Anti-lock Brakes	\$52.33
Preferred Indemnity	\$124.45	Home Ownership	\$97.12
Loyalty	\$37.12		

RATING INFORMATION

This vehicle is driven 10 - 20 miles to work/school, unmarried female age 23, limited use

AUTO *010003509121503029500503*



Revised and
 December 16, 2009

Page 3
 of 3 pages

Brand001370

Allstate Indemnity Company

Policy Number: 8 63 790365 01/22 Your Agent: E Clarendon Ins Age (843) 659-8501
 Policy Effective Date: Jan. 22, 2010

Your Policy Documents

Your auto policy consists of this Policy Declarations and the documents listed below. Please keep them together.
 - Renewal Offer Guarantee form A112952 - South Carolina Auto Policy form PDU46-1
 - South Carolina Dividend Provision form PDU79

IN WITNESS WHEREOF, Allstate has caused this policy to be signed by its Secretary and its President at Northbrook, Illinois, and if required by state law, this policy shall not be binding unless countersigned on the Policy Declarations by an authorized agent of Allstate.

Frederick F. Cripe

Frederick F. Cripe
 President

Mary J. McGinn

Mary J. McGinn
 Secretary

Allstate Indemnity Company

Policy Number: 8 63 790356 01/22
 Policy Effective Date: Jan. 22, 2010

Your Agent: E Clarendon Ins Agcy (843) 659-8501

Important Notice

Allstate's Privacy Policy

At Allstate, we value you as a customer and share your concerns about privacy. To help you understand how we treat the nonpublic personal information ("customer information") that we obtain from you or other sources in the course of providing you with products and services, this notice describes our use and protection of that information.

Whether you're doing business with us through your local agent or broker, our Customer Information Center, or allstate.com, we want you to know that Allstate respects your privacy and protects your information.

- We do not sell customer information.
- We do not share your customer information with persons, companies, or organizations outside of Allstate that would use that information to contact you about their own products and services.
- We expect persons or organizations that provide services on our behalf to keep customer information confidential and to use it only to provide the services we've asked them to perform.
- Within Allstate, we communicate to our employees regarding the need to protect customer information, and we've established physical, electronic, and procedural safeguards to protect customer information.

Below we've provided answers to questions that might be on your mind regarding privacy. You may be wondering...

What do we do with your customer information?

Allstate does not sell your customer information, or medical information, to anyone. Nor do we share it with companies or organizations outside of Allstate that would use that information to contact you about their own products and services. If that practice were ever to change, we would, of course, offer you the ability to opt out of this type of information sharing, and we would offer you the opt-out with time for you to respond before the change in our practice took place.

Your agent or broker may use customer information to help you with your overall insurance program. We may also communicate with you about products, features, and options you have expressed an interest in or that we believe may be of interest to you. We may, without authorization but only as permitted or required by law, provide customer information to persons or organizations both inside and outside of Allstate to fulfill a transaction you have requested, service your policy, market our products to you, investigate or handle claims, detect or prevent fraud, participate in insurance support organizations, or comply with lawful requests from regulatory and law enforcement authorities. These persons or organizations may include: our affiliated companies, companies that perform marketing services on our behalf, other financial institutions with which we have a joint marketing agreement for the sale of our own products, and your agent or broker.

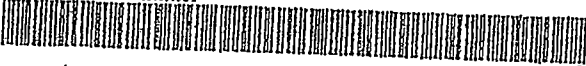
What kind of customer information do we have, and where did we get it?

Much of the customer information that we have about you comes directly from you. When submitting your application or request for insurance or other products and services we offer, or requesting an insurance quote, you may give us information such as your name, address, and Social Security number. We keep information about your transactions with our affiliates, others or us — for example, the types of products and services you purchase from us, premiums, account balances, and payment history.

We also may collect information from outside sources, including consumer reporting agencies and health care providers. This information may include loss information reports, motor vehicle reports, credit reports, and medical information.

Page 1

AUTO *0100039091210002250050-1*



Brand001372

Allstate Indemnity Company

Policy Number: 8 63 790356 01/22
Policy Effective Date: Jan. 22, 2010

Your Agent: E Clarandon Ins Age (843) 659-8501

How do we protect your customer information?

When we share customer information with companies working on Allstate's behalf, we expect those companies to use that information only to provide the services we have asked them to perform. Within Allstate, customer information is available to those individuals who may need to use it to fulfill and service the needs of Allstate customers. We communicate the need to protect customer information to all employees and agents, especially those individuals who have access to it. Plus, we've established physical, electronic, and procedural safeguards to protect customer information.

Finally, should your relationship with Allstate end, your customer information will remain protected in accordance with our privacy practices as outlined in this Important Notice.

How can you find out what information we have about you?

You may request to either see, or obtain from us by mail, the customer information about you in our records. If you believe that information is incomplete or inaccurate, you may request that we make any necessary corrections, additions or deletions to the disputed customer information. To fulfill your request, we may make arrangements with an insurance support organization or a consumer reporting agency to copy and disclose customer information to you on our behalf. You may also request a more complete description of the entities to which we disclose customer information, or the circumstances that might warrant such disclosures. Please send any of the requests listed above in writing to: Allstate Insurance Company, Customer Privacy Inquiries, P.O. Box 11904, Roanoke, VA 24022.

If you are an Internet user...

Our website, allstate.com, provides information about Allstate, our products, and the agencies and brokers that represent us. You may also perform certain transactions on the website. When accessing allstate.com, please be sure to read the Privacy Statement that appears there.

To learn more, the allstate.com Privacy Statement provides important information relating to your use of the website, including, for example, information regarding: 1) our use of online collecting devices known as "cookies"; 2) our collection of information such as IP address (the number assigned to your computer when you use the Internet), browser and platform types, domain names, access times, referral data, and your activity while using our site; 3) who should use our web site; 4) the security of information over the Internet and 5) links and co-branded sites.

We hope you have found this Important Notice helpful. If you have any questions or would like more information, please don't hesitate to contact your Allstate agent or call the Allstate Customer Information Center at 1-800-Allstate.

X66702-1v3

This notice is being provided on behalf of the following companies:

Allstate County Mutual Insurance Company
Allstate Indemnity Company
Allstate Investment Management Company
Allstate New Jersey Insurance Company
Allstate Texas Lloyd's
ForestView Mortgage Insurance Company
Allstate New Jersey Property and Casualty Insurance Company

Allstate Fire and Casualty Insurance Company
Allstate Insurance Company
Allstate Motor Club, Inc.
Allstate Property and Casualty Insurance Company
Allstate Texas Lloyd's, Inc.
General Underwriters Agency, Inc.
Roadway Protection Auto Club, Inc.

(ed. 09/2006)

Page 2

Brand001373

Allstate Indemnity Company

Policy Number: 8 53 790356 01/22
 Policy Effective Date: Jan. 22, 2010

Your Agent: E Clarendon Ins Agcy (843) 659-8501

Important Notice

Important Information About Your Allstate Policy

The enclosed Policy Declarations includes important information, such as your address, the coverages and coverage limits you've chosen, the names of insured persons — as well as other details pertinent to your policy. These details may include, for example, for motor vehicle policies, the drivers and vehicles you've insured, as well as the vehicle identification numbers (VIN) assigned to your insured vehicles; and, for property policies, the location of the insured property and mortgages information, if applicable. Your Policy Declarations also lists any discounts or surcharges applied to your policy.

Because much of the information found on your Policy Declarations is used to help us determine your premium, please be sure to review your Policy Declarations carefully each time you receive one. You may want to add coverage, delete coverage or change your coverage limits — or you may want to change other information relating to your policy, whether it be a motor vehicle, your home or other insured property. You may also want to contact your Allstate representative for information concerning discounts that may be available for your policy.

Making changes to your policy

If you need to make a change to any of the information listed on your Policy Declarations, please notify your Allstate representative of the change as soon as possible. With a few exceptions, any changes will be effective as of the date you notify us.

If you have any questions about this notice, or if you need to update any of the information listed on the enclosed Policy Declarations, please contact your Allstate agent or our Customer Information Center at 1-800-ALLSTATE (1-800-255-7828).

X67096

*AUTO *010003909121603025500505*



Brand001374

Allstate Indemnity Company

Policy Number: B 63 790856 01/22

Your Agent: E Clarendon Ins Age (843) 659-8501

Policy Effective Date: Jan. 22, 2010

Important Notice

Coverage is available with certain affiliates of Allstate

- Please keep in mind that you may be able to obtain a policy from certain Allstate affiliates that has different policy features and rates than those of your current policy.

However, be sure to note that any price difference between your current policy and policies offered through these Allstate affiliates can change significantly in future policy periods. Even if one company's rates are lower than the other's today, they may, in some cases, be higher than the other company's in the future. Similarly, policy features that are available today in one company may not be available in future policy periods, and features not available today may become available. In addition, the tenure you've earned with your current Allstate company will not carry over to the new company. In some cases, this could limit future renewal offers from the new company.

We want to help you understand your insurance options in any way that we can. If you'd like to know more about the information in this notice or about our other insurance products, just contact your local Allstate representative.

X68038-1

Policy Endorsement

The following endorsement changes your policy. Please read this document carefully and keep it with your policy.

South Carolina Renewal Offer Guarantee Endorsement -- AH2952

When the Policy Declarations indicates that the Renewal Offer Guarantee Endorsement applies, your policy is amended as follows:

A. In the General section of your policy, the following provision is added:

Renewal

Prior to the expiration of each policy period during which the Policy Declarations indicates that the Renewal Offer Guarantee Endorsement applies, we will offer to you the opportunity to renew this policy. We will offer to renew this policy with such coverages, policy terms, conditions, limits of liability, deductibles and premiums as we, in our discretion, elect to include in the offer of renewal to you on the date that the renewal offer is processed by us. You may elect to accept our renewal offer by complying with the terms and conditions of the offer and all applicable policy terms and conditions, including those relating to premium payment.

As a condition of our offer to renew this policy, we may, at our discretion and as permitted by law, require that any operator added to your policy after the Renewal Offer Guarantee Endorsement was first made a part of your policy be excluded from coverage under the policy.

If, at the time we offer you the opportunity to renew this policy, we have ceased to offer a Renewal Offer Guarantee Endorsement in South Carolina, we will notify you that the renewal policy we are offering will not include a Renewal Offer Guarantee Endorsement.

We are not required to offer to you the opportunity to renew this policy if this policy is cancelled pursuant to the Cancellation provision of this policy or if:

1. we intend to discontinue writing private passenger automobile insurance in South Carolina;
2. you no longer reside in South Carolina or the vehicles you insure under this policy are no longer principally garaged in South Carolina;
3. renewal of this policy would violate any law or regulation;
4. you obtained this policy through an independent agent or agency, and the relationship between us and that independent agent or agency is discontinued; or
5. you or any member of your household who operates an auto:
 - a. has had his or her drivers license suspended or revoked or otherwise fails to maintain a valid drivers license; or

- b. Is convicted of driving while under the influence of alcohol or drugs, leaving the scene of an accident or any other violation considered to be a major violation as described in our rules that are in effect and on file (if required) for our use in South Carolina.

If any of the items numbered 1 through 5 above apply, or if the Policy Declarations does not indicate that the Renewal Offer Guarantee Endorsement applies, we may nonrenew this policy. If we intend to nonrenew this policy, we will mail notice to you at least 34 days before the end of the policy period. Our mailing of notice of nonrenewal to you at your last mailing address known to us shall be deemed proof of notice.

- B. In the General section of your policy, the provision titled Non-Renewal is deleted.

All other policy terms and conditions apply.

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The Company Named In the Policy Declarations
 A Stock Company
 Home Office: Northbrook, Illinois 60062

General

Agreements We Make With You

This policy is a legal contract between you and us. A coverage applies only when a premium for it is shown on the Policy Declarations. If more than one auto is insured, premiums will be shown for each auto. If you pay the premiums when due and comply with the policy terms, we, relying on the information you have given us, makes the following agreements with you.

When And Where The Policy Applies

Your policy applies only during the policy period. During this time, it applies to covered losses to the auto, accidents, and occurrences within the United States Of America, its territories or possessions or Canada, or between their ports. The policy period is shown on the Policy Declarations.

Insurance Coverage In Mexico

Prior to entering and driving in Mexico, you must check with the appropriate Mexican authorities regarding automobile insurance requirements.

Automobile accidents in Mexico are subject to the laws of Mexico, NOT the United States. In Mexico, an automobile accident can be considered a CRIMINAL OFFENSE as well as a civil matter.

In some cases, part or all of this policy may NOT be recognized by Mexican authorities and we may not be allowed to provide any insurance coverage at all in Mexico. For your protection, you should consider purchasing automobile insurance coverage from a licensed Mexican insurance company before driving into Mexico.

However, when permitted, protection will be afforded under those coverages for which a premium is shown on the Policy Declarations for an insured auto while that insured auto is within 75 miles of the United States border and only for a period not to exceed ten days after each separate entry into Mexico.

If loss or damage occurs which may require repair of the insured auto or replacement of any part (s) while the insured auto is in Mexico, the basis for adjustment of the claim will be as follows: Any amount payable resulting from any covered loss or damage occurring in Mexico shall be payable in the United States. We will not be liable for more than the cost of having the repairs made or parts replaced at the nearest point in the United States where repairs or replacements can be performed. The costs for towing, transportation, and salvage operations of the insured auto while within Mexico are not covered under this policy.

Definitions Used In This Section

1. **We, Us or Our** means the company shown on the Policy Declarations.
2. **Auto** means a land motor vehicle with at least four wheels designed for use on public roads.
3. **Resident** means a person who physically resides in your household with the intention of continuing residence there.
4. **You or Your** means the policyholder named on the Policy Declarations and that policyholder's resident spouse.

Changes

When we broaden coverage during the policy period without charge, you have the new features if you have the coverage. Otherwise, the policy can be changed only by endorsement.

The premium for each auto is based on information in our possession. Any change in this information will allow us to make an adjustment of the policy premium.

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

Duty To Report Policy Changes

You must tell us within 30 days when you acquire an additional or replacement auto. If you do not, certain coverages of this policy may not apply.

Combining Limits Of Two Or More Autos Prohibited

If you have two or more autos insured in your name and one of these autos is involved in an accident, only the coverage limits shown on the Policy Declarations for that auto will apply. When you have two or more autos insured in your name and none of them is involved in the accident, you may choose any single auto shown on the Policy Declarations and the coverage limits applicable to that auto will apply. The limits available for any other auto covered by the policy will not be added to the coverage for the involved or chosen auto.

Transfer

This policy cannot be transferred to anyone without our written consent. However, if you die, coverage will be provided until the end of the policy period for:

1. your legal representative while acting as such; and
2. persons covered on the date of your death.

Payment

If your initial premium payment for your first policy period is by check, draft, or any remittance other than cash, such payment is conditional upon the check, draft, or remittance being honored upon presentation. If such check, draft, or remittance is not honored upon presentation, this shall be deemed void from its inception. This means that we will not be liable under this policy for any claims or damages which would otherwise be covered had the check, draft, or remittance been honored upon presentation.

Conditional Reinstatement

If we mail a cancellation notice because you didn't pay the required premium when due and you then tender payment by check, draft, or other remittance which is not honored upon presentation, your policy will terminate on the date and time shown on the cancellation notice and any notice we issue which waives the cancellation to reinstates coverage is void. This means that we will not be liable under this policy for claims or damages after the date and time indicated on the cancellation notice.

Misrepresentation, Fraud or Concealment

We may void this policy if it was obtained by misrepresentation, fraud or concealment of material facts. If we determine that this policy is void, all premiums paid will be returned to you since there has been no coverage under this policy.

Cancellation

You may cancel this policy by writing us the future date you wish to stop coverage.

We may cancel part or all of this policy by mailing notice to you at your last known address. Our notice will include the specific reason(s) for cancellation. The date of cancellation will be at least 15 days after the date of mailing.

Proof of mailing the notice will be proof of notice. A refund, if due, will be in proportion to the time your policy has been in effect. Cancellation will be effective even if the refund is not made immediately.

We may cancel this policy for any reason during the first 90 days of the original policy period. After your original policy has been in effect 90 days, we will not cancel your policy during the policy period unless:

1. you do not pay the premium when it is due; or
2. you or any other operator who either resides in the same household or customarily operates a motor vehicle insured by the policy has had a driver's license suspended or revoked. This must have occurred during the policy period or, if this is a renewal, during its policy period or the 90 days immediately preceding the last anniversary of the effective date.

Any unearned premium amounts under \$2.00 will be refunded only upon your request.

We will not be liable for any claims or damages which would otherwise be covered, had there not been material misrepresentation, fraud, or concealment of material fact.

We do not cover any loss or occurrence in which any insured person has concealed or misrepresented any material fact or circumstance.

Non-Renewal

We will renew your policy, unless South Carolina law permits non-renewal and we decide not to renew. If we decide not to renew your policy, we will mail notice to you at your last known address. Our notice will include the specific reason(s) for nonrenewal. Notice will be mailed at least 15 days before the end of the policy period. Proof of mailing the notice will be proof of notice.

Charge For Insufficient Funds Or Closed Account

If at any time, your payment of any premium amount due is made by check, electronic transaction, or other remittance which is not honored because of insufficient funds or a closed account, you will be charged a fee.

What Law Will Apply

This policy is issued in accordance with the laws of South Carolina and covers property or risks principally located in South Carolina. Subject to the following paragraph, any and all claims or disputes in any way related to this policy shall be governed by the laws of South Carolina.

If a covered loss to the auto, a covered auto accident, or any other occurrence for which coverage applies under this policy happens outside South Carolina, claims or disputes regarding that covered loss to the auto, covered auto accident, or other covered occurrence may be governed by the laws of the jurisdiction in which that covered loss to the auto, covered auto accident, or other covered occurrence happened.

Where Lawsuits May Be Brought

Subject to the following two paragraphs, any and all lawsuits in any way related to this policy, shall be brought, heard, and decided only in a state or federal court located in South Carolina. Any and all lawsuits against persons not parties to this policy but involved in the sale, administration, performance, or alleged breach of this policy, or involved in any other way with this policy, shall be brought, heard, and decided only in a state or federal court located in South Carolina, provided that such persons are subject to or consent to suit in the courts specified in this paragraph.

If a covered loss to the auto, a covered auto accident, or any other occurrence for which coverage applies under this policy happens outside South Carolina, lawsuits regarding that covered loss to the auto, covered auto accident, or other covered occurrence may also be brought in the judicial district where that covered loss to the auto, covered auto accident, or other covered occurrence happened.

Nothing in this provision, Where Lawsuits May Be Brought, shall impair any party's right to remove a state court lawsuit to a federal court.

Action Against Us

No one may bring an action against us unless there is full compliance with all policy terms; and the action is commenced within one year of the date the cause of action accrues. However, if an action is in any way related to the existence or amount of coverage, or the amount of loss for which coverage is sought, under a particular coverage that is shown on the Policy Declarations, such action must be commenced within the time period specified in the Action Against Us provision of that particular coverage. If an action is brought asserting claims relating to the existence or amount of coverage, or the amount of loss for which coverage is sought, under different coverages of this policy, the claims relating to each coverage shall be treated as if they were separate actions for the purpose of the time limit to commence action.

Arbitration

Any claim or dispute in any way related to this policy, by an insured person under this policy against us or us against an insured person under this policy, may be resolved by arbitration only upon mutual consent of the parties. Arbitration pursuant to this provision shall be subject to the following:

1. no arbitrator shall have the authority to award punitive damages or attorney's fees;
2. neither of the parties shall be entitled to arbitrate any claims or disputes in a representative capacity or as a member of a class; and
3. no arbitrator shall have the authority, without the mutual consent of the parties, to consolidate claims or disputes in arbitration.

Part 1

Automobile Liability Insurance Bodily Injury—Coverage AA Property Damage—Coverage BB

Insuring Agreements

We will pay for damages an insured person is legally obligated to pay because of bodily injury or property damage meaning:

1. bodily injury to any person; and
2. damage to or destruction of property, including loss of use.

Under these coverages, your policy protects an insured person from claims for accidents arising out of the ownership, maintenance or use, loading or unloading of an insured auto. Damages include prejudgment interest awarded against an insured person.

We will defend an insured person sued as the result of an auto accident, even if the suit is groundless or false. We will choose the counsel. We may settle any claim or suit if we believe it is proper.

Additional Payments We Will Make

When we defend an insured person under this Part 1, we will pay:

1. up to \$50 a day for the loss of wages or salary if we ask that person to attend hearings or trials to defend against a bodily injury suit. We will not pay for loss of other income. We will pay other reasonable expenses incurred at our request.
2. court costs for defense.
3. interest accruing on a judgment entered against you, but only on that part of a judgment entered against you which do not exceed our limits of liability, until such time as we have paid, formally offered, or conditionally or unconditionally deposited in court, the amount for which we are liable under this policy. This means that under no circumstances will we pay interest on that part of a judgment entered against you which exceeds our stated limits of liability.

4. premiums on appeal bonds and on bonds to release attachments, but not in excess of our limit of liability. We have no obligation, however, to apply for or furnish these bonds.

We will repay an insured person for:

1. the cost of any bail bonds required because of an accident or traffic law violation involving the use of the insured auto. Payment will not exceed \$300 per bond. We have no obligation to apply for or furnish a bond.
2. reasonable expenses incurred by an insured person for first aid to other persons at the time of an auto accident involving the insured auto.

Insured Persons

1. While using your insured auto:
 - a. you,
 - b. any resident, and
 - c. any other person using it with your permission.
2. While using a non-owned auto:
 - a. you,
 - b. any resident relative using a four wheel private passenger auto or utility auto.

The following are not insured persons:

1. The United States of America or any of its agencies,
2. Any person with respect to bodily injury or property damage resulting from the operation of an auto by that person as an employee of the United States Government. This applies only if the provisions of Section 2679 of Title 28, United States Code as amended, require the Attorney General of the United States to defend that person in any civil action which may be brought for the bodily injury or property damage.

Insured Autos

1. Any auto described on the Policy Declarations. This includes the four wheel private passenger auto or utility auto you replace it with.

2. An additional private passenger auto or utility auto you become the owner of during the policy period provided we insure all other private passenger autos or utility autos you own. You must tell us within 30 days of acquiring the auto and you must pay any additional premium. We must agree to insure the auto. Coverage will not continue after 30 days if we are not notified of the additional auto.
3. A substitute four wheel private passenger auto or utility auto, not owned by you or a resident, being temporarily used while your insured auto is being serviced or repaired, or if your insured auto is stolen or destroyed.
4. A non-owned auto used by you or a resident relative with the owner's permission. This auto must not be available or furnished for the regular use of an insured person.
5. A trailer while attached to an insured auto. The trailer must be designed for use with a private passenger auto or utility auto. This trailer cannot be used for business purposes with other than a private passenger auto or utility auto.

Definitions Used in Part 1

1. We, Us, or Our means the company shown on the Policy Declarations.
2. Auto means a land motor vehicle with at least four wheels designed for use on public roads.
3. Bodily Injury means bodily injury, sickness, disease or death.
4. Resident means the physical presence in your household with the intention to continue living there. Your unmarried dependent children while temporarily away from home will be considered residents, if they intend to continue to live in your household.
5. Utility auto means an auto of the pick-up body, sedan delivery or panel truck type. This auto must have a gross vehicle weight of

10,000 pounds or less, according to manufacturer's specifications.

6. You or Your means the policyholder named on the Policy Declarations and that policyholder's resident spouse.

Exclusions—What Is Not Covered

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.
2. auto business operations such as repairing, servicing, testing, washing, parking, storing or selling of autos or motor vehicles. This exclusion does not apply to the use of your insured auto by:
 - a. you, resident relatives, partners or employees of the partnership of you or a resident relative; or
 - b. any other insured person for damages up to the minimum limits required by the financial responsibility law of South Carolina.
3. a non-owned auto while being used in any business or occupation of an insured person. However, coverage does apply while you, your chauffeur, or domestic servant are using a private passenger auto or trailer.
4. bodily injury to an employee of any insured person arising in the course of employment. Coverage does apply to a domestic employee who is not required to be covered by workers' compensation law or similar law.
5. bodily injury or property damage arising out of the ownership, maintenance, or use of a motor vehicle with less than four wheels.
6. anyone other than you, for claims made by a co-worker injured in the course of employment.
7. damage to or destruction of property an insured person owns, is in charge of, or rents. However, a private residence or a garage rented by that person is covered.
8. bodily injury or property damage caused intentionally by or at the direction of an insured person. This exclusion applies only to damages in excess of the minimum limit required by the financial responsibility law of South Carolina.
9. bodily injury or property damage which would also be covered under nuclear energy liability insurance. This applies even if the limits of that insurance are exhausted.
10. bodily injury or property damage arising out of the participation in any prearranged, organized, or spontaneous:
 - a. racing contest;
 - b. speed contest; or
 - c. use of an auto at a track or course designed or used for racing or high performance driving,

or in practice or preparation for any contest or use of this type.

This exclusion does not apply up to the minimum limits required by the financial responsibility law of South Carolina.

Financial Responsibility

When this policy is certified as proof under any motor vehicle financial responsibility law, the insurance under this part of the policy will comply with the provisions of that law.

Limits Of Liability

The limits shown on the Policy Declarations are the maximum we will pay for any single accident involving an insured auto. The limit stated for each person for bodily injury is our total limit of liability for all damages because of bodily injury sustained by one person in any single accident involving an insured auto including all damages sustained by anyone else as a result of that bodily injury. Subject to the limit for each person, the limit stated for each

accident is our total limit of liability for all damages for bodily injury sustained by two or more persons in any single accident involving an insured auto. For property damage, the limit stated for each accident is our total limit of liability for property damage sustained in any single accident involving an insured auto.

The liability limits apply to each insured auto as shown on the Policy Declarations. The insuring of more than one person or auto under this policy will not increase our liability limits beyond the amount shown for any one auto, even though a separate premium is charged for each auto. The limits also will not be increased if you have other auto insurance policies that apply.

There will be no duplication of payments made under the Bodily Injury Liability and Uninsured Motorists Insurance or Underinsured Motorists Insurance of this policy.

An auto and attached trailer are considered one auto. Also, an auto and a mounted camper unit, topper, cap or canopy are considered one auto.

If There Is Other Insurance

If an insured person is using a substitute private passenger auto or non-owned auto, our liability insurance will be excess over other collectible insurance. If more than one policy applies to an accident involving your insured auto, we will bear our proportionate share with other collectible liability insurance.

Assistance And Cooperation

When we ask, an insured person must cooperate with us in the investigation, settlement and defense of any claim or lawsuit. If we ask, that person must also help us obtain payment from anyone who may be jointly responsible.

We can't be obligated if an insured person voluntarily takes any action or makes any payments other than for covered expenses for bail bonds or first aid to others.

Action Against Us

No insured person may bring an action against us in any way related to the existence or amount of coverage, or the amount of loss for which coverage is sought, under Part 1—Automobile Liability Insurance, unless there is full compliance with all policy terms and such action is commenced no later than the last of the following to occur:

1. two years after the date of the accident; or
2. one year after entry of final judgment or other court order terminating a lawsuit against the insured to determine the insured's liability or the amount of the insured's liability arising out of the accident; or
3. one year after we agree to a settlement; or
4. if we have denied coverage and the insured person has thereafter settled with the claimant without any lawsuit being filed to determine the insured's liability or the amount of the insured's liability arising out of the accident, within one year after the denial of coverage.

If the insured person is subjected to claims arising out of the same accident by more than one person claiming bodily injury or property damage, the time for the insured person to bring an action against us shall be determined separately as to the coverage sought or provided with respect to the claims of each of those claiming against the insured person.

If liability has been determined by judgment after trial, or by written agreement among the insured, the other person, and us, then whoever obtains this judgment or agreement against an insured person may sue us up to the limits of this policy. However, no one has the right to join us in a suit to determine legal responsibility of an insured person.

Bankruptcy Or Insolvency

The bankruptcy or insolvency of an insured person will not relieve us of any obligation.

What To Do In Case Of An Auto Accident Or Claim

If an insured person has an auto accident, we must be informed promptly of all details. If an insured

person is sued as the result of an auto accident, we must be informed immediately.

Additional Interested Parties

If one or more additional interested parties are listed on the Policy Declarations, the Automobile Liability Insurance coverages of this policy will apply to those parties as insureds.

We will mail or deliver at least 15 days notice to an additional interested party if we cancel or make any changes to this policy which adversely affect that party's interest. Our notice will be considered properly given if mailed to the last known address of the additional interested party.

The naming of an additional interested party does not increase that party's right to recovery under this policy, nor does it impose an obligation for the payment of premiums under this policy.

Part 2

Medical Expense Benefits Coverage CC

Insuring Agreements

We will pay an injured person medical expense benefits. Payments will be made only when bodily injury, sickness, disease or death is caused by an accident arising from the use of a motor vehicle as a motor vehicle.

Medical Expense

All reasonable and necessary treatment expenses incurred within three years from the date of accident. This covers medical, surgical, x-ray, optical, dental, chiropractic and rehabilitative services, prosthetic devices, prescription drugs, ambulance, hospital, extended care and nursing services, and funeral services. Also covered are treatment and services rendered in accordance with a recognized religious or licensed method of healing.

Definitions Used in Part 2

1. We, Us, or Our means the company indicated on the Policy Declarations.
2. Injured Person means:

- a. You or a resident relative who sustains bodily injury, sickness, disease or death:
 - i. while in, on, getting into or out of a motor vehicle
 - ii. when struck as a pedestrian by a motor vehicle.
- b. any other person who sustains bodily injury, sickness, disease or death:
 - i. while in, on, getting into or out of the insured auto,
 - ii. while in, on, getting into or out of a motor vehicle operated by you or a resident relative.

3. Insured auto means a motor vehicle to which the insurance under this coverage applies, and for which a specific premium is charged.

4. Motor vehicle means a vehicle which is required to be registered under the South Carolina Motor Vehicle Registration and Licensing Act.

5. Resident relative means
- a. any person related to you and residing in your household, and
 - b. any minor residing in your household who is:
 - i. in your custody; or
 - ii. in the custody of any relative who resides in your household.

These persons will be considered resident relatives, even if temporarily living elsewhere.

6. You or Your means the policyholder named on the Policy Declarations.

Exclusions—What Is Not Covered

This coverage does not apply to bodily injury, sickness, disease or death:

1. to you or a resident relative while maintaining or using any motor vehicle you own which is not an insured auto.
2. to any resident relative while maintaining or using any motor vehicle owned by that relative.
3. to any person who intentionally causes the accident resulting in such injury.

4. to any person
 - a. while operating or voluntarily riding in a vehicle known by him to be stolen; or
 - b. while in the commission of a felony or while in violation of Section 56-5-750 of the South Carolina 1976 Code.
5. to any person while in, on, getting into or out of a motor vehicle, or while a pedestrian, as a result of an accident involving any motor vehicle (other than an insured auto) for which security is available under South Carolina law.
6. to any pedestrian, other than you or a resident relative, if the accident occurs outside the State of South Carolina.
7. to any person while maintaining or using a motor vehicle while located for use as a residence or premises.
8. to any person, arising out of the operation, maintenance, or use of a motorcycle by such person.
9. any person arising out of the participation in any prearranged, organized, or spontaneous:
 - a. racing contest;
 - b. speed contest; or
 - c. use of an auto at a track or course designed or used for racing or high performance driving,

or in practice or preparation for any contest or use of this type.

Limits Of Liability

The limit of our liability for Medical Expense Benefits, as stated on the Policy Declarations, is the maximum we will pay per any one injured person for any motor vehicle accident. This is the maximum we will pay regardless of the number of:

1. claims made;
2. vehicles shown on the Policy Declarations; or
3. vehicles involved in the accident.

Benefits will be reduced by any amounts paid or payable under any workers' compensation law.

Determination Of Reasonable And Necessary Medical Expenses

If the injured person incurs medical expenses which we deem not to be reasonable or necessary, we have no obligation to pay and may refuse to pay for those medical expenses.

If the injured person is sued by a health care provider because we refuse to pay medical expenses which we deem to be unreasonable or unnecessary, we will pay resulting defense costs, and pay any resulting judgment against the injured person, up to the Automobile Medical Expense Benefits policy limit. We will choose the counsel. The injured person must cooperate with us in the defense of any claim or lawsuit. If we ask the injured person to attend hearings or trials, we will pay up to \$50 per day for loss of wages or salary. We will also pay other reasonable expenses incurred at our request. If the injured person is threatened with or made the subject of collection activity by the medical care provider, we will defend the injured person as to such activity.

Action Against Us

No one may bring an action against us in any way related to the existence or amount of coverage, or the amount of loss for which coverage is sought, under Part II - Auto Medical Payments, Coverage CC, unless there is full compliance with all policy terms and such action is commenced within one year after the date the expenses for which coverage is sought were actually incurred by an insured person.

Notice To Us

As soon as possible, the injured person or someone on that person's behalf must give us written notice of the accident. This notice must include the time, place and circumstances of the accident and the identity of the injured person.

Proof Of Claim; Medical Reports

As soon as practicable, the injured person or someone on that person's behalf must give us written proof of claim. It must include all details reasonably required by us to determine the amounts payable. The injured person may be asked to take physical examinations by physicians we

choose, when and as often as we may reasonably require.

Non-Duplication Of Benefits; Priority Of Payments; Other Insurance

No injured person will recover duplicate benefits for the same loss under this and any similar insurance, including self-insurance. If the injured person is entitled to recover benefits under more than one policy, the maximum recovery under all policies will not exceed the amount payable under the provisions of the policy providing the highest dollar limit. We will not be liable for more than the proportion of any loss to which this coverage applies than our limit of liability bears to the sum of our limit of liability and that of any other applicable insurance.

Subrogation

Subject to the provisions of South Carolina law, no benefit payable under this coverage will be subject to subrogation or assignment.

Reimbursement And Trust Agreement

When we pay any person under this coverage:

1. We are entitled to repayment of amounts paid by us out of the proceeds of any settlement that person recovers from any legally responsible party or insurer.
2. All rights of recovery against any legally responsible party or insurer must be preserved for our benefit.

Our rights under this provision are subject to any applicable limitations provided under the laws of South Carolina.

Constitutionality Clause

The premium for and the coverages of the policy have been established in accordance with the laws of South Carolina. If a court of competent jurisdiction declares, or enters a judgment the effect of which is to render the provisions of those applicable laws invalid or unenforceable, in whole or in part, we will have the right to recompute the premium payable for this policy. These provisions will be voidable or

subject to amendment at our option in accordance with such declaration or judgment.

Part 3

Uninsured Motorists Insurance--

Coverage SS

Underinsured Motorists Insurance--

Coverage SU

Section 1

Uninsured Motorists Insurance--

Coverage SS

Insuring Agreements

If a premium is shown on the Policy Declarations for Uninsured Motorists Insurance, we will pay those damages that an insured person is legally entitled to recover from the owner or operator of an uninsured auto because of:

1. bodily injury sustained by an insured person; and
2. property damage.

The bodily injury or property damage must be caused by accident and arise out of the ownership, maintenance or use of an uninsured auto. This coverage does not apply to the first \$200 of the total amount of all property damage as the result of any one accident.

Insured Persons

1. you and any resident relative.
2. any other person while in, on, or getting into or out of an insured auto with your permission.
3. any other person who is legally entitled to recover because of bodily injury to you, a resident relative or an occupant of your insured auto with your permission.

An Insured Auto Is A Motor Vehicle:

1. described on the Policy Declarations. This includes the motor vehicle you replace it with.

2. you become the owner of during the policy period. This additional motor vehicle will be covered if we insure all other private passenger motor vehicles you own. You must, however, tell us within 30 days after you acquire the motor vehicle. You must pay any additional premium. We must agree to insure the motor vehicle. Coverage will not continue after 30 days if we are not notified of the additional motor vehicle.
3. not owned by you or a resident relative, if being temporarily used while your insured auto is being serviced or repaired, or if your insured auto is stolen or destroyed. The motor vehicle must be used with the owner's permission. It cannot be furnished for the regular use of you or any resident relative.
4. not owned by you or a resident relative if being operated by you or a resident relative with the owner's permission. The motor vehicle cannot be furnished for the regular use of you or any resident relative.

An insured auto is not a motor vehicle made available for public hire by an insured person.

An Uninsured Auto Is:

1. a motor vehicle which has
 - a. no bodily injury liability bond or insurance in effect; and
 - b. no cash or securities deposited with the State Treasurer;
 at the time of the accident.
2. a motor vehicle covered by insurance which doesn't provide at least the minimum limits specified by the South Carolina Financial Responsibility Act and for which there is no cash deposit or bond in lieu of such minimum insurance limits.
3. a motor vehicle for which the bonding or insuring company:
 - a. successfully denies coverage;
 - b. is or becomes insolvent;

- c. is in delinquency proceedings, suspension or receivership; or
 - d. is proven unable to respond to a judgment.
4. a hit-and-run motor vehicle which causes bodily injury to an insured person by physical contact with the insured person or with a vehicle occupied by that person or which causes property damage arising out of the physical contact with the damaged property. The identity of the operator or the owner of the vehicle must be unknown and the insured must not have been negligent in failing to determine the identification of the other vehicle and driver of the other vehicle at the time of the accident. The accident must be reported within 24 hours to some appropriate police authority. We must be notified within 30 days or as soon thereafter as practicable. If the insured person was occupying a vehicle at the time of the accident, we have a right to inspect it.
 5. a phantom motor vehicle which causes:
 - a. bodily injury to an insured person without physical contact with the insured person or with a motor vehicle occupied by that person.
 - b. property damage to the insured auto without physical contact between the vehicles.

The facts of the accident must have been witnessed by someone other than the owner or operator of the insured vehicle, provided, however, the witness must sign an affidavit attesting to the truth of the facts of the accident contained in the affidavit.

An Uninsured Auto Is Not:

1. a motor vehicle owned by any state or local government or agency, unless operated by a person without proper authorization.
2. a motor vehicle owned by any federal government or agency.
3. a motor vehicle that is lawfully self-insured.

4. a motor vehicle which is insured for Automobile Liability Insurance under Part 1 of this policy.

Definitions Used In Part 3—Section I

1. We, Us, or Our means the company shown on the Policy Declarations.
2. Bodily injury means bodily injury, sickness, disease or death.
3. Motor vehicle means a land motor vehicle or trailer other than:
 - a. a vehicle or other equipment designed for use off public roads, while not on public roads;
 - b. a vehicle operated on rails or crawler-treads; or
 - c. a vehicle while used as a residence or premises.
4. Property damage means damage to or destruction of the property of an insured person.
5. Resident means a person who physically resides in your household with the intention of continuing residence there. Your unmarried dependent children while temporarily away from home will be considered residents if they intend to resume residing in your household.
6. You or Your means the policyholder named on the Policy Declarations and that policyholder's resident spouse.

Exclusions—What Is Not Covered

We will not pay any damages an insured person is legally entitled to recover because of:

1. bodily injury or property damage to any person who makes a settlement with the owner or operator of the uninsured auto without our written consent.
2. bodily injury or property damage to any person while in, on, getting into, or out of an insured auto while available for hire to the public. This exclusion does not apply to shared expense car pools.

3. bodily injury or property damage, to the extent that benefits are paid, payable or required to be provided under any workers' compensation or disability benefits law.

4. property damage if the payment would directly or indirectly benefit any insurer of property.
5. property damage to the extent that an insured person has been compensated by other property or physical damage insurance.

6. bodily injury or property damage arising out of the participation in any prearranged, organized, or spontaneous:
 - a. racing contest;
 - b. speed contest; or
 - c. use of a motor vehicle at a track or course designed or used for racing or high performance driving,

or in practice or preparation for any contest or use of this type.

Limits Of Liability

The limits shown on the Policy Declarations are the maximum we will pay for any single accident involving an insured auto. The limit stated for each person for bodily injury is our total limit of liability for all damages because of bodily injury sustained by one person in any single accident involving an insured auto including all damages sustained by anyone else as a result of that bodily injury. Subject to the limit for each person, the limit stated for each accident is our total limit of liability for all damages for bodily injury sustained by two or more persons in any single accident involving an insured auto. For property damage, the limit stated for each accident is our total limit of liability for property damage sustained in any single accident involving an insured auto.

These limits are the maximum we will pay for any one motor vehicle accident regardless of the number of:

1. insured persons;
2. claims made;
3. vehicles or premiums shown on the Policy Declarations; or

4. vehicles involved in the accident.

The liability limits apply to each insured motor vehicle as shown on the Policy Declarations. The insuring of more than one person or auto under this policy will not increase our liability limits beyond the amount shown for any one auto, even though a separate premium is charged for each auto. The limits also will not be increased if you have other auto insurance policies that apply.

In addition to this limit, we will make an additional amount available to you or any resident relative if such person sustains bodily injury or property damage in an accident involving your insured auto. The additional amount is equal to the sum of that part of the limit on each additional insured auto shown on the Policy Declarations that does not exceed the limit provided for the insured auto involved in the accident. This additional amount is the most we will pay over the stated limit of liability regardless of the number of:

1. insured persons;
2. claims made; or
3. vehicles involved in the accident.

However, no one will be entitled to receive duplicate benefits for the same elements of loss.

Subject to the above limits of liability, damages payable will be reduced by:

1. all amounts paid or payable by or on behalf of the owner or operator of the uninsured auto, or anyone else responsible. This includes all sums paid under the bodily injury liability coverage or property damage liability coverage of this or any other auto policy.
2. all amounts paid or payable under any Uninsured Motorists Coverage applicable to the vehicle involved in the accident; and
3. all amounts paid because of the property damage under Part 4 of the policy or any similar coverage under any other policy.
4. all amounts payable under any workers' compensation law, disability benefits law, or similar law, Medical Expense Benefits Coverage under this policy or any similar automobile medical payments coverage.

Non-Duplication Of Benefits

No injured person will recover duplicate benefits for the same elements of loss under this or any other uninsured motorists insurance, including approved plans of self-insurance.

Proof Of Claim; Medical Reports

Any person making claim for bodily injury must give us written proof of claim as soon as practicable. Any person making claim for property damage must submit written proof of claim within 60 days, unless we extend this time in writing. All proof of claims must include all details we need to determine the amounts payable.

The insured person may be required to take physical examinations by physicians we choose, as often as we may reasonably require. The insured person or that person's representative must authorize us to obtain medical reports or copies of records. We may also require any person making claim to submit to questioning under oath and sign the transcript.

Any person making claim for property damage must allow us to inspect the damaged property.

Assistance And Cooperation

With respect to the minimum limits required by law, we may require the insured person to take proper action to preserve all rights to recover damages from anyone responsible for the bodily injury or property damage to the extent of our payment.

If There Is Other Insurance

If the insured person was in, on, getting into or out of a vehicle which is insured for this coverage under another policy, coverage under this policy will be excess. This means that when the insured person is legally entitled to recover damages in excess of the other policy limit, we will pay only the amount by which the damages exceed the limit of liability of that policy up to the limit of liability of this policy.

If more than one policy applies to the accident on a primary basis, the total benefits payable will not exceed the amount the insured person is legally entitled to recover. We will bear our proportionate share with other uninsured motorists benefits.

With respect to property damage, this coverage will apply only after the limit of any other collectible insurance applicable to the damaged property has been exhausted.

Our Rights Of Recovery

1. If an insured person has prosecuted to judgment any suit against any person responsible, we will be entitled to an assignment of the judgment to the extent of payment under this insurance.
2. We will pay our proportionate part of any reasonable costs and expenses incurred for any recovery to the extent of payment under this insurance, including reasonable attorneys' fees. However, we reserve the right to retain an attorney of our choice to pursue a claim to the extent that claim is not in excess of the minimum limits required by law.
3. If an insured person making a claim for property damage under this insurance is also entitled to other insurance or other compensation for the property damage, we will not be obligated to pay a claim until the insured person has assigned us the rights to the compensation, to the extent of payment under this insurance.
4. If we make a payment under this policy and the person to or for whom payment is made recovers damages from another, that person shall:
 - a. hold in trust for us the proceeds of the recovery; and
 - b. reimburse us to the extent of our payment.

Payment Of Loss By Us

Any amount due is payable to the insured person, to the parent or guardian of an injured minor, or to the spouse of any insured person who dies. However, we may pay any person lawfully entitled to recover damages.

Legal Actions

No one may sue us under this coverage unless there is full compliance with all the policy terms. No action attempting to establish the liability of the uninsured motorist may be brought under this coverage unless

we are served with copies of the pleadings in the manner prescribed by law. We have the right to appear and defend in the name of the uninsured motorist in any suit which may affect our liability.

Conformity With State Statute

These coverages are intended to be in full conformity with the South Carolina Uninsured Motorists Law. If any provision of this coverage is in conflict with such law, the provision is amended or eliminated to conform with such law.

Action Against Us

No one may bring an action against us in any way related to the existence or amount of coverage, or the amount of loss for which coverage is sought, under Part 3—Uninsured Motorists Insurance, Coverage SS, unless there is full compliance with all policy terms and, except as provided below, such action is commenced within two years after the date of the accident.

If an insured person commences a timely action against the owner or operator of an uninsured auto to recover damages for loss arising out of the accident and gives us written notice of such action within 30 days after such action is commenced, an action against us related to the existence or amount of coverage, or the amount of loss for which coverage is sought, may be brought more than two years after the date of the accident, but in no event later than the earliest of the following to occur:

1. one year after entry of a final judgment or other court order terminating such lawsuit against the owner or operator of an uninsured auto; or
2. one year after we deny coverage.

If any insured person sues a person believed responsible for the accident without our written consent, we are not bound by any resulting judgment.

**Section II
Underinsured Motorists Insurance
Coverage SU**

Insuring Agreements

We will pay those damages that an insured person is legally entitled to recover from the owner or operator of an underinsured auto because of:

1. bodily injury sustained by an insured person; and
2. property damage.

The bodily injury or property damage must be caused by accident and arise out of the ownership, maintenance or use of an underinsured auto.

We will pay under this coverage only after the limits of liability under any applicable liability bonds or policies, or any applicable uninsured motorists coverage have been exhausted by payment of judgments or settlements.

Insured Persons

1. you and any resident relative.
2. any other person while in, on, getting into or out of an insured auto with your permission.
3. any other person who is legally entitled to recover because of bodily injury to you, a resident relative or an occupant of your insured auto with your permission.

An insured auto is a motor vehicle:

1. described on the Policy Declarations. This includes the motor vehicle you replace it with.
2. you become the owner of during the policy period. This additional motor vehicle will be covered if we insure all other private passenger motor vehicles you own. You must, however, tell us within 30 days after you acquire the motor vehicle. You must pay any additional premium. We must agree to insure the additional motor vehicle. Coverage will not

continue after 30 days if we are not notified of the additional motor vehicle.

3. not owned by you or a resident relative if being temporarily used while your insured auto is being serviced or repaired, or if your insured auto is stolen or destroyed. The motor vehicle must be used with the owner's permission. It cannot be furnished or available for the regular use of you or any resident relative.
4. not owned by you or a resident relative, if being operated by you or a resident relative with the owner's permission. The motor vehicle cannot be furnished for the regular use of you or any resident relative.

An insured auto is not a motor vehicle made available for public hire by an insured person.

An underinsured auto is a motor vehicle which has liability insurance or a bond in effect at the time of the accident in an amount at least equal to the minimum limits required by the financial responsibility law of South Carolina, but its limit of liability is not enough to pay the full amount the insured is legally entitled to recover as damages.

An underinsured auto is not a motor vehicle which is owned by any state or local government or agency.

Definitions Used in Part 3—Section II

1. We, Us or Our means the company shown on the Policy Declarations.
2. Bodily injury means bodily injury, sickness, disease or death.
3. Motor vehicle means a land motor vehicle or trailer other than:
 - a. a vehicle or other equipment designed for use off public roads, while not on public roads;
 - b. a vehicle operated on rails or crawler treads; or
 - c. a vehicle while used as a residence or premises.

4. **Property damage** means damage to or destruction of property of an insured person.
5. **Resident** means a person who physically resides in your household with the intention of continuing residence there. Your unmarried dependent children while temporarily away from home will be considered residents if they intend to resume residing in your household.
6. **You or Your** means the policyholder named on the Policy Declarations and that policyholder's resident spouse.

Exclusions—What Is Not Covered

We will not pay any damages an insured person is legally entitled to recover because of:

1. bodily injury or property damage to any person who makes a settlement with the owner or operator of the underinsured auto without our written consent.
2. bodily injury or property damage to any person while in, on, getting into, or out of an insured auto while available for hire to the public. This exclusion does not apply to shared expense car pools.
3. bodily injury or property damage to the extent that benefits are paid, payable or required to be provided under any workers' compensation or disability benefits law.
4. property damage if the payment would directly or indirectly benefit any insurer of property.
5. property damage to the extent that an insured person has been compensated by other property or physical damage insurance.
6. bodily injury or property damage arising out of the participation in any prearranged, organized, or spontaneous:
 - a. racing contest;
 - b. speed contest; or
 - c. use of a motor vehicle at a track or course designed or used for racing or high performance driving,

or in practice or preparation for any contest or use of this type.

Limits Of Liability

The limits shown on the Policy Declarations are the maximum we will pay for any single accident involving an insured auto. The limit stated for each person for bodily injury is our total limit of liability for all damages because of bodily injury sustained by one person in any single accident involving an insured auto including all damages sustained by anyone else as a result of that bodily injury. Subject to the limit for each person, the limit stated for each accident is our total limit of liability for all damages for bodily injury sustained by two or more persons in any single accident involving an insured auto. For property damage, the limit stated for each accident is our total limit of liability for property damage sustained in any single accident involving an insured auto. This is the most we will pay regardless of the number of:

1. insured persons;
2. claims made;
3. vehicles or premiums shown on the Policy Declarations; or
4. vehicles involved in the accident.

The Underinsured Motorists Insurance limits apply to each insured motor vehicle as shown on the Policy Declarations. The insuring of more than one person or auto under this policy will not increase our liability limits beyond the amount shown for any one auto, even though a separate premium is charged for each auto. The limits also will not be increased if you have other auto insurance policies that apply.

In addition to this limit, we will make an additional amount available to you or any resident relative if such person sustains bodily injury or property damage in an accident involving your insured auto. The additional amount is equal to the sum of that part of the limit on each additional insured auto shown on the Policy Declarations that does not exceed the limit provided for the insured auto involved in the accident. This additional amount is the most we will

pay over the stated limit of liability regardless of the number of:

1. Insured persons;
2. claims made; or
3. vehicles involved in the accident.

However, no one will be entitled to receive duplicate benefits for the same elements of loss.

Subject to the above limits of liability, damages payable will be reduced by:

1. all amounts paid or payable by or on behalf of the owner or operator of the underinsured auto or anyone else responsible. This includes all sums paid or payable under the bodily injury liability coverage or property damage liability coverage of this or any other auto policy.
2. all amounts paid or payable under any applicable underinsured motorists coverage. This includes all amounts paid under the Uninsured Motorists Insurance of this policy.
3. all amounts payable under any workers' compensation law, disability benefits law, or similar law, Medical Expense Benefits Coverage of this policy, or any similar automobile medical payments coverage.
4. all amounts paid or payable under any Underinsured Motorists Coverage applicable to a vehicle, other than your Insured auto, which the Insured person was in, on, getting into, or out of at the time of the accident.
5. all amounts paid under Part 4, Protection Against Loss To The Auto, of this policy or any similar coverage under any other policy.

Any payment under this coverage will reduce any amount that person is entitled to recover for the same damages under Part 1 of this policy.

Non-Duplication Of Benefits

No injured person will recover duplicate benefits for the same elements of loss under this or any other underinsured motorists insurance, including approved plans of self-insurance.

Proof Of Claim; Medical Reports

As soon as possible, any person making claim must give us written proof of claim. It must include all details we may need to determine the amounts payable.

The Insured person may be required to take physical examinations by physicians we choose, as often as we may reasonably require. The Insured person or that person's representative must authorize us to obtain medical reports or copies of records. We may also require any person making claim to submit to questioning under oath and sign the transcript.

Any person making claim for property damage must allow us to inspect the damaged property.

Our Rights Of Recovery

1. If an Insured person has prosecuted to judgment any suit against any person responsible, we will be entitled to an assignment of the judgment to the extent of payment under this insurance. We will pay our proportionate part of any reasonable costs and expenses incurred for any recovery to the extent of payment under this insurance, including reasonable attorneys' fees.
2. If an Insured person making a claim for property damage under this insurance is also entitled to other insurance or other compensation for the property damage, we will not be obligated to pay a claim until the Insured person has assigned us the rights to the compensation, to the extent of payment under this insurance.
3. If we make a payment under this policy and the person to or for whom payment is made recovers damages from another, that person shall:
 - a. hold in trust for us the proceeds of the recovery; and
 - b. reimburse us to the extent of our payment.

If There Other Insurance

If the Insured person was in, on, getting into or out of a vehicle which is insured for this coverage under another policy, coverage under this policy will be excess. This means that when the Insured

person is legally entitled to recover damages in excess of the other policy limit, we will pay only the amount by which the damages exceed the limit of liability of that policy up to the limit of liability of this policy.

If more than one policy applies to the accident on a primary basis, the total benefits payable will not exceed the amount the insured person is legally entitled to recover. We will bear our proportionate share with other underinsured motorists benefits.

With respect to property damage, this coverage will apply only after the limit of any other collectible insurance applicable to the damaged property has been exhausted.

Payment of Loss by Us

Any amount due is payable to the insured person, to the parent or guardian of an injured minor, or to the spouse of any insured person who dies. However, we may pay any person lawfully entitled to recover damages.

Legal Actions

No one may sue us under this coverage unless there is full compliance with all the policy terms.

If, at any time before we pay for the loss, an insured person institutes a suit against anyone believed responsible for the accident, we must be given a copy of the summons and complaint or other process. If a suit is brought without our written consent, we are not bound by any resulting judgment.

Conformity To Statute

This coverage is intended to be in full compliance with the South Carolina Uninsured Motorists Law. If any provision of this endorsement conflicts with that law, it is amended or eliminated to comply with the law.

Action Against Us

No one may bring an action against us in any way related to the existence or amount of coverage, or the amount of loss for which coverage is sought, under Part 3—Underinsured Motorists Insurance, Coverage SU, unless there is full compliance with all

policy terms and, except as provided below, such action is commenced within two years after the date of the accident.

If an insured person commences a timely action against the owner or operator of an uninsured auto to recover damages for loss arising out of the accident and gives us written notice of such action within 30 days after such action is commenced, an action against us related to the existence or amount of coverage, or the amount of loss for which coverage is sought, may be brought more than two years after the date of the accident, but in no event later than the earliest of the following to occur:

1. one year after entry of a final judgment or other court order terminating such lawsuit against the owner or operator of an uninsured auto; or
2. one year after we deny coverage.

If any insured person sues a person believed responsible for the accident without our written consent, we are not bound by any resulting judgment.

Part 4

Protection Against Loss To The Auto

Insuring Agreements

The following coverages apply when indicated and a premium for them is shown on the Policy Declarations. Other information applicable to all these coverages appears after all the coverage descriptions.

Auto Collision Insurance

Coverage DD

We will pay for loss to your insured auto or a non-owned auto from a collision with another object or by upset of that auto or trailer. No deductible will apply to loss to automobile safety glass.

Auto Comprehensive Insurance

Coverage HH

We will pay for loss to an insured auto not caused by collision. Loss caused by missiles, falling objects, fire, theft or larceny, explosion, earthquake, windstorm, hail, water, flood, malicious mischief or vandalism, and riot or civil commotion is covered.

Glass breakage, whether or not caused by collision, and collision with a bird or animal is covered. Plastic or other materials used by the manufacturer as substitutes for glass will also be considered glass.

If by agreement between you and us, the glass is repaired rather than replaced, the deductible amount will not be subtracted from a glass breakage loss. No deductible will apply to loss to automobile safety glass.

Towing And Labor Costs Coverage JJ

We will pay costs for labor performed at the initial place of disablement and for towing made necessary by the disablement of your insured auto or a non-owned auto. The total limit of our liability for towing and labor caused by a single loss is stated on the Policy Declarations.

Lease Or Loan Gap Coverage Coverage LG

If a premium is shown on the Policy Declarations for Lease Or Loan Gap Coverage, and if the amount you owe under the terms of the auto lease or loan agreement on your auto exceeds the actual cash value of the auto, then we will pay the difference between these amounts in the event of a total loss due to physical damage or theft of that auto. We may pay you and the lessor or lienholder named on the Policy Declarations.

Lease Or Loan Gap Coverage applies only if you have both Auto Collision Insurance and Auto Comprehensive Insurance in effect under this policy and the loss is covered under either coverage. This coverage applies only to the original lease or loan written on your auto and applies only if your auto was not previously titled. If, according to the information you have given us, the lease or loan ends during the policy period, we will stop this coverage at the end of that policy period. However, you must tell us if you want this coverage to end at an earlier date.

Repair Or Replacement Cost Coverage Coverage RC

If a premium is shown on the Policy Declarations for Repair Or Replacement Cost Coverage (Coverage RC),

it will be our option to pay to repair or replace the auto to which Repair Or Replacement Cost Coverage applies as shown on the Policy Declarations for a covered loss if you have purchased both Auto Collision Insurance and Auto Comprehensive Insurance and either coverage is applicable to the loss. This coverage does not apply to loss caused by fire, theft, larceny or flood.

This coverage will continue until the first policy renewal after the coverage has been in effect for three years. Repair Or Replacement Cost Coverage does not automatically transfer to any replacement auto or additional auto acquired during the policy period. This coverage does not apply to any other vehicle, including, but not limited to, additional autos, replacement autos, or substitute autos.

Rental Reimbursement Coverage Coverage UU

If a premium is shown on the Policy Declarations for Rental Reimbursement Coverage, and if you have an auto accident, or the entire insured auto is stolen, we will reimburse you for your cost of renting an auto from a rental agency or garage. We will not pay more than the dollar amount per day shown on the Policy Declarations. We will not pay mileage charges or any collision damage waiver.

If an insured auto is disabled by a collision or comprehensive loss, coverage starts the day of the loss. If the entire insured auto is stolen, coverage begins the day you report the theft to us. If an insured auto is driveable, coverage starts the day the auto is taken to a garage for repairs. Coverage ends when whichever of the following occurs first:

1. If an insured auto is disabled by a collision or comprehensive loss, completion of the repairs or replacement of the auto;
2. If an insured auto is stolen, when we offer settlement or your auto is returned to use; or
3. thirty full days of coverage.

Sound System Coverage Coverage ZA

If a premium is shown on the Policy Declarations for Sound System Coverage, we will pay for loss to a sound system.

Sound System Coverage applies only if Auto Comprehensive Insurance is in effect under this policy. This coverage makes sound systems, and antennas or other apparatus used specifically with them, insured property under the terms of both Auto Collision Insurance and Auto Comprehensive Insurance. The limit of our liability for each loss is shown on the Policy Declarations.

Tape Coverage Coverage ZZ

If a premium is shown on the Policy Declarations for Tape Coverage, we will pay for loss to any tapes, compact discs or similar items used with auto sound systems. Coverage applies to property owned by you or a resident relative that is in or on your insured auto at the time of loss. The total limit of our liability for each loss is shown on the Policy Declarations.

This coverage applies only if you have Auto Comprehensive Insurance under this policy. Tape Coverage makes tapes, compact discs, or similar items insured property under your Auto Comprehensive Insurance.

Additional Payments We Will Make Under Part 4

1. We will pay up to \$200 for loss of clothing and personal luggage, including its contents, belonging to you or a resident relative while it is in or upon your insured auto. This provision does not apply if the insured auto is a travel-trailer.

This coverage applies only when:

- a. the loss is caused by collision and you have purchased Auto Collision Insurance.
- b. the entire auto is stolen, and you have purchased Auto Comprehensive Insurance.

- c. physical damage is done to the auto and to the clothing and luggage caused by earthquake, explosion, falling objects, fire, lightning or flood and you have purchased Auto Comprehensive Insurance.

The amount stated under paragraph 1. Above is the maximum we will pay, regardless of the number of vehicles insured.

2. If you have purchased Auto Collision Insurance or Auto Comprehensive Insurance under this policy, we will pay general average and salvage charges imposed when your insured auto is being transported.

Insured Autos

1. Any auto described on the Policy Declarations. This includes the four wheel private passenger auto or utility auto you replace it with if you notify us within 30 days of the replacement and pay the additional premium.
2. An additional four wheel private passenger auto or utility auto you become the owner of during the policy period. This auto will be covered if we insure all other private passenger autos or utility autos you own. You must, however, tell us within 30 days of acquiring the auto. You must pay any additional premium. We must agree to insure the auto. Coverage will not continue after 30 days if we are not notified of the additional auto.
3. A substitute four wheel private passenger auto or utility auto, not owned by you or a resident, temporarily used with the permission of the owner while your insured auto is being serviced or repaired, or if your insured auto is stolen or destroyed.
4. A non-owned four wheel private passenger auto used by you or a resident relative with the owner's permission. This auto must not be available or furnished for the regular use of you or any resident.

5. A trailer while attached to an insured auto. This trailer must be designed for use with a private passenger auto. This trailer cannot be used for business purposes with other than a private passenger auto or utility auto. Home, office, store, display, or passenger trailers, travel-trailers or camper units are not covered unless described on the Policy Declarations.

Definitions Used In Part 4

1. We, Us, or Our the company as shown on the Policy Declarations.
 2. Auto means a land motor vehicle with at least four wheels designed for use on public roads.
 3. Camper unit means a demountable unit designed to be used as temporary living quarters, including all accessories built into and forming a permanent part of the unit. A camper unit includes caps, toppers, canopies and all equipment and accessories built into and forming a permanent part of the structure. However, a camper unit will not include radio or television antennas, awnings, cabanas, or equipment designed to create additional living facilities while off a highway.
 4. Motor home means a self-propelled vehicle equipped, designed or used as a living quarters.
 5. Resident means the physical presence in your household with the intention to continue living there. Unmarried dependent children temporarily away from home will be considered residents if they intend to continue to live in your household.
 6. Sound system means any device permanently installed inside your insured auto by bolts, brackets, or other similar means designed for:
 - a. voice or video transmission, or for voice or video reception; or
 - b. recording or playing back recorded material; or
 - c. supplying power to cellular or similar telephone equipment,
 and which is permanently installed in a location other than the one designed by the auto's manufacturer for that device.
- A sound system also includes antennas or other apparatus in or on your insured auto used specifically with that system, if permanently installed. Apparatus does not include sound reproducing media such as compact discs or cassette tapes. A sound system does not include any equipment that is externally exposed except for antennas.
7. Travel-trailer means a trailer of the house, cabin or camping type equipped or used as a living quarters.
 8. Utility auto means an auto of the pick-up body, sedan delivery or panel truck type. This auto must have a gross vehicle weight of 10,000 pounds or less, according to manufacturer's specifications.
 9. You or Your means the policyholder named on the Policy Declarations and that policyholder's resident spouse.
 10. Custom parts or equipment means equipment, devices, accessories, enhancements, and changes, other than those offered by the manufacturer of the auto specifically for that model, or installed by the auto dealership when new as part of the original sale, which alter the appearance or performance of an auto. This does not include items designed for assisting disabled persons or items covered under Sound System Coverage.

Exclusions—What Is Not Covered

These coverages do not apply to:

1. loss caused intentionally by or at the direction of an insured person.
2. any auto used for the transportation of people or property for a fee. This exclusion does not apply to shared-expense car pools.
3. any damage or loss resulting from any act of war, insurrection, rebellion or revolution.

4. loss to any non-owned auto used in auto business operations such as repairing, servicing, testing, washing, parking, storing or selling of autos.
5. loss due to radioactive contamination.
6. damage resulting from wear and tear, freezing, mechanical or electrical breakdown unless the damage is the burning of wiring used to connect electrical components, or the result of other loss covered by this policy.
7. tires unless stolen or damaged by fire, malicious mischief or vandalism. Coverage is provided if the damage to tires occurs at the same time and from the same cause as other loss covered by this policy.
8. loss to any sound system within your auto. Coverages under this Part also will not apply to any apparatus in or on the auto designed for use with that system.

This exclusion will not apply if you have purchased Sound System Coverage.
9. damage or loss to any tapes, compact discs or similar items. This exclusion will not apply if you purchased Tape Coverage under this policy.
10. damage or loss to a camper unit whether or not mounted. This exclusion will not apply if the camper unit is described on the Policy Declarations.
11. damage or loss to appliances, furniture, equipment and accessories that are not built into or forming a permanent part of a motor home or a travel-trailer.
12. damage or loss to your motor home or your travel-trailer while rented to anyone else unless a specific premium is shown on the Policy Declarations for the rented vehicle.
13. loss or damage arising out of the participation in any prearranged, organized, or spontaneous:
 - a. racing contest;
 - b. speed contest; or
 - c. use of a motor vehicle at a track or course designed or used for racing or high performance driving,

or in practice or preparation for any contest or use of this type.
14. damage or loss to home, office, store, display, or passenger trailers, or travel-trailers. This exclusion will not apply if the item is described on the Policy Declarations.
15. damage or loss to any device that is designed for the detection of radar or laser.
16. damage or loss to any custom furnishings or equipment in or upon any auto or utility auto. Custom furnishings include, but are not limited to:
 - a. Special carpeting and insulation, furniture, bars or television receivers;
 - b. Facilities for cooking and sleeping;
 - c. Halght extending roofs; or custom murals, paintings, or other decals or graphics.
17. loss to any custom parts or equipment designed for racing which is installed in or upon your insured auto. This includes, but is not limited to, nitrous oxide systems, roll cages, and air intake modifications.

Right To Appraisal

Both you and us have a right to demand an appraisal of the loss. Each will appoint and pay a qualified appraiser. Other appraisal expenses will be shared equally. The two appraisers, or a judge of a court of record, will choose an umpire. Each appraiser will state the actual cash value and the amount of loss. If they disagree, they will submit their differences to the umpire. A written decision by any two of these three persons will determine the amount of the loss.

Payment Of Loss By Us

We may pay for the loss in money, or may repair or replace the damaged or stolen property. We may, at any time before the loss is paid or the property is replaced, return at our own expense any stolen property, either to you or at our option to the address

shown on the Policy Declarations, with payment for any resulting damage. We may take all or part of the property at the agreed or appraised value. We may settle any claim or loss either with you or the owner of the property.

Limits Of Liability

Our limit of liability is the least of:

1. the actual cash value of the property or damaged part of the property at the time of the loss, which may include a deduction for depreciation; or
2. the cost to repair or replace the property or part to its physical condition at the time of loss using parts produced by or for the vehicle's manufacturer, or parts from other sources, including, but not limited to, non-original equipment manufacturers, subject to applicable state laws and regulations; or
3. \$500, if the loss is to a covered trailer not described on the Policy Declarations.

Any applicable deductible amount is then subtracted.

If we, at its option, elects to pay for the cost to repair or replace the property or part, our liability does not include any decrease in the property's value, however measured, resulting out of the loss and/or repair or replacement. If repair or replacement results in the betterment of the part, you may be responsible, subject to applicable state laws and regulations, for the amount of the betterment.

The maximum we will pay for a covered loss to any custom parts or equipment is \$1000.

An auto and attached trailer are considered separate autos, and you must pay the deductible, if any, on each. Only one deductible will apply to an auto with a mounted camper unit. If unmounted, a separate deductible will apply to the auto and camper unit.

When more than one coverage is applicable to the loss, you may recover under the broadest coverage but not both. However, any Sound System Coverage deductible will always apply.

Limits Of Liability Under Lease Or Loan Gap Coverage

If the Policy Declarations indicates a premium charge for Lease Or Loan Gap Coverage (Coverage LG), our limit of liability with respect to that coverage is the amount you owe under the terms of the auto lease or loan agreement to which the auto described on the Policy Declarations is subject. The amount payable will be reduced by:

1. overdue payments and the financial penalties associated with those payments;
2. the transfer or rollover of a previous outstanding lease or loan balance from another vehicle to the original lease or loan for the auto described on the Policy Declarations;
3. the dollar amount of unrepaired damage which occurred prior to the total loss of your auto, and
4. all refunds paid or payable to you as a result of the early termination of the lease or loan agreement or, to the extent financed, as a result of the early termination of any warranty or extended service agreement on your auto.

Limits Of Liability Under Repair Or Replacement Cost Coverage

If the Policy Declarations indicates a premium charge for Repair Or Replacement Cost Coverage (Coverage RC), it will be our option to pay to repair or replace the auto to which Repair Or Replacement Cost Coverage applies as shown on the Policy Declarations for a covered loss, subject to the applicable Auto Collision Insurance or Auto Comprehensive Insurance deductible, but without a deductible for depreciation. This coverage does not apply to loss caused by fire, theft, larceny or flood.

However, the most we will pay for the loss will be the lesser of the:

1. Cost of repair or replacement of the property or part using parts manufactured by or for the vehicle's manufacturer or parts from other sources, including, but not limited to, non-original equipment manufacturers as permitted by state laws and regulations.
2. Cost of a new auto of the same make and model with the same equipment. If an auto of the same make and model with the same

Page 24

equipment is not available, the new auto must be of similar size, class, body type and equipment. A new auto is an auto that has not been previously titled and is of the latest model year available at the time of the loss.

We reserve the right to repair, or to replace the damaged property, or to pay for the loss in money. If we, at its option elects to pay for the cost to repair or replace property or parts, Alstate's liability does not include any decrease in the property's value, however measured, resulting from the loss and/or repair or replacement.

In no event, shall an insured person be entitled to recover for the same element of loss under both Repair Or Replacement Cost Coverage and Auto Collision Insurance or Repair Or Replacement Cost Coverage and Auto Comprehensive Insurance.

If There Is Other Insurance

If there is other insurance covering the loss at the time of the accident, we will pay only our share of any damages. Our share is determined by adding the limits of this insurance to the limits of all other insurance that applies on the same basis and finding the percentage of the total that our limits represent.

When this insurance covers a substitute auto or non-owned auto, we will pay only after all other collectible insurance has been exhausted.

When this insurance covers a replacement auto or additional auto, this policy will not apply if you have other collectible insurance.

Lease Or Loan Gap Coverage is excess over any other collectible insurance.

Action Against Us

No one may bring an action against us in any way related to the existence or amount of coverage, or the amount of loss for which coverage is sought, under Part 4—Protection Against Loss to The Auto, unless there is full compliance with all policy terms and such action is commenced within one year after the date of loss.

Subrogation Rights

When we pay, your rights of recovery from anyone else become ours up to the amount we have paid. You must protect these rights and help us enforce them.

What You Must Do If There Is A Loss

1. As soon as possible any person making claim must give us written proof of loss. It must include all details reasonably required by us. We have the right to inspect the damaged property. We may require any person making claim to file with us a sworn proof of loss. We may also require that person to submit to examinations under oath.
2. Protect the auto from further loss. We will pay reasonable expenses to guard against further loss. If you do not protect the auto, further loss is not covered.
3. Report all theft losses promptly to the police.

Loss Payable Clause

If a Lienholder and/or Lessor are shown on the Policy Declarations, we may pay loss or damage under this policy to you and the Lienholder and/or Lessor as its interest may appear, except:

1. Where fraud, misrepresentation, material omission, or intentional damage has been committed by or at the direction of you.
2. When the vehicle(s) is intentionally damaged, destroyed or concealed by or at the direction of you or any owner.
3. When you or any owner makes fraudulent statement(s) or engages in fraudulent conduct in connection with any accident or loss for which coverage is sought.

The Lienholder and/or Lessor must notify us of any change in ownership or hazard that is known.

If you or any owner fails to render proof of loss within the time granted in the policy, the Lienholder and/or Lessor must do so within sixty days in the form and manner described in the policy. The Lienholder and/or Lessor are subject to the provisions of the

policy relating to appraisal, time of payment and bringing suit.

We may cancel this policy according to its terms. We will notify the Lienholder and/or Lessor at least ten days prior to the date of cancellation that the cancellation is effective as to the interest of the Lienholder and/or Lessor. Whenever we pay the Lienholder and/or Lessor any sum for loss or damage

under this policy, we will be subrogated to the extent of payment to the rights of the party to whom payment was made. However, these subrogation provisions must in no way impair the rights of the Lienholder and/or Lessor to recover the full amount of its claim from the Insured.

The Lienholder and/or Lessor have no greater rights under the provisions of the policy than the Insured.

Policy Endorsement

The following endorsement changes your policy. Please read this document carefully and keep it with your policy.

Dividend Provision—PD079

You shall be entitled to participate in a distribution of any surplus of Allstate to the extent and upon the conditions fixed and determined from time to time by its Board of Directors in accordance with the provisions of any applicable laws and regulations.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF WILLIAMSBURG)
)
 Larry Brand,)
)
 PLAINTIFF,)
)
 vs.)
)
 Allstate Insurance Company,)
)
 DEFENDANT,)
 _____)

IN THE COURT OF COMMON PLEAS
 THIRD JUDICIAL CIRCUIT
 CIVIL ACTION NO: 2014-CP-45-00644

PLAINTIFF'S MEMORANDUM
 IN OPPOSITION TO
 DEFENDANT'S MOTION
 FOR SUMMARY JUDGMENT

Comes now the Plaintiff, filing this *Memorandum in Opposition to Defendant's Motion for Summary Judgment*. In doing so, Plaintiff incorporates by reference all argument and allegations contained in his previous pleadings in this matter.

Procedural History

Plaintiff filed a *Summons and Complaint* in this matter on December 15, 2014. That complaint alleged a Declaratory Judgment cause of action against the Defendant, seeking an order declaring that the Defendant's policy for UIM insurance coverage issued to the Plaintiff was responsible for UIM coverage on amounts from \$25,000.01 through \$169,548.01.

The Defendant filed an *Answer and Counterclaim* in this matter on or about February 18, 2015. Plaintiff filed a *Reply* to that counterclaim on February 26, 2015.

The Defendant subsequently filed an *Amended Answer and Counterclaim* March 3, 2015. Plaintiff filed a *Reply* to that amended counterclaim on or about March 20, 2015.

The Defendant filed a *Motion for Summary Judgment* on or about October 13, 2015.

This *Memorandum in Opposition* follows.

History of the Case

On or about January 27, 2010, BRAND was driving a truck owned by his employer, EVERGREEN. Another driver, Casandra Olivia Stoner (hereinafter "STONE"), was driving a vehicle insured with liability coverage through PROGRESSIVE. STONE attempted to enter/cross Highway 521 from Bloody Bucket Road near Greelyville. It is doubtful liability would be contested. Bloody Bucket Road was the secondary road at this intersection, as STONE had a stop sign prohibiting her entering the intersection until the intersection was clear. At her worker's compensation deposition taken on September 30, 2013, STONE testified as follows:

Q: If you couldn't see because of the sun, why did you continue across the roadway?

A: Because I didn't see anything coming.

Q: Could you see anything at all?

A: No, sir. So I guess—I assumed nothing was coming so I went across the road.

Stone deposition, p.32, l.8-15

When asked whose fault the accident was, STONE answered:

A: I guess it was my fault because I had the stop sign.

Stone deposition, p.26, l.17-18

A worker's compensation claim was opened on behalf of BRAND, with EVERGREEN having workers compensation coverage through American International South Insurance Company (hereinafter "AIS").

BRAND's employer, EVERGREEN, also had UIM coverage through WESTFIELD in the amount of \$1,000,000.00. BRAND had UIM coverage through ALLSTATE in the amount of \$25,000.00.

A third party personal injury lawsuit seeking UIM coverage was instigated against STONE. Both WESTFIELD and ALLSTATE were served in that third party personal injury lawsuit as UIM carriers. That case number is 2012-CP-45-00657 and the case has been stayed pursuant to an order issued January 7, 2015. The purpose of the stay was to pause the underlying personal injury litigation pending resolution of this declaratory judgment action.

The liability claim in the personal injury suit was settled via a *Covenant not to Execute* between BRAND and PROGRESSIVE, executed in August/September 2011. By *Petition and Order for Approval of Compromise Settlement Agreement*, received by the South Carolina Worker's Compensation Commission on October 5, 2011, BRAND's settlement of the liability coverage in this matter was authorized. See *Exhibit A*. That document memorialized, among other things, that:

- 1) the proceeds of BRAND's liability were subject to worker's compensation lien pursuant to S.C. Code §42-1-560;
- 2) the proceeds of BRAND's home UIM policy were not subject to worker's compensation lien pursuant to S.C. Code §42-1-560;
- 3) the proceeds of BRAND's employer's UIM policy were not subject to worker's compensation lien pursuant to S.C. Code §42-1-560;

That document also memorialized that after disbursing attorney's fees and costs from the liability proceeds, BRAND's worker's comp attorney would hold the remaining balance of the liability settlement in trust pending resolution worker's compensation claim and its accompanying lien.

A mediation was held and attended by representatives of BRAND, WESTFIELD and ALLSTATE on June 30, 2014.

As of the date of that mediation, BRAND had incurred \$82,292.00 worth of medical treatment.

As early as January 1, 2012, Dr. William Naso had indicated on a 14-B form that BRAND had a 28.5% impairment to the cervical spine which would require future treatment including cervical spine surgery. BRAND had obtained a life care plan from Karen Shelton dated July 17, 2013 indicating projected future medical of \$131,439.25, as well as a report from Dr. Oliver Wood dated August 8, 2013 estimating BRAND's total financial loss of \$584,749.00. BRAND had also been evaluated by J. Adger Brown, Jr., MA, CDMS, a certified vocational expert on April 23, 2012. Mr. Brown opined that BRAND was permanently and totally disabled. BRAND was awarded Social Security disability benefits on December 31, 2011 and paid back benefits from October 2010 through December 2011 and continuing.

At the time of the mediation, BRAND had been paid Temporary Total Disability (TTD) payments from January 28, 2010 through May 17, 2010, when he returned to work for six (6) days. However, BRAND was laid off and subsequently, the workers comp carrier recommenced TTD payments beginning March 23, 2011, which continued through the date of mediation.

The UIM claims against WESTFIELD and their insureds were settled for an amount of \$450,000.00. The UIM claims against ALLSTATE remained.

Subsequent to the above, being informed and believing that the remaining issues between BRAND and ALLSTATE involved legal questions concerning UIM coverage, BRAND filed the pending declaratory judgment action.

Subsequent to the filing of this action, BRAND's worker's compensation claim, WCC File #1002789, was settled. A *Form 19* filed with the S.C. Worker's Compensation Commission in February of 2015 shows the following compensation having been paid:

-Number of weeks of T.T.: 15 5/7 from 1/28/2010 – 5/17/2010 = \$8,291.80

	201 5/7 from 3/23/2011 – 2/1/2015 =	\$106,436.56
-Agreement and Final Release:		\$156,848.66
-Total Compensation Paid:		\$271,577.02
-Total Medical Benefits Paid:		\$83,173.73

See Exhibit B.

The above shows that the true total benefits paid to BRAND through worker's compensation coverage was \$354,750.75 (\$271,577.02 in compensation and \$83,173.73 in medical benefits).

Legal Standards

Summary judgment is appropriate only if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Conner v. City of Forest Acres, 348 S.C. 454, 462; 560 S.E.2d 606, 610 (2002), citing Koester v. Carolina Rental Center, Inc., 313 S.C. 490, 443 S.E.2d 392 (1994) and Rule 56(c), SCRPC. In determining whether any triable issues of fact exist for summary judgment purposes, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party. *Id.* Moreover, since it is a drastic remedy, summary judgment should be cautiously invoked so that a litigant will not be improperly deprived of trial on disputed factual issues. Conner at 462, 610, citing Baughman v. American Tel. and Tel. Co., 306 S.C. 101, 112; 410 S.E.2d 537, 543 (1991).

Summary judgment should not be granted even when there is no dispute as to the evidentiary facts if there is dispute as to the conclusions to be drawn from those facts. Gilliland v. Elmwood Properties, 301 S.C. 295, 299; 391 S.E.2d 577, 579 (1990), citing Piedmont Engineers, Architects and Planners, Inc. v. First Hartford Realty Corp., 278 S.C. 195, 196; 293 S.E.2d 706, 707 (1982). Summary judgment is improper on a construction of contract issue where the intention of the parties as to the

meaning may not be gathered from the four corners of the instrument. Gilliland at 299, 579, citing Bishop v. Benson, 297 S.C. 14, 374 S.E.2d 517 (Ct. App. 1988).

A declaratory judgment action to determine coverage under an insurance contract is an action at law. L-J, Inc. v. Bituminous Fire & Marine Ins. Co.; 350 S.C. 549, 567 S.E.2d 489 (Ct. App. 2002).

Argument

I. Under South Carolina law, ALLSTATE is required to provide UIM coverage to BRAND on amounts from \$25,000.01 through \$50,000.01.

It is not contested that BRAND is entitled to \$25,000 of UIM coverage through ALLSTATE in this matter. What is disputed, is when ALLSTATE is required to provide that coverage.

South Carolina law allows for a worker's compensation offset on employer-purchased UIM coverage. This position is supported by the following:

S.C. Code §38-77-160, which provides, in pertinent part:

...Such carriers shall also offer, at the option of the insured, underinsured motorist coverage up to the limits of the insured liability coverage to provide coverage in the event that damages are sustained in excess of the liability limits carried by an at-fault insured or underinsured motorist...If none of the insured's or named insured's vehicles is involved in the accident, coverage is available only to the extent of coverage of any one of the vehicles with the excess or undersinsured coverage. Benefits paid pursuant to this section are not subject to subrogation and assignment. *S.C. Code §38-77-160*

S.C. Code §38-77-220, further provides:

The automobile policy need not insure any liability under the Worker's Compensation Law nor any liability on account of bodily injury to an employee of the insured while engaged in the employment, other than domestic, of the insured, or while engaged in the operation, maintenance, or repair of the motor vehicle nor any liability for damage to property owned by, rented to, in charge of, or transported by the insured. *S.C. Code §38-77-220*

In 1973, the South Carolina Supreme Court struck down policy provisions which sought to

offset the amount of uninsured motorist (UM) coverage available to an injured employee under an employee-purchased UM policy by the amount of worker's compensation benefits received by the employee. Ferguson v. State Farm Mut. Auto Ins. Co., 261 S.C. 96, 198 S.E.2d 522 (1973).

In 1994, the South Carolina Supreme Court said that policy provisions which sought to offset the amount of UIM coverage available to an injured employee under an employer-purchased UIM policy by the amount of worker's compensation benefits received by the employee were allowed under South Carolina law. Williamson v. United States Fire Ins. Co., 314 S.C. 215, 442 S.E.2d 587 (1994).

In arriving at this conclusion, the *Williamson* court noted the following:

In Ferguson v. State Farm Mutual Automobile Insurance Co., 261 S.C. 96, 198 S.E.2d 522 (1973), we held that an insurer **cannot offset workers' compensation benefits received by an employee**, notwithstanding policy provisions to the contrary. *See also* 12A GEORGE J. COUCH, COUNCIL ON INSURANCE 2D § 45:652 (MARK S. RHODES, ed. 1981). *Cf. Garris v. Cincinnati Ins. Co.*, 280 S.C. 149, 311 S.E.2d 723 (1984) (holding it is contrary to public policy to offset amount insured can recover under underinsured motorist coverage by amount received from at-fault motorist).

Ferguson is distinguishable in that it involved a claim for uninsured benefits by an **individual who had purchased the insurance policy**. In this case, however, the policy was purchased by Williamson's employer, not by Williamson. The same statute and public policy does not operate in cases where voluntary coverage had been provided by an employer. Williamson at 219, 589, emphasis added.

The *Williamson* court also held:

As long as the employee is able to **fully recover the damages sustained**, we believe the better public policy is to encourage employer voluntary coverage by not exposing employers to mandatory duplicative insurance premiums and by not allowing duplicative insurance recoveries by employees. We therefore hold that S.C. Code Ann. §38-77-220 (1989) allows an employer's automobile insurance carrier to offset workers' compensation benefits received by an employee. The offset shall be applied against the total of damages sustained **once the employee has been fully compensated for the injuries**. Williamson at 219, 589, emphasis added.

Subsequent to the above, the South Carolina Supreme Court decided the case of Sweetser v. S.C. Dep't of Ins. Reserve Fund, 390 S.C. 632, 703 S.E.2d 509 (2010). The *Sweetser* court specifically found that S.C. Code §38-77-220 can only apply to employers purchasing automobile insurance policies, as only employers can "insure and liability under" compensation law. *Sweetser* at 636, 511.

In the present case, WESTFIELD was the only Employer-purchased UIM coverage. As such, only WESTFIELD was allowed under the law to exclude/offset coverage for the amounts paid by worker's compensation. The UIM Endorsement of WESTFIELD's policy states:

C. Exclusions

This coverage does not apply to any of the following:

1. The direct or indirect benefit of any insurer or self-insurer under any workers' compensation, disability benefits or similar law.

See Exhibit C, p.2.

That UIM Endorsement goes on to state:

D. Limit of Insurance

...

We will not pay for any element of "loss" if a person is entitled to receive payment from the same element of loss under any workers' compensation, disability benefits or similar law.

See Exhibit C, p.2.

The above language combined with S.C. Code §38-77-220 and case law results in WESTFIELD providing no UIM coverage in this matter until the amount legally due BRAND is \$379,750.76 (a figure which represents the \$25,000 paid in liability coverage plus the \$354,750.75 paid in total workers compensation benefits). Since WESTFIELD is the only UIM carrier allowed to utilize S.C. Code §38-77-220, that means there is no other coverage available to BRAND for the amounts

from \$25,000.01 through \$379,750.76 other than the ALLSTATE UIM coverage.

The UIM section of ALLSTATE's policy states the following:

Exclusions – What Is Not Covered

We will not pay any damages an insured person is legally entitled to recover because of:

...

3. bodily injury or property damage to the extent that benefits are paid, payable or required to be provided under any workers' compensation or disability benefits law.

See Exhibit D, p. 17

The ALLSTATE UIM section also states:

Limits of Liability

...

Subject to the above limits of liability, damages payable will be reduced by:

...

3. all amounts payable under any workers' compensation law, disability benefits law, or similar law, Medical Expense Benefits Coverage of this policy, or any similar automobile medical payments coverage.

4. all amounts **paid or payable under any Underinsured Motorists Coverage applicable to a vehicle**, other than your insured auto, which the insured person was in, on, or getting into, or out of at the time of the accident.

See Exhibit D, p.18, emphasis added.

The ALLSTATE UIM section also states:

If There Other Insurance

If the insured person was in, on, getting into or out of a vehicle **which is insured for this coverage under another policy**, coverage under this policy will be excess. This means that when the insured person is legally entitled to recover damages in excess of the other policy limit, we will pay only the amount by which the damages exceed the limit of liability of that policy up to

the limit of liability on this policy.

If more than one policy applies to the accident on a primary basis, the total benefits payable will not exceed the amount the insured person is legally entitled to recover. We will bear our proportionate share with other underinsured motorists benefits.

...

Conformity To Statute

This coverage is intended to be in full compliance with the South Carolina Uninsured Motorists Law. If any provision of this endorsement conflicts with that law, it is amended or eliminated to comply with the law.

See Exhibit D, p. 18-19; emphasis added.

The simple fact is, there is no other coverage available to BRAND for the amounts from \$25,000.01 through \$379,750.76 except for ALLSTATE's UIM coverage. They are not allowed under South Carolina law to exclude/offset workers' compensation injuries/benefits paid. Not allowing BRAND to access his own personal UIM coverage to fill in this "gap" in coverage would erode the public policy behind UIM coverage.

The reason South Carolina law requires insurers to make meaningful offers of UIM coverage to insureds, is to encourage insureds to purchase coverage in the event that damages are sustained in excess of the liability limits carried by an at-fault insured. If the courts were to allow carriers to exclude/offset such coverage based on workers compensation as ALLSTATE seeks to do in this situation, it would render employee-purchased UIM policies practically worthless. In the present case, it would result in BRAND being uncovered by any policy for almost \$355,000 worth of damages.

Conclusion

Based on the above, the Plaintiff respectfully requests that the Court deny the Defendant's request for Summary Judgment and issue an order declaring that ALLSTATE would be responsible for providing UIM benefits to BRAND for any award from \$25,000.01 through \$50,000.00 in the underlying tort litigation.

WUKELA LAW FIRM

BY: 

PATRICK J. MCLAUGHLIN
ATTORNEY FOR PLAINTIFF
PO Box 13057
Florence, SC 29504-3057
Telephone: 843-669-5634
Facsimile: 843-6695150
patrick@wukelalaw.com

December 19, 2015

Exhibit A

STATE OF SOUTH CAROLINA
BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO: 1002789

Larry Brand,)
)
Employee/Claimant,)
)
vs.)
)
Evergreen Turf Corporation/James C.)
Justice Co., Inc.,)
)
Employer, and)
)
American International South Insurance Co.,)
Chartis Claims, Inc.,)
)
Carrier/Defendants.)

PETITION AND ORDER FOR
APPROVAL OF COMPROMISE
SETTLEMENT AGREEMENT

RECEIVED
SETTLEMENT

OCT 05 2011

Division of Claims
SC Worker's Comp. Comm.

TO: THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION:

This matter is before the Commission on the petition of the Claimant, Larry Brand, for approval of the settlement of a third party action. The Claimant, Larry Brand, suffered a compensable injury on January 27, 2010, when he was involved in an automobile accident out of and in the course of his employment with Evergreen Turf Corporation/James C. Justice Co., Inc. The Claimant filed a Form 50 captioned Larry Brand v. Evergreen Turf Corporation/James C. Justice Co., Inc., WCC # 1002789. That matter remains open.

Thereafter, the Claimant filed a liability claim against the at-fault driver, Casandra O. Stone and Stevenson M. Stone, and their automobile liability insurance carrier, Progressive Northern Insurance Company. Progressive Northern Insurance Company has a policy of

Twenty-Five Thousand and No/100 (\$25,000.00) Dollars in liability coverage per person, which they have now tendered to the Claimant Larry Brand.

By way of information, the Claimant has filed underinsured motorist claims with the underinsured policies on Larry Brand's at-home vehicle and the employer's covered vehicle that the Claimant's was driving at the time of the accident and hope to receive settlement on those claims as well.

The Claimant and employer request the Commission's approval of the settlement of the third party claim and agree as follows:

- (1) that the proceeds of the liability claim against Casandra O. Stone and Stevenson M. Stone are subject to workers' compensation lien pursuant to S.C. Code § 42-1-560;
- (2) the proceeds of Larry Brand's home underinsured policy are not subject to workers' compensation lien pursuant to S.C. Code § 42-1-560;
- (3) the proceeds of Larry Brand's employer's underinsured policy are not subject to workers' compensation lien pursuant to S.C. Code § 42-1-560;
- (4) the Claimant has an ongoing, accepted workers' compensation claim and the carrier continues to pay benefits; accordingly the workers' compensation carrier's corresponding lien claim also increases daily;
- (5) the liability coverage of Twenty-Five Thousand and No/100 (\$25,000.00) Dollars tendered by Progressive Northern Insurance Company represents a reasonable settlement of the available liability coverage.

THEREFORE:

The Claimant and employer request that the Commission authorize the settlement of the third party claim and further authorize that the Claimant's attorney maintain the proceeds of the

liability settlement in trust after disbursing 1/3 attorney's fees in the amount of Eight Thousand Three Hundred Thirty-Three and 33/100 (\$8,333.33) Dollars and costs totaling Ninety-Two and 46/100 (\$92.46) Dollars and that the Claimant's attorney continue to maintain the balance of the liability proceeds in his trust account until such time as the parties are prepared to either compromise or litigate the issue of the amount of workers' compensation lien appropriate on the proceeds of the third party liability settlement.

ORDER

For the foregoing reasons,

IT IS ORDERED AND the Commission hereby authorizes the settlement of the third-party claim in the above-captioned matter as hereinabove described and direct the Claimant to execute the documents necessary to consummate the third-party settlement.

IT IS FURTHER ORDERED that the Claimant's attorney is directed to hold the proceeds of the settlement of the liability claim, after attorney's fees of Eight Thousand Three Hundred Thirty-Three and 33/100 (\$8,333.33) Dollars and costs of Ninety-Two and 46/100 (\$92.46) Dollars, in trust pending further order of this Commission resolving the workers' compensation lien.

IT IS FURTHER ORDERED THAT S.C. Code § 42-1-560 does not apply to the Claimant's underinsured motorist claim on his at home policy nor the employer's policy and therefore the Claimant is authorized to settle those claims and distribute its proceeds free of lien.

AND IT IS SO ORDERED.

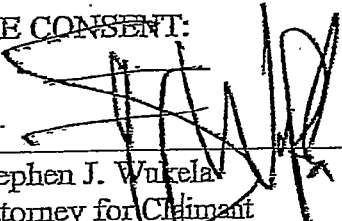
Commissioner
S.C. Workers' Compensation Commission

_____, 2011

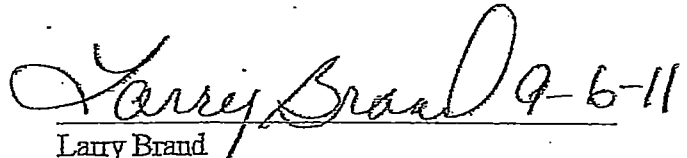
Columbia, SC

FEE SUBJECT TO FORM 61

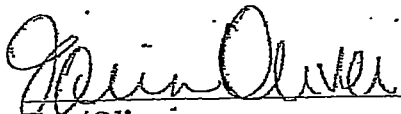
WE CONSENT:



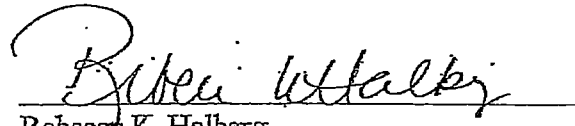
 Stephen J. Wukela
 Attorney for Claimant
 WUKELA LAW FIRM
 Post Office Box 13057
 Florence, SC 29504
 843-669-5634



 Larry Brand
 Claimant



 Erin Oliver
 Claims Department
 Progressive Northern Insurance Company
 1536 Fording Island Road, Suite 105
 Hilton Head, SC 29926



 Rebecca K. Halberg
 Attorney at Law
 Collins & Lacy, P.C.
 Post Office Box 12487
 Columbia, SC 29211

Exhibit B

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5723



WCC File #: 1002789
Carrier File #: 709-836242
Carrier Code #: 1023
Employer FEIN #: 911680858

Claimant's Name: LARRY BRAND SSN: _____ Employer's Name: EVERGREEN TURF CORP
Address: _____ Address: 1512 BOB WHITE ROAD
City: LAKE CITY State: SC Zip: 29560 City: TURBEVILLE State: SC Zip: 29162
Home Phone: _____ Work Phone: _____ Insurance Carrier: AIG ASSURANCE COMPANY
Preparer's Name: TRACY DEAN Law Firm: _____ Preparer's Phone #: (704) 553-5141

Compensation Paid:	Number of Weeks	From (m/d/yyyy)	To (m/d/yyyy)	Amount
1. Number of Weeks T.T.	<u>15 5/7</u>	<u>01/28/2010</u>	<u>05/17/2010</u>	\$ <u>8,291.80</u>
	<u>201 5/7</u>	<u>03/23/2011</u>	<u>02/01/2015</u>	\$ <u>106,436.56</u>
	<u>0</u>			\$ _____
2. Number of Weeks T.P.	<u>0</u>			\$ _____
	<u>0</u>			\$ _____
	<u>0</u>			\$ _____
3. Number of Weeks P.P.	<u>0</u>			\$ _____
	<u>0</u>			\$ _____
	<u>0</u>			\$ _____
4. Disfigurement				\$ _____
5. Agreement and Final Release				\$ <u>156,848.66</u>

Total Compensation Paid _____ \$ 271,577.02

6. Total Medical Benefits* Paid _____ \$ 83,173.73

7. Funeral Benefits _____ \$ _____

Case Denied

Date of Injury: 01/27/2010
(m/d/yyyy)

By signing this receipt, I acknowledge that I have received the compensation shown above.

By: Larry Brand
Claimant
2-18-15

By: Tracy Dean - A.N.I.
Employer's Representative

1/29/2015
Date
(m/d/yyyy)

Print or type the name of the person, other than the claimant, receiving benefits and sign below.

By: [Signature]

Report of Additional Fees and Recoupment

A. Carrier Reimbursement by Third Party _____ \$ _____

B. Attorney's Fee Paid by Employer _____ \$ _____

C. Attorney's Fee Paid by Claimant
(Non-contingent fees only) _____ \$ _____

File this form with the Claims Department according to R.67-414 and R.67-1204. A person, other than the claimant, receiving benefits should sign on the line provided. * Do not include as medical costs fees paid for expert testimony, fees for determining carrier's liability, costs of autopsy, birth and death certificates and impartial examination. Form 19 must be filed within 16 days of final payment of compensation. Form 19 must be filed when a claim is denied.

Exhibit C

POLICY NUMBER:

COMMERCIAL AUTO

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

SOUTH CAROLINA UNDERINSURED MOTORISTS COVERAGE

For a covered "auto" licensed or principally garaged in, or "garage operations" conducted in, South Carolina, this endorsement modifies insurance provided under the following:

- BUSINESS AUTO COVERAGE FORM
- GARAGE COVERAGE FORM
- MOTOR CARRIER COVERAGE FORM
- TRUCKERS COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Named Insured:
Endorsement Effective Date:
Countersignature Of Authorized Representative
Name:
Title:
Signature:
Date:

SCHEDULE

Limit Of Insurance: \$	Each "Accident"
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. Coverage

1. We will pay in accordance with the South Carolina Underinsured Motorists Law all sums the "insured" is legally entitled to recover as damages from the owner or driver of an "underinsured motor vehicle". The damages must result from "bodily injury" sustained by an "insured" or "property damage" caused by an "accident". The owner's or driver's liability for these damages must arise out of the ownership, maintenance, or use of the "underinsured motor vehicle".
2. We will pay under this coverage only after any liability bonds or policies have been exhausted by judgments or settlements.

- b. Anyone else "occupying" a covered "auto" or a temporary substitute for a covered "auto". The covered "auto" must be out of service because of its breakdown, repair, servicing, "loss" or destruction.
- c. Anyone for damages he or she is entitled to recover because of "bodily injury" sustained by another "insured".

2. A partnership, limited liability company, corporation or any other form of organization, then the following are "insureds":

- a. Anyone "occupying" a covered "auto" or a temporary substitute for a covered "auto". The covered "auto" must be out of service because of its breakdown, repair, servicing, "loss" or destruction.
- b. Anyone for damages he or she is entitled to recover because of "bodily injury" sustained by another "insured".
- c. The Named Insured for "property damage" only.

B. Who Is An Insured

If the Named Insured is designated in the Declarations as:

1. An individual, then the following are "insureds":
 - a. The Named Insured and any "family members".

C. Exclusions

This coverage does not apply to any of the following:

1. The direct or indirect benefit of any insurer or self-insurer under any workers' compensation, disability benefits or similar law.
2. Anyone using a vehicle without a reasonable belief that the person is entitled to do so.
3. That part of "property damage" for which an "insured" has been compensated by insurance or otherwise.
4. "Bodily injury" or "property damage" arising directly or indirectly out of:
 - a. War, including undeclared or civil war;
 - b. Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
 - c. Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

D. Limit Of Insurance

1. Regardless of the number of covered "autos", "insureds", premiums paid, claims made or vehicles involved in the "accident", the most we will pay for all damages resulting from any one "accident" is the limit of Underinsured Motorists Coverage shown in the Schedule. If the "bodily injury" is sustained by any "insured" while "occupying" a covered "auto", or if the Named Insured's covered "auto" sustains "property damage" in an "accident", our limit is the sum of:
 - a. The limit of insurance shown in the Schedule for this coverage applicable to a covered "auto"; and
 - b. That part of the limit for this coverage that applies to each additional covered "auto" that does not exceed the limit of insurance applicable to the covered "auto" involved in the "accident".
2. Subject to the maximum limit of insurance for all damages:
 - a. Regardless of the number of covered "autos", "insureds", premiums paid, claims made or vehicles involved in the "accident", the most we will pay for "bodily injury" sustained in an "accident" by an "insured" other than an individual Named Insured or any "family member" is that "in-

sured's" pro rata share of the limit shown in the Schedule for this coverage that applies to the vehicle that "insured" was "occupying" at the time of the "accident".

- b. An individual Named Insured or any "family member" who sustains "bodily injury" or "property damage" in that "accident" will also be entitled to a pro rata share of the limit described in Paragraph a. above.

A person's pro rata share shall be the proportion that that person's damages bears to the total damages sustained by all "insureds".

3. Regardless of the number of covered "autos", "insureds", premiums paid, claims made or vehicles involved in the "accident", if "bodily injury" is sustained by an individual Named Insured or any "family member" while not "occupying" any "auto", the most we will pay for all damages resulting from that "accident" is the sum of:
 - a. The highest limit of insurance for this coverage applicable to any one of such Named Insured's covered "autos"; and
 - b. That part of the limit for this coverage that applies to each additional covered "auto" that does not exceed the limit of insurance applicable to the covered "auto" involved in the "accident".

- a. The highest limit of insurance for this coverage applicable to any one of such Named Insured's covered "autos"; and
 - b. That part of the limit for this coverage that applies to each additional covered "auto" that does not exceed the limit of insurance applicable to the covered "auto" involved in the "accident".
4. Regardless of the number of covered "autos", "insureds", premiums paid, claims made or vehicles involved in the "accident", if "bodily injury" is sustained in an "accident" by an individual Named Insured or any "family member", while "occupying" a vehicle not owned by that Named Insured or any "family member" the most we will pay for all damages resulting from that "accident" will be the highest limit of insurance for this coverage that applies to any one of such Named Insured's covered "autos".
 5. No one will be entitled to receive duplicate payments for the same elements of "loss" under this Coverage Form and any Liability Coverage Form, Medical Payments Coverage Endorsement, or Uninsured Motorists Coverage Endorsement attached to this Coverage Form.

We will not make a duplicate payment under the Coverage Form for any element of "loss" for which payment has been made by or for anyone who is legally responsible.

We will not pay for any element of "loss" if a person is entitled to receive payment for the same element of loss under any workers' compensation, disability benefits or similar law.

E. Changes In Conditions

1. Other Insurance in the Business Auto and Garage Coverage Forms and Other Insurance - Primary And Excess Insurance Provisions in the Truckers and Motor Carrier Coverage Forms are replaced by the following:

- a. If an "insured" sustains "bodily injury" while "occupying" a vehicle not owned by that person or while not "occupying" any vehicle, the following priorities of coverage apply:

First Priority	The policy affording Underinsured Motorists Coverage to the vehicle the "insured" was "occupying" at the time of the "accident".
Second Priority	Any policy affording Underinsured Motorists Coverage to a Named Insured or a family member, if the Named Insured is an individual.

(1) If there is no applicable insurance available under the first priority, the maximum recovery under all policies in the second priority shall not exceed the highest applicable limit for any one vehicle under any one policy.

(2) If there is applicable insurance available under the first priority:

(a) The limit of insurance applicable to the vehicle the "insured" was "occupying", under the policy in the first priority, shall first be exhausted; and

(b) The most we will pay in the second priority shall not exceed the highest limit for any one vehicle under any one policy in the second priority.

b. We will pay only our share of the loss, not to exceed our share of the maximum recovery. Our share is the proportion that our limit of insurance bears to the total of all applicable limits on the same level of priority.

c. For "property damage", this insurance is excess to all collectible insurance of any kind.

d. For "bodily injury" this insurance is excess to any other collectible Underinsured Motorists Coverage.

2. Duties In The Event Of Accident, Claim, Suit Or Loss is changed by adding the following:

Promptly send us copies of the legal papers if a "suit" is brought.

3. Transfer Of Rights Of Recovery Against Others To Us does not apply to Underinsured Motorists Coverage.

4. Two Or More Coverage Forms Issued By Us does not apply to Underinsured Motorists Coverage.

5. The following provision is added:

CONFORMITY TO STATUTE

This endorsement is intended to be in full conformity with the South Carolina Insurance Laws. If any provision of this endorsement conflicts with that law, it is changed to comply with the law.

F. Additional Definitions

As used in this endorsement:

1. "Family member" means a person related to an individual Named Insured by blood, marriage or adoption who is a resident of such Named Insured's household, including a ward or foster child.

2. "Occupying" means in, upon, getting in, on, out or off.

3. "Property damage" as used in this endorsement means injury to or destruction of the Named Insured's covered "auto". However, "property damage" does not include damage to property owned by the "insured" while contained in the Named Insured's covered "auto".

4. "Underinsured motor vehicle" means a land motor vehicle or "trailer" of any type to which a liability bond or policy applies at the time of the "accident" in limits equal to or greater than the minimum limit for liability specified by the South Carolina Financial Responsibility Act, but the limits of that bond or policy provide a limit that is less than the amount the "insured" is legally entitled to recover as damages caused by the "accident".

However, "underinsured motor vehicle" does not include any vehicle or equipment designed for use mainly off public roads while not on public roads.

**Section II
Underinsured Motorists Insurance
Coverage SU**

Insuring Agreements

We will pay those damages that an insured person is legally entitled to recover from the owner or operator of an underinsured auto because of:

1. bodily injury sustained by an insured person; and
2. property damage.

The bodily injury or property damage must be caused by accident and arise out of the ownership, maintenance or use of an underinsured auto.

We will pay under this coverage only after the limits of liability under any applicable liability bonds or policies, or any applicable uninsured motorists coverage have been exhausted by payment of judgments or settlements.

Insured Persons

1. you and any resident relative.
2. any other person while in, on, getting into or out of an insured auto with your permission.
3. any other person who is legally entitled to recover because of bodily injury to you, a resident relative or an occupant of your insured auto with your permission.

An insured auto is a motor vehicle:

1. described on the Policy Declarations. This includes the motor vehicle you replace it with.
2. you become the owner of during the policy period. This additional motor vehicle will be covered if we insure all other private passenger motor vehicles you own. You must, however, tell us within 30 days after you acquire the motor vehicle. You must pay any additional premium. We must agree to insure the additional motor vehicle. Coverage will not

continue after 30 days if we are not notified of the additional motor vehicle.

3. not owned by you or a resident relative if being temporarily used while your insured auto is being serviced or repaired, or if your insured auto is stolen or destroyed. The motor vehicle must be used with the owner's permission. It cannot be furnished or available for the regular use of you or any resident relative.
4. not owned by you or a resident relative, if being operated by you or a resident relative with the owner's permission. The motor vehicle cannot be furnished for the regular use of you or any resident relative.

An insured auto is not a motor vehicle made available for public hire by an insured person.

An underinsured auto is a motor vehicle which has liability insurance or a bond in effect at the time of the accident in an amount at least equal to the minimum limits required by the financial responsibility law of South Carolina, but its limit of liability is not enough to pay the full amount the insured is legally entitled to recover as damages.

An underinsured auto is not a motor vehicle which is owned by any state or local government or agency.

Definitions Used in Part 3 - Section II

1. We, Us or Our means the company shown on the Policy Declarations.
2. Bodily injury means bodily injury, sickness, disease or death.
3. Motor vehicle means a land motor vehicle or trailer other than:
 - a. a vehicle or other equipment designed for use off public roads, while not on public roads;
 - b. a vehicle operated on rails or crawler treads; or
 - c. a vehicle while used as a residence or premises.

Exhibit D

4. **Property damage** means damage to or destruction of property of an insured person.

5. **Resident** means a person who physically resides in your household with the intention of continuing residence there. Your unmarried dependent children while temporarily away from home will be considered residents if they intend to resume residing in your household.

6. **You or Your** means the policyholder named on the Policy Declarations and that policyholder's resident spouse.

Exclusions—What Is Not Covered

We will not pay any damages an insured person is legally entitled to recover because of:

1. bodily injury or property damage to any person who makes a settlement with the owner or operator of the underinsured auto without our written consent.
2. bodily injury or property damage to any person while in, on, getting into, or out of an insured auto while available for hire to the public. This exclusion does not apply to shared expense car pools.
3. bodily injury or property damage to the extent that benefits are paid, payable or required to be provided under any workers' compensation or disability benefits law.
4. property damage if the payment would directly or indirectly benefit any insurer of property.
5. property damage to the extent that an insured person has been compensated by other property or physical damage insurance.
6. bodily injury or property damage arising out of the participation in any prearranged, organized, or spontaneous:
 - a. racing contest;
 - b. speed contest; or
 - c. use of a motor vehicle at a track or course designed or used for racing or high performance driving,

or in practice or preparation for any contest or use of this type.

Limits Of Liability

The limits shown on the Policy Declarations are the maximum we will pay for any single accident involving an insured auto. The limit stated for each person for bodily injury is our total limit of liability for all damages because of bodily injury sustained by one person in any single accident involving an insured auto including all damages sustained by anyone else as a result of that bodily injury. Subject to the limit for each person, the limit stated for each accident is our total limit of liability for all damages for bodily injury sustained by two or more persons in any single accident involving an insured auto. For property damage, the limit stated for each accident is our total limit of liability for property damage sustained in any single accident involving an insured auto. This is the most we will pay regardless of the number of:

1. insured persons;
2. claims made;
3. vehicles or premiums shown on the Policy Declarations; or
4. vehicles involved in the accident.

The Underinsured Motorists Insurance limits apply to each insured motor vehicle as shown on the Policy Declarations. The insuring of more than one person or auto under this policy will not increase our liability limits beyond the amount shown for any one auto, even though a separate premium is charged for each auto. The limits also will not be increased if you have other auto insurance policies that apply.

In addition to this limit, we will make an additional amount available to you or any resident relative if such person sustains bodily injury or property damage in an accident involving your insured auto. The additional amount is equal to the sum of that part of the limit on each additional insured auto shown on the Policy Declarations that does not exceed the limit provided for the insured auto involved in the accident. This additional amount is the most we will

pay over the stated limit of liability regardless of the number of:

1. Insured persons;
2. claims made; or
3. vehicles involved in the accident.

However, no one will be entitled to receive duplicate benefits for the same elements of loss.

Subject to the above limits of liability, damages payable will be reduced by:

1. all amounts paid or payable by or on behalf of the owner or operator of the underinsured auto or anyone else responsible. This includes all sums paid or payable under the bodily injury liability coverage or property damage liability coverage of this or any other auto policy.
2. all amounts paid or payable under any applicable uninsured motorists coverage. This includes all amounts paid under the Uninsured Motorists Insurance of this policy.
3. all amounts payable under any workers' compensation law, disability benefits law, or similar law, Medical Expense Benefits Coverage of this policy, or any similar automobile medical payments coverage.
4. all amounts paid or payable under any Underinsured Motorists Coverage applicable to a vehicle, other than your Insured auto, which the Insured person was in, on, getting into, or out of at the time of the accident.
5. all amounts paid under Part 4, Protection Against Loss To The Auto, of this policy or any similar coverage under any other policy.

Any payment under this coverage will reduce any amount that person is entitled to recover for the same damages under Part 1 of this policy.

Non-Duplication Of Benefits

No Injured person will recover duplicate benefits for the same elements of loss under this or any other underinsured motorists insurance, including approved plans of self-insurance.

Proof Of Claim; Medical Reports

As soon as possible, any person making claim must give us written proof of claim. It must include all details we may need to determine the amounts payable.

The Insured person may be required to take physical examinations by physicians we choose, as often as we may reasonably require. The Insured person or that person's representative must authorize us to obtain medical reports or copies of records. We may also require any person making claim to submit to questioning under oath and sign the transcript.

Any person making claim for property damage must allow us to inspect the damaged property.

Our Rights Of Recovery

1. If an Insured person has prosecuted to judgment any suit against any person responsible, we will be entitled to an assignment of the judgment to the extent of payment under this Insurance. We will pay our proportionate part of any reasonable costs and expenses incurred for any recovery to the extent of payment under this Insurance, including reasonable attorneys' fees.
2. If an Insured person making a claim for property damage under this insurance is also entitled to other insurance or other compensation for the property damage, we will not be obligated to pay a claim until the Insured person has assigned us the rights to the compensation, to the extent of payment under this Insurance.
3. If we make a payment under this policy and the person to or for whom payment is made recovers damages from another, that person shall:
 - a. hold in trust for us the proceeds of the recovery; and
 - b. reimburse us to the extent of our payment.

If There Other Insurance

If the Insured person was in, on, getting into or out of a vehicle which is insured for this coverage under another policy, coverage under this policy will be excess. This means that when the Insured

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person is legally entitled to recover damages in excess of the other policy limit, we will pay only the amount by which the damages exceed the limit of liability of that policy up to the limit of liability of this policy.

If more than one policy applies to the accident on a primary basis, the total benefits payable will not exceed the amount the insured person is legally entitled to recover. We will bear our proportionate share with other underinsured motorists benefits.

With respect to property damage, this coverage will apply only after the limit of any other collectible insurance applicable to the damaged property has been exhausted.

Payment of Loss by Us

Any amount due is payable to the insured person, to the parent or guardian of an injured minor, or to the spouse of any insured person who dies. However, we may pay any person lawfully entitled to recover damages.

Legal Actions

No one may sue us under this coverage unless there is full compliance with all the policy terms.

If, at any time before we pay for the loss, an insured person institutes a suit against anyone believed responsible for the accident, we must be given a copy of the summons and complaint or other process. If a suit is brought without our written consent, we are not bound by any resulting judgment.

Conformity To Statute

This coverage is intended to be in full compliance with the South Carolina Uninsured Motorists Law. If any provision of this endorsement conflicts with that law, it is amended or eliminated to comply with the law.

Action Against Us

No one may bring an action against us in any way related to the existence or amount of coverage, or the amount of loss for which coverage is sought, under Part 3—Underinsured Motorists Insurance, Coverage SU, unless there is full compliance with all

policy terms and, except as provided below, such action is commenced within two years after the date of the accident.

If an insured person commences a timely action against the owner or operator of an uninsured auto to recover damages for loss arising out of the accident and gives us written notice of such action within 30 days after such action is commenced, an action against us related to the existence or amount of coverage, or the amount of loss for which coverage is sought, may be brought more than two years after the date of the accident, but in no event later than the earliest of the following to occur:

1. one year after entry of a final judgment or other court order terminating such lawsuit against the owner or operator of an uninsured auto; or
2. one year after we deny coverage.

If any insured person sues a person believed responsible for the accident without our written consent, we are not bound by any resulting judgment.

Part 4

Protection Against Loss To The Auto

Insuring Agreements

The following coverages apply when indicated and a premium for them is shown on the Policy Declarations. Other information applicable to all these coverages appears after all the coverage descriptions.

Auto Collision Insurance Coverage DD

We will pay for loss to your insured auto or a non-owned auto from a collision with another object or by upset of that auto or trailer. No deductible will apply to loss to automobile safety glass.

Auto Comprehensive Insurance Coverage HH

We will pay for loss to an insured auto not caused by collision. Loss caused by missiles, falling objects, fire, theft or larceny, explosion, earthquake, windstorm, hail, water, flood, malicious mischief or vandalism, and riot or civil commotion is covered.

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CERTIFICATE OF SERVICE

The undersigned, Joan E. Nettles, of the Wukela Law Firm, hereby certifies that on the 29th day of December, 2015, she did place in an envelope with first class postage prepaid a copy of the *Plaintiff's Memorandum in Opposition to Defendant's Motion for Summary Judgment*, regarding Larry Brand vs. Allstate Insurance Company, Case No. 2014-CP-45-644, and deposited the same in the United States Mail. Said envelope being addressed to the following person(s):

John S. Wilkerson, III
Turner Padgett Graham & Laney, P.A.
P.O. Box 22129
Charleston, SC 29413


Joan E. Nettles

Florence, South Carolina

STATE OF SOUTH CAROLINA
 COUNTY OF WILLIAMSBURG

LARRY BRAND,

Plaintiff,

vs.

ALLSTATE INSURANCE COMPANY,

Defendant.

IN THE COURT OF COMMON PLEAS
 THIRD JUDICIAL CIRCUIT

Civil Action No. 2014-CP-45-00644

**MEMORANDUM IN SUPPORT
 OF DEFENDANT'S MOTION
 FOR SUMMARY JUDGMENT**

Defendant, by and through its undersigned counsel, hereby submits this memorandum of law to the Court in support of its motion for summary judgment.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

On January 27, 2010, Plaintiff Larry Brand (hereinafter "Plaintiff") was the operator of a 2001 Volvo truck owned by his employer, Evergreen Turf Corporation (hereinafter "Evergreen"), when he was involved in a collision with Cassandra Olivia Stone (hereinafter "Stone") who was operating a 1998 Ford vehicle owned by Stevenson M. Stone.

Stone was covered under a policy of liability coverage in an amount of \$25,000 provided by Progressive Northern Insurance Company (hereinafter "Progressive").

Subsequent to the accident, Brand instituted a workers' compensation claim captioned Larry Brand v. Evergreen Turf Corp., (WCC# 1002789) against his employer, Evergreen. Evergreen accepted the workers' compensation claim, and as of December 13, 2014, has paid \$111,507.80 in compensation and \$34,040.93 in medical benefits.

Progressive has tendered its liability limits of \$25,000 to Plaintiff.

Brand is insured under a policy of underinsured motorist coverage purchased by employer Evergreen on the 2001 Volvo truck involved in the accident and said policy contains a \$1,000,000.00 coverage limit.

Brand is also insured under a policy of underinsured coverage issued by Allstate and purchased by Brand on an at-home vehicle, and said policy contains a \$25,000 coverage limit.

Brand instituted a third-party lawsuit captioned Larry Brand v. Cassandra Olivia Stone (Civil Action No.: 2012-CP-45-657) filed on December 5, 2012, in the Court of Common Pleas for Williamsburg County. That case has not yet been finally resolved.

Plaintiff settled with his employer's underinsured motorist coverage carrier for \$450,000, \$650,000 less than the underinsured motorist coverage limits on that policy.

In the present declaratory judgment action, plaintiff claims entitlement to Allstate's underinsured motorist coverage under a theory that Allstate, as the underinsured motorist carrier for the employee, is not entitled to reduce its benefits by the amount of the worker's compensation benefits. He contends, supported by no evidence whatsoever, that the value of his claim exceeds the total amount of his settlement with the liability carrier and the employer's underinsured carrier (for less than its limits) and that Allstate's underinsured motorist coverage should partially fund that difference. Allstate's policy requires that all other benefits available to Plaintiff be exhausted before Plaintiff will be eligible to recoup under said policy, and further provides that the damages payable will be reduced by the amount of worker's compensation benefits received.

APPLICABLE LAW

A. Standard for Summary Judgment

A Motion for Summary Judgment is appropriate and should be granted where it is clear there is no genuine issue as to any material fact and the moving party is entitled to a judgment as

a matter of law. S.C. R. Civ. P. 56(c); State Farm Fire & Cas. Co. v. Breazell, 324 S.C. 228, 478 S.E.2d 831 (1996). A party opposing a properly supported Motion for Summary Judgment may not rest on the mere allegations or denials of the pleading, but must set forth or point to specific facts showing that there is a genuine issue of material fact. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A party's response to the motion must set forth specific facts, admissible in evidence, showing there is a genuine issue for trial. If he does not so respond, summary judgment should be entered against him. Moody v. McLellan, 295 S.C. 157, 367 S.E.2d 449 (Ct. App. 1988).

ARGUMENTS

I. THE POLICY AT ISSUE PROPERLY AND LAWFULLY PROVIDES THAT DAMAGES PAYABLE UNDER THE POLICY WILL BE REDUCED BY ALL AMOUNTS PAYABLE UNDER ANY WORKERS' COMPENSATION LAW.

Part 3 Section II, entitled "Limits of Liability," of the Underinsured Motorists Insurance Coverage section of Plaintiff's policy includes the following clause on page 17:

However, no one will be entitled to receive duplicate benefits for the same elements of loss. Subject to the ... limits of liability, damages payable will be reduced by:

1. all amounts paid or payable by or on behalf of the owner of operator of the underinsured auto or anyone else responsible. This includes all sums paid or payable under the bodily injury liability coverage or property damage liability coverage of this or any other auto policy... and
3. all amounts payable under any workers' compensation law...

(See attached "Defendant's Exhibit A" Page 17).

Payment made to Plaintiff under the underinsured motorist coverage of this policy would violate the terms of the insurance contract between the parties by granting Plaintiff unmerited double recovery. Id. The provisions of Plaintiff's policy make clear that any recovery under this policy will be reduced by any amount recovered from another underinsured motorist policy,

another liability policy, etc. *Id.* Furthermore, the policy also makes clear that that any recovery under this policy will be reduced by the amount of any workers' compensation benefits received by plaintiff. *Id.*

In this case, Plaintiff has received approximately \$150,000 in workers' compensation benefits. Plaintiff cannot avoid the fatal flaw in his arguments that Allstate has not denied Plaintiff the ability to receive a full recovery of benefits under the Allstate policy at issue. After reducing the insured's damages by the amount of workers' compensation benefits already paid for those damages, so long as the insured has unpaid damages that still equal or exceed the UIM coverage, he would still be eligible to receive the full recovery of those limits.

Thus, Defendant is not attempting to deny Plaintiff benefits under its policy, but merely to reduce the damages payable as to Plaintiff to an avoid unjust double recovery.

II. DEFENDANT IS ENTITLED TO SUMMARY JUDGMENT AS A MATTER OF LAW THE POLICY AT ISSUE PROPERLY AND LAWFULLY PROVIDES THAT, "NO INJURED PERSON WILL RECOVER DUPLICATE BENEFITS FOR THE SAME ELEMENTS OF LOSS."

Part 3 Section II, entitled "Non- Duplication of Benefits," of the Underinsured Motorists Insurance Coverage section of Plaintiff's policy includes the following clause on page 18:

No injured person will recover duplicate benefits for the same elements of loss under this or any other underinsured motorists insurance, including approved plans of self-insurance.

(See attached "Defendant's Exhibit A" Page 18).

Payment made to plaintiff under the underinsured motorist coverage of this policy would violate the terms of the insurance contract between the parties by granting Plaintiff unmerited double recovery. The aforementioned clause of Plaintiff's policy makes clear that no person will recover benefits under this policy if they have already recovered under another underinsured motorist policy for loss suffered from the same accident.

In this case, Plaintiff has already recovered approximately \$150,000 in Workers Compensation Benefits and any payment unless and until Plaintiff demonstrates entitlement to recover in excess of the primary Underinsured Motorist Coverage would violate the terms of the insurance contract between the parties by granting Plaintiff an unjust double recovery of underinsured motorist coverage benefits.

III. THE TERMS AND CONDITIONS OF THE POLICY AT ISSUE PROVIDE THAT COVERAGE UNDER THE POLICY WILL BE EXCESS OVER THE UNDERINSURED MOTORIST COVERAGE PROVIDED FOR THE VEHICLE PLAINTIFF WAS DRIVING AT THE TIME OF THE ACCIDENT.

Part 3 Section II, entitled "If There is Other Insurance," of the Underinsured Motorists Insurance Coverage section of Plaintiff's policy includes the following clause on pages 18-19:

If the insured person was in... a vehicle which is insured for this coverage under another policy, coverage under this policy will be excess. This means that when the insured person is legally entitled to recover damage in excess of the other policy limit, we will pay only the amount by which the damages exceed the limit of liability of that policy up to the limit of liability of this policy.

(See attached "Defendant's Exhibit A" Pages 18-19).

Most importantly, Plaintiff's insurance policy states that the underinsured motorist benefits under this policy are only recoverable once Plaintiff has exhausted the funds available to him under all other applicable policies. *Id.*

It is required by Plaintiff's policy that Plaintiff exhaust the benefits available to him under other applicable policies before the benefits from this policy are applicable to the claim. The South Carolina Court of Appeals dealt with a similar issue in an analogous case, Cobb v. Benjamin, when a plaintiff settled for an amount less than the total amount of liability coverage available and subsequently sought to recover UIM benefits. Cobb v. Benjamin, 325 S.C. 573, 482 S.E.2d 589 (1997).

In Cobb, the court held that while payment of the limits of an applicable liability policy is not a precondition to collecting underinsured motorist insurance benefits, the underinsured motorist insurance carrier is entitled to a credit for any amount of liability insurance coverage not exhausted in a settlement with its insured. Cobb, 325 S.C. at 589.

Although the facts and dispute of Cobb vary slightly from the case at bar, the premise is the same — Defendant should not be penalized for Plaintiff's rejection of funds available to him. Plaintiff has not and explicitly chose not to exhaust the benefits available to him under his employer's UIM policy. Since the case was settled for an amount that clearly reflects that the damages sustained by the Plaintiff do not exceed the limits of underinsured motorist coverage provided by the insurer for the vehicle Plaintiff was driving at the time of his injury and damage, the underinsured motorist coverage of this policy is unavailable to the Plaintiff in this case.

Therefore, Plaintiff is not entitled to the benefits under Defendant's underinsured motorist policy, because he would only be eligible to recoup such benefits upon the exhaustion of all other available benefits, which Plaintiff chose not to do.

IV. PLAINTIFF HAS NO STANDING TO BRING THIS ACTION AS THERE IS NO JUSTICIABLE CONTROVERSY TO BE DECIDED BY THE COURT.

Plaintiff's entire claim for declaratory judgment is totally dependent upon his assertion that the value of his bodily injury claim exceeds the amount he has already received from the liability carrier and the primary underinsured motorist carrier. Setting aside for the moment that fact that he has not exhausted the primary UIM coverage, a condition precedent to recover under this policy, unless and until he can establish entitlement to recover more than he has already received, his claim for UIM coverage from Allstate is totally speculative.

"A threshold inquiry for any court is a determination of justiciability, i.e., whether the litigation presents an active case or controversy." Lennon v. S.C. Coastal Council, 330 S.C. 414, 415, 498 S.E.2d 906, 906 (Ct. App. 1998). "A justiciable controversy is a real and substantial controversy which is appropriate for judicial determination, as distinguished from a dispute or difference of a

contingent, hypothetical or abstract character." *Byrd v. Irmo High Sch.*, 321 S.C. 426, 430-31, 468 S.E.2d 861, 864 (1996). "To state a cause of action under the Declaratory Judgment Act, a party must demonstrate a justiciable controversy." *Graham v. State Farm Mut. Auto. Ins. Co.*, 319 S.C. 69, 71, 459 S.E.2d 844, 845-46 (1995) (holding that ruling was not advisory but was imperative to preserve rights and necessary to determine whether insurance coverage existed and carrier was required to be served); see also *Brown v. Wingard*, 285 S.C. 478, 330 S.E.2d 301 (1985). HN10The concept of justiciability encompasses the doctrines of ripeness, mootness, and standing. *Jackson v. State*, 331 S.C. 486, 490 n.2, 489 S.E.2d 915, 917 n.2 (1997).

Holden v. Cribb, 349 S.C. 132 (S.C. Ct. App. 2002)

V. ALLSTATE'S "REDUCTION OF DAMAGES PAYABLE AS UIM BENEFITS BY AMOUNTS PAID AS WORKERS' COMPENSATION BENEFITS" IS SUPPORTED BY SOUTH CAROLINA PUBLIC POLICY.

This suit is not the first time someone challenged the propriety of a reduction in damages payable as UIM benefits based upon contractual provisions within the policy concerning other insurance benefits paid. The South Carolina Supreme Court found such a contractual provision appropriate in *Richardson v. State Farm Mut. Auto. Ins. Co.*, 313 S.C. 58, 60, 437 S.E.2d 43, 45 (1993).

Moreover, the South Carolina Court of Appeals considered a similar matter in the *Calcutt* case and held that damages payable by UIM benefits could be reduced for workers' compensation benefits received. *State Farm Mut. Auto. Ins. Co. v. Calcutt*, 340 S.C. 231, 235-36, 530 S.E.2d 896 (Ct. App. 2000).

In similar fashion here, the reduction of UIM coverage by the amount received in workers' compensation benefits does not violate any state law or public policy in this case. There is no mandatory minimum UIM coverage guaranteed by statutory requirement. Thus, an insured's recovery is never reduced below any required minimum by the reduction of damages payable for workers' compensation benefits received. As has been held with previous reduction provisions in the UIM context, under South Carolina law the language of Allstate's reduction

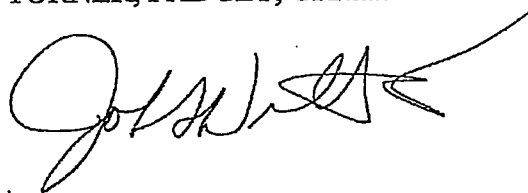
provision is clear and unambiguous, and should be enforced. See Harrington v. Edwards, 262 S.C. 263, 203 S.E.2d 691 (1974) (upholding reduction of liability coverage by medpay coverage pursuant to policy provision). See also, Rowzie v. Allstate, 556 F.3d 165 (2009) (upholding against a similar attack the identical provision in an Allstate policy relating to reduction of damages by amounts recovered in personal injury protection benefits).

CONCLUSION

Based upon the foregoing, Defendant respectfully requests that this Court grant Defendant's Motion for Summary Judgment.

Respectfully submitted,

TURNER, PADGET, GRAHAM & LANEY, P.A.



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Email: jwilkerson@turnerpadget.com

Charleston, SC
January 5, 2016

STATE OF SOUTH CAROLINA
 COUNTY OF WILLIAMSBURG

LARRY BRAND,

Plaintiff,

vs.

ALLSTATE INSURANCE COMPANY,

Defendant.

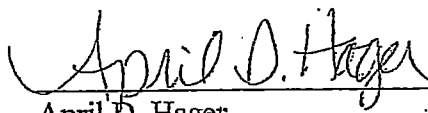
IN THE COURT OF COMMON PLEAS
 THIRD JUDICIAL CIRCUIT

Civil Action No. 2014-CP-45-00644

CERTIFICATE OF SERVICE

I, hereby certify that I have this 5 day of January, 2016, served a copy of the foregoing *Defendant's Memorandum of Law in Support of Its Motion For Summary Judgment* upon other counsel of record, by mailing same, postage prepaid in the United States Mail, addressed to the following:

Mr. Patrick J. McLaughlin
 Wukela Law Firm
 P.O. Box 13057
 Florence, SC 29504-3057


 April D. Hager

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRD JUDICIAL CIRCUIT
COUNTY OF WILLIAMSBURG	)	CIVIL ACTION NO: 2014-CP-45-00644
)	
Larry Brand,)	
)	
Plaintiff,)	
)	
vs.	)	PLAINTIFF'S MOTION TO RECONSIDER
	)	AND/OR TO ALTER OR AMEND
Allstate Insurance Company,)	
)	
Defendant,)	
_____)	

Comes now the Plaintiff, filing this *Motion to Reconsider and/or to Alter or Amend* pursuant to Rule 59 of the South Carolina Rules of Civil Procedure. In doing so, Plaintiff incorporates by reference all argument and allegations contained in his previous pleadings in this matter. In making this motion, the Plaintiff would incorporate all arguments from previous pleadings, filings and oral argument by reference.

Procedural History

Plaintiff filed a *Summons and Complaint* in this matter on December 15, 2014. That Complaint alleged a Declaratory Judgment cause of action against the Defendant, seeking an order declaring that the Defendant's policy for UIM insurance coverage issued to the Plaintiff was responsible for UIM coverage on bodily injury damage amounts suffered by the Plaintiff from \$25,000.01 through \$354,750.75.¹

The Defendant filed an *Answer and Counterclaim* in this matter on or about February 18, 2015.

¹ The original amounts were listed as \$25,000.01 through \$169,548.01. However, by the time of the summary judgement hearing in this matter, records from the Plaintiff's workers compensation claim showed that the worker's compensation carrier had paid the \$354,750.75 amount in benefits.

Plaintiff filed a *Reply* to that counterclaim on February 26, 2015.

The Defendant subsequently filed an *Amended Answer and Counterclaim* March 3, 2015.

Plaintiff filed a *Reply* to that amended counterclaim on or about March 20, 2015.

The Defendant filed a *Motion for Summary Judgment* on or about October 13, 2015.

A *Memorandum in Opposition* was filed by the Plaintiff. The parties appeared before the Court on January 7, 2016 and the Court heard argument on the motion. As a result of those oral arguments and the filed pleadings, the Court issued an order dated August 31, 2016 granting the Defendant's motion for summary judgment.

The Plaintiff files this post judgment motion pursuant to Rule 59 of the South Carolina Rules of Civil Procedure.

Argument

- I. Insurance carriers are not allowed to claim a worker's compensation offset pursuant to S.C. Code §38-77-220 for employee-purchased underinsured (UIM) coverage.**

BRAND believes the Court is aware of his position on this particular issue in this case and has interpreted the findings of Sweetser v. S.C. Dep't of Ins. Reserve Fund, 390 S.C. 632, 703 S.E.2d 509 (2010) differently. BRAND does not wish to belabor the matter by rearguing his interpretation of *Sweetser* (outside of his brief discussion of it below), but out of an abundance of caution does wish to reiterate his position for the record.

- II. There is no underinsured motorist coverage available to the Plaintiff for bodily injury damage amounts from \$25,000.01 through \$354,750.75 pursuant to S.C. Code §38-77-220. As such, the employee-purchased UIM carrier, Allstate, should be considered the primary underinsured motorist coverage for bodily injury damages in those amounts.**

South Carolina law allows for a worker's compensation offset on employer-purchased UIM coverage. This position is supported by the following:

S.C. Code §38-77-160, which provides, in pertinent part:

...Such carriers shall also offer, at the option of the insured, underinsured motorist coverage up to the limits of the insured liability coverage to provide coverage in the event that damages are sustained in excess of the liability limits carried by an at-fault insured or underinsured motorist... If none of the insured's or named insured's vehicles is involved in the accident, coverage is available only to the extent of coverage of any one of the vehicles with the excess or undersinsured coverage. Benefits paid pursuant to this section are not subject to subrogation and assignment. *S.C. Code §38-77-160*

S.C. Code §38-77-220, further provides:

The automobile policy need not insure any liability under the Worker's Compensation Law nor any liability on account of bodily injury to an employee of the insured while engaged in the employment, other than domestic, of the insured, or while engaged in the operation, maintenance, or repair of the motor vehicle nor any liability for damage to property owned by, rented to, in charge of, or transported by the insured. *S.C. Code §38-77-220*

The *Sweetser* court specifically found that S.C. Code §38-77-220 can only apply to employers purchasing automobile insurance policies, as only employers can "insure and liability under" compensation law. *Sweetser v. S.C. Dep't of Ins. Reserve Fund*, 390 S.C. 632, 703 S.E.2d 509 at 636, 511 (2010).

In the present case, WESTFIELD was the only Employer-purchased UIM coverage. As such, only WESTFIELD was allowed under the law to exclude/offset coverage for the amounts paid by worker's compensation.

The ALLSTATE UIM section also states:

If There Other Insurance
If the insured person was in, on, getting into or out of a vehicle **which is insured for this coverage under another policy**, coverage under this policy

will be excess. This means that when the insured person is legally entitled to recover damages in excess of the other policy limit, we will pay only the amount by which the damages exceed the limit of liability of that policy up to the limit of liability on this policy.

If more than one policy applies to the accident on a primary basis, the total benefits payable will not exceed the amount the insured person is legally entitled to recover. We will bear our proportionate share with other underinsured motorists benefits.

...

Conformity To Statute

This coverage is intended to be in full compliance with the South Carolina Uninsured Motorists Law. If any provision of this endorsement conflicts with that law, it is amended or eliminated to comply with the law.

See Exhibit D to original memo in opposition, p. 18-19, emphasis added.

The simple fact is there is no other underinsured motorist (UIM) coverage available to BRAND for bodily injury damage amounts from \$25,000.01 through \$379,750.75 except for ALLSTATE's UIM coverage. As an employee-purchased UIM policy, Allstate is not allowed under South Carolina law to exclude/offset workers' compensation injuries/benefits paid. Not allowing BRAND to access his own personal UIM coverage to fill in this "gap" in coverage would erode the public policy behind UIM coverage.

As the Plaintiff argued at the January 7, 2016 hearing:

MR. MCLAUGHLIN: The idea of what do you do when --- in essence, instead of a hole, what we're arguing is there actually is no UIM coverage other than Allstate up to that certain level. So it's --- they are the only ones that are there under South Carolina law, Your Honor.

Transcript of January 7, 2016 hearing, p.24, 1.7-8.

In short, BRAND's argument is that the liability carrier provided coverage for damages from \$0.01 - \$25,000. The employer-purchased UIM, Westfield, provided coverage for damages over

\$379,750.75 (the amount of the worker's compensation offset plus the liability coverage offset). ALLSTATE is not eligible for the worker's compensation offset, and is the only UIM coverage available for bodily injury damage amounts from \$25,000.01 through \$379,750.75. Thus, ALLSTATE, is the primary underinsured (UIM) coverage for those damage amounts.

Conclusion

Based on the above, the Plaintiff respectfully requests that the Court reconsider its order granting the Defendant's request for Summary Judgment and issue an order declaring ALLSTATE responsible for providing UIM coverage to BRAND for any bodily injury damage award in amounts from \$25,000.01 through \$379,750.75 in the underlying tort litigation.

WUKELA LAW FIRM

BY: s/Patrick J. McLaughlin

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Facsimile: 843-6695150
patrick@wukelalaw.com

August 31, 2016

State of South Carolina)	Court of Common Pleas
	)	Third Judicial Circuit
County of Williamsburg	)	Case No. 2014-CP-45-00644
)	
Larry Brand,)	
)	
Plaintiff,)	
)	
-vs-	)	Transcript of Record
)	
Allstate Insurance Company,)	
)	
Defendant.)	
)	

January 7, 2016
Kingstree, South Carolina

B E F O R E:

The Honorable George C. James Jr., Judge

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

Patrick J. McLaughlin, Esquire
Attorney for the Plaintiff

John S. Wilkerson III, Esquire
Attorney for the Defendant

Krystal J. Smith
Court Reporter

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E X H I B I T S

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(No Exhibits Presented)

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JANUARY 7, 2016

(WHEREAS this matter was scheduled for a motion hearing, the parties appeared through counsel of record. The hearing began at 10:46 a.m.)

THE COURT: Okay. All right. I'll need Brand against Allstate. Mr. McLaughlin, you represent Mr. Brand?

MR. MCLAUGHLIN: That's correct, Your Honor.

THE COURT: And, Mr. Wilkerson, you represent Allstate?

MR. WILKERSON: Correct.

THE COURT: And this is the motion for Allstate for summary judgment?

MR. WILKERSON: Yes, sir.

THE COURT: Okay. Any other motions that I'll hear today?

MR. MCLAUGHLIN: Well, Judge, it's a declaratory judgment action; so I think it's whatever you rule on this will decide I think the DJ action here at the trial level.

THE COURT: Okay. All right. And it is on the non-jury roster?

MR. MCLAUGHLIN: Yes, sir. That's right. In fact, Judge, there's an underlying tort case that's filed in this county as well. That's been stayed pending resolution of this DJ action.

THE COURT: And part of your motion is there's not -- no controversy because there's no judgment?

1 MR. WILKERSON: Yes, sir.

2 THE COURT: All right. Go ahead. I'll be glad to hear
3 from you, Mr. Wilkerson.

4 MR. WILKERSON: Thank you, Your Honor. This is quite a
5 unique presentation. I would expect nothing less than that
6 from Mr. McLaughlin.

7 He -- the -- the -- the -- the coverage lines up this
8 way. There was \$25,000 in liability coverage, which has been
9 paid. The --

10 THE COURT: Who paid that?

11 MR. WILKERSON: Progressive. They were the liability
12 carrier for the defendant, whose name I don't even recall,
13 Your Honor. Evergreen Turf Company was the defendant.

14 MR. MCLAUGHLIN: No.

15 MR. WILKERSON: I'm sorry. I beg your pardon.

16 MR. MCLAUGHLIN: It was a lady named Stone, Judge.

17 MR. WILKERSON: It was just third-party -- a third-party
18 accident. This guy was operating his company vehicle at the
19 time of the accident and that company vehicle, Your Honor,
20 carried relevant to this action a million dollars in
21 underinsured motorist coverage.

22 The Plaintiff recovered a substantial award from a
23 Worker's Compensation claim that he made as a result of the
24 accident and brought this third-party complaint.

25 The -- Evergreen -- the carrier for Evergreen came in and

1 defended the -- the underinsured motorist claim that was filed
2 and that matter went to I believe mediation. It was settled
3 at mediation for Evergreen paying an additional \$450,000.

4 Excuse me. The carrier for Evergreen paying an additional
5 \$450,000 on top of the 25,000 that they had already received.

6 THE COURT: Just for my purposes -- I know it's in your
7 memo or I think it's in one of your memos. Who is the
8 carrier?

9 MR. MCLAUGHLIN: Westfield was the carrier for the
10 employer UIM, Your Honor.

11 THE COURT: All right. So right now, I assume the money
12 Progressive paid was paid in exchange for a covenant not to
13 execute?

14 MR. MCLAUGHLIN: That's correct, Your Honor.

15 THE COURT: All right. Then Westfield paid 450,000 in
16 UIM?

17 MR. WILKERSON: Yes, sir.

18 MR. MCLAUGHLIN: Yes, sir.

19 THE COURT: And is there any dispute that that coverage
20 was primary or --

21 MR. MCLAUGHLIN: I think that's what's at the heart of
22 what we're arguing here with you today, Judge.

23 THE COURT: The 450,000 was paid by Westfield out of a
24 million?

25 MR. WILKERSON: Correct.

1 THE COURT: Okay. And that was obviously for a policy
2 release?

3 MR. WILKERSON: I assume so. Yes, sir.

4 THE COURT: All right. And then we get to the crux of
5 what you've got?

6 MR. WILKERSON: Well, and then -- so Mr. McLaughlin then
7 turns to Allstate, who had the policy that covered Mr. Brand
8 on his at-home vehicle, which had underinsured motorist
9 coverage of \$25,000. And the nature of Mr. Brand's claim now
10 is -- and these are my words, not his.

11 He claims that there is some sort of doughnut hole in his
12 settlement and that's the way I -- that's the best way I can
13 describe it. He claims that -- and I think that's probably a
14 very accurate way to draw an analogy -- of analogizing it.

15 He claims that -- that he settled his case against the
16 underinsured carrier for the employer less than he believed
17 the case was worth because he believes that he gave the
18 underinsured carrier credit for the Worker's Compensation
19 benefits that have been paid.

20 THE COURT: And that totaled how much?

21 MR. WILKERSON: I think it totals --

22 MR. MCLAUGHLIN: That's in the brief, Judge. The total
23 compensation paid -- I included that form that gets filed at
24 the end of a Comp case. It was \$354,750.75.

25 THE COURT: All right.

1 MR. WILKERSON: Of which about 80,000 is medicals I
2 think, Your Honor, something in that range.

3 MR. MCLAUGHLIN: That's fine.

4 MR. WILKERSON: The numbers I put in my brief were stale
5 -- stale numbers as of a year ago.

6 THE COURT: Okay.

7 MR. WILKERSON: Now, without any question, the
8 underinsured carrier for the employer is entitled to a
9 Worker's Compensation setoff. That's the *Williamson v.*
10 *Selected* case I believe, a Supreme Court decision that has
11 decided that.

12 As you also know, the Court of Appeals has decided that a
13 Worker's Compensation setoff in an employee's policy is also
14 valid. That's the *Calcutt* decision.

15 Since Mr. McLaughlin and I have been round and round on
16 this issue a number of times, Mr. McLaughlin claims that the
17 subsequent *Sweetser* decision by the Supreme Court of South
18 Carolina makes the *Calcutt* decision bad law. I disagree with
19 that analysis, but I'm not basing my argument today on the
20 *Calcutt* decision.

21 I've got to base it -- I've got basically three
22 arguments, Your Honor, as to why there should be no
23 underinsured motorist coverage available to Mr. Brand under
24 the Allstate policy.

25 First of all, the policy itself does not contain a setoff

1 -- well, it does, but I'm not relying upon the setoff
2 provision. I'm relying upon the -- the provision of the
3 policy that's found in Part 3, Section 2, that reads as
4 follows. Under limits of liability of the underinsured
5 motorist coverage section, Your Honor, it reads:

6 However -- this is on page 3 of my brief, Your Honor.

7 THE COURT: I've got it.

8 MR. WILKERSON: However, no one will be entitled to
9 receive duplicate benefits for the same elements of loss.

10 And that's specifically what we're dealing with here is
11 an attempt to obtain duplicate benefits.

12 Subject to the limits of liability, damages payable --
13 damages payable will be reduced by all amounts paid or payable
14 by or on behalf of the owner or operator of the underinsured
15 auto or anyone else responsible. This includes all sums paid
16 or payable under the bodily injury liability coverage or
17 property damage liability coverage of this or any other
18 policy. Now -- and all amounts payable under any Worker's
19 Compensation law.

20 It's not a setoff provision, Your Honor. This provision
21 of the policy simply says that damages payable will be reduced
22 by the amount of Worker's Compensation benefits. I can best
23 describe that by --

24 THE COURT: Are you also going under Number 1 here?

25 MR. WILKERSON: No, sir.

1 THE COURT: Or just Number 3?

2 MR. WILKERSON: Just Number 3.

3 THE COURT: Okay. Because Number 1 isn't the law in this
4 state, is it? We're not a reduction -- we're not a reduction
5 state I don't think.

6 MR. WILKERSON: No, but we get credit for it in the
7 amount -- in the amount that's paid in damages.

8 THE COURT: By Worker's Compensation?

9 MR. WILKERSON: No. We can credit for the damages that
10 are paid. So, for example, if the -- if the -- if the case is
11 only worth --

12 THE COURT: Okay. But in other words, let's say you get
13 a verdict of \$30,000. He gets 25 from the primary carrier;
14 you owe five.

15 MR. WILKERSON: Owe five. That's right.

16 THE COURT: But in North Carolina, you -- if you've got
17 25,000 UIM and they've got 25,000 primary, you actually have
18 zero in UIM; correct?

19 MR. WILKERSON: Correct.

20 THE COURT: But that's not what you're talking about?

21 MR. WILKERSON: That's not what I'm talking about here
22 because, in fact, damages payable are reduced by the amount of
23 the underlying limits.

24 THE COURT: Right.

25 MR. WILKERSON: Just by the analogy you just gave. And I

1 can tell you how it works then in -- in -- and with regard to
2 Worker's Compensation benefits.

3 Let's say that the Worker's Comp -- let's make it easy.
4 Let's say that we've got 25 liability and we've got \$10,000 in
5 Worker's Compensation benefits and we've got \$25,000 worth of
6 underinsured motorist coverage on his policy. Let's just line
7 it up that way.

8 Then the verdict then -- and the verdict comes in in the
9 amount of 25 -- 35 -- let's say it comes in at \$50,000. The
10 underinsured carrier gets credit for the \$25,000 that's been
11 paid, it gets credit for the \$10,000 of Worker's Compensation
12 that's been paid, and then pays another \$15,000 on top of
13 that.

14 If, however, the verdict was \$75,000, then the full
15 amount of underinsured motorist coverage would still be there
16 and it would add up on top of it. We're not reducing the
17 amount of coverage that's available to him. We only reduce
18 the damages payable to the extent that that makes any
19 difference in the amount of coverage that's owed under the
20 policy to prevent a double recovery.

21 THE COURT: Okay. I understand your train of thought.

22 MR. WILKERSON: All right, sir. So again, it's not a
23 setoff; it is a reduction.

24 Number two. Number two is really a corollary to number
25 one and that is that no injured person can recover duplicate

1 benefits for the same elements of loss. That still falls into
2 the same -- the same analysis that I gave in the -- in the --
3 in the one just a moment ago.

4 But the next argument is found under Section 3 of my
5 brief, Your Honor, which says that if the insured person was
6 in a vehicle which is insured for this coverage under another
7 policy, coverage under this policy will be excess. This means
8 that when the insured person is legally entitled to recover
9 damages -- not sin -- but in excess of the other policy limit,
10 we will pay only the amount by which the damages exceed the
11 limit of liability of that policy up to the limits of
12 liability of this policy.

13 THE COURT: And you're saying the Westfield policy is
14 primary?

15 MR. WILKERSON: It clearly is, Your Honor. He was in
16 that vehicle at the time of the accident and they came in and
17 paid. And so we now are entitled to a million-dollar setoff,
18 notwithstanding the fact that that case was settled for
19 \$450,000 in underinsured motorist coverage under that policy
20 provision.

21 THE COURT: Can you determine the setoff until you get an
22 award or -- excuse me -- a jury verdict or a damages verdict?

23 MR. WILKERSON: You really can't and that comes to the
24 last -- last argument that I have, but if I can just put a
25 little bit more meat around that argument that -- that we get

1 the full -- that we get credit for the entire amount of
2 underinsured motorist coverage under that policy provision.

3 That's not void against public policy in the state of
4 South Carolina and by analogy the Supreme Court has already
5 held in *Cobb v. Benjamin* that if -- if -- if an injured party
6 settles a liability claim for less than the liability
7 coverage, the underinsured carrier gets full credit for the
8 amount of the liability -- for the liability limits that were
9 not -- whether they were paid or not.

10 THE COURT: Right.

11 MR. WILKERSON: And so I think this policy provision is
12 consistent with that -- with that decision. That would be
13 logic with that decision and suggests to us that this doughnut
14 hole argument doesn't apply because even if he argues -- and
15 he has to convince this Court that his case is worth more than
16 \$475,000 and that he, in fact, did give some credit for the --
17 for the Worker's Compensation benefits that were received in
18 that settlement.

19 I don't think he can argue really effectively that the
20 case is worth actually a million and \$25,000, which is where
21 he would have to be in order for that argument to have any
22 merit at all in this context.

23 THE COURT: Are you saying that -- let's say you get --
24 they get a verdict in the tort case for \$5 million. You --
25 they are not going to get any of your coverage because you get

1 an offset on the Worker's Comp?

2 MR. WILKERSON: They are going to get my coverage then.

3 THE COURT: Okay. So it's not -- what you're -- what you
4 would owe is tied solely to whatever verdict they might get in
5 the tort case?

6 MR. WILKERSON: Yes, sir. Because our --

7 THE COURT: Why wouldn't you be entitled to a setoff for
8 Worker's Compensation that's been paid? Because he's already
9 set that off?

10 MR. WILKERSON: We are. We are, Your Honor. We're not
11 -- I'm not -- it's not a setoff. It's a reduction --

12 THE COURT: A reduction.

13 MR. WILKERSON: -- of damages.

14 THE COURT: Okay.

15 MR. WILKERSON: And so the five million makes it easy.
16 You stack everything together and put the Worker's Comp on top
17 of that and you've still got some coverage on top of that we
18 know of.

19 THE COURT: So there's potential coverage, but not until
20 blankety-blank?

21 MR. WILKERSON: Not until -- not until blankety-blank.
22 Two thing -- two of those things happen.

23 And that brings us to the last argument, Your Honor, and
24 I don't believe we have a case for controversy. I don't
25 believe we have a justiciable controversy here.

1 You know, as much as I'd like to have a ruling on the
2 merits here on this issue, I -- I -- I don't know how in the
3 world we can speculate as to what circumstances would give
4 rise to the underinsured motorist coverage benefit being
5 payable without this Court issuing an advisory opinion.

6 THE COURT: All right. I'll come back to you in just a
7 moment.

8 MR. WILKERSON: Thank you.

9 THE COURT: Now, you've also filed an amended motion on
10 December 29. You've covered everything?

11 MR. WILKERSON: Yes, sir. That was the standing issue
12 that I -- that I -- that I raised at the end of my brief.

13 THE COURT: All right. Mr. McLaughlin?

14 MR. MCLAUGHLIN: Thank you, Your Honor. May it please
15 the Court.

16 Judge, I won't belabor the point by going through a lot
17 of the stuff that I covered in my brief. There are a few
18 things I would like to touch on.

19 First off, Judge, I believe there is a justiciable
20 controversy at this point because one way or the other, we're
21 going to need to know where Allstate is in line. And even if
22 we go to trial and we get a verdict, if that verdict is over a
23 million plus 25, fine, but my understanding from John is that
24 they would be paying it then.

25 THE COURT: Whatever the math is that --

1 MR. MCLAUGHLIN: But -- and it doesn't matter in the
2 grand scheme of things because at some point in time we're
3 going to fight over this because if we get a judgment that's
4 below that, we're going to still have this argument that we're
5 entitled to it.

6 Judge, it comes from this idea. First off, we need to
7 think about, well, we've got 38-77-220, which is the statute
8 and it cited in the brief.

9 And, Judge, this is the statute that *Sweetser* deals a lot
10 with and I know that Mr. Wilkerson just got up here and he
11 referenced *Calcutt* and he said -- but I'm not really relying
12 on *Calcutt* today, but I think it's important because *Calcutt*
13 deals with what the law is and it deals with what 38-77-220
14 is.

15 And in that fact, Judge, kind of the history of this was
16 you had -- *Ferguson* came out first and *Ferguson* was in '73 and
17 the Court said there is no type of offset for Comp for an
18 employer-purchased UM policy. *Williamson* came out in '94 and
19 *Williamson* said, well, you can offset UIM if it was purchased
20 by the employer.

21 THE COURT: Right.

22 MR. MCLAUGHLIN: And then you had *Calcutt* that came out,
23 which *Calcutt* said that 38-77-160 allowed UIM to offset Comp
24 for employer- or employee-purchased properties -- or policies.
25 Excuse me. So *Calcutt* said you could do it with either one.

1 THE COURT: Right.

2 MR. MCLAUGHLIN: Well, the problem is *Sweetser* comes out
3 next and *Sweetser* specifically says no, you can't offset for
4 employee-purchased policies. And, in fact, that's in the
5 footnote. It's in a footnote.

6 THE COURT: Does it reverse *Calcutt*?

7 MR. MCLAUGHLIN: It does, Your Honor.

8 THE COURT: Specifically?

9 MR. MCLAUGHLIN: It does. It says -- this is the exact
10 language and I'm reading from -- let's see. It's page -- I
11 believe it's five -- or -- excuse me -- 630 -- 636.

12 THE COURT: What's the cite on *Sweetser*?

13 MR. MCLAUGHLIN: Sure, Judge. It is 390 S.C. 632.

14 Judge, I have a copy I can give you.

15 THE COURT: 390-632?

16 MR. MCLAUGHLIN: Yeah. I have a copy and I'll be glad to
17 pass it up to you. And it is on the page where we have
18 Footnote 4. Excuse me. In fact, my -- my handwritten notes
19 are on there showing the language that I'm going to be reading
20 from.

21 And so you see there, Judge, it specifically says that
22 the statute applies only to employers who were purchasing
23 automobile insurance policies. And it's footnoted.

24 Footnote 4. To the extent *State Farm Auto Insurance*
25 *Company v. Calcutt* conflicts with this interpretation of 38-

1 77-220, it is overruled, which, Judge, if you think about it,
2 makes sense. The reason why we allow an employer to offset
3 Comp benefits paid is because that employer -- he's paying
4 Comp benefits. He's paying the policy premiums for that.

5 And if you read the language of this case law, what they
6 say is, well, the public policy dictates that we don't make
7 employers pay duplicative premiums and we don't allow people
8 to recover duplicative recoveries. So that makes sense.

9 But in an employee-purchased UIM policy, it does make
10 sense to do it. Why? Well, because here's -- here's the
11 problem we have now. Mr. Brand was able to get 25,000 in
12 liability. He's not able -- there is no insurance coverage --
13 if Allstate's interpretation is right, there is no insurance
14 coverage covering him for that loss from 25,000.01 all the way
15 up to -- it's 300 and some odd thousand dollars. It's 25 plus
16 the total amount of Worker's Compensation paid. Right?
17 Because the employer would get to offset that.

18 So you have this huge hole in coverage. Our argument is
19 there is no coverage for that because Westfield is the only
20 carrier that's allowed to claim that offset under South
21 Carolina law. They are the only ones. Therefore, Allstate is
22 first in line from 25,000.01 up through 50,000.01 for their
23 \$25,000 worth of coverage.

24 THE COURT: Isn't that -- who came up with the term
25 doughnut hole? You?

1 MR. MCLAUGHLIN: No. John did. I think that's a fair --
2 I think that's a fair way to describe it.

3 THE COURT: Since you both agree on that, isn't the
4 doughnut hole filled up with Comp payments?

5 MR. MCLAUGHLIN: Well, no, sir. First off, South
6 Carolina law specifically says they don't get to get credit
7 for that via Sweetser. And we all know that the way Comp
8 works --

9 THE COURT: They do -- they do get credit for Westfield
10 UIM payment? You disagree with that?

11 MR. MCLAUGHLIN: Well, yes, I do because I believe
12 they're in front of Westfield.

13 THE COURT: But doesn't the law say that the occupied
14 auto is primary for UIM purposes?

15 MR. MCLAUGHLIN: Well, Your Honor, if there's no other
16 coverage there. This would be like there is no coverage
17 because the law allows Westfield not to even write the --

18 THE COURT: Well, that is coverage.

19 MR. MCLAUGHLIN: There's not coverage from 25,000.01
20 through whatever the Comp paid out.

21 THE COURT: But wouldn't your argument be better put to
22 say that this doughnut hole really isn't a hole, it's just a
23 bite out of the doughnut and you get to fill it in on the
24 back? Let me give you -- and both of you all are more
25 articulate than I am. You've got 25 in liability coverage?

1 MR. MCLAUGHLIN: Yes, sir.

2 THE COURT: You've got how much total Comp benefits?

3 MR. MCLAUGHLIN: It was --

4 MR. WILKERSON: 300.

5 MR. MCLAUGHLIN: -- 350 some odd thousand.

6 THE COURT: Let's say it's 350. You've got 25 in comp
7 benefits and you've got 650 in Westfield UIM potentially;
8 correct?

9 MR. MCLAUGHLIN: Yes, sir.

10 THE COURT: Okay. And you got 450 of it and you know
11 what the rule is on that, but isn't your better argument that
12 your excess starts at 675 with Allstate? I know Mr. Wilkerson
13 disagrees -- disagrees with that. He wants it to be a million
14 plus 25, but isn't that your better argument?

15 MR. MCLAUGHLIN: Well, Judge, that's another argument on
16 it, but I just -- I have a hard time understanding. If you
17 look at the fact that UIM -- there's mandatory language in
18 that statute, the statute for the UM and UIM -- 160 --

19 THE COURT: Right.

20 MR. MCLAUGHLIN: -- 38-77-160 about the fact that they
21 have to offer coverage and there's -- the one -- the one case
22 that John cited in his brief, Judge -- and I apologize for my
23 voice. I'm a little under the weather.

24 It's got some really good language in there about what
25 the purpose of UIM is and that's the *Cobb* case that he cited.

1 And this is page 518 of Cobb.

2 The central purpose of the UIM statute is to provide
3 coverage where the injured party's damages exceed the
4 liability limits of the at-fault motorist. That's where our
5 Courts have said that's the central purpose of that statute
6 and we know there's mandatory language in that statute.

7 And so it would seem to me that what the Court is saying
8 is, is the public policy that's in our public good for us to
9 say when Joe Blow goes and gets his insurance and he -- they
10 have to offer him UIM coverage that at a minimum what Joe Blow
11 understands is that when liability is over, if I still am owed
12 something, there's going to be something there to take care of
13 it. And that's -- that's why I believe that the argument that
14 it comes at the front end is valid.

15 THE COURT: And you're saying that the red herring is
16 that -- you're saying Mr. Wilkerson's red herring is the Comp
17 coverage that's been paid and that is irrelevant because of
18 Sweetser?

19 MR. MCLAUGHLIN: Yeah. That's exactly right.

20 THE COURT: And interesting.

21 MR. MCLAUGHLIN: And it is, Judge, and the only other --

22 THE COURT: It doesn't make it good, but it's
23 interesting.

24 MR. MCLAUGHLIN: Judge, the only other thing I would like
25 to know is just -- and I know given your background and your

1 history from private practice, you're familiar some with Comp,
2 but let's not forget that Comp payments don't make someone
3 whole. You know, in fact by their very nature, they are only
4 -- you know, when you get to the compensation argument.

5 THE COURT: It depends on who the commissioner is.

6 MR. MCLAUGHLIN: Well, Judge -- but you said that, not
7 me. But by their very nature, a Comp rate is only two thirds
8 of the average weekly wage. So it's not like when Westfield
9 paid this policy --

10 THE COURT: And we've got medical -- you've got medicals
11 too.

12 MR. MCLAUGHLIN: Yes, sir. That's right, but when
13 Westfield paid the 450,000 or whatever they paid, you know,
14 they are evaluating this claim as they would get that Comp
15 offset and that even that Comp offset maybe did not make Mr.
16 Brand completely whole. And I just -- I have a hard time
17 reconciling if our public policy is to provide somebody with
18 coverage once liability is worn out that that would apply.

19 The only other thing, Judge, I would like to say and then
20 I'll sit down is one other case that was cited in the brief
21 was *Richardson*.

22 Judge, in that case, it really has nothing to do with
23 UIM. It's got to do -- it deals with PIP and, in fact, the
24 carrier in that case wasn't even arguing any type of offset or
25 anything like that. They made an argument that it was an

1 anti-stacking defense and that's what the Court actually saw
2 that case on. They said they were right. They were just
3 limiting the stacking of PIP.

4 THE COURT: The policy release with Westfield. I assume
5 was pretty benign, just a typical policy release. It didn't
6 say anything about who was primary and who was secondary?

7 MR. MCLAUGHLIN: It was done via a clincher. Well --

8 THE COURT: It will come back to the UIM with Westfield?

9 MR. MCLAUGHLIN: Yeah. Yes, sir. It was -- it was
10 pretty general to the best of my recollection.

11 THE COURT: Have you taken any positions on the record
12 that Westfield is primary UIM or you just went and settled it?

13 MR. MCLAUGHLIN: Judge, I can't answer that because I
14 didn't handle that portion of the case. Steve Wukela handled
15 the Comp. Stephen handled the --

16 THE COURT: But it was your partner?

17 MR. MCLAUGHLIN: Yeah. It was our -- it was our law
18 firm. I don't -- I don't know that that's been -- but, Your
19 Honor, my answer to that would be in the grand scheme of
20 things, we're talking about \$25,000 worth of coverage. I
21 don't know that it would have been that big of an argument for
22 Westfield.

23 THE COURT: So the -- and I'm going to ask Mr. Wilkerson
24 this question because if I knew it, I forgot, but is there
25 case law that says that the occupied auto is primary UIM? Is

1 there case law that says that or has that just been a
2 commonsense train of thought?

3 MR. MCLAUGHLIN: I don't know that there is or there
4 isn't. I think there may be, but --

5 THE COURT: But that -- that -- that idea collides with
6 this doughnut hole.

7 MR. MCLAUGHLIN: The idea of what do you do when -- in
8 essence, instead of a hole, what we're arguing is there
9 actually is no UIM coverage other than Allstate up to that
10 certain level. So it's -- they are the only ones that are
11 there under South Carolina law, Your Honor.

12 MR. WILKERSON: To answer your question first, Your
13 Honor, who is primary and excess is resolved by reference to
14 the two insurance policies.

15 THE COURT: Okay. But there's no case that says that is
16 the law if you have ambiguity?

17 MR. WILKERSON: Well, the only case law that I'm aware of
18 on that -- because the policies -- both policies will say to
19 the extent that this policy provides coverage with regard to
20 an automobile that you do not own, this policy will be excess.
21 Both of them say that. Okay?

22 THE COURT: But he didn't own the car.

23 MR. WILKERSON: Well -- well, I don't know --

24 THE COURT: The employer did.

25 MR. WILKERSON: I need to go back and look and see what

1 the employer's policy says because that would be a commercial
2 policy. I'm just talking about the -- about your typical --
3 your typical individual policy.

4 And our courts have said that to the extent that they are
5 -- that they both claim to be excess, then they'll treat it
6 pro rata. And that's the -- that's the way the case law has
7 treated those issues, but I don't believe that the -- that the

8 Westfield policy -- there's any argument that claims that it
9 was excess because they stepped up and paid their primary
10 coverage.

11 THE COURT: All right.

12 MR. WILKERSON: Now, with regard to this -- to the
13 *Calcutt* argument, we do not concede that *Calcutt* has been
14 overruled as it relates to this specific issue because *Calcutt*
15 did not cite the statute that -- that they referenced in -- in
16 *Sweetser*. *Sweetser* said to the extent that *Calcutt* conflicts
17 with this interpretation of 38-77-220, it is overruled.

18 THE COURT: But what was the interpretation they gave in
19 *Sweetser* --

20 MR. WILKERSON: *Sweetser* --

21 THE COURT: -- to 220.

22 MR. WILKERSON: *Sweetser* said that 220 authorizes an
23 employer not to cover Worker's Comp because -- because an
24 employer does not statutorily have to provide this coverage.
25 And so they -- they then -- they then went back on that to say

1 then that that therefore legitimizes their attempt to set off
2 Worker's Compensation benefits for the employer.

3 THE COURT: And what does *Calcutt* could say?

4 MR. WILKERSON: *Calcutt* did not cite that statute.
5 *Calcutt* -- *Calcutt* cited -- cited *Williamson v. Selected*
6 *Insurance Company*.

7 THE COURT: But that's -- that's my coverage on my car or
8 -- excuse me -- my UIM that I bought. There's a reduction if
9 I get Comp benefits. Was that overruled?

10 MR. MCLAUGHLIN: Judge, if I may interject just for one
11 second, this was an issue in *Sweetser* about what exactly the
12 Court -- what statute they were talking about because they
13 didn't name it. And if you look just a paragraph above the
14 one that I quoted from earlier, they say that it is not
15 immediately clear what state statute or voluntary coverage the
16 *Williamson* court --

17 THE COURT: But the upshot of it is y'all disagree what
18 exactly is overruled. So I can figure that out by reading it.

19 MR. MCLAUGHLIN: Well, what it says there -- they say we
20 conclude and appellate agreed in oral argument that a
21 reference to a statute was to 38-77-220. So *Sweetser* court
22 said that's what --

23 THE COURT: Well, I can figure that out. Okay. But
24 what's --

25 MR. WILKERSON: This -- this conundrum that we're talking

1 about here is the specific reason why I did not rely upon
2 *Calcutt* in my argument.

3 THE COURT: Right.

4 MR. WILKERSON: And so I'm relying upon -- I am relying
5 upon the public policy of this. It cannot be said, Your
6 Honor, that the public policy of this state is to promote
7 double recovery, and this policy provision that we are relying
8 upon prevents double recovery. It allows full recovery to the
9 extent of policy limits.

10 As Mr. McLaughlin says, Worker's Comp may not make
11 someone whole, but we're not suggesting that it did. We're
12 suggesting that he's got -- you know, once he gets past his
13 Worker's Compensation benefits that he's paid, he's got
14 another million dollars on this policy that the -- that the --
15 that the employer wrote. They then get a setoff for that
16 amount. I'll grant him that. They get to reduce the amount
17 of their coverage by the amount of the -- of the benefits. So
18 that's -- that's a \$650,000 policy. I'll give him that --
19 that part.

20 And then beyond that, he's got another \$25,000 worth of
21 underinsured motorist coverage from Allstate that would come
22 in on top of that. We're not saying that we don't have
23 coverage. We're not saying that the policy doesn't apply.
24 We're not saying that there's an exclusion. We're just saying
25 that the damages recoverable shall be reduced by the amount to

1 prevent a double recovery.

2 THE COURT: Well, Mr. McLaughlin, if they're not denying
3 coverage, then the question is going to be at the tail end of
4 all of this what -- when their light comes on and they've got
5 to write a check, you can't just say give me \$25,000 except
6 for that doughnut hole argument. That's -- that's where
7 you're saying you've got to pay me the 25 because it's
8 undeniable that my -- my damages exceed \$50,000?

9 MR. MCLAUGHLIN: When the -- when Allstate stands up and
10 says this has to go against public policy because it would be
11 a duplicative recovery, we disagree with that and we disagree
12 with that based on *Sweetser* because -- because the law in
13 South Carolina is that they don't get -- they don't get credit
14 for that.

15 THE COURT: All right. Let me ask you this.

16 MR. MCLAUGHLIN: Yes, sir.

17 THE COURT: Is there -- is there a liability question in
18 the tort case?

19 MR. MCLAUGHLIN: I seriously doubt that, Judge.

20 THE COURT: But in other words, are you asking me for an
21 order -- excuse me. You're asking me to deny summary
22 judgment?

23 MR. MCLAUGHLIN: But I also believe this DJ -- what we've
24 asked for the DJ is that the Court say when Allstate would be
25 in line. That's a legal question. And -- and so I believe

1 that's -- I think it's appropriate. I didn't file a motion
2 for that. Of course, in my memo I asked for that relief
3 because I think denying summary judgment to them that it's
4 within the Court's bounds to go ahead and make that ruling now
5 because it is a purely legal question.

6 And like I said when we started, Judge, the reason why we
7 stayed the underlying tort action and filed this was because
8 this thing is going to have to get -- it's a fair chance that
9 it's got to get answered one way or the other. If you answer
10 it at the front end of it, then you save -- you may possibly
11 save the trouble of having to go -- having to go through the
12 trouble of having a jury trial on the underlying tort case.

13 THE COURT: My recollection is our UIM laws are fairly
14 unique, but are there any other jurisdictions who have
15 addressed this argument?

16 MR. MCLAUGHLIN: No, Judge. I say no only to the point
17 that our courts have looked at those other jurisdictions in
18 *Ferguson* and *Sweetser* and stuff like that, if that -- if that
19 makes any sense.

20 THE COURT: Well, what was done by the courts?

21 MR. MCLAUGHLIN: In other words, I don't know of anybody
22 addressing this particular argument. Judge, this is -- to be
23 frank with the Court, this is -- given the amount of Comp work
24 that my office does, this is an argument that -- that pops up
25 a fair amount of time with our cases and we've never had one

1 where we've gone over and turned over the rock. It's never
2 got that far.

3 THE COURT: Okay. All right. Mr. Wilkerson, you have
4 the last word.

5 MR. WILKERSON: It is quite a unique presentation, Your
6 Honor, and under our -- under our view of the case, in order
7 for him to be able to recover any underinsured motorist
8 coverage from Allstate, the settlement amount itself belies
9 his entitlement to any recovery because his settlement of 450
10 -- if you add 350 on top of that, what does that come out to
11 be? 800? We're dealing with the \$350,000 Worker's Comp
12 claim.

13 He's claiming -- essentially, he's claiming in this -- in
14 this argument today that he settled -- that the value of the
15 case he settled for \$450,000 was \$825,000 based on his
16 settlement agreement with the primary carrier, with the --
17 with the primary underinsured coverage, giving them full
18 credit for the Worker's Comp if it's 350. I mean we're just
19 using those numbers as -- as -- as an example.

20 And we can't sit here today and say that that's what it's
21 worth and I don't know of any argument that the -- that the
22 underinsured carrier -- carrier on the primary -- on the
23 vehicle he was involved with was not in excess -- was not a
24 primary policy.

25 He's -- he's -- his argument is quite unique in that he

1 says to the extent that they didn't pay Worker's -- pay
2 Worker's Comp benefits, then Allstate then becomes primary for
3 that Worker's Comp. That's where the doughnut hole comes in.
4 We now become primary because he says we're not entitled to
5 Worker's Comp.

6 You can't ignore, however, the two provisions of our
7 policy that say a) damages recoverable are reduced by these
8 two numbers and b) that we are -- we get full credit for the
9 amount of the underinsured motorist coverage that he had on
10 his policy.

11 THE COURT: Okay. So if you analogize this to a four-
12 course meal, the primary coverage was the first course and
13 I've got to figure out whether or not as a matter of law
14 you're the second course or the fourth course pretty much.

15 MR. WILKERSON: He actually wants me to be the first
16 course.

17 THE COURT: No. He's already got the first course. He
18 already got that from Progressive.

19 MR. MCLAUGHLIN: I already ate my appetizer, Judge. I'm
20 figuring out what comes next, the meat or the fish.

21 THE COURT: Progressive is the appetizer.

22 MR. WILKERSON: Okay. I'm sorry. The liability was the
23 first course. I gotcha. I gotcha. Yeah, you're right.

24 THE COURT: Okay.

25 MR. MCLAUGHLIN: You just made me hungry, Judge.

1 THE COURT: This is -- this is interesting. I'll be
2 reviewing it. Thank you for your clear arguments.

3 MR. MCLAUGHLIN: Yes, sir. Thank you, Your Honor.

4 MR. WILKERSON: Thank you, Your Honor.

5 THE COURT: Good to see you.

6 (WHEREUPON, the proceedings ended at 11:22 a.m.)

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8 --- END REQUESTED TRANSCRIPT ---

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1 State of South Carolina)
 2) Certificate
 3 County of Florence)
 4

5 I, the undersigned, Krystal J. Smith, Notary Public and
 6 Official Court Reporter for the Twelfth Judicial Circuit of
 7 the State of South Carolina, do hereby certify that the
 8 foregoing pages, numbered 1 through 32 constitute a true,
 9 accurate, and complete Transcript of Record of all the
 10 proceedings had and evidence introduced in the hearing of the
 11 above captioned case, relative to appeal, in the Court of
 12 Common Pleas for Williamsburg County, South Carolina, on the
 13 7th day of January, 2016.

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

16
 17 Krystal J. Smith

18 Court Reporter

19
 20 Florence, South Carolina

21 April 6, 2016

22
 23
 24
 25

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM WILLIAMSBURG COUNTY
Court of Common Pleas

George C. James, Jr., Circuit Court Judge

Case No. 2014-CP-45-00644

Larry BrandAppellant,

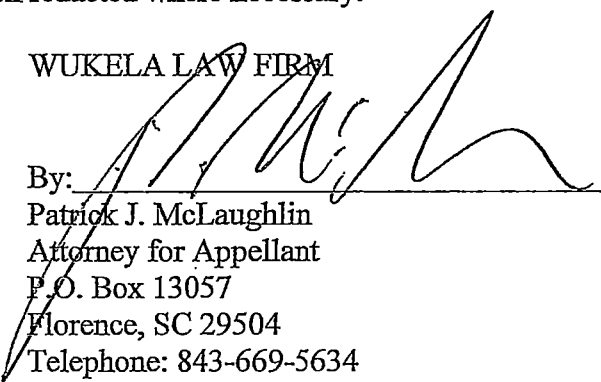
v.

Allstate Insurance CompanyRespondent.

CERTIFICATE OF COMPLIANCE

The undersigned certifies that the Record on Appeal complies with the Supreme Court Order of August 13, 2007, in that there are no personal data identifiers included in the Appellant's Record on Appeal, or have been redacted where necessary.

WUKELA LAW FIRM

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April. 3, 2017

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM WILLIAMSBURG COUNTY
Court of Common Pleas

George C. James, Jr., Circuit Court Judge

Case No. 2014-CP-45-00644

Larry BrandAppellant,

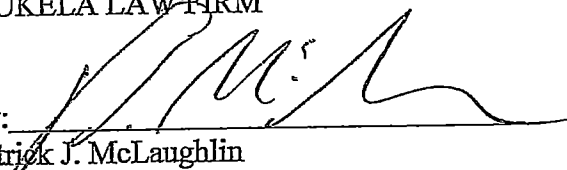
v.

Allstate Insurance CompanyRespondent.

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.

WUKELA LAW FIRM

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April 3, 2017

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM WILLIAMSBURG COUNTY
COURT OF COMMON PLEAS

George C. James, Jr., Circuit Court Judge

Case No. 2014-CP-45-00644

Larry BrandAppellant,

v.

Allstate Insurance CompanyRespondent.

FINAL INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

- I. WHETHER THE TRIAL COURT ERRED AS A MATTER OF LAW IN FAILING TO RECOGNIZE THAT SOUTH CAROLINA LAW DOES NOT ALLOW INSURANCE CARRIERS TO OFFSET EMPLOYEE-PURCHASED UNDERINSURED MOTORIST COVERAGE WITH WORKER'S COMPENSATION BENEFITS PAID.
- II. WHETHER THE TRIAL COURT ERRED AS A MATTER OF LAW IN INTERPRETING THAT ALLSTATE'S UIM COVERAGE WAS SECONDARY UIM COVERAGE FOR THE AMOUNTS OF \$25,000.01 THROUGH \$354,750.75.
- III. ASSUMING *ARGUENDO* THAT THE TRIAL COURT WAS CORRECT IN FINDING THAT ALLSTATE'S UIM COVERAGE WAS NOT TRIGGERED UNTIL AFTER THE EMPLOYER UIM IS EXHAUSTED, WHETHER THE TRIAL COURT ERRED IN FINDING ALLSTATE'S UIM COVERAGE WAS NOT TRIGGERED UNTIL A JUDGMENT EXCEEDING \$1,025,000.

STATEMENT OF THE CASE

On January 27, 2010, Larry Brand (Appellant) was driving a truck owned by his employer, Evergreen Turf Corporation (Evergreen), when he was involved in a collision with at-fault driver Cassandra Olivia Stone (Stone).

Stone's automobile had liability coverage in the amount of \$25,000 through Progressive Corporation (Progressive).

Evergreen had underinsured motorist (UIM) coverage through Westfield Insurance (Westfield) in the amount of \$1,000,000.

Brand had UIM coverage through Allstate in the amount of \$25,000.

A worker's compensation claim was opened on behalf of Brand, with Evergreen having workers compensation coverage through American International South Insurance Company (AIS).

A third party personal injury lawsuit seeking UIM coverage was brought by Brand versus Stone, where both Westfield and Allstate were served as UIM carriers. The liability claim in that underlying tort action was settled via a covenant not to execute between Brand and Progressive in August/September 2011. That settlement was approved by the South Carolina Worker's Compensation Commission in October 2011 via a Petition and Order for Approval of Compromise Settlement Agreement. Brand's UIM claims against Westfield were settled with Westfield tendering payment of \$450,000 in UIM benefits.

On December 15, 2014, Brand brought a declaratory judgment action against Allstate in order to resolve the current coverage issue. The underlying tort action was stayed pursuant to an order issued January 7, 2015 pending resolution of this coverage issue.

Subsequent to the filing of the declaratory judgment action, Brand's worker's compensation claim, WCC File #1002789, was settled. A Form 19 filed with the S.C. Worker's Compensation Commission in February 2015 shows that Brand was paid a total amount of worker's compensation benefits of \$354,750.75 (\$271,577.02 in compensation and \$83,173.73 in medical benefits).

Allstate filed a motion for summary judgment on October 13, 2015. Brand responded with a memorandum in opposition. A hearing was held before the Hon. George C. James, Jr. on January 7, 2016.

By order filed on August 31, 2016, the court granted in part and denied in part Allstate's motion for summary judgment. Brand timely moved for reconsideration and that motion for reconsideration was denied on August 31, 2016.

This appeal follows.

ARGUMENT

I. THE TRIAL COURT ERRED AS A MATTER OF LAW IN FAILING TO RECOGNIZE THAT SOUTH CAROLINA LAW DOES NOT ALLOW INSURANCE CARRIERS TO OFFSET EMPLOYEE-PURCHASED UNDERINSURED MOTORIST COVERAGE WITH WORKER'S COMPENSATION BENEFITS PAID.

A. The standard of review is correction of errors of law.

In order to determine the appropriate standard of review in a declaratory judgment, this court must look to the nature of the underlying action. Barnacle Broad, Inc. v. Baker Broad, Inc., 343 S.C. 140, 146, 538 S.E.2d 672, 675 (Ct. App. 2000). Here, Brand sought to have the trial court determine his right to underinsured motorist coverage under a contract for automobile insurance issued by Allstate. An action to determine coverage under an automobile insurance policy is an action at law. Travelers Indem. Co. v. Auto World, Inc., 334 S.C. 137, 511 S.E.2d 692 (Ct. App. 1999). In an action at law tried without a jury, the standard of review extends only to the correction of errors of law. Electro-Lab of Aiken, Inc. v. Sharp Constr. Co. of Sumter, Inc., 356 S.C. 363, 367, 593 S.E.2d 170, 172 (Ct. App. 2004). "The trial judge's findings of fact will not be disturbed upon appeal unless found to be without evidence which reasonably supports the judge's findings." Id.

B. The trial court erred in holding that Allstate's employee-purchased UIM policy could offset worker's compensation benefits.

Pursuant to the South Carolina Supreme Court's ruling in Sweetser v. S.C. Dep't of Ins. Reserve Fund, 390 S.C. 632, 703 S.E.2d 509 (2010), South Carolina law does not allow for employee-purchased UIM policy to be offset by worker's compensation benefits received.

South Carolina law requires that automobile insurance carriers "shall offer" UIM coverage "to provide coverage in the event that damages are sustained in excess of the liability

limits carried by an at-fault insured.” S.C. Code §38-77-160. The legislature has expressly recognized a permissible offset for UIM coverage:

The automobile policy need not insure **any liability under the Worker’s Compensation Law nor any liability on account of bodily injury to an employee** of the insured while engaged in the employment, other than domestic, of the insured, or while engaged in the operation, maintenance, or repair of the motor vehicle nor any liability for damage to property owned by, rented to, in charge of, or transported by the insured. *S.C. Code §38-77-220*, emphasis added.

(R. p. 133)

The evolution of the South Carolina case law concerning the ability of an automobile insurance carrier to offset worker’s compensation benefits is as follows:

i. *Ferguson v. State Farm* (1973): Offset not allowed for employee-purchased UM policies

In 1973, the South Carolina Supreme Court struck down policy provisions which sought to offset the amount of **uninsured motorist (UM) coverage** available to an injured employee under an **employee-purchased UM policy** by the amount of worker’s compensation benefits received by the employee. *Ferguson v. State Farm Mut. Auto Ins. Co.*, 261 S.C. 96, 198 S.E.2d 522 (1973), emphasis added.

ii. *Williamson v. U.S. Fire* (1994): Offset allowed for employer-purchased UIM policies

In 1994, the South Carolina Supreme Court held that policy provisions which sought to offset the amount of **UIM coverage** available to an injured employee under an **employer-purchased UIM policy** by the amount of worker’s compensation benefits received by the employee were allowed under South Carolina law. *Williamson v. United States Fire Ins. Co.*, 314 S.C. 215, 442 S.E.2d 587 (1994). In arriving at this conclusion, the *Williamson* court noted the following:

In *Ferguson v. State Farm Mutual Automobile Insurance Co.*, 261 S.C. 96, 198 S.E.2d 522 (1973), we held that an insurer **cannot offset workers’ compensation benefits received by an employee**, notwithstanding policy provisions to the

contrary. *See also* 12A GEORGE J. COUCH, COUNCH ON INSURANCE 2D § 45:652 (MARK S. RHODES, ed. 1981). *Cf. Garris v. Cincinnati Ins. Co.*, 280 S.C. 149, 311 S.E.2d 723 (1984) (holding it is contrary to public policy to offset amount insured can recover under underinsured motorist coverage by amount received from at-fault motorist).

Ferguson is distinguishable in that it involved a claim for uninsured benefits by an individual who had purchased the insurance policy. In this case, however, the policy was purchased by Williamson's employer, not by Williamson. The same statute and public policy does not operate in cases where voluntary coverage had been provided by an employer. *Williamson* at 219, 589, emphasis added.

The *Williamson* court also held:

As long as the employee is able to fully recover the damages sustained, we believe the better public policy is to encourage employer voluntary coverage by not exposing employers to mandatory duplicative insurance premiums and by not allowing duplicative insurance recoveries by employees. We therefore hold that S.C. Code Ann. §38-77-220 (1989) allows an employer's automobile insurance carrier to offset workers' compensation benefits received by an employee. The offset shall be applied against the total of damages sustained once the employee has been fully compensated for the injuries. *Williamson* at 219, 589, emphasis added.

Therefore, after *Ferguson* and *Williamson*, the law in South Carolina was that worker's compensation offsets were allowed on UIM policies, but only for employer-purchased policies.

iii. *State Farm v. Calcutt* (2000): Offset allowed for employee-purchased UIM policies

Subsequent to the *Ferguson* and *Williamson* cases cited above, this Court decided State Farm Mutual Automobile Insurance Company v. Calcutt, 340 S.C. 231, 530 S.E.2d 896 (Ct. App. 2000). The *Calcutt* court held it was permissible to offset employee-purchased UIM coverage with worker's compensation benefits. The *Calcutt* court reasoned that the public policy rationale behind *Ferguson* did not apply to employee-purchased UIM coverage because such coverage was not mandatory. *Id.* at 898.

iv. *Sweetser v. I.R.F.* (2010): offset is only allowed for employer-purchased policies

Subsequent to *Calcutt*, the South Carolina Supreme Court decided the case of *Sweetser v. S.C. Dep't of Ins. Reserve Fund*, 390 S.C. 632, 703 S.E.2d 509 (2010). The *Sweetser* court specifically found that the setoff provided in S.C. Code §38-77-220 can only apply to employers who purchase automobile insurance policies, as only employers can “insure any liability under” compensation law. *Sweetser* at 636, 511.

In footnote 4 of the *Sweetser* opinion, the Court specifically noted that “to the extent *State Farm Mutual Automobile Insurance Company v. Calcutt*, 340 S.C. 231, 530 S.E.2d 896 (Ct. App. 2000) conflicts with this interpretation of §38-77-220, it is overruled.” *Sweetser* at 636 and 511, n.4, emphasis added. In short, the *Sweetser* court clarified that the essential question to answer is whether the policy was purchased by an employer versus an employee, not whether the coverage is mandatory versus voluntary.

The instant trial court disagreed with the effect of *Sweetser* on *Calcutt* and current South Carolina law, reasoning:

In *Sweetser*, the plaintiff was a passenger in his employer’s vehicle when it collided with an uninsured driver. He collected workers’ compensation benefits and sued the uninsured driver. His employer’s carrier’s policy provided UM coverage but had an offset provision for workers’ compensation benefits. The Supreme Court held that the offset provision was valid under 38-77-220, which provides that auto policies need not insure any liability under the workers’ compensation act. The Court reviewed *Williamson, supra*, and *Ferguson* and noted that the statutory predecessor to Section 38-77-220 had no application to *Ferguson*, because Section 38-77-220 “applies only to employers who are purchasing automobile insurance policies.” 390 S.C. at 636. In a footnote to that quote, the *Sweetser* Court stated that “[t]o the extent [*Calcutt*] conflicts with this interpretation of §38-77-220, it is overruled.” In my view, the holding in *Calcutt* that employee-purchased UIM is subject to workers’ compensation offset has not been overruled by *Sweetser*. The footnoted quote in *Sweetser* and the footnote itself simply clarify that **Section 38-77-220 applies only to employers who purchase automobile coverage**. Therefore, since the Allstate policy in the instant was purchased by the employee-plaintiff, Section 38-77-220 does not apply. Since Section 38-77-220 does not apply to employee-purchased UIM, the holding in *Calcutt* remains good law as applied to employee purchased UIM. (R. p. 9), emphasis in original.

The *Sweetser* court made clear that the offset allowed by S.C. Code §38-77-220 “can only apply to **employers** as only they can ‘insure liability under’ compensation law or have employees.” Sweetser at 636, 511, emphasis added.

That ruling in *Sweetser* supports that the permissible statutory offset provided by S.C. Code §38-77-220 is an example *expressio unius est exclusio alterius*, the statutory rule of construction that “the expression of one thing is the exclusion of others.” The statute permits one (1) offset, and it is a limited one; applying only to employer-purchased insurance policies. Under the trial court’s reasoning, S.C. Code §38-77-220 is meaningless – the offset would be allowed regardless of statute.

The Court will not construe a statute in a way that which leads to an absurd result or renders it meaningless. Florence Cnty. Dem. Party v. Florence Cnty. Rep. Party, 398 S.C. 124, 128, 727 S.E.2d 418, 420. *See* Lancaster Cnty. Bar Ass’n v. S.C. Comm’n on Indigent Defense, 380 S.C. 219, 670 S.E.2d 371 (2008) (in construing a statute, this Court will reject an interpretation which leads to an absurd result that could not have been intended by the General Assembly); Gordon v. Phillips Utils., Inc., 362 S.C. 403, 608 S.E.2d 425 (2005) (it is presumed that the General Assembly intended to accomplish something by its choice or words and would not do a futile thing); Denene, Inc. v. City of Charleston, 352 S.C. 208, 574 S.E.2d 196 (2002) (this Court must presume the General Assembly did not intend a futile act, but rather intended its statutes to accomplish something); Hinton v. S.C. Dep’t of Probation, Parole and Pardon Servs., 357 S.C. 327, 592 S.E.2d 335 (Ct. App. 2004) (the Court should seek a construction that gives effect to every word of a statute rather than adopting an interpretation that renders a portion meaningless).

The trial court below agreed with *Sweetser*’s interpretation that S.C. Code §38-77-220 could only apply to employer-purchased UIM, stating as much in the emphasized language of its order above. However, the trial court then went on to allow an **employee-purchased** UIM policy a worker’s compensation offset that South Carolina law strictly limits to employer-purchased policies.

The court concludes that the workers' compensation reduction provision in the Allstate policy is valid; consequently, Allstate is entitled to a credit in the amount of \$354,750.75. (R. p.11)

This was error, and as such, the trial court's granting of summary judgment should be reversed and judgment should be declared in favor of Brand.

C. The trial court erred in interpreting what South Carolina Law requires of UIM coverage.

The trial court's ruling fails to recognize that UIM coverage is defined by statute. South Carolina law requires automobile insurance carriers to offer UIM coverage that will "provide coverage in the event that damages are sustained in excess of the liability limits carried by an at-fault insured or underinsured motorist." S.C. Code §38-77-160. This means that in order for an automobile insurance carrier to comply with South Carolina law, the coverage they offer as "UIM coverage," must be effective when the injured party suffers damages in excess of the at-fault driver's liability policy limits.

The same statute that requires the offer of and defines UIM coverage, also proscribes the limitations that may be placed on it. For example, while South Carolina law requires that the insured be offered "up to the limits of the insured liability coverage," if the insured purchases UIM coverage in excess of the basic limits, the law limits the amount of UIM coverage to the extent of the coverage the insured has on the vehicle in the accident. S.C. Code §38-77-160. Also, if none of the insured's vehicles are involved in the accident, the law limits the ability of the insured to stack his UIM coverage, only allowing the insured to get to the UIM coverage on one vehicle. S.C. Code §38-77-160. Finally, as described above, South Carolina law allows insurance carriers providing UIM coverage to an employer to claim an offset for any benefits paid by worker's compensation. S.C. Code §38-77-220. However, these enumerated exceptions are the extent to which the law allows any deviation from the statutorily-proscribed requirement

that UIM coverage must provide “coverage in the event that damages are sustained in excess of the liability limits carried by an at-fault insured or underinsured motorist.”

The trial court’s interpretation of the law allows insurance carriers to offer something less than the UIM coverage as defined by S.C. Code §38-77-160. It allows for UIM coverage that is narrower than South Carolina’s statutory definition of UIM coverage.

The UIM section of ALLSTATE’s policy states the following:

Exclusions – What Is Not Covered

We will not pay any damages an insured person is legally entitled to recover because of:

...

3. bodily injury or property damage to the extent that benefits are paid, payable or required to be provided under any workers’ compensation or disability benefits law.

(R. p. 153)

To allow this exclusion to apply to non-employers, would be to ignore *Sweetser*’s specific finding that S.C. Code §38-77-220 “can only apply to employers as only they can ‘insure liability under’ compensation law or have employees.” *Sweetser* at 636, 511, emphasis added. Therefore, pursuant to *Sweetser*, this exclusion violates South Carolina law.

The coverage created by Allstate’s illegal policy exclusion and the trial court’s decision does not become effective when the injured party suffers damages in excess of the at-fault driver’s liability policy limits. Instead, the coverage created by this policy and interpretation does not actually provide any coverage until a Plaintiff’s damages exceed the at-fault policy limits plus the amount of any benefits paid by a worker’s compensation carrier.

The trial court specifically found that Brand’s employee-purchased UIM policy through Allstate is not triggered until there is “a judgment exceeding \$1,025,000.00.” (R. p. 11)

This interpretation results in Brand getting no underinsured motorist coverage until his damages exceed \$379,750.75 (\$25,000 in at-fault liability + \$354,750.75 in comp benefits offset).

South Carolina law, as interpreted in *Sweetser*, makes it clear that the **only** time a carrier is allowed to reduce their UIM coverage in this way and not immediately “provide coverage in the event that damages are sustained in excess of the liability limits carried by an at-fault insured”, is when S.C. Code §38-77-220 applies, and that §38-77-220 “can only apply to employers.” Any policy attempting to define UIM coverage as anything else, violates South Carolina law and must be reformed to comply and provide coverage pursuant to the law.

To interpret S.C. Code §38-77-220 as the trial court has in this case, would render it meaningless. Insurance companies do not need a statute to offset employer-purchased UIM. Insurance companies could already do that because UIM is optional. While the decision to purchase UIM coverage is voluntary, how UIM coverage operates in South Carolina is not. Insurance carriers cannot water UIM coverage down. It is defined by law.

As such, the trial court’s ruling was error, and the granting of summary judgment should be reversed and judgment should be declared in favor of Brand.

II. THE TRIAL COURT ERRED AS A MATTER OF LAW IN HOLDING THAT ALLSTATE’S UIM COVERAGE WAS SECONDARY COVERAGE FOR LOSS AMOUNTS OF \$25,000.01 THROUGH \$354,750.75.

In the present case, Westfield was the only Employer-purchased UIM coverage. As such, only Westfield is allowed under the law to exclude/offset UIM coverage for the amounts paid by worker’s compensation. *See Section I above.* The UIM Endorsement of WESTFIELD’s policy states:

C. Exclusions

This coverage does not apply to any of the following:

1. The direct or indirect benefit of any insurer or self-insurer under any workers' compensation, disability benefits or similar law.

(R. p.149)

That UIM Endorsement goes on to state:

D. Limit of Insurance

...

We will not pay for any element of "loss" if a person is entitled to receive payment from the same element of loss under any workers' compensation, disability benefits or similar law.

(R. p.149)

The above language combined with S.C. Code §38-77-220 and case law results in Westfield providing no UIM coverage in this matter until the amount legally due Brand is \$379,750.76 (a figure which represents the \$25,000 paid in liability coverage plus the \$354,750.75 paid in total workers compensation benefits). Since Westfield is the only UIM carrier allowed to utilize S.C. Code §38-77-220, that means there is no other coverage available to Brand for the amounts from \$25,000.01 through \$379,750.76 other than the Allstate UIM coverage.

The UIM section of ALLSTATE's policy states the following:

Exclusions – What Is Not Covered

We will not pay any damages an insured person is legally entitled to recover because of:

...

3. bodily injury or property damage to the extent that benefits are paid, payable or required to be provided under any workers' compensation or disability benefits law.

(R. p. 153)

As explained above, given that Brand is not an employer purchasing UIM coverage, this exclusion violates South Carolina as such, is not valid.

The ALLSTATE UIM section also states:

Limits of Liability

...

Subject to the above limits of liability, damages payable will be reduced by:

...

3. all amounts payable under any workers' compensation law, disability benefits law, or similar law, Medical Expense Benefits Coverage of this policy, or any similar automobile medical payments coverage.
4. all amounts **paid or payable under any Underinsured Motorists Coverage applicable to a vehicle**, other than your insured auto, which the insured person was in, on, or getting into, or out of at the time of the accident.

(R. p. 154) emphasis added.

The ALLSTATE UIM section also states:

If There Other Insurance

If the insured person was in, on, getting into or out of a vehicle **which is insured for this coverage under another policy**, coverage under this policy will be excess. This means that when the insured person is legally entitled to recover damages in excess of the other policy limit, we will pay only the amount by which the damages exceed the limit of liability of that policy up to the limit of liability on this policy.

If more than one policy applies to the accident on a primary basis, the total benefits payable will not exceed the amount the insured person is legally entitled to recover. We will bear our proportionate share with other underinsured motorists benefits.

...

Conformity To Statute

This coverage is intended to be in full compliance with the South Carolina Uninsured Motorists Law. If any provision of this endorsement conflicts with that law, it is amended or eliminated to comply with the law.

(R. pp. 154-155) emphasis added.

Brand argued below that pursuant to South Carolina law, there was no other UIM coverage for any loss suffered from \$25,000.01 through \$354,750.75 and that as such, Allstate was the primary UIM coverage for those amounts. The trial court disagreed, finding:

Again, Plaintiff argues he is “uncovered” for \$345,750.75 in damages, but that is simply not the case. Part 3, Section III of the Allstate policy provides that the UIM from the occupied automobile is primary and that the Allstate UIM is excess. Part 3, Section II also provides that Allstate is obligated to pay only the amount by which Plaintiff’s damages exceed the limit of liability of the primary UIM policy. **By operation of law**, the limit of the Westfield policy is now \$645,249.25. (R. p. 11) emphasis added.

The emphasized language above reveals the error with this finding by the trial court: **by operation of law**, there is no other UIM coverage available to Brand for the amounts from \$25,000.01 through \$379,750.76 except for Allstate’s UIM coverage. There is no other policy insuring UIM coverage for these amounts. Therefore, Allstate’s “other insurance” policy provision does not apply. They are not “excess.” By operation of South Carolina law, Allstate is first in line, they are the primary UIM coverage for damage amounts from \$25,000.01 through \$379,750.76. Not allowing Brand to access his own personal UIM coverage to provide coverage when he has sustained damages in excess of the liability limits carried by an at-fault insured or underinsured motorist, violates S.C. Code §38-77-160.

III. ASSUMING ARGUENDO THAT THE TRIAL COURT WAS CORRECT IN FINDING THAT ALLSTATE’S COVERAGE IS NOT TRIGGERED UNTIL AFTER THE EMPLOYER UIM IS EXHAUSTED, THE TRIAL COURT ERRED IN FINDING ALLSTATE’S UIM COVERAGE WAS NOT TRIGGERED UNTIL A JUDGMENT EXCEEDING \$1,025,000.00.

In its order, the trial court found:

Again, Plaintiff argues he is “uncovered” for \$345,750.75 in damages, but that is simply not the case. Part 3, Section III of the Allstate policy provides that the UIM from the occupied automobile is primary and that the Allstate UIM is excess. Part 3, Section II also provides that Allstate is obligated to pay only the amount by which Plaintiff’s damages exceed the limit of liability of the primary UIM policy. **By operation of law**, the limit of the Westfield policy is now \$645,249.25. (R. p11) emphasis added.

Assuming the trial court was correct that Allstate’s UIM coverage is not triggered after the liability coverage is exhausted but before Westfield’s coverage is triggered under South Carolina

law (after the worker's compensation benefits are offset pursuant to S.C. Code §38-77-220), then by the findings within the order, Allstate's UIM coverage should be triggered for amounts over \$670,249.30. This figure represents the trial court's finding that Westfield's UIM policy is now, by operation of law, \$645,249.25 (\$1,000,000 minus the \$354,750.75 in comp benefits paid) plus the liability limits of \$25,000.

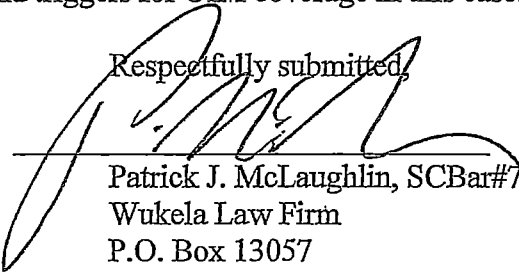
However, despite making the finding that Westfield's UIM limits are now only \$645,249.25, the trial court found that Allstate's coverage is not triggered until Brand obtains "a judgment exceeding \$1,025,000."¹ Such a ruling is inconsistent and allows Allstate to enjoy the exact same offset Westfield enjoyed, despite the fact that the *Sweetser* court specifically found that offset "can only apply to employers." This is error and should result in the granting of summary judgment being reversed and, at a minimum, the triggering amount for Allstate's coverage being declared as \$670,249.30 instead of \$1,025,000.

CONCLUSION

For the reasons stated, this Court should reverse the judgment of the circuit court and/or declare judgment stating the correct order and triggers for UIM coverage in this case.

Respectfully submitted,

April 19, 2017


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¹ Brand would not concede that a judgment is necessary for Allstate's coverage to be triggered, as Brand is in a first-party contract with Allstate and as such, Allstate owes Brand a duty of good faith and fair dealing. Brand believes such duties would require Allstate to tender coverage even when there is no judgment in the underlying case, if a good faith and fair evaluation of his claim placed a value on the claim above the triggering amount. See *Myers v. State Farm*, 950 F.Supp. 148 (D.S.C. 1997)(interpreting South Carolina law).

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM WILLIAMSBURG COUNTY
COURT OF COMMON PLEAS

George C. James, Jr., Circuit Court Judge

Case No. 2014-CP-45-00644

Larry BrandAppellant,

v.

Allstate Insurance CompanyRespondent.

FINAL REPLY BRIEF OF APPELLANT

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I. ALLSTATE’S ARGUMENT CALLS IN TO QUESTION FACTS NOT IN DISPUTE
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 UIM carrier, Westfield, received a worker’s compensation setoff of \$354,750.75.1

 B. The trial court specifically found that Brand’s Employer’s UIM, Westfield, was subject to
 a setoff.2

ARGUMENT

I. ALLSTATE'S ARGUMENT CALLS IN TO QUESTION FACTS NOT IN DISPUTE AND WHOLLY SUPPORTED BY THE RECORD.

In their brief, Allstate states:

...Brand argues (with no supporting documentation) that Westfield received a setoff of \$354,750.75, which was the amount of worker's compensation benefits Brand received.

(Respondent's Brief, p.20, emphasis added)

Thus it would appear that Allstate is attempting to dispute either a) that the amount of worker's compensation benefits received by Brand was \$354,750.75; and/or b) that Westfield actually received such an offset. Disputing either would be incorrect.

A. The Trial Court specifically found that it was an undisputed fact that Brand's Employer's UIM carrier, Westfield, received a worker's compensation setoff of \$354,750.75.

As to whether or not Brand received \$354,750.75, the trial court's order resolves that question. In the opening section of the order, in a section titled "Undisputed Facts Related To The Underlying Tort Action," the trial court specifically found:

The worker's compensation claim has been resolved for a total payment of compensation and medical benefits of \$354,750.75.

(R. p. 2)

Brand would note that finding by the trial court was based on documentation. Specifically, via his *Plaintiff's Memorandum in Opposition to Defendant's Motion For Summary Judgment*, Brand provided both Allstate and the trial court with a Form 19. In providing the Form 19 as an exhibit, Brand's memorandum explained that:

Subsequent to the filing of this action, BRAND's worker's compensation claim, WCC File #1002789, was settled. A *Form 19* filed with the S.C. Worker's Compensation Commission in February of 2015 shows the following compensation having been paid:

-Number of weeks of T.T.: 15 5/7 from 1/28/2010 – 5/1/2010 =	\$8,291.80
201 5/7 from 3/23/2011 – 2/1/2015 =	\$106,436.56
-Agreement and Final Release:	\$156,848.66
-Total Compensation Paid:	\$271,577.02
-Total Medical Benefits Paid:	\$83,173.73

See *Exhibit B*.

The above shows that the true total benefits paid to BRAND through Worker's Compensation coverage was \$354,750.75 (\$271,577.02 in compensation and \$83,173.73 in medical benefits)
(R. pp. 132, 145-146)

Therefore any allegation that Brand did not receive \$354,750.75 in workers' compensation benefits or that there was no documentation providing support for that amount of benefits received would be incorrect and directly contradicted by the record.

B. The trial court specifically found that Brand's Employer's UIM, Westfield, was subject to a setoff.

In like manner, any argument by Allstate that Westfield did not receive a setoff or that this was an unsupported allegation by Brand also fails based on the trial court's order. The trial court specifically found that:

The Westfield UIM coverage purchased by Plaintiff's employer was also subject to a workers' compensation set-off pursuant to the terms of the Westfield policy. See, *Williamson v. United States Fire Ins. Co.*, 314 S.C. 215, 442 S.E.2d 587 (1994). The workers' compensation carrier has paid benefits totaling \$354,750.75, thereby reducing by operation of law the amount of Westfield's UIM coverage payable to Plaintiff from \$1,000,000.00 to \$645,249.25, of which \$450,000.00 has been paid to Mr. Brand.
(R. p.10, emphasis added).

Brand would note that this finding by the trial court was also supported by documentation provided through Brand's memorandum in opposition.

The UIM Endorsement of WESTFIELD's policy states:

C. Exclusions

This coverage does not apply to any of the following:

1. The direct or indirect benefit of any insurer or self-insurer under any workers' compensation, disability benefits or similar law.

See Exhibit C, p.2

That UIM Endorsement goes on to state:

D. Limit of Insurance

...

We will not pay for any element of "loss" if a person is entitled to receive payment from the same element of loss under any workers' compensation, disability benefits or similar law.

See Exhibit C, p.2.

(R. pp. 135, 149)

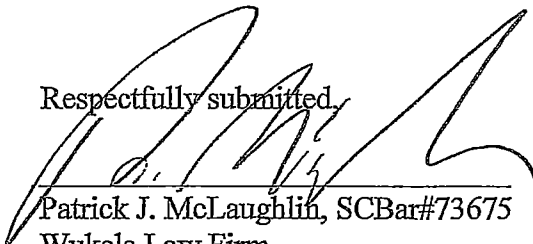
In short, Allstate's attempts to call in to question Brand's arguments based on disputing the amount of the workers' compensation setoff Westfield was entitled to or whether or not Westfield received such a setoff is directly contradicted by the record.

CONCLUSION

Having addressed these two issues concerning the factual record raised by Allstate's Respondent's Brief, Brand rests his reply in reliance upon the legal arguments made in his previous brief.

April 19, 2017

Respectfully submitted,



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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM WILLIAMSBURG COUNTY
Court of Common Pleas

George C. James, Jr., Circuit Court Judge

Case No. 2014-CP-45-00644
Appellate Case No. 2016-002050

Larry BrandAppellant,

v.

Allstate Insurance CompanyRespondent.

FINAL RESPONDENT’S BRIEF

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STATEMENT OF THE ISSUES ON APPEAL¹

I. Did the trial court properly grant summary judgment to Allstate, where the policy contained a valid, plainly worded provision reducing the amount of damages recoverable by the insured in order to prevent a double recovery?

II. Did the trial court properly rule that Allstate's UIM coverage is excess to the full amount of the UIM coverage provided by the carrier for Brand's employer, whose vehicle he was driving at the time of the accident?

STATEMENT OF THE CASE

The genesis of this action is a motor vehicle accident that occurred on January 27, 2010. On that date, the Appellant Larry Brand was driving a truck owned by Evergreen Turf Corporation ("Evergreen"). Brand worked for Evergreen and was on-the-job when the truck was involved in a collision with another vehicle. The driver of the other vehicle (Cassandra Olivia Stone) was at fault for the collision. Brand sustained injuries as a result of the accident.

Several different insurance companies have coverage applicable to the accident. Progressive Insurance Company provided \$25,000 in liability coverage to the at-fault driver. American International South Insurance Company ("American") was Evergreen's worker's compensation carrier. Evergreen also had a policy with Westfield Insurance that provided \$1,000,000 in UIM coverage for its employees. Finally, Brand had a personal automobile policy from the Respondent Allstate Insurance Company that contained \$25,000 in UIM coverage.

¹ Although the Appellant's Brief states three separate issues, Allstate will address Brand's second and third issues together under one issue/heading.

Brand first commenced a worker's compensation claim, which American accepted. Brand and American ultimately settled that claim for a total amount of \$354,750.75. Of that amount, \$83,173.73 constituted payment for medical bills, and \$271,577.02 was for wages and related compensation.

Brand also filed a personal injury action against the at-fault driver in the Court of Common Pleas for Williamsburg County. Brand's attorney served Westfield and Allstate as UIM carriers in that action. Progressive tendered its \$25,000 liability limits in exchange for a covenant not to execute. Later, at mediation, Brand settled with Westfield for \$450,000 of its \$1,000,000 in UIM coverage. The resulting policy release left Allstate as the lone UIM carrier defending the case, which the trial court has stayed pending the result of the present action.

In an attempt to answer questions about Brand's ability to recover UIM benefits under his Allstate policy, Brand filed a declaratory judgment action on December 15, 2014. After filing an Answer, which included counterclaims for declaratory judgment, Allstate moved for summary judgment on October 13, 2015. Allstate's motion argued, *inter alia*, that its policy contained a "reduction in damages recoverable" provision that meant Brand's damages had to exceed all other coverage available to him – including worker's compensation benefits – before he could be entitled to recover any of Allstate's UIM coverage.

Both parties submitted memoranda on the legal issues, and the motion went before the Honorable George C. James, Jr. for a hearing on January 7, 2016. Judge James took Allstate's motion under advisement at the conclusion of the hearing. Several months later, on August 31, 2016, Judge James issued an Order that granted Allstate's

motion in part and denied it in part. Brand filed a timely motion asking Judge James to reconsider his decision, but the judge denied that motion, and Brand appealed.

STANDARD OF REVIEW

“A declaratory judgment action is neither legal nor equitable, and therefore, the standard of review is determined by the nature of the underlying issue.” *Auto Owners Ins. Co. v. Newman*, 385 S.C. 187, 191, 684 S.E.2d 541, 543 (2009). When the purpose of the underlying dispute is to determine whether coverage exists under an insurance policy, the action is one at law.” *Id.* “In an action at law tried without a jury, the appellate court will not disturb the trial court's findings of fact unless they are found to be without evidence that reasonably supports those findings.” *Auto Owners Ins. Co. v. Hamin*, 368 S.C. 536, 540, 629 S.E.2d 683, 684 (Ct. App. 2006).

ARGUMENT

The underlying declaratory judgment action was an attempt by Brand to use UIM coverage from his personal automobile liability policy as a means of double recovery for damages previously paid by other carriers under different insurance policies. Having already received total payments of \$829,750.75 for claims stemming from his accident, Brand sought a declaratory judgment requiring Allstate to pay its full \$25,000 in UIM coverage, despite the lack of any evidence that he had any additional damages for which he had not received compensation. Brand made this claim despite settling with the primary UIM carrier for \$550,000 less than its coverage limits.

The trial court rejected Brand's attempt at a double recovery by applying the clear provisions of Allstate's policy that are designed to prevent such windfalls. That decision

not only follows the policy language as written, but also honors South Carolina public policy. Therefore, this Court should affirm the judgment in Allstate's favor.

I.

The provisions of Allstate's policy validly reduce the amount of damages recoverable by the insured in order to prevent a double recovery.

In reaching its decision, the trial court applied Part 3, Section II of the Underinsured Motorist Insurance Coverage portion of Allstate's policy. The relevant language from that section is the following:

However, no one will be entitled to receive duplicate benefits for the same elements of loss. Subject to the ... limits of liability, damages payable will be reduced by:

1. all amounts paid or payable by or on behalf of the owner or operator of the underinsured auto or anyone else responsible. This includes all sums paid or payable under the bodily injury liability coverage or property damage liability coverage of this or any other auto policy ... and

* * *

3. all amounts payable under any worker's compensation law ...

* * *

No injured person will recover duplicate benefits for the same elements of loss under this or any other underinsured motorists insurance, including approved plans of self-insurance.

[R. p. 69 (emphasis added).]

(A) Reduction in Damages Recoverable

Allstate argued in support of its summary judgment motion that this policy language constitutes a "reduction of damages recoverable" provision. This provision

requires that any recovery under Allstate's policy be reduced by any and all amounts received from other policies and also by all worker's compensation benefits the insured obtained. Brand tried to cast the provision in a different light, calling it a setoff for worker's compensation benefits. The trial court believed it was unnecessary to determine whether this language was a "reduction of damages recoverable" or a "setoff" because the court would reach the same legal conclusion in either case. Although Allstate agrees with the trial court's conclusion in that sense, it is more accurate to view the provision as one reducing the damages recoverable by the insured.² Therefore, Allstate will first discuss the provision in those terms.³

Unlike a true setoff provision, the policy language quoted above does not reduce any of the UIM coverage provided to an insured. The provision in Allstate's policy merely establishes when the UIM coverage is triggered. If an insured has damages that exceed the sum of all recoveries made under the other types of policies and benefits identified in the provision, then the full UIM limits are available. In the present case, for example, if Brand were to obtain a judgment in excess of \$1,025,000,⁴ this provision

² Allstate's policy has a separate "setoff/exclusion" provision that is not involved in this case. [R. p. 68.] The setoff provision appears in the section entitled "Exclusions – What Is Not Covered." The provision actually involved in the present case appears under a section entitled "Limits of Liability" – the same section that reduces damages for all amounts received from a liability carrier and other UIM coverage. This further demonstrates the difference between a "setoff" provision and the "reduction of damages recoverable" language at issue in this appeal.

³ This approach not only demonstrates that the trial court reached the correct legal result, but it also makes it unnecessary to examine or consider the line of cases dealing with setoff provisions in UM and UIM policies.

⁴ This amount represents the total sum of the at-fault driver's liability limits (\$25,000), Brand's worker's compensation benefits (\$354,750.75), and the still unpaid amount of the employer's UIM limits (\$645,249.25).

would require Allstate to pay any additional amount up to its UIM limits of \$25,000. As this example demonstrates, the provision at issue does not eliminate, or even limit, any type or amount of coverage. The provision only clarifies the threshold for recovering any UIM coverage in situations like this one, where recoveries under other policies have previously occurred.

This trial court's application of the provision at issue serves three important functions. Each function standing alone would arguably be sufficient to justify the trial court's decision. But considered together, these three functions leave no reasonable doubt about the sound nature of that decision.

First, the result in the trial court honors the clear language of Allstate's insurance policy. Courts "must give policy language its plain, ordinary, and popular meaning. ... When a contract is unambiguous, clear, and explicit, it must be construed according to the terms the parties have used." *B.L.G. Enters., Inc. v. First Fin. Ins. Co.*, 334 S.C. 529, 535, 514 S.E.2d 327, 330 (1999) (citations omitted). Although unclear policy language must be construed against the insurer as the drafting party, "insurers have the right to limit their liability and to impose conditions on their obligations, provided they are not in contravention of public policy or a statutory prohibition." *Id.* at 535-36, 514 S.E.2d at 330. Thus, "[c]ourts must enforce, not write, contracts of insurance." *USAA Prop. & Cas. Ins. Co. v. Clegg*, 377 S.C. 643, 655, 661 S.E.2d 791, 797 (2008) (quoting *Sloan Constr. Co. v. Central Nat'l Gen. Ins. Co. of Omaha*, 269 S.C. 183, 185, 236 S.E.2d 818, 819 (1977)).

Here, the policy language is perfectly clear in its meaning. It sets forth the point at which the UIM coverage becomes available in situations involving other coverages and

benefits for the same damages. There is no other way to read this provision. Indeed, Brand has not even attempted to argue, either in the trial court or in this appeal, that the policy language is ambiguous or unclear. Accordingly, there can be no question that the trial court followed established law by applying the parties' insurance contract as written.

Second, the trial court's decision serves the public policy against double recoveries and windfalls. "It is well settled in this state that 'there can be no double recovery for a single wrong and a plaintiff may recover his actual damages only once.'" *Collins Music Co., Inc. v. Smith*, 332 S.C. 145, 147, 503 S.E.2d 481, 482 (Ct. App. 1998) (quoting *Taylor v. Hoppin' Johns, Inc.*, 304 S.C. 471, 475, 405 S.E.2d 410, 412 (Ct. App. 1991)). See also *Williamson v. U.S. Fire Ins. Co.*, 314 S.C. 215, 218, 442 S.E.2d 587, 588 (1994) (one reason for allowing worker's compensation benefits to be offset against UIM coverage was to deny the plaintiff "the windfall of a double recovery").

If accepted, Brand's position would necessarily lead to a double recovery for his claimed damages. Brand sustained only a single wrong – the injuries from the accident – and he has already recovered \$829,750.75 as a result. There was also additional coverage still available under the primary UIM policy that Brand chose not to seek when he settled with that UIM carrier for far less than the policy limits. If Brand could recover Allstate's UIM coverage without first obtaining a judgment in excess of the amounts he has already received (and could have received), he would be compensated twice for the same damages. Preventing that type of windfall is why our law gives a UIM carrier credit for the full amount of the at-fault driver's liability coverage, regardless of how much of the coverage the plaintiff actually receives. See *Cobb v. Benjamin*, 325 S.C. 573, 589, 482 S.E.2d 589, 597 (Ct. App. 1997). The same principle applies here.

The trial court's decision guards against a double recovery, while still allowing Allstate's coverage to be available at the correct point. If Brand takes the underlying tort case to trial and gets a judgment of more than \$1,025,000, Allstate must respond to the excess amount up to its UIM policy limits. If the result of a trial is a verdict lower than that threshold number, Brand recovers nothing else under the clear language of Allstate's policy. This result is not unfair to Brand, who already recovered (or had the chance to recover) the full \$1,025,000 from other sources. The only unfair result would be allowing Brand to recover from Allstate's UIM policy before reaching that threshold judgment amount. In that scenario, Allstate would have to pay UIM coverage despite policy language to the contrary, and Brand would receive a windfall.

Third, the trial court's decision fully honors the purpose of UIM coverage under South Carolina law. Underinsured motorist coverage is designed to protect injured parties in situations where they have damages that exceed the amount of liability coverage carried by the at-fault motorist. *See Cobb*, 325 S.C. at 583, 482 S.E.2d at 594 (citing S.C. Code Ann. §38-77-160). Thus, UIM coverage is designed to prevent, or at least alleviate, situations in which an injured party is unable to recover his or her full damages because the at-fault driver does not have sufficient insurance.

The key concept for purposes of the current appeal is the party being unable to recover his or her full damages. That scenario, which is the *raison d'être* of UIM coverage, does not exist here. The record plainly demonstrates that Brand has received (a) the liability limits of the at-fault driver, (b) an extensive amount of worker's compensation benefits and (c) \$450,000 from the primary UIM policy. The record further shows that there was still a significant amount of coverage remaining under the

primary UIM policy that Brand effectively waived by settling with that UIM carrier for a lower amount. In total, Brand has recovered nearly \$850,000, and there is nothing in the record even to suggest, let alone prove, that this amount constitutes anything less than full compensation for Brand's injuries. As a result, Brand cannot credibly claim that the lower amount of liability insurance has prevented him from being able to recover his full damages.

Even if Brand were now to argue that his damages exceed the amounts of other coverages paid and/or available to him, Allstate's UIM policy will respond to any proven excess damages at the proper time. Assuming Brand obtains an excess verdict (as described above), Allstate's UIM coverage will be available up to its limits. In that scenario, Allstate's UIM coverage will perform its intended function – i.e. protecting the insured against the inability to recover his or her full damages. Thus, nothing in the trial court's ruling violates South Carolina law or public policy relating to UIM coverage.

Although the issue involved was not exactly the same, this Court's decision in *Cobb v. Benjamin*, 325 S.C. 573, 482 S.E.2d 589 (Ct. App. 1997), is instructive. In *Cobb*, this Court had to determine whether payment of the full automobile liability limits was a condition precedent to recovering UIM coverage. The Court held that payment of the underlying liability limits was not required in order to seek UIM coverage, but that the UIM carrier was entitled to an offset credit for the full amount of the liability coverage, even if the insured settled for less than those limits. *Id.* at 587-88, 482 S.E.2d at 596. This decision allowed UIM coverage to serve its intended purpose, but it also placed the risk of a shortfall on the insured in situations where he or she settles for less than the liability policy limits. As the Court explained:

By allowing full credit of the tortfeasor's policy limits, the insured, rather than the UIM carrier, bears the loss when there is a gap between liability limits and the amount of the settlement. The insured may only recover the difference between the liability policy limit and the damages suffered, subject to the UIM limits. *Id.*

Under the rule set forth in *Cobb*, the UIM coverage is available; the insured just has to recover more than the full liability limits in order to receive any of the UIM coverage. This is true regardless of whether the insured actually receives the full amount of the liability limits or settles for less. Here, the same rule applies. Brand has UIM coverage, and if he obtains a verdict in excess of the coverages he has already received, or could have received, he can recover it up to the UIM limits. But he cannot claim any of the UIM coverage without first exceeding that threshold. This rule, which is the holding in *Cobb*, extends to the present scenario. Brand has failed to demonstrate any legitimate reason why it does not.

As the preceding discussion demonstrates, there are at least three sound and logical bases for the trial court's decision. It applies the clear language of the insurance policy, it prevents a double recovery, and it honors the purpose of UIM coverage. Brand's position would serve none of those purposes and would only result in a windfall to an insured who has already been fully compensated for his damages. Therefore, the Court should affirm the trial court's decision.

(B) Setoff

Brand presents his arguments as if the policy language cited by the trial court is a "worker's compensation setoff" provision. This is a necessary tactic because Brand claims South Carolina law does not allow for any setoff of worker's compensation benefits in this context. As discussed above, this is not the kind of setoff provision

addressed in the line of cases Brand cites.⁵ The language at issue in this case is a “reduction of damages recoverable” provision, and as such, it is valid and enforceable under South Carolina law. Yet, even if this case were deemed to involve a setoff provision, the end result would be the same. The trial court correctly recognized that fact in its Order, which this Court should affirm.

The line of cases upon which Brand relies began with *Ferguson v. State Farm Mut. Auto. Ins. Co.*, 261 S.C. 96, 198 S.E.2d 522 (1973). In that case, the Supreme Court held that an offset provision for worker’s compensation benefits was unenforceable when contained in a UM policy purchased by an employee.

Twenty years later, the Supreme Court distinguished *Ferguson* and held that a worker’s compensation setoff provision in an employer-purchased UIM policy was valid. *Williamson v. United States Fire Ins. Co.*, 314 S.C. 215, 442 S.E.2d 587 (1994). The Court concluded the situation in *Williamson* was different than that in *Ferguson* for two reasons: (1) the type of coverage at issue (mandatory UM vs. voluntary UIM), (2) the party who purchased the policy (the employer vs. the employee). *Id.* at 219, 442 S.E.2d at 589.

The next case in this line came six years after *Williamson*, when this Court issued its decision in *State Farm Mut. Auto. Ins. Co. v. Calcutt*, 340 S.C. 231, 530 S.E.2d 896 (Ct. App. 2000). In *Calcutt*, the Court held that a UIM carrier could lawfully enforce a setoff provision for worker’s compensation benefits in an employee-purchased policy.

⁵ Again, Allstate’s policy does contain this type of setoff provision, but that is not the provision upon which the trial court based its decision. The trial court cited and relied on the separate and distinct “reduction in damages recoverable” provision.

The Court reached this conclusion after noting that such a provision did not violate any statutory provision or public policy of South Carolina.

For the statutory analysis, the Court examined S.C. Code §38-77-30 (which defines “uninsured motor vehicle”) and S.C. Code §38-77-160 (which “provides for UIM policies”) and found that nothing in those statutes prohibited setoff provisions. 340 S.C. at 234-35, 530 S.E.2d at 897-98.⁶ The lack of a statutory prohibition was the key factor in the Court’s decision. Finding no statute that forbade setoff provisions, the Court concluded it was proper to apply the policy as written and entered into by the parties.

The Court cited *Williamson* and acknowledged that it involved an employer-purchased policy, whereas the employee purchased the policy in *Calcutt*. However, the Court found that difference was immaterial in the absence of any statutory provision specifically preventing this type of setoff provision. As the Court explained:

In the present case, the employee purchased and paid the premiums on the policy, not the employer. However, section 38-77-160 does not prohibit a setoff provision, regardless of whether the employer or the employee purchased the UIM policy.

340 S.C. at 235, 530 S.E.2d at 898 (emphasis added). Therefore, the provision allowing for a setoff of worker’s compensation benefits in an employee-purchased policy was valid.

For its public policy analysis, the Court contrasted the Supreme Court’s decisions in *Ferguson* and *Williamson*. The Court noted that the former case has invalidated the setoff provision because it involved mandatory uninsured motorist (UM) coverage, while the latter case had upheld the setoff provision because it dealt with voluntary UIM

⁶ Significantly, the Court did not cite or discuss S.C. Code §38-77-220 in this analysis.

coverage. Thus, the “linchpin” of *Ferguson*’s public policy rationale was the “mandatory nature of UM coverage.” 340 S.C. at 235, 530 S.E.2d at 898. Since the policy at issue in *Calcutt* was not statutorily required, the same public policy concern did not apply. *Id.*

The Court again acknowledged the fact that *Williamson* had involved an employer-purchased policy, but this difference was not significant. On this point, the Court stated:

While *Williamson* only addresses setoff provisions in terms of employers’ policies, we find no reason voluntary UIM coverage held by an employee should be treated differently. Accordingly, a setoff provision in a voluntary UIM policy would be equally enforceable whether purchased by an employer or an employee.

340 S.C. at 236, 530 S.E.2d at 898 (emphasis added).

The holding in *Calcutt* is clear: Setoff provisions for worker’s compensation benefits in all UIM policies are valid and enforceable under South Carolina law. In an attempt to escape this conclusion, Brand relies upon a cryptic footnote in *Sweetser v. South Carolina Dept. of Ins. Reserve Fund*, 390 S.C. 632, 703 S.E.2d 509 (2010). The issue in *Sweetser* was the following:

Can a worker’s compensation offset clause be applied so as to reduce an employee’s recovery under an employer’s automobile policy’s UM coverage below the statutory mandatory minimum?

Id. at 634, 703 S.E.2d at 510. After examining *Ferguson* and *Williamson*, the Court answered yes to that question. The Court found that S.C. Code §38-77-220 expressly permitted the kind of setoff provision at issue in situations involving UM coverage in an employer-purchased policy. Thus, the application of a setoff was permissible in that

context, even though it would take the amount of UM coverage under the mandatory minimum limit.

During its analysis, the Court stated that S.C. Code §38-77-220 “applies only to employers who are purchasing automobile insurance policies.” 390 S.C. at 636, 703 S.E.2d at 511. Following that statement, the Court included the following footnote: “To the extent *State Farm Mut. Auto. Ins. Co. v. Calcutt*, 340 S.C. 231, 530 S.E.2d 898 (Ct. App. 2000) conflicts with this interpretation, it is overruled.” *Id.* n. 4. The Court did not cite or discuss *Calcutt* anywhere else in the opinion, and, thus, the precise meaning of the footnote is not clear. Nevertheless, Brand cites the footnote in *Sweetser* for the proposition that *Calcutt* is no longer good law under any circumstances. The trial court rejected that assertion, and its decision in that regard was correct.

Sweetser did not even mention, let alone overrule, the fundamental holding of *Calcutt*. As previously discussed, *Calcutt* held that a worker’s compensation offset provision in an employee-purchased UIM policy was enforceable because it did not violate any statute or public policy. This Court in *Calcutt* did not cite or discuss S.C. Code §38-77-220, nor did it use that statute as the basis for its decision. This Court’s only focus was determining whether any South Carolina statute or policy prohibited a worker’s compensation setoff in a UIM policy. The Court did not need to look to §38-77-220, which actually permits such a setoff in other circumstances. Section 38-77-220 was not relevant to the holding in *Calcutt*, and, therefore, the Supreme Court’s footnote in *Sweetser*, which specifically references the statute, does not affect that holding.

This, of course, raises the question of what the Supreme Court intended to do when it included the footnote in *Sweetser*. If, as the trial court concluded, the Supreme

Court did not completely overrule *Calcutt*, then what does the footnote mean? To answer this question, it is important to recall the basis for the Supreme Court's decision. Because *Sweetser* dealt with a type of coverage that has mandatory minimum limits under South Carolina law, the Court had to examine the Insurance Code to see if it specifically authorized a setoff that would potentially reduce the insured's recovery below those limits. The Court found that authorization in §38-77-220. Under that statute, a worker's compensation setoff provision in an employer-purchased UM policy is allowed, even though setoff against a UM policy is not permitted in other contexts. This is the holding of *Sweetser*, and it necessarily depends on §38-77-220.

In that sense, *Sweetser* was very different from *Calcutt*, which did not rely on §38-77-220. *Calcutt* involved an employee-purchased policy. As the Supreme Court stated in *Sweetser*, that statute can apply only to employers. Thus, because an employer-purchased policy was not at issue in *Calcutt*, §38-77-220 did not come into play. *Calcutt* decided a similar issue as the one in *Sweetser*, but in an entirely different setting – one that did not depend on the application of §38-77-220. In short, *Calcutt* had nothing to do with that statute and vice versa.

The Supreme Court's footnote in *Sweetser* merely indicates that *Calcutt* does not – and cannot – change the plain meaning of §38-77-220. That statute applies only to employer-purchased policies, and the Supreme Court's footnote just prevents anyone from claiming that *Calcutt* says otherwise. As discussed below, this is the only reading of the footnote that makes logical sense in light of what is – and what is not – found in the *Sweetser* opinion as a whole.

First, the phrasing of the footnote supports this interpretation. Had the Supreme Court intended to overrule *Calcutt* completely, it could have used clear language to that effect. For example, the Court could have said something like the following: “In light of our holding today, we overrule *State Farm Mut. Auto. Ins. Co. v. Calcutt*.” But the Court did not use that kind of broad language. Instead, the Court chose to include the limiting phrase “[t]o the extent [*Calcutt*] conflicts with this interpretation of §38-77-220 ...” 390 S.C. at 636, 703 S.E.2d at 511 n. 4. This demonstrates that the Court intended to do something other than overrule *Calcutt* in its entirety. Otherwise, there would have been no reason for the Court to begin the footnote with a qualifying phrase.

Second, the placement of the footnote is telling. The footnote that mentions *Calcutt* comes immediately after the Court’s statement that §38-77-220 applies only to employers purchasing automobile insurance policies. Clearly, then, the statement about the statute’s limited application must be the “this interpretation of §38-77-220” to which the footnote refers. Placed in this proper context, the meaning of the footnote becomes clear: If *Calcutt* could be construed as saying that §38-77-220 applies to non-employers, it is mistaken and overruled. The implicit corollary to this statement is that *Calcutt* remains intact to the extent it does not rely on that statute.

Third, it is significant that the body of the *Sweetser* opinion made absolutely no reference to *Calcutt*. The Court discussed *Ferguson* and *Williamson* in some detail, but never mentioned *Calcutt* outside of the footnote. If *Calcutt*’s fundamental holding was wrong – i.e. if worker’s compensation setoff provisions could never be valid in employee-purchased policies – the Court had ample opportunity to say so. For example, if the Court had believed that §38-77-220 was the only allowable basis for any type of

worker's compensation setoff, the Court could have made that blanket declaration and then overruled any and all cases to the contrary. But the Court did not do that. Instead, the Court focused on situations covered by §38-77-220 and did not address setoff provisions in other scenarios that do not involve that statute.

Similarly, the *Sweetser* Court did not mention *Calcutt* when it addressed the public policy issues. The Court concluded that the setoff provision in the employer-purchased policy comported with public policy, but the Court never said, or even suggested, that setoff provisions in other types of policies violate public policy. Again, if the Court had intended to make such a sweeping pronouncement, it had every opportunity to do so. The Court could have explained why the provision at issue in that case satisfied public policy and then proceeded to state that similar provisions in other types of policies would not. The Court did not do so, however, and reading such a conclusion into the opinion would be an unwarranted and unintended expansion of *Sweetser*'s scope.

Sweetser overruled *Calcutt* only to the extent the latter case could be construed as stating that §38-77-220 applies to non-employers. *Calcutt* never actually makes such a statement, but the Supreme Court apparently wanted to make sure no one could read that kind of statement into *Calcutt*. Taking that precautionary measure was the sole purpose for the partial – and conditional – overruling of *Calcutt*, and that is all the footnote in question expresses. Any other reading of the footnote ignores the limiting phrase at its beginning and bestows a level of meaning that the Supreme Court did not intend.⁷

⁷ At least one court has recently interpreted *Sweetser* in this manner – i.e. that it only overruled *Calcutt* in one limited respect. See *Siron v. Allstate Fire & Cas. Ins. Co.*, ___ F. Supp. 3d ___, 2016 WL 7229057 at *4 (D.S.C. Dec. 14, 2016) (“*Sweetser* overrules *Calcutt* only ‘to the extent’ it conflicts with the holding in *Sweetser* that S.C. Code §38-77-220 applies just to employers.”).

Brand appears to argue that even a limited overruling of *Calcutt* is sufficient for purposes of his position. Brand contends that if §38-77-220 does not apply to non-employer-purchased policies, then worker's compensation setoffs in such policies are never allowed. Yet, this line of reasoning is mistaken because it depends upon the wrong inquiry. Brand suggests that if no statute or policy specifically authorizes a worker's compensation setoff, then such provisions must be invalid. The proper question, however, is not whether any statute or policy allows for that type of setoff, but whether any statute or policy forbids it.⁸

"[I]nsurers have the right to limit their liability and to impose conditions on their obligations, provided they are not in contravention of public policy or a statutory prohibition." *B.L.G. Enters., Inc. v. First Fin. Ins. Co.*, 334 S.C. 529, 535-36, 514 S.E.2d 327, 330 (1999) (emphasis added). Significantly, the rule does not state that insurers have the right to limit their liability and impose conditions "as long as a statute or public policy allows it." Instead, this rule provides that insurers are free to write their policies however they wish, as long as the provisions do not violate the law of South Carolina. This might be a subtle distinction, but it is very important in the present case.

The question here is not whether S.C. Code §38-77-220 or any other statute allows a worker's compensation setoff provision to be in Brand's UIM policy. The question is whether any South Carolina law prohibits such a provision. This was precisely the issue in *Calcutt*, and this Court answered the question in the negative. That

⁸ The analysis is arguably different in the UM setting because UM coverage is mandatory and has minimum required limits. Thus, it is logical that an insurer would need express permission or authorization to include a provision that might take the insured's recovery under those limits. However, the same concern does not arise in the UIM context.

holding remains intact despite the footnote in *Sweetser*, and the trial court properly followed it.

(C) Conclusion

The provision at issue in this appeal reduces the damages that are recoverable under the UIM portion of the policy. In that sense, it is not a true setoff provision. It is, instead, a means of establishing when the UIM coverage becomes available. The provision is clearly stated, and it does not violate any South Carolina law. It also guards against double recoveries by an insured, which South Carolina's public policy disfavors. Therefore, the trial court properly upheld and applied the provision.

In addition, even if the provision is viewed as a "setoff," the trial court's decision is still correct. *Calcutt* expressly upholds this type of provision, and *Calcutt* remains good law even after *Sweetser* because the footnote in *Sweetser* overruled *Calcutt* only in one very limited respect that is not applicable here.

For these reasons, the Court should affirm the result in the trial court and allow the judgment in Allstate's favor to stand.

II.

The trial court properly ruled that Allstate's UIM coverage is, at a minimum, excess to the full amount of coverage provided by the carrier for Brand's employer.

As discussed above, Brand's primary argument on appeal is that Allstate should not receive any reduction in damages payable under its UIM policy for the worker's compensation benefits that Brand received. However, Brand also argues the trial court should have ruled that Allstate was the primary UIM carrier for any damages falling in between the at-fault driver's liability limits and the worker's compensation setoff to

which the employer's UIM carrier was entitled. In essence, Brand contends Allstate is not entitled to any reduction of damages payable for the amounts of UIM coverage Brand received from his employer's carrier. This assertion is contrary to the language of the policy and the law of South Carolina, and the trial court properly rejected it.

According to Brand, a "gap" in UIM coverage exists in this case due to the worker's compensation setoff provision in the UIM policy issued by his employer's carrier (Westfield). Pursuant to that provision, and S.C. Code §38-77-220, Brand argues (with no supporting documentation) that Westfield received a setoff of \$354,750.75, which was the amount of worker's compensation benefits Brand received. As a result, Westfield owed nothing to Brand until his damages exceeded that amount, plus the \$25,000 he received from the liability carrier (for a total of \$379,750.75). Citing that "fact," Brand claims his damages were "uncovered" from the point immediately after the liability limits to the end of the worker's compensation amount (i.e. \$25,000.01 to \$354,750.75) and that Allstate's UIM should be required to fill that "gap." Brand's position fails, however, for several reasons.

First, Brand's argument ignores the actual settlement he reached with Westfield. Brand suggests he was somehow prejudiced by Westfield receiving a setoff for the amount of his worker's compensation benefits. But this assertion is difficult to square with the fact that Brand received \$450,000 from Westfield's primary UIM policy. Despite having a substantial setoff, Westfield paid an even larger amount of UIM coverage to Brand. Thus, Brand received a significant sum of UIM coverage, and any claimed "coverage gap" was illusory.

The second reason Brand's argument fails, which is related to the first, is Brand's focus on the concept of UIM "coverage" rather than on compensation for his damages. As previously discussed, the acknowledged purpose of UIM coverage is to provide some protection for insureds against being undercompensated for their damages. Brand's situation must be viewed with this goal in mind. Although Westfield was entitled to and allegedly received a setoff for the amount of the worker's compensation benefits, that did not cause Brand to be undercompensated. To make such a claim is to ignore the fact that worker's compensation is, as its name indicates, a form of compensation for an injured party. Westfield did not receive a setoff for no good reason. It received the alleged setoff because Brand had already recovered \$354,750.75 in damages. Granted, as Brand has argued, worker's compensation does not include all the same elements of damages as a tort claim, but there is a significant amount of overlap between the two forms of recovery. This is precisely why the setoff exists – to prevent a double recovery for an insured.

Here, Brand is absolutely seeking to obtain a double recovery through Allstate's UIM coverage. He has already received a total of \$829,750.75 as agreed upon compensation for his damages (the total amount of which, or even the basis for which, does not appear in the record).⁹ As a result, Brand cannot credibly argue that he was uncompensated for any amount between the liability coverage and Westfield's post-setoff UIM coverage. The money that filled in that "coverage gap" might have been worker's

⁹ Brand is incorrect when he refers to Allstate's UIM coverage as "meaningless" under the trial court's order. That coverage is still available to compensate Brand if he obtains a verdict in excess of the coverages he has already received (or could have received). If Allstate's UIM coverage could be seen as "meaningless," it would only be because Brand has already recovered such a substantial amount of money for his claimed damages.

compensation benefits, but it was money nonetheless. If nothing else, those benefits compensated Brand for his lost wages and medical bills. The large settlement from Westfield then compensated him for any other damages. Yet, Brand now seeks to have Allstate pay him for those other damages a second time. This is undeniably a demand for a double recovery, which violates South Carolina public policy.

It is important to recall that Brand, through his “coverage gap” argument, seeks a judgment requiring Allstate to pay its UIM policy limits now – i.e. before obtaining any kind of excess verdict in the underlying tort case. This request is what constitutes a demand for a double recovery. The same concerns do not apply under the trial court’s order, which requires Brand to get a verdict in excess of \$1,025,000 before reaching Allstate’s coverage. If Brand were to achieve that result, he would not be getting a double recovery because his damages would exceed the amounts of the underlying coverages and benefits. In that event, Brand would be entitled to recover under Allstate’s UIM policy. Unless and until an excess verdict happens, however, Brand is only asking Allstate to compensate him a second time for damages that other coverages have already satisfied.

The third problem with Brand’s position stems from the actual language of Allstate’s UIM policy. As relevant to this issue, the policy states:

If the insured person was in, or getting into or out of a vehicle which is insured for this coverage under another policy, coverage under this policy will be excess. This means that when the insured person is legally entitled to recover damages in excess of the other policy limit, we will pay only the amount by which the damages exceed the limit of liability of that policy up to the limit of liability on this policy.

[R. pp. 69-70 (emphasis added).] This passage plainly demonstrates that Allstate's UIM coverage is excess to any UIM coverage on the vehicle involved in the accident.¹⁰ It further shows that Allstate is not obligated to pay any UIM coverage unless and until Brand is "legally entitled to recover damages in excess of the other policy limit." Obviously that condition has not yet occurred in the present case. Thus, in light of this plainly worded policy language, Brand's "coverage gap" theory is incorrect. It is not any sort of setoff for the primary UIM coverage that triggers Allstate's excess UIM coverage. Only a judgment in excess of the primary UIM limits can do that. The policy is unambiguous on that point, and the trial court correctly enforced the applicable provision.

At a minimum, this policy language entitles Allstate to receive credit for Westfield's UIM limits. Even if Allstate's "reduction in damages recoverable" provision were not enforced, the language quoted above would still prevent any recovery of Allstate's UIM coverage unless Brand had a judgment in excess of the primary UIM limits. The trial court determined Westfield's UIM limits (after the worker's compensation setoff) to be \$645,249.25. Brand only recovered \$450,000 of that amount through his settlement with Westfield, but Allstate gets credit for the full coverage amount. *See Cobb v. Benjamin, supra*. Allstate also receives credit for the at-fault driver's full liability limits of \$25,000. This means Allstate is entitled to a credit of \$670,249.25 even if the policy did not have a damages reduction provision. Therefore, even if the Court were to reverse as to that provision, there would still be a threshold verdict amount Brand would have to reach in order to recover from Allstate's policy.

¹⁰ Nothing in the record suggests that either Westfield or Brand disputed Westfield's status as the primary UIM carrier during the process that led to the \$450,000 settlement.

Yet, this lower threshold amount is not the correct result in this case. Allstate's policy does contain the "reduction in damages recoverable" provision, and as previously discussed, that provision comports with South Carolina law and public policy. Thus, a reduction based on the worker's compensation benefits is both proper and mandatory under the plainly worded language of Allstate's policy. For this reason, the trial court correctly held that the true threshold amount for purposes of Allstate's UIM coverage is \$1,025,000.

CONCLUSION

The trial court's decision applies the unambiguous terms of Allstate's policy. The result does not violate any South Carolina statute or public policy, and it prevents Brand from receiving a windfall through a double recovery. Therefore, the trial court's order is correct in all respects, and this Court should affirm the result below.

Respectfully submitted,

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RULE 211(b) CERTIFICATION

The undersigned, an attorney for the Respondent, certifies that this Final Respondent's Brief complies with the requirements of Rule 211(b), SCACR.

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**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Larry Brand, Appellant,

v.

Allstate Insurance Company, Respondent.

Appellate Case No. 2016-002050

Appeal From Williamsburg County
George C. James, Jr., Circuit Court Judge

Unpublished Opinion No. 2018-UP-050
Submitted November 1, 2017 – Filed January 31, 2018

AFFIRMED

Patrick James McLaughlin, of Wukela Law Office, of
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Laney, P.A., of Charleston, and R. Hawthorne Barrett, of
Turner Padget Graham & Laney, P.A., of Columbia, both
for Respondent.

PER CURIAM: Larry Brand appeals the circuit court's order granting partial summary judgment to Allstate Insurance Company (Allstate) in a declaratory judgment action determining Brand's entitlement to Allstate's underinsured

motorist (UIM) coverage. Brand argues the circuit court erred in holding (1) Allstate had the right to offset employee-purchased UIM coverage with paid workers' compensation benefits; (2) Allstate's UIM coverage was secondary UIM coverage for amounts \$25,000.01 through \$354,750.75; and (3) assuming the circuit court was correct in finding Allstate's UIM coverage was secondary, Allstate's UIM coverage was not triggered until a judgment exceeding \$1,025,000.00 was awarded. We affirm pursuant to Rule 220(b) and the following authorities:

1. As to issue 1: *Auto Owners Ins. Co. v. Newman*, 385 S.C. 187, 191, 684 S.E.2d 541, 543 (2009) ("A declaratory judgment action is neither legal nor equitable, and therefore, the standard of review is determined by the nature of the underlying issue."); *Auto-Owners Ins. Co. v. Hamin*, 368 S.C. 536, 540, 629 S.E.2d 683, 685 (Ct. App. 2006) ("When the purpose of the underlying dispute is to determine whether coverage exists under an insurance policy, the action is one at law. In an action at law tried without a jury, the appellate court will not disturb the [circuit] court's findings of fact unless they are found to be without evidence that reasonably supports those findings."); S.C. Code Ann. § 38-77-160 (2015) ("[Automobile insurance] carriers shall also offer, at the option of the insured, [UIM] coverage up to the limits of the insured liability coverage to provide coverage in the event that damages are sustained in excess of the liability limits carried by an at-fault insured or underinsured motorist or in excess of any damages cap or limitation imposed by statute."); *Broome v. Watts*, 319 S.C. 337, 341, 461 S.E.2d 46, 48 (1995) ("The very definition of UIM insurance mandates a [setoff]."); *State Farm Mut. Auto. Ins. Co. v. Calcutt*, 340 S.C. 231, 236, 530 S.E.2d 896, 898 (Ct. App. 2000) ("[A] setoff provision in a voluntary UIM policy would be equally enforceable whether purchased by an employer or an employee."), *overruled on other grounds by Sweetser v. S.C. Dep't of Ins. Reserve Fund*, 390 S.C. 632, 703 S.E.2d 509 (2010).

2. As to issues 2 and 3: *Williams v. Gov't Emps. Ins. Co.*, 409 S.C. 586, 594, 762 S.E.2d 705, 709 (2014) ("An insurance policy is a contract between the insured and the insurance company, and the policy's terms are to be construed according to the law of contracts."); *McGill v. Moore*, 381 S.C. 179, 185, 672 S.E.2d 571, 574 (2009) ("Where the contract's language is clear and unambiguous, the language alone determines the contract's force and effect."); *Cobb v. Benjamin*, 325 S.C. 573, 587-89, 482 S.E.2d 589, 596-97 (Ct. App. 1997) (holding a UIM carrier was entitled to credit for the full amount of primary liability coverage before the UIM coverage became payable, even when the plaintiff settled with the primary liability carrier for less than the policy limit); *Collins Music Co. v. Smith*, 332 S.C. 145, 147, 503 S.E.2d 481, 482 (Ct. App. 1998) ("It is well settled in this state that 'there

can be no double recovery for a single wrong and a plaintiff may recover his actual damages only once." (quoting *Taylor v. Hoppin' Johns, Inc.*, 304 S.C. 471, 475, 405 S.E.2d 410, 412 (Ct. App. 1991)).

AFFIRMED.¹

SHORT, KONDUROS, and GEATHERS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM WILLIAMSBURG COUNTY
Honorable George C. James, Jr., Circuit Court Judge

Appellate Case No. 2016-002050

Larry Brand.....Appellant,

v.

Allstate Insurance CompanyRespondent.

Unpublished Opinion No. 2018-UP-050
Submitted November 1, 2017 – Filed January 31, 2018

PETITION FOR REHEARING

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TABLE OF AUTHORITIES
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 S.C. Code Ann. §38-77-160 (2015)..... 1

Appellant, Larry Brand, respectfully requests the Court rehear the above matter. Appellant believes that the Court misapprehended certain elements of the Appellant's argument as follows:

I. SOUTH CAROLINA LAW POST-*SWEETSER* PROHIBITS INSURANCE CARRIERS FROM OFFSETTING EMPLOYEE-PURCHASED UNDERINSURED MOTORIST COVERAGE WITH WORKER'S COMPENSATION BENEFITS PAID.

Brand argues that the trial court had erred in failing to recognize that South Carolina law does not allow insurance carriers to offset employee-purchased underinsured motorist coverage with worker's compensation benefits paid.

In addressing this issue, the Court cites S.C. Code Ann. §38-77-160 (2015); *Broome v. Watts*, 319 S.C. 337, 461 S.E.2d 46, 48 (1995) ("The very definition of UIM insurance mandates a [setoff]."); and *State Farm Mut. Auto. Ins. Co. v. Calcutt*, 340 S.C. 231, 236, 530 S.E.2d 896, 898 (Ct. App. 2000) ("[A] setoff provision in a voluntary UIM policy would be equally enforceable whether purchased by an employer or an employee."), overruled on other grounds by *Sweetser v. S.C. Dep't of Ins. Reserve Fund*, 390 S.C. 632, 702 S.E.2d 509 (2010), emphasis added.

The "overruled on other grounds by *Sweetser*" language above is confusing, as Brand believes the grounds for overruling the *Calcutt* finding cited by the *Sweetser* court is precisely the issue presented in this case.

Brand's argument is based on not only S.C. Code §38-77-160, but also on S.C. Code §38-77-220, specifically the current state of South Carolina law post-*Sweetser* in regards to the ability of an insurance carrier to claim an offset for worker's compensation benefits paid on an employee-purchased underinsured motorist coverage. Brand specifically laid out the history of South Carolina case law related to this issue beginning

with *Ferguson v. State Farm Mut. Auto Ins. Co.*, 261 S.C. 96, 198 S.E.2d 522 (1973) (offset not allowed for employee-purchased UM policies); through *Williamson v. United States Fire Ins. Co.*, 314 S.C. 215, 442 S.E.2d 587 (1994) (offset allowed for employer-purchased UIM policies); and *State Farm Mutual Automobile Insurance Company v. Calcutt*, 340 S.C. 231, 530 S.E.2d 896 (Ct. App. 2000) (offset allowed for employee-purchased UIM policies); to *Sweetser*.

Brand argues that *Sweetser* specifically found that the setoff provided in S.C. Code §38-77-220 can only apply to employers who purchase automobile insurance policies, as only employers can “insure any liability under” compensation law. This finding came as the *Sweetser* court was specifically discussing S.C. Code §38-77-220 and how it “applies only to employers who are purchasing automobile policies.” *Sweetser* at 636, 511. It is at that point, that the *Sweetser* Court inserts a footnote into their decision which reads:

To the extent *State Farm Mut. Auto. Ins. Co. v. Calcutt*, 340 S.C. 231, 530 S.E.2d 896 (Ct. App. 2000) conflicts with this interpretation of §38-77-220, it is overruled. *Sweetser* at 636, 512)

The applicability of S.C. Code §38-77-220 is at the heart of this case and was at the heart of the *Sweetser* court’s decision to overruling *Calcutt*. As Brand argues, if this is not the correct interpretation of *Sweetser*, S.C. Code §38-77-220 would be meaningless -- the offset would be allowed regardless of statute. The Court will not construe a statute in a way that which leads to an absurd result or renders it meaningless. *Florence Cnty. Dem. Party v. Florence Cnty. Rep. Party*, 398 S.C. 124, 128, 727 S.E.2d 418, 420. See *Lancaster Cnty. Bar Ass’n v. S.C. Comm’n on Indigent Defense*, 380 S.C. 219, 670 S.E.2d 371 (2008) (in construing a statute, this Court will reject an interpretation which leads to an absurd result that could not have been intended by the General Assembly); *Gordon v. Phillips*

Utils., Inc., 362 S.C. 403, 608 S.E.2d 425 (2005) (it is presumed that the General Assembly intended to accomplish something by its choice or words and would not do a futile thing); Denene, Inc. v. City of Charleston, 352 S.C. 208, 574 S.E.2d 196 (2002) (this Court must presume the General Assembly did not intend a futile act, but rather intended its statutes to accomplish something); Hinton v. S.C. Dep't of Probation, Parole and Pardon Servs., 357 S.C. 327, 592 S.E.2d 335 (Ct. App. 2004) (the Court should seek a construction that gives effect to every word of a statute rather than adopting an interpretation that renders a portion meaningless).

Thus, if left unaltered, this Court's ruling would result in ruling that leaves S.C. Code §38-77-220 meaningless.

II. REGARDLESS OF THE CLEAR AND UNAMBIGUOUS LANGUAGE OF ALLSTATE'S INSURANCE CONTRACT, TO THE EXTENT THEIR POLICY PROVISIONS CONFLICT WITH SOUTH CAROLINA LAW, SOUTH CAROLINA LAW PREVAILS.

Brand argued two additional issues: whether Allstate's underinsured motorist coverage could be considered secondary under South Carolina law and, assuming arguendo, when Allstate's underinsured motorist coverage would be triggered.

In addressing these issues, the Court cites *Williams v. Gov't Emps. Ins. Co.*, 409 S.C. 586, 594, 762 S.E.2d 705, 709 (2014) ("An insurance policy is a contract between the insured and the insurance company, and the policy's terms are to be construed according to the law of contracts."); *McGill v. Moore*, 381 S.C. 179, 185, 672 S.E.2d 571, 574 (2009) ("Where the contract's language is clear and unambiguous, the language alone determines the contract's force and effect."); *Cobb v. Benjamin*, 325 S.C. 573, 587-89, 482 S.E.2d 589, 596-97 (Ct. App. 1997) (holding a UIM carrier was entitled to credit for the full amount of primary liability coverage before the UIM coverage became

payable, even when the plaintiff settled with the primary liability carrier for less than the policy limit); *Collins Music Co. v. Smith*, 332 S.C. 145, 147, 503 S.E.2d 481, 482 (Ct. App. 1998) (“It is well settled in this state that there can be no double recovery for a single wrong and plaintiff may recover his actual damages only once.” (quoting *Taylor v. Hoppin’ Johns, Inc.*, 304 S.C. 471, 475, 405 S.E.2d 410, 412 (Ct. App. 1991))).

Brand argues these findings result in Allstate being allowed to provide “underinsured” motorist coverage limitations that conflict with South Carolina’s statutory requirements for underinsured motorist coverage. In order for a carrier to comply with South Carolina law, the carrier must offer underinsured motorist coverage that provides coverage “in the event that damages are sustained in excess of the liability limits carried by an at-fault insured or underinsured motorist.” S.C. Code §38-77-160. South Carolina law further imposes restrictions on underinsured motorist coverage, such as the amount of coverage that must be offered, limits on stacking (both through S.C. Code §38-77-160) and the ability to offset benefits paid by worker’s compensation (through S.C. Code §38-77-220). Through statutory scheme, South Carolina has defined the underinsured motorist coverage which must be provided to South Carolinians.

Therefore any policy provision of Allstate’s that allows them to write coverage/limitations different than that prescribed by South Carolina law would be invalid. In this case, Allstate’s policy provision that claims an offset for worker’s compensation benefits paid on a policy that was not purchased by an employer conflicts with South Carolina law. Likewise, any policy provision that allows Allstate to claim they are the secondary underinsured carrier, when South Carolina law allows another carrier to exclude coverage for an element of damages “in excess of the liability limits carried by an at-fault insured” would similarly conflict with South Carolina law.

Allstate's policy acknowledges, their coverage is intended to be in full compliance with South Carolina law and any provision conflicting with that law is amended or eliminated to comply with the law. (R. pp. 155).

The trial court's rulings allow insurance carriers to offer something less than the underinsured motorist coverage defined by South Carolina law in that it allows non-employers to enjoy the benefits South Carolina law strictly limits to employer-purchased underinsured motorist coverage. To allow Allstate's coverage to not trigger until the full amount of both the liability coverage and the employer-purchased underinsured motorist coverage is exhausted would be to allow Allstate the benefit of S.C. Code §38-77-220, which South Carolina courts have specifically interpreted is strictly limited to employers, which Allstate is not.

When read in conjunction with South Carolina law, Allstate's policy language is not "clear and unambiguous." Specifically, by South Carolina law, there is no other underinsured motorist coverage for loss suffered from \$25,000.01 through \$354,750.75.

Allstate's policy reads:

If the insured person was in, on, getting into or out of a vehicle which is insured for this coverage under another policy, coverage under this policy will be excess. This means that when the insured person is legally entitled to recover damages in excess of the other policy limit, we will pay only the amount by which the damages exceed the limit of liability of that policy up to the limit of liability on this policy. (R. pp. 154-155).

This policy provision conflicts with South Carolina law, as it allows an employer-purchased policy to enjoy the benefit of a worker's compensation offset reserved solely for employer-purchased underinsured motorist coverage. S.C. Code §38-77-220 and Sweetser at 636, 511. Statutory provisions relating to an insurance contract are part of the contract as a matter of law. To the extent a policy provision conflicts with an applicable

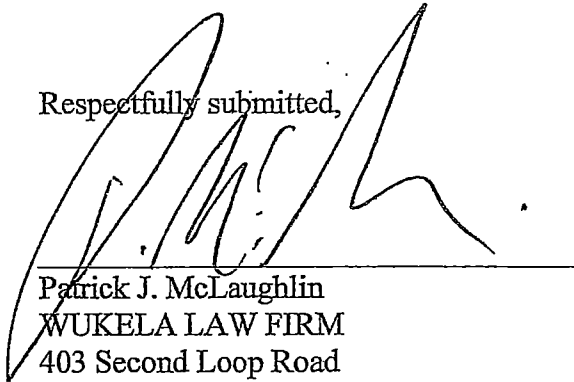
statutory provision, the statute prevails. Kay v. State Farm Mut. Auto. Ins. Co., 349 S.C. 446, 450, 562 S.E.2d 676, 678 (Ct. App. 2002).

If left unaltered, this Court's ruling would allow an insurance carrier's policy language to trump South Carolina law.

CONCLUSION

Based on the argument above, Brand respectfully requests that the Court grant this petition for rehearing.

Respectfully submitted,



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February 13, 2018

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM WILLIAMSBURG COUNTY
Court of Common Pleas

George C. James, Jr., Circuit Court Judge

Case No. 2014-CP-45-00644
(Appellate Case No. 2016-002050)

Larry Brand,.....Appellant,

v.

Allstate Insurance Company,.....Respondent.

RETURN TO PETITION FOR REHEARING

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The Respondent Allstate Insurance Company respectfully submits this Return in opposition to the Appellant's Petition for Rehearing pursuant to Rule 240(e), SCACR.

STATEMENT OF THE CASE

The genesis of this action is a motor vehicle accident that occurred on January 27, 2010. On that date, the Appellant Larry Brand was driving a truck owned by Evergreen Turf Corporation ("Evergreen"). Brand worked for Evergreen and was on-the-job when the truck was involved in a collision with another vehicle. The driver of the other vehicle (Cassandra Olivia Stone) was at fault for the collision. Brand sustained injuries as a result of the accident.

Several different insurance companies have coverage applicable to the accident. Progressive Insurance Company provided \$25,000 in liability coverage to the at-fault driver. American International South Insurance Company ("American") was Evergreen's worker's compensation carrier. Evergreen also had a policy with Westfield Insurance that provided \$1,000,000 in UIM coverage for its employees. Finally, Brand had a personal automobile policy from the Respondent Allstate Insurance Company that contained \$25,000 in UIM coverage.

Brand first commenced a worker's compensation claim, which American accepted. Brand and American ultimately settled that claim for a total amount of \$354,750.75. Of that amount, \$83,173.73 constituted payment for medical bills, and \$271,577.02 was for wages and related compensation.

Brand also filed a personal injury action against the at-fault driver in the Court of Common Pleas for Williamsburg County. Brand's attorney served Westfield and Allstate as UIM carriers in that action. Progressive Insurance Company, which had liability coverage for the defendant driver, tendered its \$25,000 limits in exchange for a covenant not to execute. Later, at mediation, Brand settled with Westfield for \$450,000 of its \$1,000,000 in UIM

coverage. The resulting policy release left Allstate as the lone UIM carrier defending the case, which the trial court has stayed pending the result of the present action.

In an attempt to answer questions about Brand's ability to recover UIM benefits under his Allstate policy, Brand filed a declaratory judgment action on December 15, 2014. After filing an Answer, which included counterclaims for declaratory judgment, Allstate moved for summary judgment on October 13, 2015. Allstate's motion argued, *inter alia*, that its policy contained a "reduction in damages recoverable" provision that meant Brand's damages had to exceed all other coverage available to him – including worker's compensation benefits – before he could be entitled to recover any of Allstate's UIM coverage.

Both parties submitted memoranda on the legal issues, and the motion went before the Honorable George C. James, Jr. for a hearing on January 7, 2016. Judge James took Allstate's motion under advisement at the conclusion of the hearing. Several months later, on August 31, 2016, Judge James issued an Order that granted Allstate's motion in part and denied it in part. Brand filed a timely motion asking Judge James to reconsider his decision, but the judge denied that motion, and Brand appealed.

After the final briefs and Record on Appeal were filed, the Court notified the parties that it intended to decide the case without oral arguments pursuant to Rule 215, SCACR. On January 31, 2018, the Court issued a unanimous, unpublished opinion (number 2018-UP-050) in which it affirmed the trial court's decision in full. The Appellant filed and served the current Petition for Rehearing on February 13, 2018.

STANDARD OF REVIEW

Under Rule 221(a), SCACR, a party seeking rehearing of an appellate court's decision must demonstrate "with particularity the points supposed to have been overlooked or misapprehended by the court."

ARGUMENT

I. The Court did not misapprehend or overlook any point regarding the state of the law in South Carolina law following the *Sweetser* decision.

Brand's first argument in the rehearing petition is that the Court erred in affirming the trial court's decision allowing Allstate to offset employee-purchased UIM coverage with worker's compensation benefits.¹ As he has done throughout this case, Brand attempts to support this argument by relying on a claim that the Supreme Court's decision in *Sweetser v. S.C. Dept. of Ins. Reserve Fund*² completely overruled a provision decision by this Court allowing such a setoff.³

Brand's argument does not identify any point that the Court is supposed to have overlooked or misapprehended. The parties' appellate briefs contained extensive discussion of this issue, and the Court clearly ruled on it. Indeed, Brand acknowledges the Court's ruling by citing the portion of the opinion in which the Court stated that *Calcutt* was "overruled on other grounds" by *Sweetser* (emphasis added). This was an unambiguous decision that the specific legal conclusion from *Calcutt* quoted by the Court remains good law despite *Sweetser*. Thus, the

¹ Here, it is important to note that Allstate relies primarily on a "reduction in damages recoverable provision," rather than a set-off provision. Unlike a true setoff provision, the "reduction in damages recoverable" language does not reduce any of the UIM coverage provided to an insured. The provision in Allstate's policy merely establishes when the UIM coverage is triggered. If an insured has damages that exceed the sum of all recoveries made under the other types of policies and benefits identified in the provision, then the full UIM limits are available.

² 390 S.C. 632, 702 S.E.2d 509 (2010)

³ *State Farm Mut. Auto. Ins. Co. v. Calcutt*, 340 S.C. 231, 530 S.E.2d 896 (Ct. App. 2000)

only reasonable inference to draw is that the Court considered all the arguments presented in the briefs and sided with Allstate's position. Brand obviously disagrees with the Court's decision, but that disagreement, without more, does not provide the basis for granting a rehearing.

Brand further argues that the Court's decision renders meaningless section 38-77-220 of the South Carolina Code. This assertion is without merit because that statute continues to serve the function the Supreme Court recognized in *Sweetser*. Section 38-77-220 specifically authorizes setoffs for UM coverage in employer-purchased policies, even if that setoff reduces the amount of available UM coverage below the statutory minimum. The statute continues to serve that purpose even after this Court's decision because the issue in the present case has nothing to do with §38-77-220. This case does not involve employer-purchased UM coverage; it involves employee-purchased UIM coverage. Thus, the statute continues to govern one type of situation, while *Calcutt* remains good law for another.

As fully discussed in the Final Respondent's Brief, the purpose of the Supreme Court's footnote in *Sweetser* is merely to ward off any future arguments that *Calcutt* could affect the Court's interpretation of §38-77-220 in any way. This is why the Supreme Court phrased the footnote the way it did.⁴ The conditional nature of the footnote ("To the extent [*Calcutt*] conflicts...") demonstrates that the Court viewed *Calcutt* and §38-77-220 as different authorities for different situations. The footnote, therefore, served only as a preemptive strike against any parties who might argue otherwise in the future. Otherwise, the Court would have simply overruled *Calcutt in toto* without any conditional or qualifying language. The fact that the

⁴ The footnote states: "To the extent *State Farm Mut. Auto. Ins. Co. v. Calcutt*, 340 S.C. 231, 530 S.E.2d 898 (Ct. App. 2000) conflicts with this interpretation, it is overruled." (emphasis added).

Supreme Court chose to make the overruling condition and limited is significant for purposes of the present case, and this Court's decision properly recognized that point.

Section 38-77-220 remains in full force and effect, and it continues to serve the specific purpose the Supreme Court recognized in *Sweetser*.⁵ This Court's decision in the current case does nothing to change that, and it certainly does not render the statute meaningless. Rather, the Court's decision acknowledges that the statute does not have any impact on the type of situation presented by this case. Brand's arguments to the contrary are incorrect, and the Court should deny his petition.

II. The Court correctly concluded that Allstate's policy does not violate any law or public policy of South Carolina.

Brand next argues that allowing Allstate to offset the full amounts of worker's compensation benefits, liability coverage and employer-purchased UIM coverage violates South Carolina law. The primary problem with this argument is that relies on the same premise as Brand's first issue – i.e. that *Sweetser* overruled *Calcutt* in its entirety and that S.C. Code §38-77-220 is the only means through which a UIM carrier can have a legal right to setoff. This is the “South Carolina law” that Brand claims Allstate's policy violates. Consequently, the two issues raised in the petition are inextricably linked. If *Sweetser* did not overrule the relevant portion of *Calcutt*, as this Court correctly concluded, then the “South Carolina law” upon which Brand bases his argument does not even exist. Thus, because Brand is incorrect about the impact of *Sweetser*, he cannot possibly be right in his second argument, either.

Brand also errs in his assertion that this Court's decision violates the purpose of UIM coverage by creating a “coverage gap” for any damages he sustained between \$25,000.01 and

⁵ This is not necessarily the only purpose the statute serves, but even just this one purpose is sufficient to defeat Brand's claim that the Court's decision makes the statute meaningless.

\$354,750.75. This Court has already rejected Brand's arguments on this issue, which were fully briefed by both parties, and that decision was correct for the following reasons.

First, Brand's argument ignores the actual settlement he reached with Westfield (his employer's UIM carrier). Brand suggests he was somehow prejudiced by Westfield receiving a setoff for the amount of his worker's compensation benefits. But this assertion is difficult to square with the fact that Brand received \$450,000 from Westfield's primary UIM policy. Despite having a substantial setoff, Westfield paid an even larger amount of UIM coverage to Brand. Thus, Brand received a significant sum of UIM coverage, and any claimed "coverage gap" was illusory.

The second reason Brand's argument fails, which is related to the first, is Brand's focus on the concept of UIM "coverage" rather than on compensation for his damages. The acknowledged purpose of UIM coverage is to provide some protection for insureds against being undercompensated for their damages. Brand's situation must be viewed with this goal in mind. Although Westfield was entitled to, and allegedly received, a setoff for the amount of the worker's compensation benefits, that did not cause Brand to be undercompensated. To make such a claim is to ignore the fact that worker's compensation is, as its name indicates, a form of compensation for an injured party. Westfield did not receive a setoff for no good reason. It received the alleged setoff because Brand had already recovered \$354,750.75 in damages. Granted, as Brand has argued, worker's compensation does not include all the same elements of damages as a tort claim, but there is a significant amount of overlap between the two forms of recovery. This is precisely why the setoff exists – to prevent a double recovery for an insured.

Here, Brand is absolutely seeking to obtain a double recovery through Allstate's UIM coverage. He has already received a total of \$829,750.75 as agreed upon compensation for his

damages. As a result, Brand cannot credibly argue that he was uncompensated for any amount between the liability coverage and Westfield's post-setoff UIM coverage. The money that filled in that "coverage gap" might have been worker's compensation benefits, but it was money nonetheless. If nothing else, those benefits compensated Brand for his lost wages and medical bills. The large settlement from Westfield then compensated him for any other damages. Yet, Brand now seeks to have Allstate pay him for those other damages a second time. This is undeniably a demand for a double recovery, which violates South Carolina public policy.

It is important to recall that Brand, through his "coverage gap" argument, seeks a judgment requiring Allstate to pay its UIM policy limits now – i.e. before obtaining any kind of excess verdict in the underlying tort case. This request is what constitutes a demand for a double recovery. The same concerns do not apply under the trial court's order, which requires Brand to get a verdict in excess of \$1,025,000 before reaching Allstate's coverage. If Brand were to achieve that result, he would not be getting a double recovery because his damages would exceed the amounts of the underlying coverages and benefits. In that event, Brand would be entitled to recover under Allstate's UIM policy. Unless and until an excess verdict happens, however, Brand is only asking Allstate to compensate him a second time for damages that other coverages have already satisfied. Stated another way, Brand wants to be paid as if he had received an excess verdict, without actually having to try the case and obtain one. The Court's decision correctly prevents that unfair result.

The third problem with Brand's position stems from the actual language of Allstate's UIM policy. As relevant to this issue, the policy states:

If the insured person was in, or getting into or out of a vehicle which is insured for this coverage under another policy, coverage under this policy will be excess. This means that when the insured person is legally entitled to recover damages in excess of the other

policy limit, we will pay only the amount by which the damages exceed the limit of liability of that policy up to the limit of liability on this policy.

[R. pp. 69-70 (emphasis added).] This passage plainly demonstrates that Allstate's UIM coverage is excess to any UIM coverage on the vehicle involved in the accident. It further shows that Allstate is not obligated to pay any UIM coverage unless and until Brand is "legally entitled to recover damages in excess of the other policy limit." Obviously that condition has not yet occurred in the present case. Thus, in light of this plainly worded policy language, Brand's "coverage gap" theory is incorrect. It is not any sort of setoff for the primary UIM coverage that triggers Allstate's excess UIM coverage. Only a judgment in excess of the primary UIM limits can do that. The policy is unambiguous on that point.

At a minimum, this policy language entitles Allstate to receive credit for Westfield's UIM limits. Even if Allstate's "reduction in damages recoverable" provision were not enforced, the language quoted above would still prevent any recovery of Allstate's UIM coverage unless Brand had a judgment in excess of the primary UIM limits. The trial court determined Westfield's UIM limits (after the worker's compensation setoff) to be \$645,249.25. Brand only recovered \$450,000 of that amount through his settlement with Westfield, but Allstate gets credit for the full coverage amount. *See Cobb v. Benjamin*, 325 S.C. 573, 482 S.E.2d 589 (Ct. App. 1997). Allstate also receives credit for the at-fault driver's full liability limits of \$25,000. This means Allstate is entitled to a credit of \$670,249.25 even if the policy did not have a damages reduction provision.

Yet, this lower threshold amount would not be the correct result in this case. Allstate's policy does contain the "reduction in damages recoverable" provision, and as discussed in the Final Respondent's Brief, that provision comports with South Carolina law and public policy.

Thus, a reduction based on the worker's compensation benefits (as well as the limits of liability coverage and primary UIM coverage) is both proper and mandatory under the plainly worded language of Allstate's policy. For this reason, this Court correctly affirmed the decision that the true threshold amount for purposes of Allstate's UIM coverage is \$1,025,000.

The trial court's decision did not create any situation that violates South Carolina law. To the contrary, the trial court correctly applied South Carolina law to the facts of this case and the unambiguous terms of Allstate's policy. This Court was right to affirm that decision, and nothing in the Court's opinion leads to a result that violates the law or public policy of South Carolina. For that reason, Brand's second argument fails, and the petition should be denied.

CONCLUSION

Brand has not demonstrated any specific points that this Court overlooked or misapprehended in reaching its decision to affirm the trial court's rulings. The Court fully considered all the arguments and authorities, and Brand has not shown any basis for disturbing the Court's ultimate decision. Therefore, the Court should deny Brand's petition and allow that decision to stand:

Respectfully submitted,

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February 22, 2018

The South Carolina Court of Appeals

Larry Brand, Appellant,

v.

Allstate Insurance Company, Respondent.

Appellate Case No. 2016-002050

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

Paul E. Shortz, Jr.

J.

[Signature]

J.

John S. Wilkerson, III

J.

Columbia, South Carolina

cc:

Patrick James McLaughlin, Esquire
 John S. Wilkerson, III, Esquire
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 The Honorable George C. James, Jr.

FILED

March 22, 2018