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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals
Case Tracking No. 2017-002234

APPEAL FROM RICHLAND COUNTY COURT OF COMMON PLEAS
Civil Action No. 2016-CP-40-5885
Jocelyn Newman, Circuit Court Judge

Stephany A. Connelly and James M. Connelly Plaintiffs

v.

The Main Street America Group; Old Dominion Insurance Company;
Allstate Fire and Casualty Insurance Company; Debbie Cohn; and
Freya Trezona Defendants

Of which, Allstate Fire and Casualty Insurance Company; The Main
Street America Group; and Old Dominion Insurance Company are Appellants
and

Of which, Stephany A. Connelly and James M. Connelly are Respondents

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FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: **2016CP4005885**

Stephany Connelly

Main Street America Group

James M Connelly

Old Dominion Insurance Company

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other _____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____
- ☐ STAYED DUE TO BANKRUPTCY
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:
Defendant's Motion to Dismiss is GRANTED by consent. Defendants Debbie Cohn and Freya Trozona are DISMISSED by consent. Motions for Summary Judgment filed by Plaintiffs (3/21/17), Defendants Main Street and Old Dominion (3/6/17) and Defendant Allstate (3/8/17) are

ORDER INFORMATION taken UNDER ADVISEMENT.

This order ☐ ends ☐ does not end the case. Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge Jocelyn Neuman Judge Code 2757 Date May 17, 2017

For Clerk of Court Office Use Only

This judgment was entered on the 2 day of June, 2017 and a copy mailed first class or placed in the appropriate attorney's box on this 2 day of June, 2017 to attorneys of record or to parties (when appearing pro se) as follows:

John D. Kassel

Alfred Johnston Cox
Ashley Berry Stratton

Thomas Frank Dougall

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court

Janette W. McBride

SCRPC Form 4C (10/2011)

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Stephany A. Connelly and James M.
Connelly,

Plaintiffs,

v.

The Main Street America Group, Old
Dominion Insurance Company, Allstate
Fire and Casualty Insurance Company,
Debbie Cohn, and Freya Trezona,

Defendants.

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

Civil Action No.: 2016-CP-40-05885

**ORDER GRANTING PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT AND DENYING
DEFENDANTS' MOTIONS FOR SUMMARY
JUDGMENT**

2017 OCT -2 PM 11:02
 JEFFREY L. COOPER, JR.
 CLERK OF COURT
 RICHLAND COUNTY

This matter comes before the Court upon Old Dominion Insurance Company and Main Street America Group's motion for summary judgment, filed on March 6, 2017;¹ Allstate Fire and Casualty Insurance Company's Motion for Summary Judgment and Memorandum in Support, filed on March 8, 2017; and Plaintiff's Notice of Motion and Motion for Summary Judgment, filed on March 21, 2017. A hearing was held on these motions at the Richland County Judicial Center on May 17, 2017.

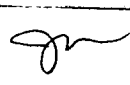
For the reasons set forth below, Plaintiff's motion for summary judgment is GRANTED; and Defendants' motions for summary judgment are DENIED.

STIPULATED FACTS²

On February 24, 2015, Stephany Connelly was riding as a passenger in a Jeep Compass vehicle owned and operated by Freya Trezona ("Trezona"). Ms. Connelly was occupying the vehicle with Trezona's permission. The vehicle had uninsured ("UM") liability insurance

¹ These defendants filed no formal motion but only a document entitled "Old Dominion Insurance Company and Main Street America Group's Memorandum in Support of Motion for Summary Judgment," which the Court has accepted as their motion.

² The parties filed a written Joint Stipulation of Fact on January 31, 2017.



coverage under a policy issued by The Main Street America Group ("Main Street")/Old Dominion Insurance Company ("Old Dominion"). Ms. Connelly maintained a separate policy of UM coverage with Allstate Fire and Casualty Insurance Company ("Allstate") covering her private vehicle. Trezona negligently caused an automobile collision, resulting in injuries to Ms. Connelly.

At the time of the collision, Ms. Connelly and Trezona were co-employees, both working within the course and scope of their employment with Apple One Employment Agency. Ms. Connelly made a claim for, and received benefits under, the South Carolina Workers' Compensation Act. Ms. Connelly and James Connelly ("the Connellys") then made claims for damages under the Trezona liability policy. Main Street/Old Dominion denied coverage, relying on the Workers' Compensation Act's exclusive remedy provision which provided tort immunity to Trezona. Faced with an absence of liability coverage, the Connellys made claims for UM benefits under both the Main Street/Old Dominion and Allstate policies. Both carriers denied the UM claims.

SCOPE OF REVIEW

A suit for declaratory judgment is neither legal nor equitable per se; the nature of the suit, therefore, is determined by the underlying issue. *Felts v. Richland County*, 303 S.C. 354, 400 S.E.2d 781 (1991). The issue here involves the determination of UM coverage. Therefore, the action is at law. *Horry County v. Ins. Reserve Fund*, 344 S.C. 493, 54 S.E.2d 637 (Ct. App. 2001). The parties' Joint Stipulations of Fact leave only a question of law for the trial court. *WDW Props. v. City of Sumter*, 342 S.C. 6, 535 S.E.2d 631 (2000). Summary judgment is appropriate where the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and the

moving party is entitled to judgment as a matter of law. *Turner v. Milliman*, 392 S.C. 116, 122, 708 S.E.2d 766, 769 (2011); *see also* Rule 56(c), SCRCP.

I. The Trezona Vehicle was an Uninsured Vehicle.

UM coverage is mandatory coverage in South Carolina. South Carolina Code §38-77-150(A) provides:

No automobile insurance policy or contract may be issued or delivered unless it contains a provision by endorsement or otherwise, herein referred to as the uninsured motorist provision, *undertaking to pay the insured all sums which he is legally entitled to recover as damages from the owner or operator of an uninsured motor vehicle*, within limits which may be no less than the requirements of Section 38-77-140. (Emphasis added).

Before UM benefits become available, the at-fault motorist must be operating an uninsured vehicle. Main Street/Old Dominion and Allstate deny that the Trezona Jeep Compass vehicle was an uninsured motor vehicle. The definition of "uninsured motor vehicle" is controlled by statute. South Carolina Code §38-77-30(14) and its relevant subsection (b) provide that an uninsured motor vehicle means a motor vehicle as to which "...there is nominally that insurance, but the insurer writing the same successfully denies coverage thereunder..." Here, Main Street/Old Dominion provided liability coverage on the Trezona vehicle but denied coverage for the Connellys' claims, relying on the exclusivity provision of the Workers' Compensation Act with its grant of immunity to Trezona.

With denial of the claims, the Trezona vehicle's UM coverage became operable. The Trezona vehicle falls within the plain language of the statute because Main Street/Old Dominion successfully denied any liability coverage. A similar result was reached in *Unisun Ins. Co. v. Schmidt*, 339 S.C. 362, 529 S.E.2d 280 (2000), where the Supreme Court found that the denial of liability coverage, due to vehicle being driven by a non-permissive driver, triggered the vehicle's

UM coverage. See also *Allstate Ins. Co. V. Wilson*, 259 S.C. 586, 593, 193 S.E.2d 527, 531 (1972) (appellant's uninsured motorist coverage became operative when respondent Allstate successfully denied liability for the other vehicle on ground that it was being driven without the consent of the insured).

The Defendants herein argue that Main Street/Old Dominion did not deny coverage but denied liability; thus the Trezona vehicle is an insured vehicle. This argument is foreclosed given both carriers' stipulation that Trezona was negligent and that her negligence was the cause of Ms. Connelly's injuries. Therefore, liability could not be denied only coverage. Moreover, both carriers cite to language in their respective policies defining an insured vehicle. According to Defendants the Trezona vehicle failed to meet the policy language definition of an uninsured vehicle. The Defendants made a coverage denial.

II. Ms. Connelly was "an Insured" Under Both Policies.

UM eligibility requires that Ms. Connelly be an insured under either policy. Ms. Connelly was occupying the Trezona vehicle as a passenger with permission of its owner. As such, she must be deemed an insured. An insured is defined by S.C. Code Ann. §38-77-30(7).

"Insured" means the named insured and, while resident of the same household, the spouse of any named insured and relatives of either, while in a motor vehicle or otherwise, and any person who uses with the consent, expressed or implied, of the named insured the motor vehicle to which the policy applies and a guest in the motor vehicle to which the policy applies or the personal representative of any of the above.

Main Street/Old Dominion stipulated that Ms. Connelly was an insured under their policy. Ms. Connelly was a named insured under the Allstate policy.

III. The South Carolina UM Statute Requires Only a Finding of Fault to Trigger Coverage.

A. The Legally Entitled to Recover Language of South Carolina Code § 38-77-150(A) is Ambiguous

The South Carolina UM statute provides that a UM policy must undertake to pay the insured all sums which "he is legally entitled to recover" as damages from the owner or operator of an uninsured motor vehicle. S.C. CODE ANN. § 38-77-150(A).

The novel question presented by this case is whether an innocent, injured motor vehicle passenger is entitled to UM coverage where the at-fault driver is immune from suit pursuant to the South Carolina Workers' Compensation Act. In other words, in the context of the UM statute, the Court must determine whether Ms. Connelly legally entitled to recover damages. Clearly Main Street/Old Dominion and Allstate answer the question in the negative. Defendants argue that if Trezona is immune from suit then Ms. Connelly cannot be legally entitled to recover damages from her. Indeed, Ms. Connelly has stipulated that she cannot recover damages for her injuries from Ms. Trezona. However, if the meaning of the statute is ambiguous and simply means the insured must demonstrate fault on the part of the uninsured driver then the discussion is far from over. Review of decisions from other jurisdictions addressing similar language and coming to different interpretations suggest ambiguity of this statutory language.

First, the statutory language is not defined in the statute or in either insurance policy. Second, various courts have entertained different interpretations. For example, Defendants rely on several cases from distant jurisdictions interpreting the "legally entitled to recover language" as a fatal obstacle in a plaintiff's ability to collect UM benefits. See *Otterberg v. Farm Bureau Mut. Ins. Co.*, 696 N.W. 24 (Iowa 2005); *Wachtler v. State Farm Mut. Auto. Ins. Co.*, 835 So. 2d 23 (Miss. 2003); and *State Farm Mutual Auto. Ins. Co. v. Slusher*, 325 S.W.3d (Ky. 2010). By

contrast, other courts have interpreted the same or similar language in a broader vein. See, e.g., *Torres v. Kansas City Fire and Marine*, 1993 OK 32, 849 P.2d 407 (Sup Ct. 1993) (finding the "legally entitled to recover" language to mean the insured must simply establish fault on the part of the uninsured motorist). The lack of a statutory or policy definition for the phrase "legally entitled to recover" and the parties' conflicting interpretations provide evidence of the statute's ambiguity. *Jenkins v. City of Elkins*, 230 W.Va. 335, 345, 738 S.E.2d 1, 11 (2012).

The cardinal rule of statutory interpretation is to ascertain and effectuate the intention of the legislature. *Sloan v. Hardee*, 371 S.C. 495, 498, 640 S.E. 2d 457, 459 (2007). If the statute is ambiguous then courts must construe the terms of the statute. *Town of Mt. Pleasant v. Roberts*, 393 S.C. 332, 342, 713 S.E.2d 278, 283 (2011). When interpreting the language of the UM statute the court must settle on a meaning that is consistent with the intent of the legislature. The UM statute is remedial in nature, enacted for the benefit of the injured persons, and is to be liberally construed so that the purpose intended may be accomplished. *Gunnels v. American Liberty Ins. Co.*, 251 S.C. 242, 247, 161 S.E.2d 822, 824 (1968).

Given the ambiguity of the statute, this Court must construe the language in a way that is consistent with the intent of the legislature. The purpose of the South Carolina Uninsured Motorist statute is to provide benefits to protect against the peril of injury or death by an uninsured motorist to an insured motorist, his family and the permissive users of his vehicle. *Ferguson v. State Farm Mut. Auto. Ins. Co.*, 261 S.C. 96, 100, 198 S.E.2d 522, 524 (1973). An uninsured motorist is a "financially unresponsive motorist." *O'Neill v. Smith*, 388 S.C. 246, 254, 695 S.E.2 531, 535 (2010). To an injured motorist, it makes no difference whether unresponsiveness is due to workers' compensation immunity or lack of insurance. In either instance, the availability of UM benefits furthers the protective goal of the legislature.

Interpreting the statute to require that plaintiffs first secure a judgment against the unresponsive driver undermines the legislative intent. Requiring simply a finding of fault against the unresponsive driver furthers the legislative intent. This Court is mindful of the lofty position our legislature has endowed UM coverage in our state. It is mandatory coverage. Attempts to restrict UM benefits are either void or themselves limited. See *Ferguson v. State Farm Mut. Auto. Ins. Co.*, 261 S.C. 96, 100, 198 S.E.2d 522, 524 (1973) (finding any limiting language in an insurance contract which had the effect of providing less protection than made obligatory by the statutes is contrary to public policy and is of no force and effect); *Wright v. Smallwood*, 308 S.C. 471, 419 S.E.2d 219 (1992) (efforts to deny UM benefits given the exclusivity provision of the S.C. Workers' Compensation Act were rebuffed).

In order to effectuate the legislative intent of protecting motorists from unresponsive drivers this Court is bound to interpret the "legally entitled to recover" language as requiring simply a showing of fault by the unresponsive driver and the amount of resulting damages. As will be seen, cases from other jurisdictions endorse this view.

A formal judgment against an unresponsive motorist is not the only way to demonstrate fault and trigger UM coverage. In *Ferguson v. State Farm*, 261 S.C. 96, 198 S.E. 2d 522 (1973) a judgment was rendered against the uninsured driver. However, the court concluded liability under the UM coverage arose after the liability of the uninsured motorist *had been established*. (Emphasis added. 261 S.C. at 102, 198 S.E.2 at 525). There was no language to suggest procuring a judgment was the only way to establish liability. In *Otterbacher v. Snyder*, 2015 WL 4068204 (Ct. App.), the court concluded that until Otterbacher obtained a judgment or *otherwise establishes liability* against the person who collided with him in a motor vehicle wreck, Otterbacher could not pursue the other driver's liability coverage. See *Park v. Safeco Ins. Co. Of*

Am., 251 S.C. 410, 413, 162 S.E. 2d 709, 710 (1968) (no right to recover can accrue to plaintiff against the insurance company until and unless the insured driver becomes liable to pay). In this case, the fault requirement is satisfied as the parties stipulated that Trezona was at fault in causing the wreck and injuries to Ms. Connelly.

Defendants suggest that the Connellys cannot trigger UM coverage as result of the collision because they are not legally entitled to recover damages from Trezona. This argument falls away when interpreting the statute to simply mean demonstrating fault and resulting damages. But Defendants argue further that the Connellys cannot satisfy the UM statute which requires them to file suit against Trezona. However, the language of S.C. CODE ANN. § 38-77-150(B) does not address any requirement of filing suit against the at fault driver.

B. Numerous Jurisdictions Allow UM Coverage Despite an Immune Adverse Driver.

South Carolina courts have not directly addressed the questions whether an at-fault driver causing injury, who is immune from suit, can nonetheless trigger the "legally entitled to recover" language of the UM statute, resulting in UM coverage. However, numerous cases from other jurisdictions have answered this question. To promote the public policy of protecting motorists injured by uninsured drivers, these courts interpret the language as simply requiring a showing of fault by the adverse driver.

In *Borjas v. State Farm Mut. Auto. Ins. Co.*, 33 P.2d 1265 (Colorado Ct. App. 2001), an injured insured was allowed to collect her own UM coverage after being hit by a vehicle driven by a police officer, despite the officer being cloaked with immunity under the Colorado Governmental Immunity Act (CGIA). Colorado's UM statute provided coverage for persons who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness, or disease, including death, resulting therefrom. §10-4-

609(1)(a), C.R.S. 2000. State Farm argued that its UM coverage was not available because the injured plaintiff was not legally entitled to recover damages from the at-fault driver who was immune from liability under the CGIA. State Farm cited various cases denying UM coverage because of immunity. In rejecting State Farm's position, the court found such an interpretation was inconsistent with the public policy expressed by the legislature. "If we were to follow that line of cases, members of the public would be deprived of the opportunity to protect themselves from loss under the circumstances presented here, a result not intended by the General Assembly." *Borjas*, 33 P.3d at 1269. The court noted the policy underlying the statute was to compensate innocent drivers for injuries received at the hands of one from whom damages cannot be recovered, stating

It is entirely consistent with this public policy to construe §10-4-609 to require that UM insurance coverage apply even though the tortfeasor is immune from liability under the CGIA. Negligent drivers and their employers who are immune from liability under the CGIA may not be financially irresponsible in the sense that they lack the ability to pay, but from the perspective of the injured innocent driver, the lack of legal responsibility has the same effect.

Id. at 1268.

Finally the *Borjas* court listed several other court decisions providing support for allowing UM coverage despite a claim of immunity. Giving a further rationale for its opinion, the Court relied on the reasoning expressed in the treatise 1 A. Widiss, *Uninsured and Underinsured Motorist Insurance* §7.14, at 388-90 (2d ed. 2001):

1) while tort immunity protects the tortfeasor, it should have no effect on an insurance company providing first party UM insurance coverage; 2) it is consistent with the strong public policy of providing insurance coverage to protect drivers when no compensation is available from the negligent tortfeasor; 3) tort immunities are personal to the tortfeasor and therefore cannot be raised by an insurer; and finally, 4) the immune tortfeasor is unaffected by providing UM coverage, while at the same time,

those disadvantaged by the immunity can protect themselves by purchasing UM insurance.

The court concluded that the phrase "legally entitled to recover damages" as used in the UM statute, simply meant that the insured injured motorist must be able to establish the fault of the uninsured motorist as the cause of her damages.

C. UM Coverage is Available Despite Worker's Compensation Immunity

While *Borjas* addressed the availability of UM coverage in the face of a governmental immunity, there is support for the same result applying where a workers' compensation immunity is in place. In *Barfield v. Barfield*, 742 P.2d 1107 (Oklahoma Sup. Ct. 1987), the widow of a deceased passenger killed by his at-fault co-employee driver was allowed to recover under her husband's UM policy despite receipt of workers' compensation benefits. The court found that tort immunity under the Workers' Compensation Act did not preclude recovery under one's own contract of insurance. Protection under a UM policy is a contractual right resting in the insured and co-existent with the protection under the workers' compensation act. A UM carrier does not stand in the tortfeasor's shoes and thus does not enjoy the benefits of the tortfeasor's immunity. The conditions for recovery under the UM policy can be satisfied even if the insured cannot prove all the elements of the tort against the uninsured driver.

Interpreting the Oklahoma UM statute, the court found the words "legally entitled to recover" simply meant the insured must establish fault on the part of the uninsured motorist which gave rise to damages and prove the extent of those damages. *Id.* at 1112. Recovery was based upon a contractual promise by the insurer to the insured to provide coverage in the event of injury or death resulting by fault of an uninsured motorist. "It would be manifestly unjust to permit the insurer to avoid its contractual duty as well as its statutorily imposed liability under 36

O.S. 1981 §3636, by its assertion of entitlement to third party tort immunity which would deny the insured's widow receipt of that for which the decedent has paid a premium." *Id.* at 1113.

The recovery of UM benefits is not limited to coverage paid for by the insured. UM benefits may also be sought even though the policy was procured and paid for by the employer. The Oklahoma Supreme Court found the estate of a fatally injured worker eligible for employer provided UM coverage even though a co-employee negligently caused the deadly wreck within the course and scope of employment. *Torres v. Kansas City Fire and Marine*, 849 P.2d 407 (Oklahoma Sup Ct. 1993). There, the decedent was a passenger in a company owned vehicle driven by a co-employee. The passenger's estate filed for and received workers' compensation benefits. The estate also brought an action against the carrier for the employer which had a UM endorsement on the vehicle. The UM carrier admitted the wreck was caused by the negligence of the co-employee driver. The carrier admitted the passenger was an insured under the policy by virtue of his occupancy in the vehicle. The trial court ruled as a matter of law recovery was proper under the UM endorsement and the matter of damages was tried to a jury. A jury verdict resulted for estate. The UM carrier appealed, arguing the UM endorsement was inapplicable because the negligent co-employee was immune from liability by virtue of the exclusivity provisions of the workers' compensation laws and thus the insured was not legally entitled to recover damages from the wrongdoer. Under the Oklahoma UM statute, the carrier was obligated only to provide coverage to an insured who is "legally entitled to recover damages" from the owners or operators of uninsured motor vehicles..." The Supreme Court of Oklahoma found the estate was entitled to benefits under the UM policy despite the co-employee negligent driver being immune from suit under the exclusivity provision of the state's workers' compensation act.

Relying on a previous decision, *Uptegraft v. Home Insurance Company*, 622 P.2d 681 (Oklahoma Sup. Ct. 1983), the court stated, "[W]e said the words legally entitled to recover simply mean that the insured must be able to establish fault on the part of the uninsured motorist which gives rise to damages and prove the extent of those damages." *Torres*, 849 P.2d at 410. The Court rejected the view the phrase required an insured to establish all the elements of a viable claim in tort.

The rationale for the court's decision was based upon contract interpretation aimed at effectuating the intention of the parties. The decedent was a passenger in the vehicle and thus an insured under the UM policy. The intention of the passenger, purchaser of the policy, and carrier, was for the insurance carrier to bear the loss for injury to an insured person uncompensated by an uninsured wrongdoer. Interpreting the phrase "legally entitled to recover damages" as simply requiring a showing of fault promotes the parties intention of providing coverage. To require more would result in the insured bearing the loss. Further, the court noted that UM benefits were recoverable despite the fact that the passenger did not pay any premiums for the UM coverage.

IV. UM Coverage Co-Exists with the Worker's Compensation Exclusive Remedy

To the extent that Defendants argue the Connellys' UM claim is precluded by the exclusivity provision of the Workers' Compensation Act, the argument lacks merit. First, the exclusivity provision of the Workers' Compensation Act does not bar UM claims. The exclusivity provision only bars tort actions. A UM claim is a contract action. *Wright v. Smallwood*, 308 S.C. 471, 419 S.E.2d 219 (Sup. Ct. 1992). Second, the Connellys have not sued (in tort or contract) Trezona or their mutual employer, Apple One. Thus, there is no breach of the exclusivity provision.

Third, the carefully balanced interests crafted by the Workers' Compensation Act are preserved despite allowance of UM benefits. Defendants cite *Machin v. Carus Corp*, 419 S.C. 527, 799 S.E.2d 468 (2017), to reiterate the underlying policy considerations of the statute: tort immunity for the employer while instituting a no fault scheme for work place injuries to insure swift and sure but limited compensation. Allowing UM coverage has no impact on the workers' compensation system. Trezona, Apple One and the workers' compensation carrier will be unaffected by the Connelly's receipt of UM benefits.³

Fourth, the Workers' Compensation Act anticipates recovery other than workers' compensation for workplace injuries. South Carolina Code §42-1-560 allows an injured plaintiff to seek an action for workplace injury against a third party despite receiving workers' compensation benefits. This is a recognition by the Legislature that workers' compensation benefits are limited in amount. They are designed to replace lost income and pay for medical expenses. Workers' compensation benefits, unlike tort damages, do not include loss of consortium, pain and suffering, emotional distress, loss of enjoyment of life or punitive damages. To suggest, as Defendants do, that workers' compensation will provide the Connellys with a remedy ignores the limited nature of that remedy. An insured is entitled to recover the same amount he would have recovered if the offending motorist had maintained liability insurance. *Ferguson v. State Farm Mut. Auto. Ins. Co.*, 261 S.C. 96, 101, 198 S.E.2d 522, 525 (1973).

Finally, Defendants' reliance on South Carolina Code §15-78-190 is misplaced. The South Carolina Tort Claims Act is the exclusive remedy to address injuries caused by tortious conduct of state actors. Defendants assert that §15-78-190 allows UM and underinsured benefits

³ In situations where the employer provided the UM coverage, the UM carrier may be entitled to an offset for workers' compensation benefits provided. See *Sweetser v. S.C. Dept of Insurance Reserve Fund*, 390 S.C. 632, 703 S.E.2d 509 (Sup. Ct. 2010) and S.C. CODE ANN. §38-77-220.



if a tort claims remedy is inadequate. If the legislature wanted a similar provision in the Workers' Compensation Act, it could have inserted one. As discussed, the legislature did just that, including §42-1-560 in the Act.

CONCLUSION

The public policy expressed by the legislature in enacting the South Carolina Uninsured Motorist statute, §38-77-150, is to protect motorists harmed by uninsured drivers. Uninsured drivers can include those who are without liability coverage and financially irresponsible, as well as drivers cloaked with immunity from a tort suit. From the perspective of the injured motorist, the outcome from meeting either type of driver on the roadway is the same: no compensation. To effectuate the intent of the legislature this Court must interpret the critical language "legally entitled to recover" as simply a requirement to demonstrate fault. Such an interpretation protects a passenger occupying a vehicle with permission despite her driver being cloaked with workers' compensation immunity from a tort suit. At the same time, recovery of UM benefits does not frustrate the goals of the workers' compensation statutes. Moreover, allowing UM recovery meets the expectation of the parties and certainly allows those who paid for UM insurance premiums the benefit of their bargain.

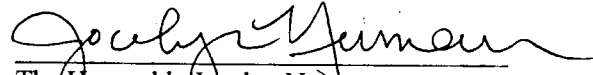
IT IS THEREFORE ORDERED that Plaintiffs' Motion for Summary Judgment is GRANTED.

IT IS FURTHER ORDERED that Old Dominion Insurance Company and Main Street America Group's motion for summary judgment and Allstate Fire and Casualty Insurance Company's Motion for Summary Judgment are DENIED.

IT IS FURTHER ORDERED that Plaintiffs' cause of action for breach of contract is DISMISSED, as it has not been argued and is, therefore, deemed abandoned.

IT IS FURTHER ORDERED that this matter be scheduled for a trial on the issue of damages.

AND IT IS SO ORDERED.


The Honorable Jocelyn Newman

September 28, 2017
Columbia, South Carolina.

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2016- CP-40-05885

Stephany A. Connelly

The Main Street America Group, Old Dominion

James Connelly

Insurance Company, Allstate Fire and Casualty
Insurance Company, Debbie Cohn, and Freya Treona

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Newman, J.

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCF; ☐ Rule 41(a), SCRCF (Vol. Nonsuit); ☐ Rule 43(k), SCRCF (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCF; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

SCRCF Form 4C (02/2017)

2757

Judge Code

Sept. 27, 2017

Date

Page 1 of 4

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 2 day of Oct, 2017 to attorneys of record or to parties (when appearing pro se) as follows:

John D. Kassel

Alfred Johnston Cox
Ashley Berry Stratton

Thomas Frank Dougall

ATTORNEY(S) FOR THE PLAINTIFF(S)

Court Reporter _____

ATTORNEY(S) FOR THE DEFENDANT(S)

Clerk of Court _____

Jeanette W. McBride



Claim# 0396105223

To Whom It May Concern:

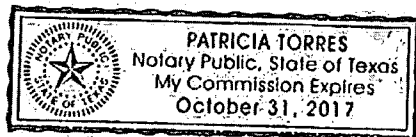
I, Olivia Leach, employee of Allstate Insurance Company Irving, Texas, do certify that the enclosed is a copy of policy and or declaration page for the above claim number, showing the coverages that were on the policy at the time of loss of 02/24/2015. The enclosed copy of policy and or declaration page was printed and mailed through Allstate's Output Processing Center.

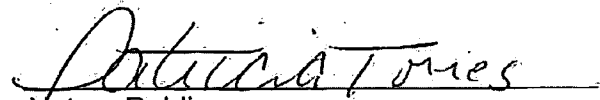


Claim Support

State of Texas, County of Dallas

On this 8th day of December 2016, before me personally appeared Olivia Leach 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.




Notary Public



Giles Ins Agy
3510 Bush River Rd
Columbia SC 29210

Information as of July 29, 2014

Policyholder(s) Page 1 of 3

James M &/Or Stephany Connelly

Policy number

Your Allstate agency is

Giles Ins Agy

(803) 798-4600



JAMES M &/OR STEPHANY
CONNELLY

You Can Continue Enjoying Great Savings and Safe Driving Rewards

Here's the Allstate® Your Choice Auto Insurance Renewal Offer

We're pleased to offer to renew your Allstate Fire and Casualty Insurance Company automobile policy with the Your Choice Auto Platinum Protection package for another six months, so you can continue enjoying extra savings and rewards, including*:

- Up to \$500 off your collision coverage deductible
- With safe driving, a credit of up to 5% can be applied to your next renewal premium.
- Enhanced accident forgiveness—Your rates won't go up just because of an accident

*This is a brief description and not part of any contract of insurance. Features are optional and subject to terms and conditions. Safe Driving Bonus is based on eligible premium for prior policy period.

And remember that you're getting these features on top of Allstate's quality coverage and 24/7 claim service. You can also qualify for a premium discount at your next renewal by having your insurance payments automatically deducted from your bank account through the Allstate® Easy Pay Plan. Just contact your Allstate agent or representative, or log into your account at allstate.com to apply. If you're already enrolled in the Allstate® Easy Pay Plan the discount has been applied to your policy.

How to Contact Us

The Platinum Protection package is just one of many Your Choice Auto options available. If you have a question or would like additional information about the Platinum Protection package or any package options, please contact your Allstate representative at (803) 798-4600. The enclosed Checklist outlines several additional convenient contact options. It also outlines what's in this package and walks you through any "next steps" you

(continued)



Policy number: [REDACTED]
Policy effective date: September 1, 2014
Your Allstate agency is Giles Ins Agy
(803) 798-4600

Page 2 of 3

may need to take. And for 24-hour-a-day, 7-day-a-week service and information, just call 1-800-ALLSTATE (1-800-255-7828).

We Appreciate Your Business

Thank you for choosing Allstate—where you get the peace of mind of knowing you, your family and your vehicle are protected by an established, experienced insurance provider offering service when and how you want it.

We appreciate the opportunity to help you protect what you have today and help prepare you for the future.

Sincerely,



Steven P. Sorenson
President, Allstate Fire and Casualty Insurance Company

RA732-2

027 010 039
140730A003721
1100000A3037210275C000140730235246004038001008026667

Policy number: [REDACTED]
 Policy effective date: September 1, 2014
 Your Allstate agency is: Giles Ins Ag
 (803) 798-4600



Page 3 of 3

Your Insurance Coverage Checklist

We're happy to have you as an Allstate customer! This checklist outlines what's in this package and provides answers to some basic questions, as well as any "next steps" you may need to take.

☐ **What's in this package?**

See the *guide to your welcome package* below for the documents that are included. **Next steps:** review your *Policy Declarations* to confirm you have the coverages, coverage limits, premiums and savings that you requested and expected. Read any *Endorsements* or *Important Notices* to learn about new policy changes, topics of special interest, as well as required communications. Keep all of these documents with your other important insurance papers.

☐ **Am I getting all the discounts I should?**

Confirm with your Allstate Agent that you're benefiting from all the discounts you're eligible to receive.

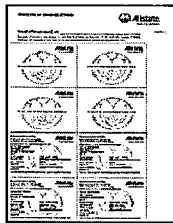
☐ **What about my bill?**

Unless you've already paid your premium in full, we'll send your bill separately. **Next steps:** please pay the minimum amount by the due date listed on it. You can also pay your bill online at allstate.com or by calling 1-800-ALLSTATE (1-800-255-7828). If you're enrolled in the Allstate® Easy Pay Plan, we'll send you a statement detailing your payment withdrawal schedule.

☐ **What if I have questions?**

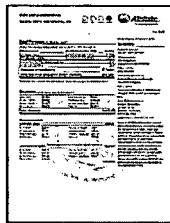
You can either contact your Allstate Agent or call us 24/7 at 1-800-ALLSTATE (1-800-255-7828) with questions about your coverage, or to update your coverages, limits or deductibles. Or visit us online at allstate.com.

A guide to your renewal package



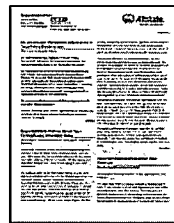
Proof of Insurance ID Cards

Your insurance cards are legally required, so please keep them in your vehicle at all times.



Policy Declarations*

The Policy Declarations lists policy details, such as your specific drivers, vehicles and coverages.



Important Notices

We use these notices to call attention to particularly important coverages, policy changes and discounts.

*** To make it easier to see where you may have gaps in your protection, we've highlighted any coverages you do not have in the Coverage Detail section in the enclosed Policy Declarations.**



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Thank you for choosing Allstate



Allstate
You're in good hands.

Proof of Insurance Card

Page 1 of 2

For your convenience, two insurance cards have been included for each vehicle. State law requires that one of these cards be kept in each vehicle. Please place them in your vehicles by the effective date.



IDSC

Allstate
You're in good hands.

Please use the printed Insurance Cards below.

Allstate
You're in good hands.

Please use the printed Insurance Cards below.

Allstate
You're in good hands.

Please use the printed Insurance Cards below.

Allstate
You're in good hands.

Please use the printed Insurance Cards below.

South Carolina Automobile Insurance Identification Card

Allstate Fire and Casualty Insurance Company
James M &/Or Stephany Connelly

POLICY NUMBER

EFFECTIVE DATE

09/01/14

EXPIRATION DATE

03/01/15

This card must be carried in the vehicle at all times as evidence of insurance.

YEAR / MAKE / MODEL
2011 Cadillac Escalade
VEHICLE ID NUMBER

Allstate
You're in good hands.

South Carolina Automobile Insurance Identification Card

Allstate Fire and Casualty Insurance Company
James M &/Or Stephany Connelly

POLICY NUMBER

EFFECTIVE DATE

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VEHICLE ID NUMBER

Allstate
You're in good hands.

South Carolina Automobile Insurance Identification Card

Allstate Fire and Casualty Insurance Company
James M &/Or Stephany Connelly

POLICY NUMBER

EFFECTIVE DATE

09/01/14

EXPIRATION DATE

03/01/15

This card must be carried in the vehicle at all times as evidence of insurance.

YEAR / MAKE / MODEL
2012 Acura Mdx
VEHICLE ID NUMBER

Allstate
You're in good hands.

South Carolina Automobile Insurance Identification Card

Allstate Fire and Casualty Insurance Company
James M &/Or Stephany Connelly

POLICY NUMBER

EFFECTIVE DATE

09/01/14

EXPIRATION DATE

03/01/15

This card must be carried in the vehicle at all times as evidence of insurance.

YEAR / MAKE / MODEL
2012 Acura Mdx
VEHICLE ID NUMBER

Allstate
You're in good hands.

Policy number: [REDACTED]
 Policy effective date: September 1, 2014
 Your Allstate agency is Giles Ins Agy
 (803) 798-4600

Please use the printed Insurance Cards below.

Please use the printed Insurance Cards below.

Please use the printed Insurance Cards below.

Please use the printed Insurance Cards below.

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.
 Giles Ins Agy
 (803) 798-4600
 3510 Bush River Rd
 Columbia, SC 29210
- **The coverage provided by your policy meets South Carolina's minimum financial responsibility requirements.**

If you have an accident or loss:

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 (803) 798-4600
 3510 Bush River Rd
 Columbia, SC 29210
- **The coverage provided by your policy meets South Carolina's minimum financial responsibility requirements.**

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Renewal auto policy declarations

Your policy effective date is September 1, 2014



Platinum



Gold



Standard



Value Plan

**Allstate**
You're in good hands.

Page 1 of 5

Total Premium for the Policy Period

Please review your insured vehicles and verify their VINs are correct.

Vehicles covered	Identification Number (VIN)	Premium
2012 Acura Mdx		\$326.67
2011 Cadillac Escalade		532.98
2014 Caliber		11.06

If you pay in installments*	\$870.71
If you pay in full (includes FullPay® Discount)	\$817.17

*If you pay less than the Pay in Full amount, you will be charged an installment fee(s).

Discounts (included in your total premium)

Passive Restraint	\$2.67	New Car	\$15.11
Multiple Policy	\$35.23	Prior Insurance Carrier	\$35.25
Antilock Brakes	\$43.82	Allstate Easy Pay Plan	\$20.74
The Good Hands People® Program	\$42.76	Good Payer	\$35.25
Premier Plus	\$246.70	Preferred Package	\$146.92

Total discounts	\$624.45
------------------------	-----------------

Discounts per vehicle

2012 Acura Mdx		\$241.64	
Passive Restraint	\$1.36	Multiple Policy	\$12.18
Antilock Brakes	\$18.75	The Good Hands	\$14.81
		People® Program	
Premier Plus	\$97.05	New Car	\$15.11
Prior Insurance	\$12.20	Allstate Easy Pay	\$7.18
Carrier		Plan	
Good Payer	\$12.20	Preferred Package	\$50.80
2011 Cadillac Escalade		\$382.81	
Passive Restraint	\$1.31	Multiple Policy	\$23.05
Antilock Brakes	\$25.07	The Good Hands	\$27.95
		People® Program	
Premier Plus	\$149.65	Prior Insurance	\$23.05
		Carrier	
Allstate Easy Pay	\$13.56	Good Payer	\$23.05
Plan			
Preferred Package	\$96.12		

Information as of July 29, 2014

SummaryNamed Insured(s)
James M &/Or Stephany ConnellyMailing address
[REDACTED]Policy number
[REDACTED]The company issuing the policy is:
Allstate Fire and Casualty Insurance Company
2775 Sanders Road
Northbrook, IL 60062-6127
1-800-ALLSTATE (1-800-255-7828)Policy period
Beginning **September 1, 2014** through
March 1, 2015 at 12:01 a.m. standard timeYour Allstate agency is
Giles Ins Agy
3510 Bush River Rd
Columbia SC 29210
(803) 798-4600
[REDACTED]

Some or all of the information on your Policy Declarations is used in the rating of your policy or it could affect your eligibility for certain coverages. Please notify us immediately if you believe that any information on your Policy Declarations is incorrect. We will make corrections once you have notified us, and any resulting rate adjustments, will be made only for the current policy period or for future policy periods. Please also notify us immediately if you believe any coverages are not listed or are inaccurately listed.

SC070820



Renewal auto policy declarations

Page 2 of 5

Policy number: [REDACTED]

Policy effective date: September 1, 2014

Your Allstate agency is Giles Ins Agy
(803) 798-4600**Listed drivers on your policy**

James Connelly

Stephany Connelly

Excluded drivers from your policy

None

Coverage detail for 2012 Acura Mdx

Coverage	Limits	Deductible	Premium
Automobile Liability Insurance			
 Bodily Injury	\$250,000 each person \$500,000 each accident	Not applicable	\$57.94
 Property Damage	\$100,000 each accident	Not applicable	\$32.74
Uninsured Motorists Insurance			
 Bodily Injury	\$250,000 each person \$500,000 each accident	Not applicable	\$19.60
 Property Damage	\$100,000 each accident	\$200	
Underinsured Motorists Insurance			
 Bodily Injury	\$100,000 each person \$300,000 each accident	Not applicable	\$52.20
 Property Damage	\$50,000 each accident		
 Auto Collision Insurance	Actual cash value	\$500	\$73.39
(Safe Driving Deductible Reward - deductible reduction amount available is \$200)			
 Auto Comprehensive Insurance	Actual cash value	\$250	\$58.40
 Towing and Labor Costs	\$100 each disablement	Not applicable	\$6.40
 Rental Reimbursement	up to \$30 per day for a maximum of 30 days	Not applicable	\$16.90
New Car Expanded Protection			
 Automobile Medical Payments	\$1,000 each person	Not applicable	\$5.93
Customizing Equipment - Collision	Not purchased*		
Customizing Equipment - Comprehensive	Not purchased*		
 Sound System	Not purchased*		

(continued)

SC010RBD

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Renewal auto policy declarations

Policy number: [REDACTED]
 Policy effective date: September 1, 2014
 Your Allstate agency is Giles Ins Agcy
 (803) 798-4600



Page 3 of 5

Coverage	Limits	Deductible	Premium
Tape	Not purchased*		
Total premium for 2012 Acura Mdx			\$326.67

* This coverage can provide you with valuable protection. Talk to your agent about the availability of this coverage and whether it meets your needs.

VIN [REDACTED]

Lienholder

American Honda Fin Corp (Retail)

Rating information

- Owns residence
- This vehicle is driven over 7,500 miles per year, 0-3 miles to work/school, married female age 35, good driver rate

Coverage detail for 2011 Cadillac Escalade

Coverage	Limits	Deductible	Premium
Automobile Liability Insurance			
Bodily Injury	\$250,000 each person \$500,000 each accident	Not applicable	\$72.75
Property Damage	\$100,000 each accident	Not applicable	\$42.39
Uninsured Motorists Insurance			
Bodily Injury	\$250,000 each person \$500,000 each accident	Not applicable	\$19.60
Property Damage	\$100,000 each accident	\$200	
Underinsured Motorists Insurance			
Bodily Injury	\$100,000 each person \$300,000 each accident	Not applicable	\$52.20
Property Damage	\$50,000 each accident		
Auto Collision Insurance	Actual cash value	\$500	\$110.43
(Safe Driving Deductible Reward - deductible reduction amount available is \$200)			
Auto Comprehensive Insurance	Actual cash value	\$250	\$209.30
Towing and Labor Costs	\$100 each disablement	Not applicable	\$6.40
Rental Reimbursement	up to \$30 per day for a maximum of 30 days	Not applicable	\$16.90
New Car Expanded Protection			
Automobile Medical Payments	\$1,000 each person	Not applicable	\$3.01
Customizing Equipment - Collision			
Customizing Equipment - Comprehensive			
Sound System	Not purchased*		

(continued)

SC010RB0



Renewal auto policy declarations
 Policy number: [REDACTED]
 Policy effective date: September 1, 2014
 Your Allstate agency is Giles Ins' Agy
 (803) 798-4600

Coverage	Limits	Deductible	Premium
Tape	Not purchased*		
Total premium for 2011 Cadillac Escalade			\$532.98

* This coverage can provide you with valuable protection. Talk to your agent about the availability of this coverage and whether it meets your needs.

VIN [REDACTED] Lienholder
 Bank of America Na

Rating information

- Owns residence
- This vehicle is driven over 7,500 miles per year, 0-3 miles to work/school, married male age 34, good driver rate

Coverage detail for 2014 Caliber

Coverage	Limits	Deductible	Premium
 Auto Collision Insurance	Actual cash value	\$50	\$8.40
(Safe Driving Deductible Reward - deductible reduction amount available is \$200)			
 Auto Comprehensive Insurance	Actual cash value	\$50	\$2.66
Total premium for 2014 Caliber			\$11.06

VIN [REDACTED] Rating information

- Owns residence
- This vehicle is used as a trailer

Your policy documents

Your automobile policy consists of this Policy Declarations and the documents in the following list. Please keep these together.

- South Carolina Auto Policy - AFA24
- Dividend Provision - PDU79
- Claim Satisfaction Guarantee Amendatory Endorsement - AP4780-1
- New Car Expanded Protection Endorsement - AU12876
- Amendatory Endorsement - AP4838

Important payment and coverage information

Here is some additional, helpful information related to your coverage and paying your bill:

- ▶ Your rate is lower because you are insuring multiple cars.
- ▶ Your Platinum Protection package contains the following features:
 - Accident Waiver Enhancement Plus feature
 - Safe Driving Deductible Reward feature
 - Safe Driving Bonus feature

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 SC010RBD

Renewal auto policy declarations

Policy number: [REDACTED]

Policy effective date: September 1, 2014

Your Allstate agency is Giles Ins Agy
(803) 798-4600



Allstate
You're in good hands.

Page 5 of 5

Allstate Fire and Casualty Insurance Company's Secretary and President have signed this policy with legal authority at Northbrook, Illinois.

Steven P. Sorenson
President

Susan L. Lees
Secretary

SC010880



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Important notices

Policy number: [REDACTED]
 Policy effective date: September 1, 2014
 Your Allstate agency is Giles Ins Agy
 (803) 798-4600



Page 1 of 1

Are You Eligible for New Discounts?

Did you know that you may now qualify for discounts that you previously were not eligible to receive? For instance, in many states, Allstate offers discounts for:

- Drivers who are age 55 and older who are no longer working;
- Young drivers, including students under the age of 25;
- Drivers who have completed approved driver training courses; and
- Drivers who also insure their homes with Allstate.

Please contact your Allstate representative for additional information about discount qualifications, as well as other discounts that may be available.

X67094-1

We're Applying the Good Payer Discount to Your Policy

Congratulations! You've once again earned the Good Payer Discount by consistently paying your insurance premiums on time for the last twelve months. We have added this discount back to your policy as of renewal effective date shown on the enclosed Policy Declarations.

Hang on to the Good Payer Discount savings—consider the Allstate® Easy Pay Plan or pay-by-phone.

We want you to keep saving money with the Good Payer Discount, so we offer several ways to make bill paying easier. Why not apply for the Allstate® Easy Pay Plan, which allows us to deduct your insurance premiums each month from your checking account? You'll save on postage, and you'll have fewer checks to write.

You can also pay your premium over the phone with either a check or credit card—just call us toll-free at 1-800-ALLSTATE (1-800-255-7828). You'll be asked for your policy number when you pay by phone, so it's a good idea to have your policy documents in hand before you call.

A few reminders about how the Good Payer Discount works:

- You will continue to receive the discount if we do not send you a cancellation notice for non-payment of premium (the notice we send when we don't receive your payment on

time). Again, we hope you'll consider the automatic bill payment plan we offer.

- If we send you a cancellation notice for non-payment of premium but you make a payment and your policy renews, the discount will be removed from your policy at the subsequent renewal. This change may cause your overall insurance premium to increase.
- If at any time this discount is removed from your policy, it will be added back to your policy at the next renewal if no cancellation notices for non-payment of premium have been sent to you within the most recent twelve-month period ending 34 days prior to your renewal effective date.

If you have any questions about this discount, or if you'd like more information about the different bill paying options available to you, please contact your Allstate representative. Or, call Allstate toll-free at 1-800-ALLSTATE (1-800-255-7828).

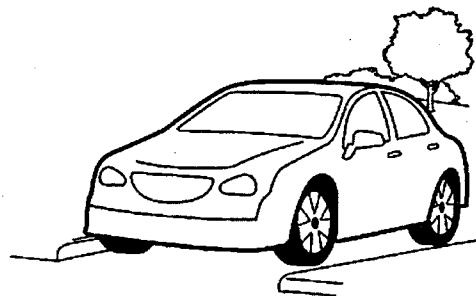
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[illegible]

Issued to:



Allstate Fire and Casualty Insurance Company
The Company Named in the Policy Declarations
A Stock Company---Home Office: Northbrook, Illinois 60062

AFA24

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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 I, **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.

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 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.

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. 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.

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.

Claim Satisfaction Guarantee Amendatory Endorsement – AP4780-1

Claim Satisfaction Guarantee Premium Credit Eligibility Requirements

You are eligible to receive a credit under the Claim Satisfaction Guarantee Premium Credit provision below, if the following credit eligibility requirements are met:

1. **you** are dissatisfied for any reason with any aspect of the claims experience for a loss covered under **your** policy;
2. **your** policy is in force on the date of that covered loss;
3. the Claim Satisfaction Guarantee Amendatory Endorsement applied to **your** policy on the date of that covered loss;
4. **we** have made a payment to **you** or on **your** behalf for that covered loss;
5. **you** have not previously received a credit or payment under the Claim Satisfaction Guarantee Premium Credit provision in connection with that covered loss;
6. **you** have not previously received a credit or payment under the Claim Satisfaction Guarantee Premium Credit provision in connection with another covered loss occurring during the same policy period involving the same vehicle; and
7. **you** have provided notice of **your** dissatisfaction with the claims experience to **us** within 180 days of the date of that covered loss. The notice that **you** submit must include **your** name, address, claim number, date of loss, phone number and the reason that **you** are dissatisfied with the claims experience. The required notice must be submitted via first class mail to **our** Customer Care Center at the following address: Allstate Insurance, CSG, P.O. Box 11904, Roanoke, VA 24022-9933; or by other means made available by **us** for the express purpose of receiving notices of dissatisfaction pursuant to this endorsement.

Claim Satisfaction Guarantee Premium Credit

We will give **you** a premium credit after **you** have met all of the Claim Satisfaction Guarantee Premium Credit Eligibility Requirements listed above. The credit will be in an amount equal to the six month premium listed on the Policy Declarations at the time of the covered loss for the vehicle listed on **your** Policy Declarations that was involved in the covered loss. If no vehicle listed on the Policy Declarations was involved in the covered loss, the premium credit will be equal to the premium for the vehicle listed on the Policy Declarations with the lowest premium amount.

If **your** policy has been in effect for more than six months at the time **we** receive **your** notice of dissatisfaction, the Claim Satisfaction Guarantee Premium Credit will be applied to **your** current policy period; however, if a premium credit amount exceeds the amount necessary to pay **your** policy period premium in full, **we** will either apply the remaining credit to **your** next policy period premium or **we** will pay **you** the remainder via check, at **our** discretion.

If **your** policy has been in effect for less than six months at the time **we** receive **your** notice of dissatisfaction, the Claim Satisfaction Guarantee Premium Credit will be applied to **your** policy renewal premium (if the premium credit amount exceeds **your** policy renewal premium, **we** will either apply the remaining premium credit to the next policy period premium or **we** will pay **you** the remainder via check during the policy renewal period, at **our** discretion); however, if **your** policy is cancelled during the policy period in which a covered loss occurred, the premium credit under this endorsement will not exceed the prorated premium charged by Allstate for the

applicable vehicle for the policy period, nor will it exceed the total premium **you** actually paid for the policy period for all vehicles on the policy.

Our concurrence with any reasons **you** state for **your** dissatisfaction is not a condition of the Claim Satisfaction Guarantee Premium Credit Eligibility Requirements, and **our** provision of a premium credit under this endorsement does not mean that **we** agree with any reasons **you** stated for **your** dissatisfaction.

This endorsement will not apply to **your** policy for any policy periods effective June 1, 2015 or after.

All other policy terms and conditions apply.

Policy Endorsement

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

Amendatory Endorsement – AP4838

In the **General** section, the **Loss Reduction And Other Items** provision is added:

Loss Reduction And Other Items

From time to time and at **our** sole discretion:

1. **we** may provide **you**, or allow others to provide **you**, with:
 - a) items, memberships, special offers, merchandise, points, rewards, airline miles, services, classes, seminars, or other things of value designed to help **you** or other persons insured under this policy manage the risks **you** or they face, including, but not limited to, loss reduction or safety-related items; or
 - b) items, memberships, special offers, merchandise, points, rewards, airline miles, services, classes, seminars, or things of any other type that **we** think may be of value to **you** or someone else insured under this policy.
2. **we** may make, or allow others to make, one or more of the following: charitable contributions, donations, or gifts.

These items, memberships, special offers, merchandise, points, rewards, airline miles, services, classes, seminars, charitable contributions, donations, gifts, or other things of value may be provided in any form, including, but not limited to, redemption codes, coupons, vouchers, and gift cards, and will not exceed \$75.00 per policy per policy term. At no point shall these things of value be provided in the form of cash.

All other policy terms and conditions apply.

Policy Endorsement

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

New Car Expanded Protection Endorsement — AU12876

When **New Car Expanded Protection** is shown on **your** Policy Declarations, the following changes are made to the **Protection Against Loss To The Auto** section of **your** policy:

- I. The following coverage is added:

New Car Expanded Protection

If **you** have both Auto Collision Insurance and Auto Comprehensive Insurance in effect under this policy at the time of loss to **your auto** and the loss is covered under either of those coverages, **we** will pay for loss to that **auto** as described in this endorsement if:

1. **your** Policy Declarations indicates that New Car Expanded Protection is in effect for that **auto**;
2. **you** are the original owner of that **auto**, or **you** lease that **auto**;
3. that **auto** was not previously titled; and
4. the loss occurs during a policy period that began any time during a calendar year in which that **auto** was two model years old or less.

New Car Expanded Protection does not automatically apply to any replacement **auto** or additional **auto** you acquire during the policy period.

A. Repair Provision

In the event of a covered loss, other than a total loss, due to physical damage to the **auto** to which New Car Expanded Protection applies, **we** will pay to repair that **auto**, without a deduction for depreciation. This Repair Provision does not apply to loss caused by fire, theft, larceny or flood.

The most **we** will pay to repair the **auto** will be the lesser of the following, reduced by any amount paid or payable under the Auto Collision Insurance or Auto Comprehensive Insurance of this policy and any deductible for which **you** are responsible under the Auto Collision Insurance or Auto Comprehensive Insurance of this policy:

1. 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
2. the actual cash value of the **auto** at the time of loss, which may include a deduction for depreciation.

We reserve the right to repair or replace the damaged property or part, or to pay for the loss in money.

If **we**, at **our** option, elect 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 from the loss and/or repair or replacement.

B. Replacement Provision

In the event of a covered total loss due to physical damage to the **auto** to which New Car Expanded Protection applies, **we** will pay to replace that **auto**. This Replacement Provision does not apply to loss caused by fire, theft, larceny or flood. This Replacement Provision does not apply to a leased vehicle.

The amount **we** will pay to replace the **auto** will not exceed the cost of a new **auto** of the same make and model with the same equipment or, if a new **auto** of the same make and model with the same equipment is not available, the cost of a new **auto** that is:

1. similar in size, class, body type and equipment; and
2. similar in price to the price **you** paid for the **auto** being replaced, as adjusted for inflation, but not to exceed an amount equal to 110% of the Manufacturer's Suggested Retail Price of the **auto** being replaced.

A new **auto** is one that has not been previously titled and is of the latest model year available at the time of the loss.

Any amounts payable under this Replacement Provision will be reduced by any amount paid or payable under the Auto Collision Insurance or Auto Comprehensive Insurance of this policy, any deductible for which **you** are responsible under the Auto Collision Insurance or Auto Comprehensive Insurance of this policy, and the dollar amount of unrepaid damage which occurred prior to the total loss of **your auto**.

C. Loan or Lease Gap Provision

In the event of a covered total loss due to physical damage to, or theft of, the **auto** to which New Car Expanded Protection applies, if the amount **you** owe at the time of loss under the terms of an auto loan or auto lease agreement to which that **auto** is subject exceeds the actual cash value of the **auto** at the time of the loss, then **we** will pay the difference between these amounts. This Loan or Lease Gap provision applies only to the original auto loan or auto lease written on **your auto**. **We** may pay **you** and the lienholder or lessor named on the Policy Declarations.

Any amounts payable under this Loan or Lease Gap Provision will be reduced by:

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

II. The following is added to the If There Is Other Insurance provision:

New Car Expanded Protection is excess over any other collectible insurance.

All other policy terms and conditions apply.

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.

Clough, Nancy

From: ClaimCenterAdmin@msagroup.com
Sent: Monday, September 14, 2015 2:54 PM
To: CertPolicyReq
Subject: Certified Policy Request

A Certified Policy is requested

Policy Number: [REDACTED]

Effective Date: 2014-03-09

Expiration Date: 2015-03-09

Date of Loss: 2015-02-24

Additional Instructions: null

Needed By: 2015-09-18

Return To: Steve Singleton - Richmond, VA



**THE
MAIN
STREET
AMERICA
GROUP**

NGM Insurance Company
Old Dominion Insurance Company
Main Street America Assurance Company
MSA Insurance Company
Information Systems and Services Corporation



September 16, 2015

TO WHOM IT MAY CONCERN:

This is to certify that the attached is a true and accurate copy of a Personal Auto policy issued to Debbie Cohn. This policy was issued under policy number [REDACTED] for the policy term 03/09/14 to 03/09/15.

Very truly yours,

Nancy Clough
Operations Supervisor
Integrated Customer Solutions

/a

enclosures

New England Region Office
55 West Street, Keene, NH 03431-3374 • (800) 258-5310

9/17/2015 9:04:03 AM

OLD DOMINION INSURANCE CO.
P.O. BOX 16100
JACKSONVILLE, FL 32245-6100

RENEWAL EFFECTIVE 03/09/2014
PERSONAL AUTO POLICY
ACCOUNT NUMBER [REDACTED]
POLICY PERIOD: 12:01 AM STANDARD TIME
FROM 03/09/2014 TO 03/09/2015

POLICYHOLDER SINCE 03/09/2012

NAMED INSURED

DEBBIE COHN
[REDACTED]

AGENCY

390176003
VISTA INSURANCE GROUP
P O BOX 5837
COLUMBIA, SC 29250

803 - 726 - 0550

THIS IS NOT A BILL

Description of Auto(s) or Trailer(s)																
AUTO	YEAR	TRADE NAME	MODEL	BODY TYPE	VEHICLE IDENTIFICATION NUMBER	ORIG. COST NEW	SYMBOLS				RATING		TERR	USE	AT	PR
							LS1	LS2	PH1	PH2	CLASS	SUB				
1	04	NISSA	PATHFI	4W			315	520	15	15				3	3	Y
2	12	JEEP	COMPAS	4W			300	490	14	14				1	2	Y

Coverage provided only where both Limit of Liability and Premium are shown.

PART (REFER TO FORM PP-0001 FOR COVERAGE DEFINITIONS)		1-04 NISSA	2-12 JEEP
A LIABILITY			
\$100,000 EACH PERSON \$300,000 EACH ACCIDENT		\$233.00	\$234.00
PROPERTY DAMAGE \$50,000 EACH ACCIDENT		\$152.00	\$163.00
B MEDICAL PAYMENTS			
\$5,000 EACH PERSON		\$30.00	\$23.00
C UNINSURED MOTORISTS			
\$100,000 EACH PERSON \$300,000 EACH ACCIDENT		\$17.00	\$17.00
PROPERTY DAMAGE \$50,000 SUBJECT TO \$200 DEDUCTIBLE		\$11.00	\$11.00
UNDERINSURED MOTORISTS			
\$100,000 EACH PERSON \$300,000 EACH ACCIDENT		\$47.00	\$47.00
PROPERTY DAMAGE \$50,000 EACH ACCIDENT		\$11.00	\$11.00
D LIMITS MIGHT BE REDUCED BY POLICY PROVISIONS OR LAW			
DAMAGE TO YOUR AUTO			
COLLISION LOSS			
ACV** LESS \$500 DEDUCTIBLE - STANDARD		\$139.00	\$248.00
COMPREHENSIVE (EXCLUDING COLLISION)			
ACV** LESS \$500 DEDUCTIBLE		\$110.00	\$137.00
TOWING AND LABOR - \$75 PER DISABLEMENT		\$8.00	\$8.00
TRANSPORTATION EXPENSES \$30/\$900		\$8.00	\$8.00
TOTAL PREMIUM BY VEHICLE		\$766.00	\$907.00

The Auto(s) or Trailer(s) described in this policy is (are) principally garaged at the above address unless otherwise stated here.

Auto Any loss under Physical Damage is payable as interest may appear to the Named Insured and:
2 Ally Financial, P.O. Box 8132, Cockeysville, MD 21030

12 MONTHS PREMIUM \$2,527.00

Endorsements made part of this policy at time of issue:

PP0001(06-98), 61-8643 (03-07), PP0488(05-13), PP0465 (06-98), PP1301(12-99), PP0302 (06-98), PP0303 (04-86),
PP0341(11-96), 61-8599 (09-11)

NO	DRIVER NAME	LICENSE NUMBER	DOB	SX	MR	VR	SC	DT	GS	DD	MD
1	DEBBIE COHN	[REDACTED]	01 22 56	F	M	3	N	N	N	N	N
2	HARRY TREZONA	[REDACTED]	04 20 88	M	S	1	N	N	N	N	N

** ACTUAL CASH VALUE

61-7621 (01/10) SEE REVERSE FOR ADDITIONAL INFORMATION
DATE PROCESSED 02/04/2014 INSURED

COUNTERSIGNATURE:
PG 1/2

AB 39

9/17/2015 9:04:04 AM

OLD DOMINION INSURANCE CO.
P.O. BOX 16100
JACKSONVILLE, FL 32245-6100

RENEWAL
PERSONAL AUTO POLICY
ACCOUNT NUMBER [REDACTED]
POLICY PERIOD: 12:01 AM STANDARD TIME
FROM 03/09/2014 TO 03/09/2015

EFFECTIVE 03/09/2014

POLICYHOLDER SINCE

03/09/2012

NAMED INSURED

DEBBIE COHN
[REDACTED]

AGENCY

390176003
VISTA INSURANCE GROUP
P O BOX 5837
COLUMBIA, SC 29250

803 - 726 - 0550

THIS IS NOT A BILL

Description of Auto(s) or Trailer(s)										ORIG. COST NEW		SYMBOLS		RATING		TERR	USE	AT	PR
AUTO	YEAR	TRADE NAME	MODEL	BODY TYPE	VEHICLE IDENTIFICATION NUMBER		LS1		LS2	PH1	PH2	CLASS	SUB						
3	08	VOLKS	PASSAT	SW			285		485	15	15					3	3	Y	

Coverage provided only where both Limit of Liability and Premium are shown.

PART (REFER TO FORM PP-0001 FOR COVERAGE DEFINITIONS)

3-08 VOLKS

A	LIABILITY	
	\$100,000 EACH PERSON \$300,000 EACH ACCIDENT	\$244.00
	PROPERTY DAMAGE \$50,000 EACH ACCIDENT	\$147.00
B	MEDICAL PAYMENTS	
	\$5,000 EACH PERSON	\$23.00
C	UNINSURED MOTORISTS	
	\$100,000 EACH PERSON \$300,000 EACH ACCIDENT	\$17.00
	PROPERTY DAMAGE \$50,000 SUBJECT TO \$200 DEDUCTIBLE	\$11.00
	UNDERINSURED MOTORISTS	
	\$100,000 EACH PERSON \$300,000 EACH ACCIDENT	\$47.00
	PROPERTY DAMAGE \$50,000 EACH ACCIDENT	\$11.00
D	LIMITS MIGHT BE REDUCED BY POLICY PROVISIONS OR LAW	
	DAMAGE TO YOUR AUTO	
	COLLISION LOSS	
	ACV** LESS \$500 DEDUCTIBLE - STANDARD	\$205.00
	COMPREHENSIVE (EXCLUDING COLLISION)	
	ACV** LESS \$500 DEDUCTIBLE	\$133.00
	TOWING AND LABOR - \$75 PER DISABLEMENT	\$8.00
	TRANSPORTATION EXPENSES \$30/\$900	\$8.00
	TOTAL PREMIUM BY VEHICLE	\$854.00

The Auto(s) or Trailer(s) described in this policy is (are) principally garaged at the above address unless otherwise stated here:

Auto Any loss under Physical Damage is payable as interest may appear to the Named Insured and:

12 MONTHS PREMIUM \$2,527.00

Endorsements made part of this policy at time of issue:

PP0001(06-98), 61-8643 (03-07), PP0488(05-13), PP0465 (06-98), PP1301(12-99), PP0302 (06-98), PP0303 (04-86),
PP0341(11-96), 61-8599 (09-11)

NO	DRIVER NAME	LICENSE NUMBER	DOB			SX	MR	VR	SC	DT	GS	DD	MD
1	DEBBIE COHN	[REDACTED]	01	22	56	F	M	3	N	N	N	N	N
2	HARRY TREZONA	[REDACTED]	04	20	88	M	S	1	N	N	N	N	N

** ACTUAL CASH VALUE

61-7621 (01/10) SEE REVERSE FOR ADDITIONAL INFORMATION
DATE PROCESSED 02/04/2014 INSURED

COUNTERSIGNATURE:
PG 2/2

AB 39

9/17/2015 9:04:04 AM

LIBERALIZATION CLAUSE

"If the company revises this policy form with respect to policy provisions, endorsements or rules by which the insurance hereunder could be extended or broadened without additional premium charge, such insurance as is afforded hereunder shall be so extended or broadened effective immediately upon approval of such revision during the policy period by the appropriate insurance supervisory authority."

LOSS PAYABLE CLAUSE PP 0305 (8/86) / AIP 1003 (8/86)*Loss Payee:**

Loss or damage under this policy shall be paid, as interest may appear, to you and the loss payee shown in the Declarations or in this endorsement. This insurance with respect to the interest of the loss payee, shall not become invalid because of your fraudulent acts or omissions unless the loss results from your conversion, secretion or embezzlement of "your covered auto." However, we reserve the right to cancel the policy as permitted by policy terms and the cancellation shall terminate this agreement as to the loss payee's interest. We will give the same advance notice of cancellation to the loss payee as we give to the named insured shown in the Declarations.

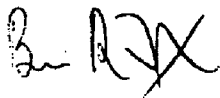
When we pay the loss payee we shall, to the extent of payment, be subrogated to the loss payee's rights of recovery.

OLD DOMINION INSURANCE COMPANY

In Witness Whereof, we have caused this policy to be executed and attested, and, if required by state law, this policy shall not be valid unless countersigned by our authorized representative. Old Dominion Insurance Company is a stock insurance company with headquarters located at:

4601 Touchton Road, East, Suite 3300
P.O. Box 16100
Jacksonville, FL 32245-6100
Telephone: (904) 642-3000

If you have questions about your policy, contact your agent at the address and phone number shown on the Declaration page. You may also contact the company at the address and phone number shown above.



Bruce R. Fox
Secretary



Gregg A. Effner
President

60-5231 (9/11)

WHEN THE FRONT OF THIS IS A RENEWAL OR AMENDED DECLARATION, YOUR POLICY HAS BEEN UPDATED TO SHOW CURRENT INFORMATION. IT SHOULD BE KEPT IN A SAFE PLACE ALONG WITH YOUR OTHER INSURANCE RECORDS.

THE APPROPRIATE POLICY PROVISIONS OR POLICY AGREEMENTS, ALONG WITH RELATED FORMS, CONTAINING AGREEMENTS AND CONDITIONS, WERE PREVIOUSLY ISSUED TO YOU. THOSE THAT HAVE NOT CHANGED AND STILL APPLY HAVE NOT BEEN INCLUDED AGAIN. WE ARE ENCLOSING ONLY THOSE FORMS THAT APPLY FOR THE FIRST TIME OR HAVE CHANGED DURING THE PAST POLICY TERM. IF, HOWEVER, YOU WOULD LIKE THE COMPLETE SET, PLEASE CONTACT YOUR AGENT.

THE ENDORSEMENTS APPEARING IN STATE COVERAGE PARTS AND THE FORMS SHOWN ON THE DECLARATIONS APPLY ONLY WHEN THE COVERAGES TO WHICH THEY PERTAIN ARE IDENTIFIED ON THE DECLARATION PAGE WITH A PREMIUM CHARGE OR THE ABBREVIATION "INCL".

IF YOUR POLICY IS BEING AMENDED THE REASON FOR THE CHANGE IS PRINTED ON THIS DECLARATION PAGE.

If you are billed directly by the company, your premium billing will be mailed to you in about two weeks. At that time, you will be offered the option of our convenient monthly installment plan or payment in full, whichever you choose.

9/17/2015 9:04:04 AM

**SO. CAROLINA AUTOMOBILE INSURANCE IDENTIFICATION CARD
POLICY MEETS SC FINANCIAL RESPONSIBILITY REQUIREMENTS**COMPANY 40231 OLD DOMINION INSURANCE CO.
JACKSONVILLE, FL. 32245-6100POLICY NUMBER
01G0167FEFFECTIVE DATE
03/09/2014EXPIRATION DATE
03/09/2015YEAR MAKE/MODEL
2004 NISSA PATHFI

VEHICLE IDENTIFICATION NUMBER

803 - 726 - 0550

AGENCY/COMPANY ISSUING CARD
VISTA INSURANCE GROUP
P O BOX 5837
COLUMBIA SC 29250

INSURED

DEBBIE COHN

SEE IMPORTANT NOTICE ON REVERSE SIDE

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**THIS CARD MUST BE KEPT IN THE INSURED
VEHICLE AND PRESENTED UPON DEMAND**

IN CASE OF ACCIDENT: Report all accidents to your Agent/Company as soon as possible. Obtain the following information:

1. Name and address of each driver, passenger and witness.
2. Name of Insurance Company and policy number for each vehicle involved.

To report a claim call: (877) 4CLAIMS or (877) 425-2467

ACORD 50 (1/83)

ACORD CORPORATION 1983

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01G0167FEFFECTIVE DATE
03/09/2014EXPIRATION DATE
03/09/2015YEAR MAKE/MODEL
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VEHICLE IDENTIFICATION NUMBER

803 - 726 - 0550

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VISTA INSURANCE GROUP
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POLICY MEETS SC FINANCIAL RESPONSIBILITY REQUIREMENTS**COMPANY 40231 OLD DOMINION INSURANCE CO.
JACKSONVILLE, FL. 32245-6100

POLICY NUMBER 01G0167F EFFECTIVE DATE 03/09/2014 EXPIRATION DATE 03/09/2015

YEAR 2008 MAKE/MODEL VOLKS PASSAT VEHICLE IDENTIFICATION NUMBER [REDACTED]

AGENCY/COMPANY ISSUING CARD
VISTA INSURANCE GROUP
P O BOX 5837
COLUMBIA SC 29250

INSURED

DEBBIE COHN
[REDACTED]

SEE IMPORTANT NOTICE ON REVERSE SIDE

**SO. CAROLINA AUTOMOBILE INSURANCE IDENTIFICATION CARD
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JACKSONVILLE, FL. 32245-6100

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P O BOX 5837
COLUMBIA SC 29250

INSURED

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ACORD 50 (1/83)

ACORD CORPORATION 1983

PERSONAL AUTO POLICY

YOUR PERSONAL AUTO POLICY QUICK REFERENCE

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	Coverages and Amounts of Insurance	
		Beginning On Page
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PERSONAL AUTO**PERSONAL AUTO POLICY****AGREEMENT**

In return for payment of the premium and subject to all the terms of this policy, we agree with you as follows:

DEFINITIONS**A. Throughout this policy, "you" and "your" refer to:**

1. The "named insured" shown in the Declarations; and
2. The spouse if a resident of the same household.

If the spouse ceases to be a resident of the same household during the policy period or prior to the inception of this policy, the spouse will be considered "you" and "your" under this policy but only until the earlier of:

1. The end of 90 days following the spouse's change of residency;
2. The effective date of another policy listing the spouse as a named insured; or
3. The end of the policy period.

B. "We", "us" and "our" refer to the Company providing this insurance.**C. For purposes of this policy, a private passenger type auto, pickup or van shall be deemed to be owned by a person if leased:**

1. Under a written agreement to that person; and
2. For a continuous period of at least 6 months.

Other words and phrases are defined. They are in quotation marks when used.

D. "Bodily injury" means bodily harm, sickness or disease, including death that results.**E. "Business" includes trade, profession or occupation.****F. "Family member" means a person related to you by blood, marriage or adoption who is a resident of your household. This includes a ward or foster child.****G. "Occupying" means in, upon, getting in, on, out or off.****H. "Property damage" means physical injury to, destruction of or loss of use of tangible property.****I. "Trailer" means a vehicle designed to be pulled by a:**

1. Private passenger auto; or
2. Pickup or van.

It also means a farm wagon or farm implement while towed by a vehicle listed in 1. or 2. above.

J. "Your covered auto" means:

1. Any vehicle shown in the Declarations.
2. A "newly acquired auto".

3. Any "trailer" you own.**4. Any auto or "trailer" you do not own while used as a temporary substitute for any other vehicle described in this definition which is out of normal use because of its:**

- a. Breakdown;
- b. Repair;
- c. Servicing;
- d. Loss; or
- e. Destruction.

This Provision (J.4.) does not apply to Coverage For Damage To Your Auto.

K. "Newly acquired auto":**1. "Newly acquired auto" means any of the following types of vehicles you become the owner of during the policy period:**

- a. A private passenger auto; or
- b. A pickup or van, for which no other insurance policy provides coverage, that:
 - (1) Has a Gross Vehicle Weight of less than 10,000 lbs.; and
 - (2) Is not used for the delivery or transportation of goods and materials unless such use is:

- (a) Incidental to your "business" of installing, maintaining or repairing furnishings or equipment; or
- (b) For farming or ranching.

2. Coverage for a "newly acquired auto" is provided as described below. If you ask us to insure a "newly acquired auto" after a specified time period described below has elapsed, any coverage we provide for a "newly acquired auto" will begin at the time you request the coverage.

- a. For any coverage provided in this policy except Coverage For Damage To Your Auto, a "newly acquired auto" will have the broadest coverage we now provide for any vehicle shown in the Declarations. Coverage begins on the date you become the owner. However, for this coverage to apply to a "newly acquired auto" which is in addition to any vehicle shown in the Declarations, you must ask us to insure it within 14 days after you become the owner.

If a "newly acquired auto" replaces a vehicle shown in the Declarations, coverage is provided for this vehicle without your having to ask us to insure it.

- b. Collision Coverage for a "newly acquired auto" begins on the date you become the owner. However, for this coverage to apply, you must ask us to insure it within:

- (1) 14 days after you become the owner if the Declarations indicate that Collision Coverage applies to at least one auto. In this case, the "newly acquired auto" will have the broadest coverage we now provide for any auto shown in the Declarations.
- (2) Four days after you become the owner if the Declarations do not indicate that Collision Coverage applies to at least one auto. If you comply with the 4 day requirement and a loss occurred before you asked us to insure the "newly acquired auto", a Collision deductible of \$500 will apply.

- c. Other Than Collision Coverage for a "newly acquired auto" begins on the date you become the owner. However, for this coverage to apply, you must ask us to insure it within:

- (1) 14 days after you become the owner if the Declarations indicate that Other Than Collision Coverage applies to at least one auto. In this case, the "newly acquired auto" will have the broadest coverage we now provide for any auto shown in the Declarations.
- (2) Four days after you become the owner if the Declarations do not indicate that Other Than Collision Coverage applies to at least one auto. If you comply with the 4 day requirement and a loss occurred before you asked us to insure the "newly acquired auto", an Other Than Collision deductible of \$500 will apply.

PART A – LIABILITY COVERAGE

INSURING AGREEMENT

- A. We will pay damages for "bodily injury" or "property damage" for which any "insured" becomes legally responsible because of an auto accident. Damages include prejudgment interest awarded against the "insured". We will settle or defend, as we consider appropriate, any claim or suit asking for these damages. In addition to our limit of liability, we will pay all defense costs we incur. Our duty to settle or defend ends when our limit of liability for this coverage has been exhausted by payment of judgments or settlements. We have no duty to defend any suit or settle any claim for "bodily injury" or "property damage" not covered under this policy.
- B. "Insured" as used in this Part means:
1. You or any "family member" for the ownership, maintenance or use of any auto or "trailer".
 2. Any person using "your covered auto".
 3. For "your covered auto", any person or organization but only with respect to legal responsibility for acts or omissions of a person for whom coverage is afforded under this Part.
 4. For any auto or "trailer", other than "your covered auto", any other person or organization but only with respect to legal responsibility for acts or omissions of you or any "family member" for whom coverage is afforded under this Part. This Provision (B.4.) applies only if the person or organization does not own or hire the auto or "trailer".

SUPPLEMENTARY PAYMENTS

In addition to our limit of liability, we will pay on behalf of an "insured":

1. Up to \$250 for the cost of bail bonds required because of an accident, including related traffic law violations. The accident must result in "bodily injury" or "property damage" covered under this policy.
2. Premiums on appeal bonds and bonds to release attachments in any suit we defend.
3. Interest accruing after a judgment is entered in any suit we defend. Our duty to pay interest ends when we offer to pay that part of the judgment which does not exceed our limit of liability for this coverage.
4. Up to \$200 a day for loss of earnings, but not other income, because of attendance at hearings or trials at our request.
5. Other reasonable expenses incurred at our request.

EXCLUSIONS

- A. We do not provide Liability Coverage for any "insured":
1. Who intentionally causes "bodily injury" or "property damage".
 2. For "property damage" to property owned or being transported by that "insured".

3. For "property damage" to property:

- a. Rented to;
- b. Used by; or
- c. In the care of, that "insured".

This Exclusion (A.3.) does not apply to "property damage" to a residence or private garage.

4. For "bodily injury" to an employee of that "insured" during the course of employment. This Exclusion (A.4.) does not apply to "bodily injury" to a domestic employee unless workers' compensation benefits are required or available for that domestic employee.

5. For that "insured's" liability arising out of the ownership or operation of a vehicle while it is being used as a public or livery conveyance. This Exclusion (A.5.) does not apply to a share-the-expense car pool.

6. While employed or otherwise engaged in the "business" of:

- a. Selling;
- b. Repairing;
- c. Servicing;
- d. Storing; or
- e. Parking;

vehicles designed for use mainly on public highways. This includes road testing and delivery. This Exclusion (A.6.) does not apply to the ownership, maintenance or use of "your covered auto" by:

- a. You;
- b. Any "family member"; or
- c. Any partner, agent or employee of you or any "family member".

7. Maintaining or using any vehicle while that "insured" is employed or otherwise engaged in any "business" (other than farming or ranching) not described in Exclusion A.6.

This Exclusion (A.7.) does not apply to the maintenance or use of a:

- a. Private passenger auto;
- b. Pickup or van; or
- c. "Trailer" used with a vehicle described in a. or b. above.

8. Using a vehicle without a reasonable belief that that "insured" is entitled to do so. This Exclusion (A.8.) does not apply to a "family member" using "your covered auto" which is owned by you.

9. For "bodily injury" or "property damage" for which that "insured":

- a. Is an insured under a nuclear energy liability policy; or
- b. Would be an insured under a nuclear energy liability policy but for its termination upon exhaustion of its limit of liability.

A nuclear energy liability policy is a policy issued by any of the following or their successors:

- a. Nuclear Energy Liability Insurance Association;
- b. Mutual Atomic Energy Liability Underwriters; or
- c. Nuclear Insurance Association of Canada.

B. We do not provide Liability Coverage for the ownership, maintenance or use of:

1. Any vehicle which:

- a. Has fewer than four wheels; or
- b. Is designed mainly for use off public roads.

This Exclusion (B.1.) does not apply:

- a. While such vehicle is being used by an "insured" in a medical emergency;
- b. To any "trailer"; or
- c. To any non-owned golf cart.

2. Any vehicle, other than "your covered auto", which is:

- a. Owned by you; or
- b. Furnished or available for your regular use.

3. Any vehicle, other than "your covered auto", which is:

- a. Owned by any "family member"; or
- b. Furnished or available for the regular use of any "family member".

However, this Exclusion (B.3.) does not apply to you while you are maintaining or "occupying" any vehicle which is:

- a. Owned by a "family member"; or
- b. Furnished or available for the regular use of a "family member".

4. Any vehicle, located inside a facility designed for racing, for the purpose of:

- a. Competing in; or
- b. Practicing or preparing for; any prearranged or organized racing or speed contest.

LIMIT OF LIABILITY

- A.** The limit of liability shown in the Declarations for each person for Bodily Injury Liability is our maximum limit of liability for all damages, including damages for care, loss of services or death, arising out of "bodily injury" sustained by any one person in any one auto accident. Subject to this limit for each person, the limit of liability shown in the Declarations for each accident for Bodily Injury Liability is our maximum limit of liability for all damages for "bodily injury" resulting from any one auto accident.

The limit of liability shown in the Declarations for each accident for Property Damage Liability is our maximum limit of liability for all "property damage" resulting from any one auto accident.

This is the most we will pay regardless of the number of:

1. "Insureds";
2. Claims made;
3. Vehicles or premiums shown in the Declarations; or
4. Vehicles involved in the auto accident.

- B.** No one will be entitled to receive duplicate payments for the same elements of loss under this coverage and:

1. Part B or Part C of this policy; or
2. Any Underinsured Motorists Coverage provided by this policy.

OUT OF STATE COVERAGE

If an auto accident to which this policy applies occurs in any state or province other than the one in which "your covered auto" is principally garaged, we will interpret your policy for that accident as follows:

- A.** If the state or province has:

1. A financial responsibility or similar law specifying limits of liability for "bodily injury" or "property damage" higher than the limit shown in the Declarations, your policy will provide the higher specified limit.
2. A compulsory insurance or similar law requiring a nonresident to maintain insurance whenever the nonresident uses a vehicle in that state or province, your policy will provide at least the required minimum amounts and types of coverage.

- B.** No one will be entitled to duplicate payments for the same elements of loss.

FINANCIAL RESPONSIBILITY

When this policy is certified as future proof of financial responsibility, this policy shall comply with the law to the extent required.

OTHER INSURANCE

If there is other applicable liability insurance we will pay only our share of the loss. Our share is the proportion that our limit of liability bears to the total of all applicable limits. However, any insurance we provide for a vehicle you do not own shall be excess over any other collectible insurance.

PART B - MEDICAL PAYMENTS COVERAGE**INSURING AGREEMENT**

- A.** We will pay reasonable expenses incurred for necessary medical and funeral services because of "bodily injury":

1. Caused by accident; and
2. Sustained by an "insured".

We will pay only those expenses incurred for services rendered within 3 years from the date of the accident.

- B.** "Insured" as used in this Part means:

1. You or any "family member":
 - a. While "occupying"; or
 - b. As a pedestrian when struck by:
 - a motor vehicle designed for use mainly on public roads or a trailer of any type.
2. Any other person while "occupying" "your covered auto".

EXCLUSIONS

We do not provide Medical Payments Coverage for any "insured" for "bodily injury":

1. Sustained while "occupying" any motorized vehicle having fewer than four wheels.

2. Sustained while "occupying" "your covered auto" when it is being used as a public or livery conveyance. This Exclusion (2.) does not apply to a share-the-expense car pool.
3. Sustained while "occupying" any vehicle located for use as a residence or premises.
4. Occurring during the course of employment if workers' compensation benefits are required or available for the "bodily injury".
5. Sustained while "occupying", or when struck by, any vehicle (other than "your covered auto") which is:
 - a. Owned by you; or
 - b. Furnished or available for your regular use.
6. Sustained while "occupying", or when struck by, any vehicle (other than "your covered auto") which is:
 - a. Owned by any "family member"; or
 - b. Furnished or available for the regular use of any "family member".

However, this Exclusion (6.) does not apply to you.

7. Sustained while "occupying" a vehicle without a reasonable belief that that "insured" is entitled to do so. This Exclusion (7.) does not apply to a "family member" using "your covered auto" which is owned by you.
8. Sustained while "occupying" a vehicle when it is being used in the "business" of an "insured". This Exclusion (8.) does not apply to "bodily injury" sustained while "occupying" a:
 - a. Private passenger auto;
 - b. Pickup or van that you own; or
 - c. "Trailer" used with a vehicle described in a. or b. above.
9. Caused by or as a consequence of:
 - a. Discharge of a nuclear weapon (even if accidental);
 - b. War (declared or undeclared);
 - c. Civil war;
 - d. Insurrection; or
 - e. Rebellion or revolution.
10. From or as a consequence of the following, whether controlled or uncontrolled or however caused:
 - a. Nuclear reaction;
 - b. Radiation; or
 - c. Radioactive contamination.
11. Sustained while "occupying" any vehicle located inside a facility designed for racing, for the purpose of:
 - a. Competing in; or
 - b. Practicing or preparing for; any prearranged or organized racing or speed contest.

LIMIT OF LIABILITY

- A. The limit of liability shown in the Declarations for this coverage is our maximum limit of liability for each person injured in any one accident. This is the most we will pay regardless of the number of:
 1. "Insureds";
 2. Claims made;
 3. Vehicles or premiums shown in the Declarations; or
 4. Vehicles involved in the accident.
- B. No one will be entitled to receive duplicate payments for the same elements of loss under this coverage and:
 1. Part A or Part C of this policy; or
 2. Any Underinsured Motorists Coverage provided by this policy.

OTHER INSURANCE

If there is other applicable auto medical payments insurance we will pay only our share of the loss. Our share is the proportion that our limit of liability bears to the total of all applicable limits. However, any insurance we provide with respect to a vehicle you do not own shall be excess over any other collectible auto insurance providing payments for medical or funeral expenses.

PART C – UNINSURED MOTORISTS COVERAGE

INSURING AGREEMENT

- A. We will pay compensatory damages which an "insured" is legally entitled to recover from the owner or operator of an "uninsured motor vehicle" because of "bodily injury":
 1. Sustained by an "insured"; and
 2. Caused by an accident.

The owner's or operator's liability for these damages must arise out of the ownership, maintenance or use of the "uninsured motor vehicle".

Any judgment for damages arising out of a suit brought without our written consent is not binding on us.

- B. "Insured" as used in this Part means:

1. You or any "family member".
2. Any other person "occupying" "your covered auto".

3. Any person for damages that person is entitled to recover because of "bodily injury" to which this coverage applies sustained by a person described in 1. or 2. above.

- C. "Uninsured motor vehicle" means a land motor vehicle or trailer of any type:

1. To which no bodily injury liability bond or policy applies at the time of the accident.
2. To which a bodily injury liability bond or policy applies at the time of the accident. In this case its limit for bodily injury liability must be less than the minimum limit for bodily injury liability specified by the financial responsibility law of the state in which "your covered auto" is principally garaged.

3. Which is a hit-and-run vehicle whose operator or owner cannot be identified and which hits:
 - a. You or any "family member";
 - b. A vehicle which you or any "family member" are "occupying"; or
 - c. "Your covered auto".
4. To which a bodily injury liability bond or policy applies at the time of the accident but the bonding or insuring company:
 - a. Denies coverage; or
 - b. Is or becomes insolvent.

However, "uninsured motor vehicle" does not include any vehicle or equipment:

1. Owned by or furnished or available for the regular use of you or any "family member".
2. Owned or operated by a self-insurer under any applicable motor vehicle law, except a self-insurer which is or becomes insolvent.
3. Owned by any governmental unit or agency.
4. Operated on rails or crawler treads.
5. Designed mainly for use off public roads while not on public roads.
6. While located for use as a residence or premises.

EXCLUSIONS

- A. We do not provide Uninsured Motorists Coverage for "bodily injury" sustained:
 1. By an "insured" while "occupying", or when struck by, any motor vehicle owned by that "insured" which is not insured for this coverage under this policy. This includes a trailer of any type used with that vehicle.
 2. By any "family member" while "occupying", or when struck by, any motor vehicle you own which is insured for this coverage on a primary basis under any other policy.
- B. We do not provide Uninsured Motorists Coverage for "bodily injury" sustained by any "insured":
 1. If that "insured" or the legal representative settles the "bodily injury" claim without our consent.
 2. While "occupying" "your covered auto" when it is being used as a public or livery conveyance. This Exclusion (B.2.) does not apply to a share-the-expense car pool.
 3. Using a vehicle without a reasonable belief that that "insured" is entitled to do so. This Exclusion (B.3.) does not apply to a "family member" using "your covered auto" which is owned by you.
- C. This coverage shall not apply directly or indirectly to benefit any insurer or self-insurer under any of the following or similar law:
 1. Workers' compensation law; or

2. Disability benefits law.

- D. We do not provide Uninsured Motorists Coverage for punitive or exemplary damages.

LIMIT OF LIABILITY

- A. The limit of liability shown in the Declarations for each person for Uninsured Motorists Coverage is our maximum limit of liability for all damages, including damages for care, loss of services or death, arising out of "bodily injury" sustained by any one person in any one accident. Subject to this limit for each person, the limit of liability shown in the Declarations for each accident for Uninsured Motorists Coverage is our maximum limit of liability for all damages for "bodily injury" resulting from any one accident.

This is the most we will pay regardless of the number of:

1. "Insureds";
2. Claims made;
3. Vehicles or premiums shown in the Declarations; or
4. Vehicles involved in the accident.

- B. No one will be entitled to receive duplicate payments for the same elements of loss under this coverage and:

1. Part A. or Part B. of this policy; or
2. Any Underinsured Motorists Coverage provided by this policy.

- C. We will not make a duplicate payment under this coverage for any element of loss for which payment has been made by or on behalf of persons or organizations who may be legally responsible.

- D. 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 of the following or similar law:

1. Workers' compensation law; or
2. Disability benefits law.

OTHER INSURANCE

If there is other applicable insurance available under one or more policies or provisions of coverage that is similar to the insurance provided under this Part of the policy:

1. Any recovery for damages under all such policies or provisions of coverage may equal but not exceed the highest applicable limit for any one vehicle under any insurance providing coverage on either a primary or excess basis.
2. Any insurance we provide with respect to a vehicle you do not own shall be excess over any collectible insurance providing such coverage on a primary basis.

3. If the coverage under this policy is provided:

- a. On a primary basis, we will pay only our share of the loss that must be paid under insurance providing coverage on a primary basis. Our share is the proportion that our limit of liability bears to the total of all applicable limits of liability for coverage provided on a primary basis.
- b. On an excess basis, we will pay only our share of the loss that must be paid under insurance providing coverage on an excess basis. Our share is the proportion that our limit of liability bears to the total of all applicable limits of liability for coverage provided on an excess basis.

ARBITRATION

A. If we and an "insured" do not agree:

1. Whether that "insured" is legally entitled to recover damages; or
2. As to the amount of damages which are recoverable by that "insured";

from the owner or operator of an "uninsured motor vehicle", then the matter may be arbitrated. However, disputes concerning coverage under this Part may not be arbitrated.

Both parties must agree to arbitration. If so agreed, each party will select an arbitrator. The two arbitrators will select a third. If they cannot agree within 30 days, either may request that selection be made by a judge of a court having jurisdiction.

B. Each party will:

1. Pay the expenses it incurs; and
2. Bear the expenses of the third arbitrator equally.

C. Unless both parties agree otherwise, arbitration will take place in the county in which the "insured" lives. Local rules of law as to procedure and evidence will apply. A decision agreed to by two of the arbitrators will be binding as to:

1. Whether the "insured" is legally entitled to recover damages; and
2. The amount of damages. This applies only if the amount does not exceed the minimum limit for bodily injury liability specified by the financial responsibility law of the state in which "your covered auto" is principally garaged. If the amount exceeds that limit, either party may demand the right to a trial. This demand must be made within 60 days of the arbitrators' decision. If this demand is not made, the amount of damages agreed to by the arbitrators will be binding.

PART D – COVERAGE FOR DAMAGE TO YOUR AUTO

INSURING AGREEMENT

A. We will pay for direct and accidental loss to "your covered auto" or any "non-owned auto", including their equipment, minus any applicable deductible shown in the Declarations. If loss to more than one "your covered auto" or "non-owned auto" results from the same "collision", only the highest applicable deductible will apply. We will pay for loss to "your covered auto" caused by:

1. Other than "collision" only if the Declarations indicate that Other Than Collision Coverage is provided for that auto.
2. "Collision" only if the Declarations indicate that Collision Coverage is provided for that auto.

If there is a loss to a "non-owned auto", we will provide the broadest coverage applicable to any "your covered auto" shown in the Declarations.

B. "Collision" means the upset of "your covered auto" or a "non-owned auto" or their impact with another vehicle or object.

Loss caused by the following is considered other than "collision":

1. Missiles or falling objects;
2. Fire;
3. Theft or larceny;
4. Explosion or earthquake;

5. Windstorm;
6. Hail, water or flood;
7. Malicious mischief or vandalism;
8. Riot or civil commotion;
9. Contact with bird or animal; or
10. Breakage of glass.

If breakage of glass is caused by a "collision", you may elect to have it considered a loss caused by "collision".

C. "Non-owned auto" means:

1. Any private passenger auto, pickup, van or "trailer" not owned by or furnished or available for the regular use of you or any "family member" while in the custody of or being operated by you or any "family member"; or
2. Any auto or "trailer" you do not own while used as a temporary substitute for "your covered auto" which is out of normal use because of its:
 - a. Breakdown;
 - b. Repair;
 - c. Servicing;
 - d. Loss; or
 - e. Destruction.

TRANSPORTATION EXPENSES

- A. In addition, we will pay, without application of a deductible, up to a maximum of \$600 for:

1. Temporary transportation expenses, not exceeding \$20 per day incurred by you in the event of a loss to "your covered auto". We will pay for such expenses if the loss is caused by:

- a. Other than "collision" only if the Declarations indicate that Other Than Collision Coverage is provided for that auto.
- b. "Collision" only if the Declarations indicate that Collision Coverage is provided for that auto.

2. Expenses for which you become legally responsible in the event of loss to a "non-owned auto". We will pay for such expenses if the loss is caused by:

- a. Other than "collision" only if the Declarations indicate that Other Than Collision Coverage is provided for any "your covered auto".
- b. "Collision" only if the Declarations indicate that Collision Coverage is provided for any "your covered auto".

However, the most we will pay for any expenses for loss of use is \$20 per day.

B. If the loss is caused by:

- 1. A total theft of "your covered auto" or a "non-owned auto", we will pay only expenses incurred during the period:
 - a. Beginning 48 hours after the theft; and
 - b. Ending when "your covered auto" or the "non-owned auto" is returned to use or we pay for its loss.
- 2. Other than theft of a "your covered auto" or a "non-owned auto", we will pay only expenses beginning when the auto is withdrawn from use for more than 24 hours.

C. Our payment will be limited to that period of time reasonably required to repair or replace the "your covered auto" or the "non-owned auto".

EXCLUSIONS

We will not pay for:

- 1. Loss to "your covered auto" or any "non-owned auto" which occurs while it is being used as a public or livery conveyance. This Exclusion (1.) does not apply to a share-the-expense car pool.
- 2. Damage due and confined to:
 - a. Wear and tear;
 - b. Freezing;
 - c. Mechanical or electrical breakdown or failure; or
 - d. Road damage to tires.

This Exclusion (2.) does not apply if the damage results from the total theft of "your covered auto" or any "non-owned auto".

3. Loss due to or as a consequence of:

- a. Radioactive contamination;
- b. Discharge of any nuclear weapon (even if accidental);
- c. War (declared or undeclared);
- d. Civil war;
- e. Insurrection; or
- f. Rebellion or revolution.

4. Loss to any electronic equipment designed for the reproduction of sound and any accessories used with such equipment. This includes but is not limited to:

- a. Radios and stereos;
- b. Tape decks; or
- c. Compact disc players.

This Exclusion (4.) does not apply to equipment designed solely for the reproduction of sound and accessories used with such equipment, provided:

- a. The equipment is permanently installed in "your covered auto" or any "non-owned auto"; or
- b. The equipment is:
 - (1) Removable from a housing unit which is permanently installed in the auto;
 - (2) Designed to be solely operated by use of the power from the auto's electrical system; and
 - (3) In or upon "your covered auto" or any "non-owned auto" at the time of loss.

5. Loss to any electronic equipment that receives or transmits audio, visual or data signals and any accessories used with such equipment. This includes but is not limited to:

- a. Citizens band radios;
- b. Telephones;
- c. Two-way mobile radios;
- d. Scanning monitor receivers;
- e. Television monitor receivers;
- f. Video cassette recorders;
- g. Audio cassette recorders; or
- h. Personal computers.

This Exclusion (5.) does not apply to:

- a. Any electronic equipment that is necessary for the normal operation of the auto or the monitoring of the auto's operating systems; or

- b. A permanently installed telephone designed to be operated by use of the power from the auto's electrical system and any accessories used with the telephone.
6. Loss to tapes, records, discs or other media used with equipment described in Exclusions 4. and 5.
7. A total loss to "your covered auto" or any "non-owned auto" due to destruction or confiscation by governmental or civil authorities.
This Exclusion (7.) does not apply to the interests of Loss Payees in "your covered auto".
8. Loss to:
- A "trailer", camper body, or motor home, which is not shown in the Declarations; or
 - Facilities or equipment used with such "trailer", camper body or motor home. Facilities or equipment include but are not limited to:
 - (1) Cooking, dining, plumbing or refrigeration facilities;
 - (2) Awnings or cabanas; or
 - (3) Any other facilities or equipment used with a "trailer", camper body, or motor home.
- This Exclusion (8.) does not apply to a:
- "Trailer", and its facilities or equipment, which you do not own; or
 - "Trailer", camper body, or the facilities or equipment in or attached to the "trailer" or camper body, which you:
 - (1) Acquire during the policy period; and
 - (2) Ask us to insure within 14 days after you become the owner.
9. Loss to any "non-owned auto" when used by you or any "family member" without a reasonable belief that you or that "family member" are entitled to do so.
10. Loss to equipment designed or used for the detection or location of radar or laser.
11. Loss to any custom furnishings or equipment in or upon any pickup or van. Custom furnishings or equipment include but are not limited to:
- Special carpeting or insulation;
 - Furniture or bars;
 - Height-extending roofs; or
 - Custom murals, paintings or other decals or graphics.
- This Exclusion (11.) does not apply to a cap, cover or bedliner in or upon any "your covered auto" which is a pickup.
12. Loss to any "non-owned auto" being maintained or used by any person while employed or otherwise engaged in the "business" of:
- Selling;
 - Repairing;
 - Servicing;
 - Storing; or
 - Parking;
- vehicles designed for use on public highways. This includes road testing and delivery.
13. Loss to "your covered auto" or any "non-owned auto", located inside a facility designed for racing, for the purpose of:
- Competing in; or
 - Practicing or preparing for;
- any prearranged or organized racing or speed contest.
14. Loss to, or loss of use of, a "non-owned auto" rented by:
- You; or
 - Any "family member";
- if a rental vehicle company is precluded from recovering such loss or loss of use, from you or that "family member", pursuant to the provisions of any applicable rental agreement or state law.

LIMIT OF LIABILITY

- A. Our limit of liability for loss will be the lesser of the:
1. Actual cash value of the stolen or damaged property; or
 2. Amount necessary to repair or replace the property with other property of like kind and quality.
- However, the most we will pay for loss to:
1. Any "non-owned auto" which is a trailer is \$500.
 2. Equipment designed solely for the reproduction of sound, including any accessories used with such equipment, which is installed in locations not used by the auto manufacturer for installation of such equipment or accessories, is \$1,000.
- B. An adjustment for depreciation and physical condition will be made in determining actual cash value in the event of a total loss.
- C. If a repair or replacement results in better than like kind or quality, we will not pay for the amount of the betterment.

PAYMENT OF LOSS

We may pay for loss in money or repair or replace the damaged or stolen property. We may, at our expense, return any stolen property to:

1. You; or
2. The address shown in this policy.

If we return stolen property we will pay for any damage resulting from the theft. We may keep all or part of the property at an agreed or appraised value.

If we pay for loss in money, our payment will include the applicable sales tax for the damaged or stolen property.

NO BENEFIT TO BAILEE

This insurance shall not directly or indirectly benefit any carrier or other bailee for hire.

OTHER SOURCES OF RECOVERY

If other sources of recovery also cover the loss, we will pay only our share of the loss. Our share is the proportion that our limit of liability bears to the total of all applicable limits. However, any insurance we provide with respect to a "non-owned auto" shall be excess over any other collectible source of recovery including, but not limited to:

1. Any coverage provided by the owner of the "non-owned auto";
2. Any other applicable physical damage insurance;
3. Any other source of recovery applicable to the loss.

APPRAISAL

A. If we and you do not agree on the amount of loss, either may demand an appraisal of the loss. In this event, each party will select a competent appraiser. The two appraisers will select an umpire. The appraisers will state separately the actual cash value and the amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

1. Pay its chosen appraiser; and
2. Bear the expenses of the appraisal and umpire equally.

B. We do not waive any of our rights under this policy by agreeing to an appraisal.

PART E - DUTIES AFTER AN ACCIDENT OR LOSS

We have no duty to provide coverage under this policy unless there has been full compliance with the following duties:

A. We must be notified promptly of how, when and where the accident or loss happened. Notice should also include the names and addresses of any injured persons and of any witnesses.

B. A person seeking any coverage must:

1. Cooperate with us in the investigation, settlement or defense of any claim or suit.
2. Promptly send us copies of any notices or legal papers received in connection with the accident or loss.
3. Submit, as often as we reasonably require:
 - a. To physical exams by physicians we select. We will pay for these exams.
 - b. To examination under oath and subscribe the same.
4. Authorize us to obtain:
 - a. Medical reports; and

b. Other pertinent records.

5. Submit a proof of loss when required by us.

C. A person seeking Uninsured Motorists Coverage must also:

1. Promptly notify the police if a hit-and-run driver is involved.
2. Promptly send us copies of the legal papers if a suit is brought.

D. A person seeking Coverage For Damage To Your Auto must also:

1. Take reasonable steps after loss to protect "your covered auto" or any "non-owned auto" and their equipment from further loss. We will pay reasonable expenses incurred to do this.
2. Promptly notify the police if "your covered auto" or any "non-owned auto" is stolen.
3. Permit us to inspect and appraise the damaged property before its repair or disposal.

PART F - GENERAL PROVISIONS

BANKRUPTCY

Bankruptcy or insolvency of the "insured" shall not relieve us of any obligations under this policy.

CHANGES

- A.** This policy contains all the agreements between you and us. Its terms may not be changed or waived except by endorsement issued by us.
- B.** If there is a change to the information used to develop the policy premium, we may adjust your premium. Changes during the policy term that may result in a premium increase or decrease include, but are not limited to, changes in:
1. The number, type or use classification of insured vehicles;
 2. Operators using insured vehicles;
 3. The place of principal garaging of insured vehicles;
 4. Coverage, deductible or limits.

If a change resulting from **A.** or **B.** requires a premium adjustment, we will make the premium adjustment in accordance with our manual rules.

- C.** If we make a change which broadens coverage under this edition of your policy without additional premium charge, that change will automatically apply to your policy as of the date we implement the change in your state. This Paragraph (**C.**) does not apply to changes implemented with a general program revision that includes both broadenings and restrictions in coverage, whether that general program revision is implemented through introduction of:
1. A subsequent edition of your policy; or
 2. An Amendatory Endorsement.

FRAUD

We do not provide coverage for any "insured" who has made fraudulent statements or engaged in fraudulent conduct in connection with any accident or loss for which coverage is sought under this policy.

LEGAL ACTION AGAINST US

- A.** No legal action may be brought against us until there has been full compliance with all the terms of this policy. In addition, under Part **A.**, no legal action may be brought against us until:
1. We agree in writing that the "insured" has an obligation to pay; or
 2. The amount of that obligation has been finally determined by judgment after trial.
- B.** No person or organization has any right under this policy to bring us into any action to determine the liability of an "insured".

OUR RIGHT TO RECOVER PAYMENT

- A.** If we make a payment under this policy and the person to or for whom payment was made has a right to recover damages from another we shall be subrogated to that right. That person shall do:

1. Whatever is necessary to enable us to exercise our rights; and
2. Nothing after loss to prejudice them.

However, our rights in this Paragraph (**A.**) do not apply under Part **D.**, against any person using "your covered auto" with a reasonable belief that that person is entitled to do so.

- B.** If we make a payment under this policy and the person to or for whom payment is made recovers damages from another, that person shall:

1. Hold in trust for us the proceeds of the recovery; and
2. Reimburse us to the extent of our payment.

POLICY PERIOD AND TERRITORY

- A.** This policy applies only to accidents and losses which occur:

1. During the policy period as shown in the Declarations; and
2. Within the policy territory.

- B.** The policy territory is:

1. The United States of America, its territories or possessions;
2. Puerto Rico; or
3. Canada.

This policy also applies to loss to, or accidents involving, "your covered auto" while being transported between their ports.

TERMINATION**A. Cancellation**

This policy may be cancelled during the policy period as follows:

1. The named insured shown in the Declarations may cancel by:
 - a. Returning this policy to us; or
 - b. Giving us advance written notice of the date cancellation is to take effect.
2. We may cancel by mailing to the named insured shown in the Declarations at the address shown in this policy:
 - a. At least 10 days notice:
 - (1) If cancellation is for nonpayment of premium; or

- (2) If notice is mailed during the first 60 days this policy is in effect and this is not a renewal or continuation policy; or
- b. At least 20 days notice in all other cases.
- 3. After this policy is in effect for 60 days, or if this is a renewal or continuation policy, we will cancel only:
 - a. For nonpayment of premium; or
 - b. If your driver's license or that of:
 - (1) Any driver who lives with you; or
 - (2) Any driver who customarily uses "your covered auto";
 has been suspended or revoked. This must have occurred:
 - (1) During the policy period; or
 - (2) Since the last anniversary of the original effective date if the policy period is other than 1 year; or
 - c. If the policy was obtained through material misrepresentation.

B. Nonrenewal

If we decide not to renew or continue this policy, we will mail notice to the named insured shown in the Declarations at the address shown in this policy. Notice will be mailed at least 20 days before the end of the policy period. Subject to this notice requirement, if the policy period is:

- 1. Less than 6 months, we will have the right not to renew or continue this policy every 6 months, beginning 6 months after its original effective date.
- 2. 6 months or longer, but less than one year, we will have the right not to renew or continue this policy at the end of the policy period.
- 3. 1 year or longer, we will have the right not to renew or continue this policy at each anniversary of its original effective date.

C. Automatic Termination

If we offer to renew or continue and you or your representative do not accept, this policy will automatically terminate at the end of the current policy period. Failure to pay the required renewal or continuation premium when due shall mean that you have not accepted our offer.

If you obtain other insurance on "your covered auto", any similar insurance provided by this policy will terminate as to that auto on the effective date of the other insurance.

D. Other Termination Provisions

- 1. We may deliver any notice instead of mailing it. Proof of mailing of any notice shall be sufficient proof of notice.
- 2. If this policy is cancelled, you may be entitled to a premium refund. If so, we will send you the refund. The premium refund, if any, will be computed according to our manuals. However, making or offering to make the refund is not a condition of cancellation.
- 3. The effective date of cancellation stated in the notice shall become the end of the policy period.

TRANSFER OF YOUR INTEREST IN THIS POLICY

A. Your rights and duties under this policy may not be assigned without our written consent. However, if a named insured shown in the Declarations dies, coverage will be provided for:

- 1. The surviving spouse if resident in the same household at the time of death. Coverage applies to the spouse as if a named insured shown in the Declarations; and
- 2. The legal representative of the deceased person as if a named insured shown in the Declarations. This applies only with respect to the representative's legal responsibility to maintain or use "your covered auto".

B. Coverage will only be provided until the end of the policy period.

TWO OR MORE AUTO POLICIES

If this policy and any other auto insurance policy issued to you by us apply to the same accident, the maximum limit of our liability under all the policies shall not exceed the highest applicable limit of liability under any one policy.

PERSONAL AUTO

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AMENDMENT OF POLICY PROVISIONS – SOUTH CAROLINA**I. Part A – Liability Coverage**

Exclusion A.1. is replaced by the following:

We do not provide Liability Coverage for any "insured":

1. Who intentionally causes "bodily injury" or "property damage" to the extent that the limits of liability for this coverage exceed the limits of liability required by the South Carolina Financial Responsibility Act.

II. Part F – General Provisions

Part F is amended as follows:

- A. The following is added to the Fraud Provision:

FRAUD

However, we will provide coverage to such "insured" for damages sustained by any person who has not made fraudulent statements or engaged in fraudulent conduct if such damages result from an accident which is otherwise covered under this policy.

- B. The following is added to the Our Right To Recover Payment Provision:

OUR RIGHT TO RECOVER PAYMENT

This provision does not apply to Part B – Medical Payments Coverage.

- C. The Termination Provision is replaced by the following:

TERMINATION**Cancellation**

This policy may be cancelled during the policy period as follows:

1. The named insured shown in the Declarations may cancel by:
 - a. Returning this policy to us; or
 - b. Giving us advance written notice of the date cancellation is to take effect.
2. We may cancel by mailing notice to the named insured shown in the Declarations at the address shown in this policy at least 15 days prior to the date cancellation is to take effect.

If this policy is cancelled within the first 60 days, and is not a renewal or continuation policy, the cancellation will become effective only on or after the 61st day of the policy period. However, if this policy is cancelled for nonpayment of premium, the cancellation will become effective only on or after the 31st day of the policy period.

3. After this policy has been in effect for more than 90 days, or if this is a renewal or continuation policy, we will cancel only:

a. For nonpayment of premium; or

b. If your driver's license or that of:

(1) Any driver who lives with you; or

(2) Any driver who customarily uses "your covered auto";

has been suspended or revoked. This must have occurred:

(1) During the policy period; or

(2) If this is a renewal or continuation policy, during the policy period or the 90 days immediately preceding the last anniversary of the original effective date.

Nonrenewal

If we decide not to renew or continue this policy, we will mail notice to the named insured shown in the Declarations at the address shown in this policy. Notice will be mailed at least 15 days before the end of the policy period. Subject to this notice requirement, if the policy period is:

1. Less than 6 months, we will have the right not to renew or continue this policy every 6 months, beginning 6 months after its original effective date.
2. 6 months or longer, but less than one year, we will have the right not to renew or continue this policy at the end of the policy period.
3. 1 year or longer, we will have the right not to renew or continue this policy at each anniversary of its original effective date.

Automatic Termination

If we offer to renew or continue and you or your representative do not accept, this policy will automatically terminate at the end of the current policy period. Failure to pay the required renewal or continuation premium when due shall mean that you have not accepted our offer.

Other Termination Provisions

1. We may deliver any notice instead of mailing it. Proof of mailing of any notice shall be sufficient proof of notice.

2. If this policy is cancelled, you may be entitled to a premium refund. If so, we will send you the refund. The premium refund, if any, will be computed according to our manuals. However, making or offering to make the refund is not a condition of cancellation.

3. The effective date of cancellation stated in the notice shall become the end of the policy period.

This endorsement must be attached to the Change Endorsement when issued after the policy is written.

**THE MAIN STREET AMERICA GROUP**

NGM Insurance Company • Old Dominion Insurance Company
Main Street America Assurance Company • MSA Insurance Company
Great Lakes Casualty Insurance Company

**SOUTH CAROLINA****IMPORTANT INFORMATION ABOUT YOUR MAXIMUM OPTIONAL POLICY FEES**

The South Carolina Department of Insurance requires insurers to notify policyholders of the Fee Schedule associated with a policy. The policy fees are as follows:

Fee Type	Maximum Fee
Installment Fee	\$5
Late Fee	\$10
Non Sufficient Fund Fee	\$25

POLICY NUMBER: [REDACTED]

PERSONAL AUTO
[REDACTED]

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

UNDERINSURED MOTORISTS COVERAGE – SOUTH CAROLINA**SCHEDULE**

Coverage is provided where a premium and a limit of liability are shown for the coverage.

Underinsured Motorists Coverage	Limit Of Liability	Premium		
		Auto 1	Auto 2	Auto 3
Bodily Injury Liability	\$ *			
	\$ *			
Property Damage Liability	\$ *	\$	\$	\$

*As indicated on Declarations.

We will pay damages which an "insured" is legally entitled to recover from the owner or operator of an "underinsured motor vehicle" because of:

1. "Bodily injury" sustained by an "insured" and caused by an accident; and
2. "Property damage" caused by an accident.

The owner's or operator's liability for these damages must arise out of the ownership, maintenance or use of the "underinsured motor vehicle".

"Insured" as used in this endorsement means:

1. You or any "family member".
2. Any other person "occupying" "your covered auto".
3. Any person for damages that person is entitled to recover because of "bodily injury" to which this coverage applies sustained by a person described in 1. or 2. above.

"Property damage" as used in this endorsement means injury to or destruction of "your covered auto". However, "property damage" does not include damage to property owned by the "insured" while contained in "your covered auto".

"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 are not enough to pay the full amount the "insured" is legally entitled to recover as damages.

However, "underinsured motor vehicle" does not include any vehicle or equipment:

1. Operated on rails or crawler treads.
2. Designed mainly for use off public roads while not upon public roads.
3. While located for use as a residence or premises.

EXCLUSIONS

A. We do not provide Underinsured Motorists Coverage for "property damage" or "bodily injury" sustained:

1. By you while "occupying", or when struck by, any motor vehicle you own which is not insured for this coverage. This includes a trailer of any type used with that vehicle.
2. By any "family member" while "occupying", or when struck by, a motor vehicle owned by such "family member" which is not insured for this coverage. This includes a trailer of any type used with that vehicle.

B. We do not provide Underinsured Motorists Coverage for "property damage" or "bodily injury" sustained by any "insured":

1. While "occupying" "your covered auto" when it is being used as a public or livery conveyance. This Exclusion (B.1.) does not apply to a share-the-expense car pool.
2. Using a vehicle without a reasonable belief that that "insured" is entitled to do so. This Exclusion (B.2.) does not apply to a "family member" using "your covered auto" which is owned by you.

C. This coverage shall not apply directly or indirectly to benefit:

1. Any insurer or self-insurer under any of the following or similar law:
 - a. Workers' compensation law; or
 - b. Disability benefits law.
2. Any insurer of property.

LIMIT OF LIABILITY

A. If "bodily injury" is sustained in an accident by any "insured" while "occupying" "your covered auto", or if "your covered auto" sustains "property damage" in an accident:

1. Our maximum limit of liability for all damages, including damages for care, loss of services or death, arising out of "bodily injury" sustained by any one person in that accident is the sum of the Limits Of Liability shown in the Schedule or in the Declarations for each person for Bodily Injury Liability Underinsured Motorists Coverage.
2. Subject to this limit for each person, our maximum limit of liability for all damages arising out of "bodily injury" sustained in that accident is the sum of the Limits Of Liability shown in the Schedule or in the Declarations for each accident for Bodily Injury Liability Underinsured Motorists Coverage.
3. Subject to the maximum limit of liability set forth in Paragraphs 1. and 2. above:
 - a. The most we will pay for "bodily injury" sustained in that accident by an "insured" other than you or any "family member" is that "insured's" pro rata share of the each person or each accident limit shown in the Schedule or in the Declarations for Bodily Injury Liability Underinsured Motorists Coverage applicable to the vehicle that "insured" was "occupying" at the time of the accident; and
 - b. You or any "family member" who sustains "bodily injury" in that accident will also be entitled to a pro rata share of the each person or each accident limit described in Paragraph a. above.

A person's pro rata share shall be the proportion that that person's "bodily injury" damages bears to the total of all "bodily injury" damages sustained by all "insureds".

4. Our maximum limit of liability for all "property damage" resulting from that accident is the sum of the Limits Of Liability shown in the Schedule or in the Declarations for each accident for Property Damage Liability Underinsured Motorists Coverage.

The maximum limit of liability is the most we will pay regardless of the number of:

1. "Insureds";
2. Claims made;
3. Vehicles or premiums shown in the Schedule or in the Declarations; or
4. Vehicles involved in the accident.

B. If "bodily injury" is sustained in an accident by you or any "family member" while not "occupying" any auto:

1. Our maximum limit of liability for all damages, including damages for care, loss of services or death, arising out of "bodily injury" sustained by any one person in that accident is the sum of the Limits Of Liability shown in the Schedule or in the Declarations for each person for Bodily Injury Liability Underinsured Motorists Coverage.
2. Subject to this limit for each person, our maximum limit of liability for all damages arising out of "bodily injury" sustained in that accident is the sum of the Limits Of Liability shown in the Schedule or in the Declarations for each accident for Bodily Injury Liability Underinsured Motorists Coverage.

The maximum limit of liability is the most we will pay regardless of the number of:

1. "Insureds";
2. Claims made;
3. Vehicles or premiums shown in the Schedule or in the Declarations; or
4. Vehicles involved in the accident.

C. If "bodily injury" is sustained in an accident by you or any "family member" while "occupying" a vehicle not owned by you or any "family member":

1. Our maximum limit of liability for all damages, including damages for care, loss of services or death, arising out of "bodily injury" sustained by any one person in that accident is the highest each person Limit Of Liability shown in the Schedule or in the Declarations for Bodily Injury Liability Underinsured Motorists coverage applicable to any one of "your covered autos".
2. Subject to this limit for each person, our maximum limit of liability for all damages arising out of "bodily injury" sustained in that accident is the highest each accident Limit Of Liability shown in the Schedule or in the Declarations for Bodily Injury Liability Underinsured Motorists Coverage applicable to any one of "your covered autos".

The maximum limit of liability is the most we will pay regardless of the number of:

1. "Insureds";
 2. Claims made;
 3. Vehicles or premiums shown in the Schedule or in the Declarations; or
 4. Vehicles involved in the accident.
- D. No one will be entitled to receive duplicate payments for the same elements of loss under this coverage and Part A, Part B, Part C or Part D of this policy.
- E. We will not make a duplicate payment under this coverage for any element of loss for which payment has been made by or on behalf of persons or organizations who may be legally responsible.
- F. 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 of the following or similar law:
1. Workers' compensation law; or
 2. Disability benefits law.
- G. We will reduce the "insured's" total damages by any amount available to that "insured", under any bodily injury liability bonds or policies applicable to the "underinsured motor vehicle", that such "insured" did not recover as a result of a settlement between that "insured" and the insurer of an "underinsured motor vehicle". However, any reduction of the "insured's" total damages will not reduce the limit of liability for this coverage.

OTHER INSURANCE

- A. If an "insured" sustains "bodily injury" while:
1. "Occupying" a vehicle:
 - a. Not owned by that person, including any vehicle while used as a temporary substitute for "your covered auto"; or
 - b. Owned by you or any "family member" which is not insured for this coverage under this policy; or
 2. Not "occupying" any vehicle;
- the following priorities of recovery 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 the "insured" as a named insured or "family member".

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 liability applicable to the vehicle the "insured" was "occupying", under the policy in the first priority, shall first be exhausted; and
 - b. The maximum recovery in the second priority shall not exceed the highest limit for any one vehicle under any one policy in the second priority.
 3. 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 liability bears to the total of all applicable limits in the same level of priority.
- B. With respect to "property damage", this insurance shall apply only after the limits of any other collectible insurance applicable to the damaged property have been exhausted.

ADDITIONAL DUTY

Any person seeking coverage under this endorsement must also promptly send us copies of the legal papers if a suit is brought.

GENERAL PROVISIONS

Part F is amended as follows with respect to Underinsured Motorists Coverage:

- A. The **Our Right To Recover Payment** Provision does not apply to Underinsured Motorists Coverage.
- B. The following is added to the **Two Or More Auto Policies** Provision:
 1. This provision does not apply to Underinsured Motorists Coverage.
 2. No one will be entitled to receive duplicate payments for the same elements of loss under Underinsured Motorists Coverage.
- C. 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.

POLICY NUMBER: [REDACTED]

PERSONAL AUTO
[REDACTED]

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

UNDERINSURED MOTORISTS COVERAGE – SOUTH CAROLINA**SCHEDULE**

Coverage is provided where a premium and a limit of liability is shown for the coverage.

Underinsured Motorists Coverage	Limit of Liability *	Premium *		
		Auto 1	Auto 2	Auto 3
Bodily Injury Liability	\$ _____ each person			
	\$ _____ each accident			
Property Damage Liability	\$ _____ each accident	\$	\$	\$

*** As Indicated on Declarations.**

We will pay damages which an "insured" is legally entitled to recover from the owner or operator of an "underinsured motor vehicle" because of:

1. "Bodily injury" sustained by an "insured" and caused by an accident; and
2. "Property damage" caused by an accident.

The owner's or operator's liability for these damages must arise out of the ownership, maintenance or use of the "underinsured motor vehicle".

We will pay under this coverage only after the limits of liability under any liability bonds or policies applicable to the "underinsured motor vehicle" have been exhausted by payment of judgments or settlements.

"Insured" as used in this endorsement means:

1. You or any "family member".
2. Any other person "occupying" "your covered auto".
3. Any person for damages that person is entitled to recover because of "bodily injury" to which this coverage applies sustained by a person described in 1. or 2. above.

"Property damage" as used in this endorsement means injury to or destruction of "your covered auto". However, "property damage" does not include damage to property owned by the "insured" while contained in "your covered auto".

"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 are not enough to pay the full amount the "insured" is legally entitled to recover as damages.

However, "underinsured motor vehicle" does not include any vehicle or equipment:

1. Operated on rails or crawler treads.
2. Designed mainly for use off public roads while not upon public roads.
3. While located for use as a residence or premises.

EXCLUSIONS

A. We do not provide Underinsured Motorists Coverage for "bodily injury" or "property damage" sustained by any "insured":

1. While "occupying" "your covered auto" when it is being used as a public or livery conveyance. This Exclusion (A.1.) does not apply to a share-the-expense car pool.
2. Using a vehicle without a reasonable belief that that "insured" is entitled to do so. This Exclusion (A.2.) does not apply to a "family member" using "your covered auto" which is owned by you.

B. This coverage shall not apply directly or indirectly to benefit:

1. Any insurer or self-insurer under any of the following or similar law:
 - a. Workers' compensation law; or
 - b. Disability benefits law.
2. Any insurer of property.

LIMIT OF LIABILITY

A. If "bodily injury" is sustained in an accident by any "insured" while "occupying" "your covered auto", or if "your covered auto" sustains "property damage" in an accident:

1. Our maximum limit of liability for all damages, including damages for care, loss of services or death, arising out of "bodily injury" sustained by any one person in that accident is the sum of the limits of liability shown in the Schedule or in the Declarations for each person for Bodily Injury Liability Underinsured Motorists Coverage.

2. Subject to this limit for each person, our maximum limit of liability for all damages arising out of "bodily injury" sustained in that accident is the sum of the limits of liability shown in the Schedule or in the Declarations for each accident for Bodily Injury Liability Underinsured Motorists Coverage.

3. Subject to the maximum limit of liability set forth in Paragraphs 1. and 2. above:

a. The most we will pay for "bodily injury" sustained in that accident by an "insured" other than you or any "family member" is that "insured's" pro rata share of the each person or each accident limit shown in the Schedule or in the Declarations for Bodily Injury Liability Underinsured Motorists Coverage applicable to the vehicle that "insured" was "occupying" at the time of the accident; and

b. You or any "family member" who sustains "bodily injury" in that accident will also be entitled to a pro rata share of the each person or each accident limit described in Paragraph a. above.

A person's pro rata share shall be the proportion that that person's "bodily injury" damages bears to the total of all "bodily injury" damages sustained by all "insureds".

4. Our maximum limit of liability for all "property damage" resulting from that accident is the sum of the limits of liability shown in the Schedule or in the Declarations for each accident for Property Damage Liability Underinsured Motorists Coverage.

The maximum limit of liability is the most we will pay regardless of the number of:

1. "Insureds";
2. Claims made;
3. Vehicles or premiums shown in the Schedule or in the Declarations; or
4. Vehicles involved in the accident.

B. If "bodily injury" is sustained in an accident by you or any "family member" while not "occupying" any auto:

1. Our maximum limit of liability for all damages, including damages for care, loss of services or death, arising out of "bodily injury" sustained by any one person in that accident is the sum of the limits of liability shown in the Schedule or in the Declarations for each person for Bodily Injury Liability Underinsured Motorists Coverage.

2. Subject to this limit for each person, our maximum limit of liability for all damages arising out of "bodily injury" sustained in that accident is the sum of the limits of liability shown in the Schedule or in the Declarations for each accident for Bodily Injury Liability Underinsured Motorists Coverage.

The maximum limit of liability is the most we will pay regardless of the number of:

1. "Insureds";
2. Claims made;
3. Vehicles or premiums shown in the Schedule or in the Declarations; or
4. Vehicles involved in the accident.

C. If "bodily injury" is sustained in an accident by you or any "family member" while "occupying" a vehicle not owned by you or any "family member":

1. Our maximum limit of liability for all damages, including damages for care, loss of services or death, arising out of "bodily injury" sustained by any one person in that accident is the highest each person limit of liability shown in the Schedule or in the Declarations for Bodily Injury Liability Underinsured Motorists coverage applicable to any one of "your covered autos".

2. Subject to this limit for each person, our maximum limit of liability for all damages arising out of "bodily injury" sustained in that accident is the highest each accident limit of liability shown in the Schedule or in the Declarations for Bodily Injury Liability Underinsured Motorists Coverage applicable to any one of "your covered autos"; and

The maximum limit of liability is the most we will pay regardless of the number of:

1. "Insureds";
2. Claims made;
3. Vehicles or premiums shown in the Schedule or in the Declarations; or
4. Vehicles involved in the accident.

D. No one will be entitled to receive duplicate payments for the same elements of loss under this coverage and Part A, Part B, Part C or Part D of this policy.

E. We will not make a duplicate payment under this coverage for any element of loss for which payment has been made by or on behalf of persons or organizations who may be legally responsible

F. 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 of the following or similar law:

1. Workers' compensation law; or
2. Disability benefits law.

OTHER INSURANCE

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 recovery 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 the "insured" as a named insured or family member.

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 liability applicable to the vehicle the "insured" was "occupying", under the policy in the first priority, shall first be exhausted; and
 - b. The maximum recovery in the second priority shall not exceed the highest limit for any one vehicle under any one policy in the second priority.

3. 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 liability bears to the total of all applicable limits in the same level of priority.

B. With respect to "property damage", this insurance shall apply only after the limits of any other collectible insurance applicable to the damaged property have been exhausted.

ADDITIONAL DUTY

Any person seeking coverage under this endorsement must also promptly send us copies of the legal papers if a suit is brought.

GENERAL PROVISIONS

Part F is amended as follows with respect to Underinsured Motorists Coverage:

- A. The Our Right To Recover Payment Provision does not apply to Underinsured Motorists Coverage.
- B. The following is added to the Two Or More Auto Policies Provision:

TWO OR MORE AUTO POLICIES

1. This provision does not apply to Underinsured Motorists Coverage.
 2. No one will be entitled to receive duplicate payments for the same elements of loss under Underinsured Motorists Coverage.
- C. 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.

This endorsement must be attached to the Change Endorsement when issued after the policy is written.

POLICY NUMBER: [REDACTED]

PERSONAL AUTO
[REDACTED]

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

UNINSURED MOTORISTS COVERAGE – SOUTH CAROLINA**SCHEDULE**

Coverage is provided where a premium and a limit of liability are shown for the coverage.

Uninsured Motorists Coverage	Limit Of Liability *	Premium *		
		Auto 1	Auto 2	Auto 3
Bodily Injury Liability	\$ _____ each person \$ _____ each accident			
Property Damage Liability	\$ _____ each accident	\$	\$	\$

* As Indicated on Declarations.

I. Part C – Uninsured Motorists Coverage

Part C is replaced by the following:

INSURING AGREEMENT

We will pay damages which an "insured" is legally entitled to recover from the owner or operator of an "uninsured motor vehicle" because of:

1. "Bodily injury" sustained by an "insured" and caused by an accident; and
2. "Property damage" caused by an accident.

The owner's or operator's liability for these damages must arise out of the ownership, maintenance or use of the "uninsured motor vehicle".

"Insured" as used in this endorsement means:

1. You or any "family member".
2. Any other person "occupying" "your covered auto".
3. Any person for damages that person is entitled to recover because of "bodily injury" to which this coverage applies sustained by a person described in 1. or 2. above.

"Property damage" as used in this endorsement means injury to or destruction of the property of an "insured".

"Uninsured motor vehicle" means a land motor vehicle or trailer of any type:

1. To which neither:
 - a. A liability bond or policy; nor
 - b. Cash or securities deposited with the State Treasurer;
 applies at the time of the accident.
2. To which a liability bond or policy applies at the time of the accident. In this case its limit for liability must be less than the minimum limits specified by the South Carolina Financial Responsibility Act.

3. Which is a hit-and-run vehicle whose operator or owner cannot be identified and which hits or which causes an accident resulting in "bodily injury" or "property damage" without hitting:

- a. You or any "family member";
- b. A vehicle which you or any "family member" are "occupying";
- c. "Your covered auto"; or
- d. Any of your property.

If there is no physical contact with the hit-and-run vehicle the facts of the accident must be corroborated by an affidavit attesting to the truth of the facts of the accident signed by any eyewitness other than the owner or operator of the vehicle which you or any "family member" were "occupying" at the time of the accident.

4. To which a liability bond or policy applies at the time of the accident but 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.

However, "uninsured motor vehicle" does not include any vehicle or equipment:

1. Owned by any governmental unit or agency unless a cause of action against that governmental unit or agency is barred by the Tort Claims Act, South Carolina Laws 1986, Ratification No. 514, Subsection 15-78-60, or by other applicable statute.
2. Operated on rails or crawler treads.

3. Designed mainly for use off public roads while not on public roads.

EXCLUSIONS

A. We do not provide Uninsured Motorists Coverage for "property damage" or "bodily injury" sustained by any "insured":

1. If that "insured" or the legal representative settles the "bodily injury" or "property damage" claim without our consent.
2. While "occupying" "your covered auto" when it is being used as a public or livery conveyance. This Exclusion (A.2.) does not apply to a share-the-expense car pool.
3. Using a vehicle without a reasonable belief that that "insured" is entitled to do so. This Exclusion (A.3.) does not apply to a "family member" using "your covered auto" which is owned by you.
4. For the first \$200 of the amount of "property damage" to the property of each "insured" as the result of any one accident.

B. This coverage shall not apply directly or indirectly to benefit:

1. Any insurer or self-insurer under any of the following or similar law:
 - a. Workers' compensation law; or
 - b. Disability benefits law.
2. Any insurer of property.

LIMIT OF LIABILITY

A. If "bodily injury" or "property damage" is sustained in an accident by you or any "family member" while "occupying" "your covered auto":

1. Our maximum limit of liability for all damages, including damages for care, loss of services or death, arising out of "bodily injury" sustained by any one person in that accident is the sum of the limits of liability shown in the Schedule or in the Declarations for each person for Bodily Injury Liability Uninsured Motorists Coverage.
2. Subject to this limit for each person, our maximum limit of liability for all damages arising out of "bodily injury" sustained in that accident is the sum of the limits of liability shown in the Schedule or in the Declarations for each accident for Bodily Injury Liability Uninsured Motorists Coverage.
3. Our maximum limit of liability for all "property damage" resulting from that accident is the sum of the limits of liability shown in the Schedule or in the Declarations for each accident for Property Damage Liability Uninsured Motorists Coverage.

Subject to the maximum limit of liability set forth in Paragraphs 1., 2. or 3. above:

1. The most we will pay for "bodily injury" or "property damage" sustained in that accident by an "insured" other than you or any "family member" is that "insured's" pro rata share of the each person or each accident limit shown in the Schedule or in the Declarations for this coverage applicable to the vehicle that "insured" was "occupying" at the time of the accident; and
2. You 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 each person or each accident limit described in Paragraph 1. 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".

The maximum limit of liability is the most we will pay regardless of the number of:

1. "Insureds";
2. Claims made;
3. Vehicles or premiums shown in the Schedule or in the Declarations; or
4. Vehicles involved in the accident.

B. If "bodily injury" or "property damage" is sustained in an accident by you or any "family member" while not "occupying" any auto:

1. Our maximum limit of liability for all damages, including damages for care, loss of services or death, arising out of "bodily injury" sustained by any one person in that accident is the sum of the limits of liability shown in the Schedule or in the Declarations for each person for Bodily Injury Liability Uninsured Motorists Coverage.
2. Subject to this limit for each person, our maximum limit of liability for all damages arising out of "bodily injury" sustained in that accident is the sum of the limits of liability shown in the Schedule or in the Declarations for each accident for Bodily Injury Liability Uninsured Motorists Coverage.
3. Our maximum limit of liability for all "property damage" resulting from that accident is the sum of the limits of liability shown in the Schedule or in the Declarations for each accident for Property Damage Liability Uninsured Motorists Coverage.

The maximum limit of liability is the most we will pay regardless of the number of:

1. "Insureds";
 2. Claims made;
 3. Vehicles or premiums shown in the Schedule or in the Declarations; or
 4. Vehicles involved in the accident.
- C. If "bodily injury" or "property damage" is sustained in an accident by you or any "family member" while "occupying" a vehicle not owned by you or any "family member":

1. Our maximum limit of liability for all damages, including damages for care, loss of services or death, arising out of "bodily injury" sustained by any one person in that accident is the highest each person limit of liability shown in the Schedule or in the Declarations for Bodily Injury Liability Uninsured Motorists Coverage applicable to any one of "your covered autos";
2. Subject to this limit for each person, our maximum limit of liability for all damages arising out of "bodily injury" sustained in that accident is the highest each accident limit of liability shown in the Schedule or in the Declarations for Bodily Injury Liability Uninsured Motorists Coverage applicable to any one of "your covered autos"; and
3. Our maximum limit of liability for all "property damage" resulting from that accident is the highest each accident limit of liability shown in the Schedule or in the Declarations for Property Damage Liability Uninsured Motorists Coverage applicable to any one of "your covered autos".

The maximum limit of liability is the most we will pay regardless of the number of:

1. "Insureds";
 2. Claims made;
 3. Vehicles or premiums shown in the Schedule or in the Declarations; or
 4. Vehicles involved in the accident.
- D. If "bodily injury" or "property damage" is sustained by an "insured" other than you or any "family member" in an accident in which neither you nor any "family member" sustained "bodily injury" or "property damage":
1. Our maximum limit of liability for all damages, including damages for care, loss of services or death, arising out of "bodily injury" sustained by any one person in that accident will be the each person limit of liability shown in the Schedule or in the Declarations for Bodily Injury Liability Uninsured Motorists Coverage applicable to the vehicle that "insured" was "occupying" at the time of that accident.

2. Subject to this limit for each person, our maximum limit of liability for all damages arising out of "bodily injury" sustained in that accident is the each accident limit of liability shown in the Schedule or in the Declarations for Bodily Injury Liability Uninsured Motorists Coverage applicable to the vehicle that "insured" was "occupying" at the time of the accident.

3. Our maximum limit of liability for all "property damage" resulting from that accident is the each accident limit of liability shown in the Schedule or in the Declarations for Property Damage Liability Uninsured Motorists Coverage applicable to the vehicle that "insured" was "occupying" at the time of the accident.

The maximum limit of liability is the most we will pay regardless of the number of:

1. "Insureds";
 2. Claims made;
 3. Vehicles or premiums shown in the Schedule or in the Declarations; or
 4. Vehicles involved in the accident.
- E. No one will be entitled to receive duplicate payments for the same elements of loss under this coverage and:
1. Part A or Part B of this policy;
 2. Any Underinsured Motorists Coverage provided by this policy; or
 3. Part D of this policy or any similar coverage under any other policy.
- F. We will not make a duplicate payment under this coverage for any element of loss for which payment has been made by or on behalf of persons or organizations who may be legally responsible.

OTHER INSURANCE

- 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 recovery apply:

First Priority	The policy affording Uninsured Motorists Coverage to the vehicle the "insured" was "occupying" at the time of the accident.
Second Priority	Any policy affording Uninsured Motorists Coverage to the "insured" as a named insured or family member.

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 liability applicable to the vehicle the "insured" was "occupying", under the policy in the first priority, shall first be exhausted; and
 - b. The maximum recovery in the second priority shall not exceed the highest limit for any one vehicle under any one policy in the second priority.
3. 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 liability bears to the total of all applicable limits in the same level of priority.
- B. With respect to "property damage", this insurance shall apply only after the limits of any other collectible insurance applicable to the damaged property have been exhausted.

II. Part F – General Provisions

Part F is amended as follows with respect to Uninsured Motorists Coverage:

- A. The Our Right to Recover Payment Provision is replaced by the following:

OUR RIGHT TO RECOVER PAYMENT

- 1. If we make payment under this policy and the person to or for whom payment was made has a right to recover damages from another, we shall be subrogated to that right to the extent of such payment that does not exceed the minimum limits specified by the South Carolina Motor Vehicle Financial Responsibility Act. That person shall do:
 - a. Whatever is necessary to enable us to exercise our rights; and
 - b. Nothing after loss to prejudice them.

- 2. If an "insured" 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 that does not exceed the minimum limits specified by the South Carolina Motor Vehicle Financial Responsibility Act.
- 3. We will pay our proportionate part of any reasonable costs and expenses incurred for any recovery, including reasonable attorneys' fees. However, we reserve the right to retain an attorney of our choice to pursue a claim instead of reasonable attorneys' fees.
- 4. If an "insured" making a claim for "property damage" under this insurance is also entitled to insurance or other compensation for the "property damage", we will not be obligated to pay a claim until the "insured" has assigned us the rights to the compensation, to the extent of payment under this insurance that does not exceed the minimum limits specified by the South Carolina Motor Vehicle Financial Responsibility Act.

- B. The following is added to the **Two or More Auto Policies** Provision:

TWO OR MORE AUTO POLICIES

- 1. This provision does not apply to Uninsured Motorists Coverage.
 - 2. No one will be entitled to receive duplicate payments for the same elements of loss under Uninsured Motorists Coverage.
- C. 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.

This endorsement must be attached to the Change Endorsement when issued after the policy is written.

PERSONAL AUTO
[REDACTED]

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

COVERAGE FOR DAMAGE TO YOUR AUTO EXCLUSION ENDORSEMENT

With respect to the coverage provided by this endorsement, the provisions of the policy apply unless modified by the endorsement.

I. Definitions

The following definition is added:

"Diminution in value" means the actual or perceived loss in market or resale value which results from a direct and accidental loss.

II. Part D – Coverage For Damage To Your Auto

The following exclusion is added:

We will not pay for:

Loss to "your covered auto" or any "non-owned auto" due to "diminution in value".

This endorsement must be attached to the Change Endorsement when issued after the policy is written.

POLICY NUMBER: [REDACTED]

PERSONAL AUTO
[REDACTED]

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

OPTIONAL LIMITS TRANSPORTATION EXPENSES COVERAGE**SCHEDULE**

Description Of Your Covered Auto(s)	Limit Per Day For Temporary Transportation Or Loss Of Use Expenses	Maximum Limit Of Liability	Premium
2004 Nissan PATHFINDER SE/LE [REDACTED]	\$30 Per Day	\$900	\$8.00
	Per Day		
	Per Day		

With respect to the coverage provided by this endorsement, the provisions of the policy apply unless modified by the endorsement.

**OPTIONAL LIMITS TRANSPORTATION
EXPENSES COVERAGE**

When there is a loss to a "your covered auto" described in the Schedule or in the Declarations for which a specific premium charge indicates that Optional Limits Transportation Expenses Coverage is afforded, or to a "non-owned auto":

Coverage for Transportation Expenses provided under Part D of this policy is increased to the limits shown in the Schedule or in the Declarations.

This endorsement must be attached to the Change Endorsement when issued after the policy is written.

PERSONAL AUTO**TOWING AND LABOR COSTS COVERAGE**

SCHEDULE		
Description of Your Covered Auto	Limit of Towing and Labor Costs Coverage	Premium
2004 Nissan PATHFINDER SE/LE [REDACTED]	\$75	\$8.00
	\$	\$
	\$	\$

We will pay towing and labor costs incurred each time "your covered auto" or any "non-owned auto" is disabled, up to the amount shown in the Schedule or in the Declarations as applicable to that vehicle. If a "non-owned auto" is disabled, we will provide the broadest towing and labor costs coverage applicable to any "your covered auto" shown in the Schedule or in the Declarations. We will only pay for labor performed at the place of disablement.

This endorsement must be attached to the Change Endorsement when issued after the policy is written.

PERSONAL AUTO
[REDACTED]

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

FULL SAFETY GLASS COVERAGE – SOUTH CAROLINA

COVERAGE FOR DAMAGE TO YOUR AUTO

With respect to the coverage provided by this endorsement, the provisions of the policy apply unless modified by this endorsement.

The following is added to Paragraph A. of the Insuring Agreement in Part D:

We will pay under Other Than Collision Coverage or under Collision Coverage for loss to safety glass on "your covered auto" without applying a deductible.

This endorsement must be attached to the Change Endorsement when issued after the policy is written.

IMPORTANT NOTICE

IN ADDITION TO THE INSURANCE COVERAGE REQUIRED BY LAW TO PROTECT YOU AGAINST A LOSS CAUSED BY AN UNINSURED MOTORIST, IF YOU HAVE PURCHASED LIABILITY INSURANCE COVERAGE THAT IS HIGHER THAN THAT REQUIRED BY LAW TO PROTECT YOU AGAINST LIABILITY ARISING OUT OF THE OWNERSHIP, MAINTENANCE, OR USE OF THE MOTOR VEHICLES COVERED BY THIS POLICY, AND YOU HAVE NOT ALREADY PURCHASED UNINSURED MOTORIST INSURANCE COVERAGE EQUAL TO YOUR LIABILITY INSURANCE COVERAGE:

- (a) YOUR UNINSURED AND UNDERINSURED MOTORIST INSURANCE COVERAGE HAS INCREASED TO THE LIMITS OF YOUR LIABILITY COVERAGE AND THIS INCREASE WILL COST YOU AN EXTRA PREMIUM CHARGE; AND
- (b) YOUR TOTAL PREMIUM CHARGE FOR YOUR MOTOR VEHICLE INSURANCE COVERAGE WILL INCREASE IF YOU DO NOT NOTIFY YOUR AGENT OR INSURER OF YOUR DESIRE TO REDUCE COVERAGE WITHIN TWENTY DAYS OF THE MAILING OF THE POLICY OR THE PREMIUM NOTICE, AS THE CASE MAY BE;
- (c) IF THIS IS A NEW POLICY AND YOU HAVE ALREADY SIGNED A WRITTEN REJECTION OF SUCH HIGHER LIMITS IN CONNECTION WITH IT PARAGRAPHS (1) AND (2) OF THIS NOTICE DO NOT APPLY.

61-5698 (3/99)

SOUTH CAROLINA RESIDENT ADJUSTER

Gay and Taylor Insurance Adjusters, Inc.
1321 Lady Street
P.O. Box 11407
Columbia, SC 29211

(803) 256-3420

The above is for your information. In the event of a claim, please contact your agent.

60-N155 (3/89)



THE MAIN STREET AMERICA GROUP

NGM Insurance Company • Old Dominion Insurance Company
Main Street America Assurance Company • MSA Insurance Company
Great Lakes Casualty Insurance Company



PRIVACY NOTICE

Dear Policyholder:

As your insurer, our objective is to professionally serve your insurance needs. We recognize that in providing these services, we have an obligation to safeguard the personal information you entrust to us as well as other information we may collect as part of the insurance transaction.

This notice describes the privacy practices and standards we adopted to protect and ensure the confidentiality of your non-public personal information. All of our insurance companies listed above adhere to these practices and standards.

OUR POLICY

We do not disclose any non-public personal information about our policyholders or claimants to any third parties except as is permitted by law. Any such disclosures are made for the purpose of underwriting and transacting the business of your insurance coverage or your claim. We do not sell or provide your non-public personal information to others for their marketing purposes.

THE INFORMATION WE COLLECT

Most of your non-public personal information is provided by you on your application for insurance. Depending on the type of insurance policy you request, we may seek additional information about you or other individuals who are being proposed for coverage under the policy. In certain circumstances we may collect information about you from third parties. For example, for automobile insurance we may seek driver information from the state motor vehicle departments; for property insurance we may send someone to inspect the property. We may review prior insurance claims information. We may obtain medical or financial information. We may also receive information about you from a consumer reporting agency. The information we collect allows us to properly underwrite and rate your policy of insurance and to complete the other transactions incidental to your insurance policy.

THE INFORMATION WE DISCLOSE

We do not disclose any non-public information about our policyholders except as permitted by law. In some cases this information can be disclosed to third parties without your authorization. These disclosures may include those made to your agent or broker, appraisers and independent adjusters who investigate, defend or settle your claims, insurance regulators, and/or your mortgage lender or lienholder.

HOW WE PROTECT YOUR PERSONAL INFORMATION

We restrict access to your personal information to those employees who need it to provide the insurance products and services you have requested. We maintain electronic and procedural safeguards to ensure the confidentiality of your information. These safeguards comply with state and federal laws designed to guard your non-public personal information. Our employees are educated on the importance of maintaining the standards we have in place.

ADDITIONAL INFORMATION

You have the right to review certain items of information we have collected about you, and the right to request corrections of that information if it is inaccurate.

If you would like a copy of our privacy policy please contact us as follows:

Main Street America Group
ATTN: Privacy Compliance Coordinator
55 West Street
Keene, NH 03431

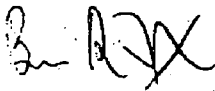
IMPORTANT NOTICE

IN COMPLIANCE WITH THE REQUIREMENTS OF THE FAIR CREDIT REPORTING ACT (PUBLIC LAW 91-508), WE ADVISE THAT AS PART OF OUR ROUTINE PROCEDURE IN REVIEWING APPLICATIONS FOR INSURANCE OR RENEWALS OF INSURANCE POLICIES, WE MAY PROCURE A CONSUMER REPORT INCLUDING INFORMATION AS TO THE CONSUMER'S CHARACTER, GENERAL REPUTATION, PERSONAL CHARACTERISTICS OR MODE OF LIVING. IF SUCH INSURANCE IS FOR AN INDIVIDUAL AND IS PRIMARILY FOR PERSONAL, FAMILY OR HOUSEHOLD PURPOSES, SUCH INFORMATION MAY BE OBTAINED THROUGH PERSONAL INTERVIEWS WITH NEIGHBORS, FRIENDS OR OTHERS WITH WHOM THE CONSUMER IS AQUAINTED.

UPON REQUEST IN THE MANNER AS NOTED ABOVE, WE WILL PROVIDE, IN WRITING, A COMPLETE AND ACCURATE DISCLOSURE OF THE NATURE AND SCOPE OF THE CONSUMER REPORT REQUESTED OR ADVISE THAT NO INVESTIGATION WAS CONDUCTED.

These privacy practices and standards have been put in place to protect your personal information. You will receive a reaffirmation of our privacy practices annually.

Very truly yours,

A handwritten signature in black ink, appearing to read "Bruce R. Fox", is positioned above the printed name and title.

Bruce R. Fox
Corporate Secretary

Main Street America Group
NGM Insurance Company
Old Dominion Insurance Company
Main Street America Assurance Company
MSA Insurance Company

Letter to Our Customers

When we (a member of the Main Street America Group) quote, issue or renew a policy, we require and obtain certain information about the people and property being insured; most of this information is provided by you on your application for insurance. Depending on the type of insurance policy you request, we may seek additional information about you or other individuals who are being covered under the policy. Such information is gathered through the use of consumer reporting agencies that provide motor vehicle reports, claim history reports and reports on credit histories.

All information is used to underwrite and rate policies at the time of application or subsequent renewals. Increase in premiums or other adverse action may result from a review of this information, including your credit history. Underwriting decisions will not be based solely on your credit history but in conjunction with other underwriting characteristics including, but not limited to, years driving experience, prior accident and/or conviction history and loss information. If any adverse action is taken based on your credit history, you will be notified and provided with instructions on how to obtain a copy of your report.

You have the option to request an updated credit history review prior to each policy renewal. Your request should be received in writing prior to the effective date of the renewal policy.

We thank you for allowing MSA to meet your automobile insurance needs and we look forward to serving your needs in the future.

OLD DOMINION INSURANCE CO.
P.O. BOX 16100
JACKSONVILLE, FL 32245-6100

AMENDMENT
PERSONAL AUTO POLICY
ACCOUNT NUMBER
POLICY PERIOD: 12:01 AM STANDARD TIME
FROM 03/09/2014 TO 03/09/2015

EFFECTIVE 06/09/2014

POLICYHOLDER SINCE 03/09/2012

NAMED INSURED

DEBBIE COHN

AGENCY

390176003
VISTA INSURANCE GROUP
P O BOX 5837
COLUMBIA, SC 29250

803 - 726 - 0550

THIS IS NOT A BILL

Description of Auto(s) or Trailer(s)																
AUTO	YEAR	TRADE NAME	MODEL	BODY TYPE	VEHICLE IDENTIFICATION NUMBER	ORIG. COST NEW	SYMBOLS				RATING		TERR	USE	AT	PR
							LS1	LS2	PH1	PH2	CLASS	SUB				
1	04	NISSA	PATHFI	4W			315	520	15	15				3	3	Y
2	12	JEEP	COMPAS	4W			300	490	14	14				1	2	Y

Coverage provided only where both Limit of Liability and Premium are shown.

PART (REFER TO FORM PP-0001 FOR COVERAGE DEFINITIONS)		1-04 NISSA	2-12 JEEP
A LIABILITY			
\$100,000 EACH PERSON \$300,000 EACH ACCIDENT		\$271.00	\$272.00
PROPERTY DAMAGE \$50,000 EACH ACCIDENT		\$174.00	\$187.00
B MEDICAL PAYMENTS			
\$5,000 EACH PERSON		\$32.00	\$24.00
C UNINSURED MOTORISTS			
\$100,000 EACH PERSON \$300,000 EACH ACCIDENT		\$17.00	\$17.00
PROPERTY DAMAGE \$50,000 SUBJECT TO \$200 DEDUCTIBLE		\$11.00	\$11.00
UNDERINSURED MOTORISTS			
\$100,000 EACH PERSON \$300,000 EACH ACCIDENT		\$47.00	\$47.00
PROPERTY DAMAGE \$50,000 EACH ACCIDENT		\$11.00	\$11.00
LIMITS MIGHT BE REDUCED BY POLICY PROVISIONS OR LAW			
D DAMAGE TO YOUR AUTO			
COLLISION LOSS			
ACV** LESS \$500 DEDUCTIBLE - STANDARD		\$150.00	\$267.00
COMPREHENSIVE (EXCLUDING COLLISION)			
ACV** LESS \$500 DEDUCTIBLE		\$116.00	\$144.00
TOWING AND LABOR - \$75 PER DISABLEMENT		\$8.00	\$8.00
TRANSPORTATION EXPENSES \$30/\$900		\$8.00	\$8.00
TOTAL PREMIUM BY VEHICLE		\$845.00	\$996.00

AMENDMENT REASON: VEHICLE ADD/CHANGE/DELETE

The Auto(s) or Trailer(s) described in this policy is (are) principally garaged at the above address unless otherwise stated here:

Auto Any loss under Physical Damage is payable as interest may appear to the Named Insured and:

2 Ally Financial, P.O. Box 8132, Cockeysville, MD 21030

RETURN PREMIUM FOR AMENDMENT	-\$514.00	12 MONTHS PREMIUM	\$1,841.00
------------------------------	-----------	-------------------	------------

Endorsements made part of this policy at time of issue:

PP0001(06-98), 61-8643 (03-07), PP0488(05-13), PP0465 (06-98), PP1301(12-99), PP0302 (06-98), PP0303 (04-86),
PP0341(11-96), 61-8599 (09-11)

NO	DRIVER NAME	LICENSE NUMBER	DOB	SX	MR	VR	SC	DT	GS	DD	MD
1	DEBBIE COHN		01 22 56	F	M	2	N	N	N	N	N
2	HARRY TREZONA		04 20 88	M	S	1	N	N	N	N	N

** ACTUAL CASH VALUE

61-7621 (01/10) SEE REVERSE FOR ADDITIONAL INFORMATION
DATE PROCESSED 06/10/2014 INSURED

COUNTERSIGNATURE:
PG 1/1

AB 39

9/17/2015 9:04:26 AM

LIBERALIZATION CLAUSE

"If the company revises this policy form with respect to policy provisions, endorsements or rules by which the insurance hereunder could be extended or broadened without additional premium charge, such insurance as is afforded hereunder shall be so extended or broadened effective immediately upon approval of such revision during the policy period by the appropriate insurance supervisory authority."

LOSS PAYABLE CLAUSE PP 0305 (8/86) / AIP 1003 (8/86)*Loss Payee:**

Loss or damage under this policy shall be paid, as interest may appear, to you and the loss payee shown in the Declarations or in this endorsement. This insurance with respect to the interest of the loss payee, shall not become invalid because of your fraudulent acts or omissions unless the loss results from your conversion, secretion or embezzlement of "your covered auto." However, we reserve the right to cancel the policy as permitted by policy terms and the cancellation shall terminate this agreement as to the loss payee's interest. We will give the same advance notice of cancellation to the loss payee as we give to the named insured shown in the Declarations.

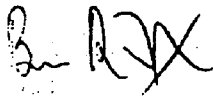
When we pay the loss payee we shall, to the extent of payment, be subrogated to the loss payee's rights of recovery.

OLD DOMINION INSURANCE COMPANY

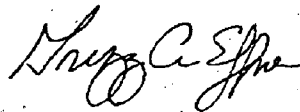
In Witness Whereof, we have caused this policy to be executed and attested, and, if required by state law, this policy shall not be valid unless countersigned by our authorized representative. Old Dominion Insurance Company is a stock insurance company with headquarters located at:

4601 Touchton Road, East, Suite 3300
P.O. Box 16100
Jacksonville, FL 32245-6100
Telephone: (904) 642-3000

If you have questions about your policy, contact your agent at the address and phone number shown on the Declaration page. You may also contact the company at the address and phone number shown above.



Bruce R. Fox
Secretary



Gregg A. Effner
President

60-5231 (9/11)

WHEN THE FRONT OF THIS IS A RENEWAL OR AMENDED DECLARATION, YOUR POLICY HAS BEEN UPDATED TO SHOW CURRENT INFORMATION. IT SHOULD BE KEPT IN A SAFE PLACE ALONG WITH YOUR OTHER INSURANCE RECORDS.

THE APPROPRIATE POLICY PROVISIONS OR POLICY AGREEMENTS, ALONG WITH RELATED FORMS, CONTAINING AGREEMENTS AND CONDITIONS, WERE PREVIOUSLY ISSUED TO YOU. THOSE THAT HAVE NOT CHANGED AND STILL APPLY HAVE NOT BEEN INCLUDED AGAIN. WE ARE ENCLOSING ONLY THOSE FORMS THAT APPLY FOR THE FIRST TIME OR HAVE CHANGED DURING THE PAST POLICY TERM. IF, HOWEVER, YOU WOULD LIKE THE COMPLETE SET, PLEASE CONTACT YOUR AGENT.

THE ENDORSEMENTS APPEARING IN STATE COVERAGE PARTS AND THE FORMS SHOWN ON THE DECLARATIONS APPLY ONLY WHEN THE COVERAGES TO WHICH THEY PERTAIN ARE IDENTIFIED ON THE DECLARATION PAGE WITH A PREMIUM CHARGE OR THE ABBREVIATION "INCL".

IF YOUR POLICY IS BEING AMENDED THE REASON FOR THE CHANGE IS PRINTED ON THIS DECLARATION PAGE.

If you are billed directly by the company, your premium billing will be mailed to you in about two weeks. At that time, you will be offered the option of our convenient monthly installment plan or payment in full, whichever you choose.

9/17/2015 9:04:26 AM

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

COPY

IN THE COURT OF COMMON PLEAS

Stephany Connelly and James M. Connelly,

Plaintiff(s)

CIVIL ACTION COVERSHEET

2016-CP-40-5885

vs.

The Main Street America Group, et al.

Defendant(s)

Submitted By: John D. Kassel; Theile B. McVey
Address: P O Box 1476, Columbia SC 29202-1476

SC Bar #: 03286; 16682

Telephone #: 803-256-4242

Fax #: 803-256-1952

Other:

E-mail: jkassel@kassellaw.com;
emontrie@kassellaw.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)
☐ General (130)
☒ Breach of Contract (140)
☐ Fraud/Bad Faith (150)
☐ Failure to Deliver/Warranty (160)
☐ Employment Discrim (170)
☐ Employment (180)
☐ 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
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Assault/Battery (370)
☐ Slander/Libel (380)
☐ 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)
☐ Sexual Predator (510)
☐ Permanent Restraining Order (680) | ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Motion to Quash Subpoena in an Out-of-County Action (660)
☐ Pre-Suit Discovery (670) | | |

Submitting Party Signature:

Date: September 30, 2016

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous SCCA / 234 (03/2016)

Page 1 of 2

Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

Effective January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

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

Pursuant to the ADR Rules, you are required to take the following action(s):

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

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

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

) FOR THE FIFTH JUDICIAL CIRCUIT

Sephany A. Connelly and James M.
Connelly,) Civil Action No.: 2016-CP-40- 5885

Plaintiffs,

) **SUMMONS**

) (Declaratory Judgement-Breach of Contract)

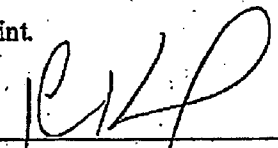
v.

The Main Street America Group, Old
Dominion Insurance Company, Allstate
Fire and Casualty Insurance Company,
Debbie Cohn, and Freya Trozona,

Defendants.

TO THE DEFENDANTS ABOVE-NAMED:

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


 John D. Kassel (SC Bar No. 03268)
jkassel@kassellaw.com
 Theile B. McVey (SC Bar No. 16682)
tmcvey@kassellaw.com
KASSEL McVEY ATTORNEYS AT LAW
 1330 Laurel Street
 Post Office Box 1476
 Columbia, South Carolina 29202-1476
 803-256-4242
 803-256-1952 (Facsimile)
 Other email: emoultrie@kassellaw.com

RICHLAND COUNTY
FILED
2016 SEP 30 PM 4:49
JEANNETTE W. MCARD
C.C.P. & G.S.

Benjamin D. McCoy, Esquire
bmc coy@hnblaw.com
Howser Newman & Besley, LLC
P.O. Box 12009
Columbia, South Carolina 29211
803-758-6000
803-758-4445 (Facsimile)

ATTORNEYS FOR PLAINTIFFS

September 19, 2016

Columbia, South Carolina.

STATE OF SOUTH CAROLINA	) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	) FOR THE FIFTH JUDICIAL CIRCUIT
Sephany A. Connelly and James M. Connelly,	) Civil Action No.: 2016-CP-40- <u>5885</u>
Plaintiffs,	)
v.	)
The Main Street America Group, Old Dominion Insurance Company, Allstate Fire and Casualty Insurance Company, Debbie Cohn, and Freya Trozona,	)
Defendants.	)

COMPLAINT
(Declaratory Judgement-Breach of Contract)

RICHLAND COUNTY
 FILED
 2016 SEP 30 PM 12:49
 JEANNETTE W. MCBRIDE
 C.C.P. & G.S.

Plaintiffs will allege and show unto this court as follows:

JURISDICTION

1. Plaintiffs Stephany A. Connelly and James M. Connelly are married and are citizens and residents of the State of North Carolina.
2. Defendant The Main Street America Group is an insurance company doing business in South Carolina with its principal place of business in the State of Florida.
4. Defendant Old Dominion Insurance Company is an insurance company doing business in South Carolina with its principal place of business in the State of Florida.
5. Defendant Allstate Fire and Casualty Insurance Company is an insurance company doing business in South Carolina with its principal place of business in the State of Illinois.
6. Defendants Debbie Cohn and Freya Trozona are citizens and residents of Richland County, State of South Carolina.

FACTS COMMON TO ALL CAUSES OF ACTION

7. At all times relevant to this action, Defendants The Main Street America Group and Old Dominion Insurance Company issued an automobile insurance policy with provision for

uninsured motorist coverage, to Debbie Cohn, designated by policy number 01G0167F, with effective dates of March 9, 2014 to March 9, 2015, and with policy limits of \$100,000 each person, \$300,000.00 each accident.

8. At all times relevant to this action, Freya Trozona was an insured under the above identified The Main Street America Group and Old Dominion Insurance Company policy. Freya Trozona was a family member and resident relative of Debbie Cohn.

9. At all times relevant to this action, a motor vehicle described as a 2012 Jeep Comas vehicle, VIN 1C4NJCBA7CD504097, was listed as an insured vehicle under the above described The Main Street America Group and Old Dominion Insurance Company policy.

10. At all times relevant to this action, Defendant Allstate Fire and Casualty Company issued an automobile insurance policy with provision for uninsured motorist coverage, in the name of James and Stephany Connelly, designated by policy number 963 934 526, with effective dates of September 1, 2014 to March 1, 2015, with policy limits in the amount of \$250,000.00 each person, \$500,000.00 each accident. James and Stephany Connelly paid all premiums required for maintenance of this policy.

11. On February 24, 2015 Stephany Connelly was riding as a passenger in the 2012 Jeep Comas vehicle which was being operated by Freya Trozona. Ms. Connelly and Ms. Trozona were co- employees both working within the course and scope of their employment with Apple One Employment Agency. Ms. Trozona was a co- owner of the above described vehicle and had permission from Ms. Cohn to be driving the vehicle. Ms. Connelly was occupying the 2012 Jeep Comas vehicle with permission of Ms. Trozona.

12. On February 24, 2015 Ms. Trozona improperly turned left into a private drive way off of Academy Street in Columbia, S.C., or improperly backed down a private driveway onto Academy Street.

13. As a result of Ms. Trozona's actions, her vehicle collide with another vehicle properly in its lane and traveling eastbound on Academy Street.

14. Freya Trozona was negligent, grossly negligent, reckless, wilful and wanton in the following particulars:

- a. In failing to keep her vehicle under proper control
- b. In failing to yield to traffic on Academy Street
- c. In turning into a private driveway from an improper lane of travel
- d. In backing out of a private driveway without yielding to approaching traffic
- e. In failing to keep a proper lookout
- f. In traveling too fast for conditions
- g. In failing to brake
- h. In failing to take evasive action

15. The above described acts of negligence and gross negligence, recklessness, wilfulness and wantonness proximately caused the injuries and damages suffered by Stephany Connelly.

16. As a result of the collision, Ms. Connelly struck her head causing a loss of consciousness and numerous facial fractures. Ms. Connelly has endured pain, suffering, loss of enjoyment of life, mental anguish, hospital bills, medical bills and loss of income. James Connelly suffered a loss of consortium.

17. Ms. Connelly applied for and began receiving benefits under the South Carolina Workers' Compensation Act.

18. Ms. Freya Trozona was the negligent cause of Ms. Stephany Connelly's injuries and damages. Ms. Trozona was at fault in causing the wreck. Thus, Ms. Connelly is legally entitled to recover damages from Ms. Freya Trozona. However, under South Carolina Ann. §42-5-10 (1985), Ms. Trozona is immune from suit for a tort action.

19. Ms. Connelly made a claim for damages under The Main Street America Group and Old Dominion Insurance Company policy described above. The claim was denied. The stated reason was the exclusivity remedy provision of the South Carolina Workers' Compensation Act.

20. Ms. Connelly made a claim for damages under the Allstate Fire and Casualty Insurance Company policy described above. The claim was denied. The stated reason was the exclusivity remedy provision of the South Carolina Workers' Compensation Act.

**FOR A FIRST CAUSE OF ACTION
DECLARATORY JUDGMENT**

21. Ms. Trozona's immunity and the insurers' denial of coverage rendered the 2012 Jeep Comas an uninsured motor vehicle.

22. As an insured in an uninsured vehicle, Ms. Stephany Connelly is eligible for coverage for uninsured motorist coverage under The Main Street America Group and Old Dominion Insurance Company policy and the Allstate Fire and Casualty Insurance Company policy described above.

23. There is now a controversy as to whether or not uninsured motorist coverage exists to cover Stephany Connelly's injuries and damages resulting from the February 24, 2015 wreck, as well as James M. Connelly's loss of consortium.

24. This action has brought pursuant to South Carolina Code § 15-53-10 et. seq.

25. Plaintiffs pray that this Court inquire into the matter and issue a declaratory judgement finding that uninsured motorist coverage from The Main Street America Group policy, the Old

Dominion Insurance Company policy, and the Allstate Fire and Casualty Insurance Company policy were in full force and each provided coverage, including uninsured motorist coverage and benefits, to Stephany A. Connelly and James M. Connelly for injuries and damages arising out of the February 24, 2015 wreck.

**FOR A SECOND CAUSE OF ACTION
BREACH OF CONTRACT**

(The Main Street America Group and Old Dominion Insurance Company)

26. In exchange for payment of premium, which has been received and paid in full, The Main Street America Group and Old Dominion Insurance Company promised to pay compensatory damages which an insured was legally entitled to recover from the owner or operator of an uninsured motor vehicle because of bodily injury sustained by an insured and caused by an accident arising out of the use of an uninsured automobile.

27. An insured person, included any person occupying a covered vehicle, who received personal injury and bodily harm.

28. The Jeep Comas was a covered vehicle.

29. Pursuant to the above described policy and South Carolina Code Ann. §38-77-30(7) and §38-77-150, Stephany A. Connelly was an insured subject to the uninsured motorist benefits promised by the policy. Stephany A. Connelly was a permissive occupant of the Jeep Comas. James M. Connelly was her husband.

30. Stephany A. Connelly and James M. Connelly were entitled to uninsured motorist coverage and benefits as insures or in the alternative, as intended third party beneficiaries under the insurance policy.

31. Stephany A. Connelly and James M. Connelly received personal injury and bodily harm as a result of the February 24, 2015 wreck. Their injuries and damages are of a type that are compensable under the policy.

32. Despite demand for payment of compensation under the policy, The Main Street America Group and Old Dominion Insurance Company have refused to provide uninsured motorist benefits.

**FOR A SECOND CAUSE OF ACTION
BREACH OF CONTRACT
(Allstate Fire and Casualty Insurance Company)**

33. In exchange for payment of premium by Stephany A. Connelly and James M. Connelly, which has been received and paid in full, Allstate Fire and Casualty Insurance Company promised to pay compensatory damages which an insured was legally entitled to recover from the owner or operator of an uninsured motor vehicle because of bodily injury sustained by an insured and caused by an accident arising out of the use of an uninsured automobile.

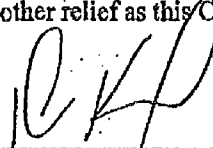
34. Stephany A. Connelly and James M. Connelly were named insures under the above described policy.

35. Pursuant to the above described policy and South Carolina Code Ann. §38-77-30(7) and §38-77-150, Stephany A. Connelly and James M. Connelly were insures subject to the uninsured motorist benefits promised by the policy.

36. Stephany A. Connelly and James M. Connelly received personal injury and bodily harm as a result of the February 24, 2015 wreck. Their injuries and damages are of a type that are compensable under the policy.

37. Despite demand for payment of compensation under the policy, Allstate Fire and Casualty Insurance Company has refused to provide uninsured motorist benefits.

WHEREFORE, Plaintiffs pray for uninsured motorist benefits in an amount commensurate with their damages, for the costs of this action, and for such other relief as this Court may find just and owing.


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 803-256-1952 (Facsimile)
 Other email: emoultrie@kassellaw.com

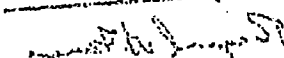
Benjamin D. McCoy, Esquire
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 Howser Newman & Besley, LLC
 P.O. Box 12009
 Columbia, South Carolina 29211
 803-758-6000
 803-758-4445 (Facsimile)

ATTORNEYS FOR PLAINTIFFS

September 27, 2016

Columbia, South Carolina.

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 ta boyioet esuse bolline nrtiw
 bqlqecaa edvaze bna ecillo airt
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 notary public in and for
 the State of South Carolina
 my commission expires 03/01/17

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Stephany A. Connelly and James M. Connelly,

Plaintiffs,

vs.

The Main Street America Group; Old
Dominion Insurance Company; Allstate Fire
and Casualty Insurance Company; Debbie
Cohn; and Freya Trozona,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
C/A#: 2016-CP-40-5885

ANSWER OF DEFENDANT
ALLSTATE FIRE AND CASUALTY
INSURANCE COMPANY

2016 NOV -8 AM 8:18
RICHLAND COUNTY
FILED

Defendant, Allstate Fire and Casualty Insurance Company (hereinafter "Defendant"), by
and through the undersigned counsel, hereby answers the Complaint of Plaintiffs herein as follows:

FOR A FIRST DEFENSE
(General Denial)

1. Each and every paragraph of Plaintiffs' Complaint not hereinafter specifically admitted, qualified, or explained is denied.
2. Paragraph 1 is denied upon information and belief.
3. Defendant is currently without knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 2 and, therefore, denies same and strict proof is demanded thereof.
4. [sic] Defendant is currently without knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 4 and, therefore, denies same and strict proof is demanded thereof.
5. Paragraph 5 is admitted.

6. Defendant is currently without knowledge or information sufficient to form a belief as to the allegations contained in Paragraphs 6 through 9 and, therefore, denies same and strict proof is demanded thereof.

7. Paragraph 10 is admitted.

8. As to Paragraph 11, Defendant admits that on February 24, 2015 Stephany Connelly was riding as a passenger in the 2012 Jeep which was being operated by Freya Trozona and that they were co-employees working in the course and scope of their employment with AppleOne Employment Agency, and that Ms. Connelly had permission from Ms. Trozona to be in the vehicle. As to the remaining allegations of Paragraph 11, Defendant is currently without knowledge or information sufficient to form a belief as to the allegations and, therefore, denies same and strict proof is demanded thereof.

9. Defendant is currently without knowledge or information sufficient to form a belief as to the allegations contained in Paragraphs 12 through 16 and, therefore, denies same and strict proof is demanded thereof.

10. Paragraph 17 is admitted upon information and belief.

11. As to Paragraph 18, it is admitted only that the Workers' Compensation Act is Ms. Connelly's exclusive remedy and that Ms. Trozona is immune from suit for any damages arising out of the automobile accident. The remaining allegations of Paragraph 18 are denied and strict proof is demanded thereof.

12. Paragraph 19 is admitted upon information and belief.

13. Paragraph 20 is admitted.

14. Paragraphs 21 and 22 are denied.

15. As to Paragraph 23, it is admitted that there is an actual controversy as to whether the Old Dominion and Allstate policies provide uninsured motorist coverage in regards to Ms. Connelly's injuries resulting from the February 24, 2015 wreck. The remaining allegations of Paragraph 23 are denied and strict proof is demanded thereof.

16. Paragraph 24 is admitted.

17. Paragraph 25 is denied.

18. Paragraphs 26 through 32 are not directed toward this Defendant and therefore requires no response. To the extent a response is required, Paragraphs 26 through 32 are denied and strict proof is demanded thereof.

19. As to Paragraph 33, Defendant craves reference to the actual policy of insurance that was issued to the Plaintiffs. Any allegations contained in Paragraph 33 that are inconsistent with that policy and/or South Carolina are denied.

20. Paragraph 34 is admitted.

21. As to Paragraph 35, it is admitted only that Plaintiffs qualify as insureds under Defendant's insurance policy. The remaining allegations of Paragraph 35 are denied and strict proof is demanded thereof.

22. Paragraph 36 is denied.

23. As to Paragraph 37, it is admitted only that because the vehicle that Plaintiff Stephany Connelly was riding in at the time of this accident was not an uninsured motorist vehicle, the uninsured motorist provisions of the policy do not apply to this accident and therefore, her claim for uninsured motorist benefits was denied.

24. The WHEREFORE Paragraph of Plaintiffs' Complaint is denied, including but not limited to any allegations which state that Plaintiffs are entitled to relief of any form from Defendant.

FOR A SECOND DEFENSE

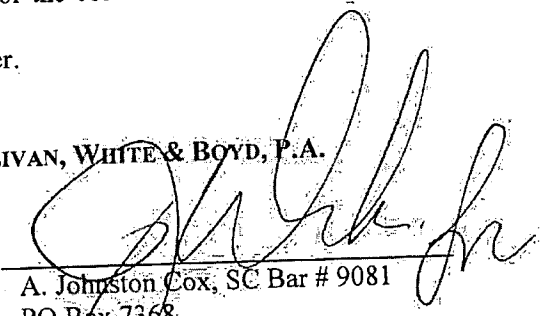
25. Because Plaintiffs are not legally entitled to recover any amounts from Defendant Freya Trozona, they are not entitled to receive any uninsured motorist coverage benefits under Defendant Allstate's policy.

FOR A THIRD DEFENSE

26. Defendant alternatively asserts that if it is determined that its uninsured motorist coverage is triggered as a result of the accident that occurred on February 24, 2015, Defendant is entitled to receive an offset for any amounts payable under the Workers' Compensation Act and any amount of uninsured motorist benefits received from the Old Dominion policy.

WHEREFORE, having fully answered the Complaint of the Plaintiffs, Defendant Allstate prays that the Complaint be dismissed with prejudice, for the costs of this action, and for such other and further relief as the Court deems just and proper.

GALLIVAN, WHITE & BOYD, P.A.

By: 

A. Johnston Cox, SC Bar # 9081
PO Box 7368
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(803) 779-1833 Ofc
(803) 779-1767 Fax

Attorney for Defendant Allstate

November 4, 2016

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Stephany A. Connelly and James M. Connelly,
Plaintiffs,

vs.

The Main Street America Group; Old
Dominion Insurance Company; Allstate Fire
and Casualty Insurance Company; Debbie
Cohn; and Freya Trozona,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
C/A#: 2016-CP-40-5885

CERTIFICATE OF SERVICE

2016 NOV -8 AM 8:48
RICHLAND COUNTY
FILED
JEROME L. HARRIS
CLERK OF COURT

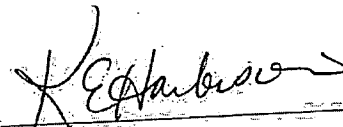
I, the undersigned employee of Gallivan, White & Boyd, P.A., do hereby certify that I have caused the below referenced to be served via U.S. mail, postage prepaid, or by other delivery as indicated, to all parties of record at the address(es) shown below.

DOCUMENT(S) AND PARTIES SERVED:

Answer of Defendant Allstate Fire and Casualty Insurance Company

John D. Kassel, Esquire
Theile B. McVey, Esquire
PO Box 1476
Columbia, SC 29202-1476

Attorneys for Plaintiffs


Legal Assistant

Date: November 4, 2016

STATE OF SOUTH CAROLINA	)	
	)	IN THE CIRCUIT COURT
COUNTY OF RICHLAND	)	
STEPHANY A. CONNELLY and	)	
JAMES CONNELLY,	)	Civil Action No.: 2016-CP-40-05885
	)	
Plaintiffs,	)	
	)	
v.	)	MOTION TO DISMISS PLAINTIFF'S
	)	COMPLAINT ON BEHALF OF
THE MAIN STREET AMERICA	)	DEBBIE COHN
GROUP; OLD DOMINION INSURANCE	)	
COMPANY; ALLSTATE FIRE AND	)	
CASUALTY COMPANY; DEBBIE	)	
COHN; and FREYA TROZONA	)	
	)	
Defendants.	)	

PLEASE TAKE NOTICE that the Defendant, Debra Cohn, improperly named above, (hereinafter "Cohn" or "Defendant"), by and through her undersigned attorneys, will move before the Court of Common Pleas, County of Richland, South Carolina, on such day and at such time as the Court may appoint, for and Order dismissing the Plaintiffs' Complaints pursuant to Rule 12, or alternatively Rule 56 of the South Carolina rules of Civil Procedure. The grounds for said Motion are as follows:

1. This matter arises out of an automobile accident on or about February 24, 2015 involving an automobile owned by Freya Trezona.
2. Debra Cohn is not the owner of the vehicle and even if she was determined to be the owner, she was not driving the automobile on February 24, 2015 or in any other way involved in the accident.

3. It is properly alleged in the Complaint that Freya Trozona [sic] was driving the automobile in which the plaintiff, Stephany Connelly was a passenger at the time of the accident.

4. It is further properly alleged in the Complaint that Freya Trozona [sic] and Stephany Connelly were co-employees within the scope and course of their employment at the time of the accident and that Freya Trozona [sic] is immune from any tort action by Stephany Connelly due to the provisions of the South Carolina Workers' Compensation Act.

5. It is further properly alleged in the Complaint that Stephany Connelly has made a claim against the policy of insurance issued to me as the named insured.

6. This is a matter of law and contract construction between the plaintiffs and my insurance company, Old Dominion Insurance Company. I have no interest in how the Court decides the issues asserted in plaintiffs' Complaint as I cannot be personally liable for any of Stephany Connelly's claims under the policy of insurance.

7. Stephany Connelly was not a passenger in the vehicle with my permission.

8. Freya Trezona was not a resident relative of my household at the time of the accident.

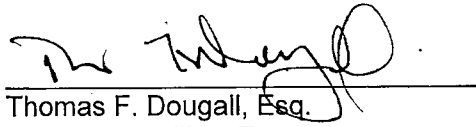
9. I further refer the Court to my Affidavit dated June 9, 2016 which is attached hereto as Exhibit A and incorporated by reference herein.

WHEREFORE, Debra Cohn respectfully requests that the Court dismiss her as an unnecessary party to the instant action with prejudice.

[SIGNATURE PAGE FOLLOWS]

Respectfully submitted,

DOUGALL & COLLINS

A handwritten signature in black ink, appearing to read 'Tom Dougall', is written over a horizontal line.

Thomas F. Dougall, Esq.

William A. Collins, Esq.

1700 Woodcreek Farms Road

Elgin, South Carolina 29045

(803) 865-8858 (TEL)

(803) 865-8944 (FAX)

Attorneys for Defendants Old Dominion
Insurance Company and Main Street America
Group

December 16, 2016

Columbia, South Carolina

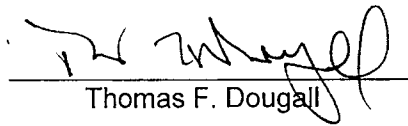
CERTIFICATE OF SERVICE

This is to certify that the foregoing Defendant's Motion to Dismiss was served in the above-referenced case by depositing a copy of the same in the United States mail, postage prepaid, on the 16th day of December, 2016 addressed as follows:

John D. Kassel, Esq.
Kassel McVey Attorneys at Law
Post Office Box 1476
Columbia, SC 29202-1476
Attorney for Plaintiffs

Benjamin D. McCoy, Esq.
Howser, Newman & Besley, LLC
Post Office Box 12009
Columbia, SC 29211
Attorney for Plaintiffs

A. Johnston Cox, Esq.
Gallivan, White & Boyd, P.A.
Post Office Box 7368
Columbia, SC 29202
Attorney for Allstate Fire & Casualty Insurance Company



Thomas F. Dougall

STATE OF SOUTH CAROLINA	)	
	)	IN THE CIRCUIT COURT
COUNTY OF RICHLAND	)	
STEPHANY A. CONNELLY and	)	
JAMES CONNELLY;	)	Civil Action No.: 2016-CP-40-05885
	)	
Plaintiffs,	)	
	)	
v.	)	ANSWER TO PLAINTIFF'S
	)	COMPLAINT ON BEHALF OF
THE MAIN STREET AMERICA	)	MAIN STREET AMERICA GROUP
GROUP; OLD DOMINION INSURANCE	)	AND OLD DOMINION INSURANCE
COMPANY; ALLSTATE FIRE AND	)	COMPANY
CASUALTY COMPANY; DEBBIE	)	
COHN; and FREYA TROZONA	)	
	)	
Defendants.	)	
	)	

NOW COME the defendants, The Main Street America Group and Old Dominion Insurance Company, improperly named above, hereinafter ("ODIC," "MSAG," "Defendants," or "Insurer") by and through their undersigned counsel, specifically reserving all of their rights to make jurisdictional, Rule 12, or other motions and in answer to the plaintiffs' Complaint would respectfully show unto the Court that:

FOR A FIRST DEFENSE
(Lack of Jurisdiction as to MSA)

1. MSAG, a holding company incorporated under the laws of the State of Florida, is not an insurance company, does no business in the State of South Carolina, has not been served with a Summons and Complaint, and therefore this Court lacks personal jurisdiction as to MSA pursuant to Rule 12(b)(2), SCRPC.

FOR A SECOND DEFENSE
(Insufficiency of Process of Service as to MSA)

2. MSAG has not been properly served in this matter and requests that it be dismissed from this matter for insufficiency of process pursuant to Rule 12(b)(4), SCRPC.

FOR A THIRD DEFENSE
(Insufficiency of Process of Service as to MSA)

3. MSAG has not been properly served in this matter and requests that it be dismissed from this matter for insufficiency of service of process pursuant to Rule 12(b)(5), SCRPC.

FOR A FOURTH DEFENSE
(Failure to State a Cause of Action as to MSA)

4. The Complaint herein fails to state facts sufficient to constitute a cause of action as to MSAG and therefore the Complaint should be dismissed, as to MSAG, pursuant to Rule 12(b)(6), SCRPC.

FOR A FIFTH DEFENSE
(General Denial)

5. Defendants deny each and every allegation of the Complaint not hereinafter specifically admitted, qualified, or explained.

6. ODIC and MSAG lack sufficient information as to the allegations in paragraph 1 of the Complaint and therefore deny the same.

7. As to paragraph 2 of the Complaint MSAG admits its principal place of business is in the State of Florida. MSAG denies it is an insurance company and denies any remaining allegations in paragraph 2 of the Complaint.

8. Paragraph 4 of the Complaint is admitted.
9. Upon information and belief paragraph 5 of the Complaint is admitted.
10. Upon information and belief paragraph 6 of the Complaint is admitted.
11. As to paragraph 7 of the Complaint ODIC admits it issued an automobile insurance policy, number 01G0167F, with effective dates of March 9, 2014 to March 9, 2015, with policy limits of \$100,000 each person and \$300,000 per accident to its named insured, Debbie Cohn. The remaining allegations in paragraph 7 of the Complaint, specifically any allegations as to MSAG are denied.
12. Paragraph 8 of the Complaint is denied.
13. As to paragraph 9 of the Complaint, ODIC admits it insured the 2012 Jeep Comas [sic]. Any allegations as to MSAG in paragraph 9 of the Complaint are denied.
14. ODIC and MSAG lack sufficient information as to the allegations in paragraph 10 of the Complaint and they are therefore denied.
15. As to paragraph 11 of the Complaint, ODIC and MSAG admit that on February 24, 2015 Stephany Connelly was riding as a passenger in the 2012 Jeep Comas [sic] which was being operated by Freya Trozona [sic] and that they were co-employees in the course and scope of their employment with Apple One Employment Agency and that Stephany Connelly was occupying the 2012 Jeep Comas [sic] with the permission of Freya Trozona [sic]. The remaining allegations of paragraph 11 of the Complaint are denied.
16. Upon information and belief paragraphs 12 and 13 of the Complaint are admitted.

17. ODIC and MSAG lack sufficient information as to the allegations in paragraph 14 of the Complaint and therefore each and every allegation in the paragraph and each and every subparagraph is denied.

18. Paragraph 15 of the Complaint is denied.

19. ODIC and MSAG lack sufficient information as to the allegations in paragraph 16 of the Complaint and it is therefore denied.

20. Paragraph 17 of the Complaint is admitted.

21. As to paragraph 18 of the Complaint ODIC and MSAG admit only that the Workers' Compensation Act is the sole and exclusive remedy for Stephany Connelly and that Freya Trozona [sic] is immune from suit for any damages arising out of the subject automobile accident and she is therefore an improper and unnecessary party to this lawsuit. The remaining allegations in paragraph 18 of the Complaint are denied.

22. As to paragraph 19 of the Complaint ODIC and MSAG admit that Stephany Connelly has made a claim for damages under the ODIC policy described above. MSAG denies it issued any insurance policy. All remaining allegations in paragraph 19 of the Complaint are denied.

23. Upon information and belief paragraph 20 of the Complaint is admitted.

24. Paragraphs 21 and 22 of the Complaint are denied.

25. As to paragraph 23 of the Complaint it is admitted that there is a controversy as to whether or not there is any uninsured motorist coverage in regard to Stephany Connelly's injuries and damages arising out of the alleged accident. The remaining allegations in paragraph 23 of the Complaint are denied.

26. Paragraph 24 of the Complaint is admitted.

27. Paragraph 25 of the Complaint is denied.

28. Paragraphs 26 of the Complaint is denied and ODIC and MSAG crave reference to the insurance policy in question for all terms, conditions, and exclusions contained therein and any allegations that are inconsistent with the terms, conditions, exclusions or South Carolina law are denied.

29. Paragraph 27 of the Complaint is unintelligible and it is therefore denied. To the extent that it attempts to allege any coverage under the ODIC insurance policy then ODIC and MSAG crave reference to the insurance policy in question for all terms, conditions, and exclusions contained therein and any allegations that are inconsistent with the terms, conditions, exclusions or South Carolina law are denied

30. As to paragraph 28 of the Complaint ODIC admits that it provided coverage for the Jeep Comas [sic] for its named insured Debbie Cohn. The remaining allegations in paragraph 28 of the Complaint are denied.

31. As to paragraph 29 of the Complaint it is admitted upon information and belief that James Connelly is the husband of Stephany Connelly. The remaining allegations in paragraph 29 of the Complaint are denied.

32. Paragraphs 30 and 31 of the Complaint are denied.

33. As to paragraph 32 of the Complaint ODIC and MSAG admit that ODIC has denied the claim made by the plaintiffs. ODIC and MSAG deny the remaining allegations in paragraph 32 of the Complaint.

34. Paragraphs 33, 34, 35, 36, and 37 of the Complaint contain no allegations

as to ODIC or MSAG and therefore no responsive pleading is required. To the extent that paragraphs 33, 34, 35, 36, and 37 of the Complaint can be read to contain any allegations against ODIC and MSAG they are denied.

35. As to the unnumbered paragraph following paragraph 37 of the Complaint, ODIC and MSAG deny that the plaintiffs are entitled to the relief requested.

FOR A SIXTH DEFENSE

36. Because plaintiffs are not legally entitled to recover any amount of damages from Freya Trezona they are not entitled to receive any benefits, including uninsured motorist coverage, under ODIC's policy of insurance.

FOR A SEVENTH DEFENSE

37. ODIC alternatively asserts that if the Court determines that the ODIC policy provides any uninsured motorist coverage to the plaintiffs then ODIC is entitled to an offset for any amounts paid under the Workers' Compensation Act.

FOR AN EIGHTH DEFENSE

38. Defendant ODIC has at all relevant times acted fairly, reasonably, and in good faith as to its insureds in accordance with its contractual obligations.

FOR A NINTH DEFENSE

39. The terms, conditions, exclusions, endorsements, and limitations contained in the ODIC policy preclude plaintiffs' claims for coverage and reasonable grounds exist to deny plaintiffs' claims.

FOR A TENTH DEFENSE

40. Any coverage under the ODIC policy is precluded to the extent that plaintiff may have failed to perform any obligations under the alleged policies and failed to comply with the terms and conditions contained in the policies.

FOR AN ELEVENTH DEFENSE

41. Plaintiffs lack privity with defendant ODIC and have no contract with ODIC.

FOR A TWELFTH DEFENSE

42. The plaintiffs have failed to show, as a matter of law, that they are entitled to the declaratory relief requested.

FOR A THIRTEENTH DEFENSE

43. The plaintiffs have failed to state a cause of action upon which relief can be granted and therefore their Complaint should be dismissed pursuant to Rule 12(b)(6), SRCP.

FOR A FOURTEENTH DEFENSE

44. The plaintiffs' Complaint fails to state a cause of action upon which fees or costs can be awarded or alleged facts which, if proven, would entitle plaintiffs to an award of costs and fees.

FOR A FIFTEENTH DEFENSE

45. ODIC and MSAG hereby adopt, as if fully repeated verbatim herein, any defenses of any other defendants to the extent that such defenses are not inconsistent with any defenses stated in paragraphs 1 through 44 above.

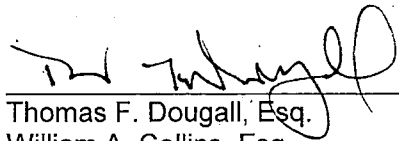
FOR A SIXTEENTH DEFENSE

46. ODIC and MSAG reserve any additional and further defenses as may be revealed by additional information during the course of discovery and investigation, and as is consistent with the South Carolina Rules of Civil Procedure.

WHEREFORE, having fully answered the plaintiffs' Complaint and asserted their affirmative defenses Old Dominion Insurance Company and Main Street America Group pray that they dismissed from this lawsuit with prejudice, that the Complaint be dismissed with prejudice, and for such further relief as the court deems just and proper.

Respectfully submitted,

DOUGALL & COLLINS



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William A. Collins, Esq.
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Elgin, South Carolina 29045
(803) 865-8858 (TEL)
(803) 865-8944 (FAX)

Attorneys for Defendants Old Dominion
Insurance Company and Main Street America
Group

December 16, 2016

Columbia, South Carolina

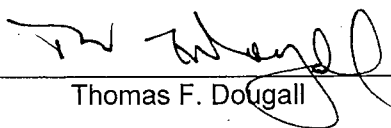
CERTIFICATE OF SERVICE

This is to certify that the foregoing Defendants' Answer to Plaintiffs' Complaint was served in the above-referenced case by depositing a copy of the same in the United States mail, postage prepaid, on the 16th day of December, 2016 addressed as follows:

John D. Kassel, Esq.
Kassel McVey Attorneys at Law
Post Office Box 1476
Columbia, SC 29202-1476
Attorney for Plaintiffs

Benjamin D. McCoy, Esq.
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Thomas F. Dougall

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	
Stephany A. Connelly and James M. Connelly,	)	Civil Action No.: 2016-CP-40-5885
	)	
Plaintiffs,	)	JOINT STIPULATIONS OF FACT
	)	
v.	)	
The Main Street America Group, Old Dominion Insurance Company, Allstate Fire and Casualty Insurance Company, Debbie Cohn, and Freya Trozona,	)	
	)	
Defendants.	)	

RICHLAND COUNTY
 FILED
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 JEANNETTE W. MCBRIDE
 C.C.P. & G.S.

1. Old Dominion Insurance Company issued an automobile liability insurance policy to Debbie Cohn ("Cohn"), designated by policy number 01G0167F, with effective dates of March 9, 2014 to March 9, 2015, and with policy limits of \$100,000 each person, \$300,000.00 each accident (the "Old Dominion Policy") The Old Dominion Policy contained an uninsured motorist endorsement with the same coverage limits.
2. The Old Dominion Policy was in full force and effect at the time of the accident.
3. The Old Dominion Policy issued to Cohn includes bodily injury liability insurance and property damage liability insurance with limits in compliance with S.C. Code Ann. §38-77-140.
4. Allstate Fire and Casualty Company issued an automobile liability insurance policy in the name of James and Stephany Connelly, designated by policy number 963934526, with effective dates of September 1, 2014 to March 1, 2015, with policy limits in the amount of \$250,000.00 each person, \$500,000.00 each accident (the "Allstate Policy"). The Allstate Policy

contained an uninsured motorist endorsement with the same coverage limits. James and Stephany Connelly paid all premiums required for maintenance of this policy.

5. Freya Trezona ("Trezona") is the daughter of Cohn.

6. Cohn and Trezona owned a motor vehicle described as a 2012 Jeep Compass vehicle, VIN 1C4NJCBA7CD504097 (the "Vehicle"). The Vehicle was an insured vehicle under the Old Dominion Policy.

7. Trezona is an insured under the Old Dominion Policy.

8. On February 24, 2015, Stephany Connelly ("Connelly") was riding as a passenger in the Vehicle that was being operated by Trezona.

9. Connelly was occupying the Vehicle with permission of Ms. Trezona.

10. For purposes of this declaratory judgment only, the parties stipulate that Trezona's negligence caused the accident and Connelly's resulting injuries and damages.

11. Connelly and Trezona were co-employees, both working within the course and scope of their employment with Apple One Employment Agency at the time of the accident.

12. Connelly applied for and began receiving benefits under the South Carolina Workers' Compensation Act (the "Act").

13. Connelly is not legally entitled to recover damages from Trezona, because Trezona is immune from suit as a co-employee under the exclusivity provision of the Act.

14. Connelly made a claim for damages under the liability and uninsured coverage of the Old Dominion Policy. The claim was denied. Old Dominion denied the claim under the liability policy because of its belief that Trezona cannot be legally responsible to Connelly due to her immunity under the Act.

15. The Old Dominion liability policy provides that: We will pay damages for "bodily injury" or "property damage" for which any "insured" becomes legally responsible because of an auto accident.

16. The Old Dominion uninsured endorsement provided that: We will pay compensatory damages which an "insured" is legally entitled to recover from the owner or operator of an "uninsured motor vehicle" because of "bodily injury": 1. Sustained by an "insured", and 2. Caused by an accident.

17. Connelly was an insured person under the Old Dominion Policy's uninsured motorist endorsement by reason of her occupancy in the Vehicle and the definition of an insured in the Old Dominion Policy.

18. Old Dominion denied the claim under the uninsured motorist coverage on the ground that the vehicle Trezona was driving was not an uninsured vehicle and workers' compensation is her exclusive remedy in South Carolina.

19. Connelly made a claim for damages under the uninsured coverage of the Allstate Policy. Allstate denied the claim on the grounds that the vehicle Trezona was driving was not uninsured at the time of the accident and that workers compensation is the plaintiff's exclusive remedy in South Carolina.

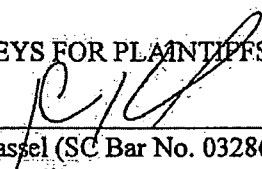
20. Old Dominion does not deny that the Vehicle was insured at the time of the accident.

[Signatures appear on the following page]

JOINT STIPULATIONS OF FACT
Connelly v. The Main Street America Group, et al.
Civil Action No.: 2016-CP-40-5885

WE SO STIPULATE:

ATTORNEYS FOR PLAINTIFFS:



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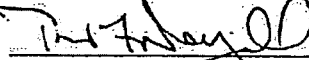
January 25, 2017

Columbia, South Carolina.

JOINT STIPULATIONS OF FACT
Connelly v. The Main Street America Group, et al.
Civil Action No.: 2016-CP-40-5885

I SO STIPULATE:

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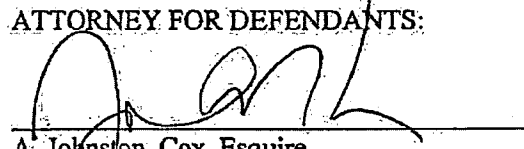
January 24, 2017

Elgin, South Carolina

JOINT STIPULATIONS OF FACT
Connelly v. The Main Street America Group, et al.
Civil Action No.: 2016-CP-40-5885

I SO STIPULATE:

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January 23, 2017

Columbia, South Carolina.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Stephany A. Connelly and James M. Connelly,

Plaintiffs,

vs.

The Main Street America Group; Old
Dominion Insurance Company; Allstate Fire
and Casualty Insurance Company; Debbie
Cohn; and Freya Trozona,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
Civil Action Number: 2016-CP-40-05885

**OLD DOMINION INSURANCE
COMPANY AND MAIN STREET
AMERICA GROUP'S MEMORANDUM
IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT**

Defendants Old Dominion Insurance Company (hereinafter "Old Dominion") and The Main Street America Group (hereinafter "Main Street") submit the following memorandum in support of their Motion for Summary Judgment.

BACKGROUND

This case arises out of an automobile accident that occurred on February 24, 2015, in Columbia, South Carolina. The following facts have been stipulated by the parties (See, Joint Stipulations of Fact, Exhibit A).

Plaintiff Stephany Connelly was riding as a passenger in a vehicle operated and owned by Freya Trezona¹. Connelly and Trezona were co-employees working within the course and scope of their employment with Apple One Employment Agency at the time of the accident. The Complaint alleges the accident occurred when Trezona either improperly turned left into a private driveway or improperly backed down the driveway causing her vehicle to collide with

¹ As discussed below, Trezona co-owned the vehicle with Old Dominion's named insured Debbie Cohn. Ms. Trezona is improperly named in this matter. The vehicle had liability limits in compliance with S.C. Code Ann. §38-77-140. See Old Dominion Policy, Exhibit B.

another vehicle. Connelly alleges she has incurred damages as a result of Trezona's negligent operation of the vehicle.

After the accident, Connelly applied for and began receiving benefits under the South Carolina Workers' Compensation Act (the "Act").² The fact the accident occurred within the course and scope of Connelly's and Trezona's employment has rendered two outcomes. First, Connelly has received benefits under the South Carolina Workers' Compensation Act. Second, as Connelly's co-employee, Trezona has received immunity from tort actions pursuant to the Act's exclusivity provision.

Following the accident, Connelly also made a third-party claim against Trezona and sought liability coverage from the Old Dominion policy. However, Old Dominion denied liability because Trezona is not legally obligated to pay any amount of damages to Connelly based upon the exclusivity provision found in S.C. Code Ann. § 42-5-10 and Trezona is immune from liability in tort under the Act.³

Following Old Dominion's denial of liability, Connelly then presented an uninsured motorist ("UM") claim to Old Dominion Insurance Company ("Old Dominion"). Again, Old Dominion denied the UM claim on the grounds that the vehicle Trezona was driving was not an

² S.C. Code Ann. §42-1-540 states: "The rights and remedies granted by this title to an employee when he and his employer have accepted the provisions of this title, respectively, to pay and accept compensation on account of personal injury or death by accident, shall exclude all other rights and remedies of such employee, his personal representative, parents, dependents or next of kin as against his employer, at common law or otherwise, on account of such injury, loss of service or death."

³ South Carolina courts have held that the same immunity from civil suit provided to employers under the Workers' Compensation Act also extends to co-employees. *See, e.g., Posey v. Proper Mold & Engineering, Inc.*, 378 S.C. 210, 661 S.E.2d 395 (Ct. App. 2008); *Nolan v. Daley*, 222 S.C. 407, 73 S.E.2d 449 (1952) (holding a co-employee who negligently injures another employee while in the scope of employment is immune under the Act and cannot be held personally liable).

uninsured vehicle and that workers' compensation is Connelly's exclusive remedy in South Carolina.

Allstate issued an automobile policy to Plaintiffs James and Stephany Connelly. The Connelys maintained UM coverage in the amount of \$250,000 per person and \$500,000 per accident. The Allstate policy contains an uninsured motorist endorsement with the same coverage limits. Connelly presented a UM claim to Allstate and Allstate denied the claim on the grounds that the vehicle Trezona was driving was not an uninsured vehicle and that workers' compensation is Connelly's exclusive remedy in South Carolina.

In response to Old Dominion and Allstate's denial of coverage, Plaintiffs instituted this action alleging the denial of UM benefits constitutes a breach of contract and seeking a declaration that Connelly is entitled to UM benefits under both policies. However, as a matter of law and for the reasons stated herein, Connelly was not involved in an accident with an uninsured vehicle and she is not legally entitled to recover damages from the owner or operator of an uninsured vehicle.

STANDARD OF REVIEW

The determination of coverage under an insurance policy is an action at law. *Nationwide Mut. Ins. Co. v. Prioleau*, 359 S.C. 238, 241, 597 S.E.2d 165, 167 (Ct. App. 2004); *see also Morehead v. Doe*, 324 S.C. 559, 568, 479 S.E.2d 817, 821 (Ct. App. 1996) (holding an action for breach of an insurance contract is an action at law); *Johnson v. State Farm Mut. Auto Ins. Co.*, 260 S.C. 24, 193 S.E.2d 806 (1973) (holding the construction of an unambiguous insurance policy is a matter for the trial judge). Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is

entitled to judgment as a matter of law.” Rule 56(c), SCRCP; *Russell v. Wachovia Bank, N.A.*, 353 S.C. 208, 217, 578 S.E.2d 329, 334 (2003). A court considering summary judgment neither makes factual determinations nor considers the merits of competing testimony; however, summary judgment is completely appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner. *David v. McLeod Reg'l Med. Ctr.*, 367 S.C. 242, 250, 626 S.E.2d 1, 5 (2006).

ARGUMENT

The Trezona vehicle was insured and therefore cannot be an uninsured vehicle.

Old Dominion does not deny that it issued a policy of insurance coverage to Debbie Cohn, policy number 01G0167F with effective dates of March 9, 2014 to March 9, 2015 with liability limits of \$100,000 per person and \$300,000 per accident. As required by law the policy was endorsed to provide mandatory UM coverage in the amount of \$100,000 per person and \$300,000 per accident. In addition, Debbie Cohn purchased optional UIM coverage with the same limits. The policy limits exceed South Carolina's minimum liability insurance limits. Accordingly, the Jeep was an insured vehicle at all times relevant to Plaintiffs' Complaint.

It is clear under South Carolina law that a vehicle cannot be both insured and uninsured.

S.C. Code Ann. § 38-77-30 provides the following definition:

- (14) “Uninsured motor vehicle” means a motor vehicle as to which:
- (a) there is not bodily injury liability insurance and property damage liability insurance both at least in the amounts specified in Section 38-77-140; or
 - (b) there is nominally that insurance, but the insurer writing the same successfully denies coverage thereunder; or
 - (c) there was that insurance, but the insurer who wrote the same is declared insolvent, or is in delinquency proceedings, suspension, or receivership, or is proven unable fully to respond to a judgment; and
 - (d) there is no bond or deposit of cash or securities in lieu of the bodily injury and property damage liability insurance;
 - (e) the owner of the motor vehicle has not qualified as a self-insurer in accordance with the applicable provisions of law.

A motor vehicle is considered uninsured if the owner or operator is unknown. However, recovery under the uninsured motorist provision is subject to the conditions set forth in this chapter.

Any motor vehicle owned by the State or any of its political subdivisions is considered an uninsured motor vehicle when the vehicle is operated by a person without proper authorization.

Accordingly, as the Jeep in question was insured by the Defendant, Debbie Cohn, under the policy of insurance issued by Old Dominion, and as the policy provided for insurance limits exceeding South Carolina's minimum limits under the South Carolina Financial Responsibility Act, the Jeep cannot be an uninsured vehicle. There is simply no statutory or contractual language to support plaintiffs' contention that the Trezona vehicle was an uninsured motor vehicle under the facts of this case.

The exclusivity of the Workers' Compensation Act does not render the Trezona vehicle uninsured and Plaintiffs are not "legally entitled to recover damages."

The Plaintiffs admit that "[o]n February 24, 2015 Stephany Connelly was riding as a passenger in the 2012 Jeep Comas (sic) vehicle which was being operated by Freya Trozona (sic). Ms. Connelly and Ms. Trozona (sic) were co-employees both working within the course and scope of their employment with Apple One Employment Agency. (Plaintiffs' Complaint, ¶11).

The issue of whether a co-employee's immunity under the Workers' Compensation Act renders a vehicle uninsured for purposes of UM coverage has not yet been addressed in South Carolina and a review of decisions from other jurisdictions addressing this issue reveals a split in authority. However, a finding that a co-employee's statutory immunity under the Act does not implicate uninsured motorist coverage is required to adhere to South Carolina's statutory definition of "uninsured motor vehicle," uninsured motorist statutes, and the legislative intent of the Workers' Compensation Act.

The statutory requirements for uninsured motorist coverage in South Carolina are found in S.C. Code Ann. §38-77-10, et. al. S.C. Code Ann. §38-77-150 states:

No automobile insurance policy or contract may be issued or delivered unless it contains a provision by endorsement or otherwise, herein referred to as the uninsured motorist provision, undertaking to pay the insured all sums which he is *legally entitled to recover* as damages from the owner or operator of an uninsured motor vehicle, within limits which may be no less than the requirements of Section 38-77-140.

S.C. Code Ann. § 38-77-150(A) (emphasis added). Tracking the “legally entitled to recover” language, the Old Dominion policy states:

INSURING AGREEMENT

We will pay damages which an “insured” is **legally entitled to recover** (emphasis added) from the owner or operator of an “uninsured motor vehicle” because of:

1. “Bodily injury” sustained by an “insured” and caused by an accident; and
2. “Property damage” caused by an accident.

(Policy, Exhibit B)

S.C. Code Ann. § 38-77-30 provides the following definition:

(14) “Uninsured motor vehicle” means a motor vehicle as to which:

- (a) there is not bodily injury liability insurance and property damage liability insurance both at least in the amounts specified in Section 38-77-140; or
- (b) there is nominally that insurance, but the insurer writing the same successfully denies coverage thereunder; or
- (c) there was that insurance, but the insurer who wrote the same is declared insolvent, or is in delinquency proceedings, suspension, or receivership, or is proven unable fully to respond to a judgment; and
- (d) there is no bond or deposit of cash or securities in lieu of the bodily injury and property damage liability insurance;
- (e) the owner of the motor vehicle has not qualified as a self-insurer in accordance with the applicable provisions of law.

A motor vehicle is considered uninsured if the owner or operator is unknown. However, recovery under the uninsured motorist provision is subject to the conditions set forth in this chapter.

Any motor vehicle owned by the State or any of its political subdivisions is considered an uninsured motor vehicle when the vehicle is operated by a person without proper authorization.

As previously discussed, it is undisputed that Connelly is not legally entitled to recover damages from Trezona due to her immunity under the Workers' Compensation Act. This is not only undisputed, it is so stipulated by the plaintiffs. (See Joint Stipulation of Fact 13).

These undisputed facts, statutes, and provisions guide the determination of whether the Trezona vehicle was uninsured and whether Plaintiffs are "legally entitled to recover" damages from Trezona. They also correspond with statutes and provisions relied upon by the Supreme Court of Kentucky in *State Farm Mutual Automobile Insurance Co. v. Slusher*, 325 S.W.3d 318 (Ky. 2010). The *Slusher* Court addressed a factually similar situation involving the right of a worker to recover under his personal UM or UIM policy for injuries sustained in a work-related motor vehicle accident caused by the negligence of a co-worker. Like the instant case, the worker in *Slusher* was injured during the course and scope of his employment when his co-worker's truck rolled into the building in which the decedent was working. The worker's estate received workers' compensation benefits from the employer's carrier and was unable to assert a wrongful death claim against the co-worker due to the exclusive remedy provision of the Workers' Compensation Act⁴. When the worker's estate sought payment under his personal UM and UIM policies, the carrier denied on the grounds the policy limited UM and UIM liability to damages the estate was legally entitled to collect from the owner or operator of an uninsured or

⁴ KRS 342.690(1) states: "If an employer secures payment of compensation as required by this chapter, the liability of such employer under this chapter shall be exclusive and in place of all other liability of such employer to the employee, his legal representative, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from such employer at law or in admiralty on account of such injury or death The exemption from liability given an employer by this section shall also extend to such employer's carrier and to all employee's, officers or directors of such employer or carrier" *See also, Travelers Indemnity Co. v. Reker*, 100 S.W.3d 756, 760 (Ky. 2003) (holding the effect of this statute is to "shield a covered employer and its insurer from any other liability to a covered employee for damages arising out of a work-related injury.").

underinsured vehicle. Further, like S.C. Code Ann. § 38-77-150(A), Kentucky's statutory law eliminated the estate's legal entitlement to collect any damages from the employer or a co-worker in excess of the workers' compensation benefits paid.

Citing the exclusivity statute, the *Slusher* court found that except for the workers' compensation benefits that had already been awarded, the worker's estate is not "legally entitled to collect" any further amounts from either the employer or the co-worker. Consequently, the estate could not collect under its UM or UIM coverage because the contractual language of the policy afforded payment of those benefits only for "bodily injury an insured is legally entitled to collect from the driver of an uninsured motor vehicle." In reaching this conclusion, the *Slusher* court sided with a majority of other jurisdictions. *Slusher*, 325 S.W.3d at 324 n. 12 (citing *Ex parte Carlton*, 867 So.2d 332 (Ala. 2003) (employee injured as a passenger in a vehicle driven by a co-employee was, under Workers' Compensation Act, not legally entitled to recover from owner or operator of uninsured vehicle, for purposes of uninsured motorist statute, and, therefore not entitled to UM benefits under his insurance policy); *Wachtler v. State Farm Mut. Auto. Ins. Co.*, 835 So.2d 23 (Miss. 2003) (insured was not "legally entitled to recover" from co-employee driving truck that struck insured and, therefore, was not entitled to UM benefits under personal automobile policies; the exclusive remedy provision of the Workers' Compensation Act barred recovery from co-employee); *Williams v. Thomas*, 370 S.E.2d 773 (Ga. App. 1987) (an employee who suffered an on-the-job injury when struck by a motor vehicle owned by his employer and operated by his co-employee while in the scope of employment, and for which the employee was awarded workers' compensation benefits, held not entitled to recover uninsured motorist benefits under his own automobile insurance policy); *Williams v. Country Mut. Ins. Co.*, 328 N.E.2d 117 (Ill. App. 1975) (collision between two employees' automobiles on their

employer's premises in the course of employment, was within the purview of the state workers' compensation law; the injured employee's sole recourse was under the workers' compensation statute, and there was no coverage under the injured employee's UM coverage, even though the co-employee was uninsured); *Lee v. Allstate Ins. Co.*, 467 So.2d 44 (La. App. 1985) (employee injured in an automobile accident caused by co-employee held not entitled to recover from his co-employee's insurer or from his own UM carrier as both insurers were entitled to avail themselves of the exclusive remedy provision of the state workers' compensation statute.)).

In determining the worker's estate was not legally entitled to recover UM and/or UIM benefits due to the exclusivity provision in the Workers' Compensation Act, the *Slusher* court distinguished cases applying an "essential facts" approach. *Id.* Under this approach, some courts have interpreted the phrase "legally entitled to recover," or its equivalent, to allow an insured to collect UM coverage merely by establishing fault on the part of the tortfeasor and the amount of the insured's damages. *Id.* at 322. Under the "essential facts" approach, the tortfeasor's immunity does not preclude UM coverage.⁵

Noting the shortcomings of the essential facts analysis, the *Slusher* court found that the abridgment of the essential facts approach "fails to properly consider an individualized analysis of a particular policy's language and its interplay with statutory public policy exemptions to tort liability, such as the exclusive remedy provisions of the Workers' Compensation Act." *Slusher*, 325 S.W.3d at 324 n. 11 (; see also *Williams v. State Farm Mut. Auto. Ins. Co.*, 641 A.2d 783, 787 (Conn. 1994) ("In order to recover uninsured motorist benefits, the plaintiff must prove, pursuant to the applicable statutes and regulations, as well as the contract, that he is 'legally

⁵ Representative of the essential facts approach is *Borjas v. State Farm Mutual Automobile Insurance Co.*, 33 P.3d 1265 (Colo. Ct. App. 2001), which held "legally entitled to recover" means the insured need only establish fault of the uninsured motorist gave rise to damages and the extent of those damages.

entitled to collect' damages from the uninsured motorist... 'Legally entitled to collect damages from the owner or driver of an uninsured motor vehicle,' means that in order to recover under the policy, the plaintiff must prove: (1) that the other motorist was uninsured; (2) that the other motorist was legally liable under the prevailing law; and (3) the amount of liability." (emphasis added).

The reasoning in *Slusher* and other cases accounting for statutory immunity in a "legally entitled to recover" analysis is applicable to this case and in accord with South Carolina law and legislative intent. The legislature's intent is evidenced in the fact it did not include a provision in the Workers' Compensation Act entitling injured workers with damages in excess of allowable workers' compensation benefits to obtain further benefits.

Proof of the legislative intent that the Workers' Compensation Act is an employee's exclusive remedy against a co-employee is further evidenced by the fact the General Assembly chose not to include a provision in the Workers' Compensation Act entitling workers injured by co-employees to seek additional recovery from uninsured or underinsured motorist carriers.

The legislature certainly could have included such a provision, but apparently chose not to do so. This is illustrated by the fact that the legislature did include such a provision within the South Carolina Tort Claims Act. S.C. Code Ann. § 15-78-190, entitled "Compensation of plaintiff pursuant to underinsured or uninsured defendant provisions of plaintiff's insurance policy" provides:

If the amount of the verdict or judgment is not satisfied by reason of the monetary limitations of this chapter upon recovery from the State or political subdivision thereof, the plaintiff's insurance company, subject to the underinsured and uninsured defendant provisions of the plaintiff's insurance policy, if any, shall compensate the plaintiff for the difference between the amount of the verdict or judgment and the payment by the political subdivision. If a cause of action is barred under § 15-78-60 of the 1976 Code, the plaintiff's insurance company must compensate him for his losses subject to the aforementioned provisions of his insurance policy.

The South Carolina Supreme Court construed this statute in *Cain v. Nationwide Property & Casualty Insurance Co.*, and held that “by enacting section 15-78-190, the Legislature assured that an insurance company could not cite the ‘exclusive civil remedy portion of section 15-78-20⁶ to deny payment from the plaintiff’s uninsured or underinsured motorist coverage where recovery pursuant to the Tort Claims Act was insufficient.” 378 S.C. 25, 31, 661 S.E.2d 349, 352 (2008). Conversely, the omission of a similar provision in the Workers’ Compensation Act evinces the legislature’s intent to allow insurance companies to cite the exclusivity portion of S.C. Code Ann. § 42-1-540 to deny payment from the plaintiff’s UM/UIM coverage where recovery pursuant to the Workers’ Compensation Act was insufficient. See *State v. Thomas*, 372 S.C. 466, 469, 642 S.E.2d 724, 725 (2007) (holding that the inclusion of specific provisions to prohibit suspension of sentences in other statutes and omission of any such provision in the proximity statute, indicates the legislature did not intend to limit the general authority to suspend sentences); *Branch v. City of Myrtle Beach ex rel. Attorney Gen. of S.C.*, 340 S.C. 405, 410, 532 S.E.2d 289, 292 (2000) (holding that by including definition of public employee in other sections but not in right-to-work statute, legislature did not intend to cover public employees).

The *Cain* opinion is instructive in that it also analyzed the statutory definitions of uninsured and underinsured vehicles. The Court recognized that limiting recovery from the government under the Tort Claims Act is not unusual, but the UM and UIM arena is unique. *Id.* The Court further recognized that “the sole purpose of these kinds of insurance is to provide compensation where the at-fault motorist either is not insured or does not have enough insurance.” *Id.* Relying on the definitions of uninsured and underinsured vehicles in the

⁶ Section 15-78-20(b) states: “The remedy provided by this chapter is the exclusive civil remedy available for any tort committed by a governmental entity, its employees, or its agents except as provided in § 15-78-70(b).”

plaintiff's policy and corresponding statutory definitions, the *Cain* Court held plaintiff was not entitled to recover under the UM section of his policy because the tortfeasor's vehicle had insurance protection greater than the minimum limits but less than plaintiff's damages and was, therefore, "underinsured". *Id.* at 32, 661 S.E.2d at 353. Plaintiff did not have UIM coverage on his policy and consequently, could not recover.

The same analysis applies to this case. The Workers' Compensation Act is the exclusive remedy for workers injured in the course and scope of employment. South Carolina courts have held that the same immunity from civil suit provided to employers under the Act also extends to co-employees. *See, e.g., Posey v. Proper Mold & Engineering, Inc.*, 378 S.C. 210, 661 S.E.2d 395 (Ct. App. 2008); *Nolan v. Daley*, 222 S.C. 407, 73 S.E.2d 449 (1952) (holding a co-employee who negligently injures another employee while in the scope of employment is immune under the Act and cannot be held personally liable). Unlike the Tort Claims Act, the Workers' Compensation Act does not include a provision permitting the collection of UM or UIM benefits in accidents involving at-fault co-employees or employers. Although the purpose of these coverages is to compensate an individual when the at-fault motorist is uninsured or does not have enough insurance, the determination of coverage in UM/UIM policies still turns on the definitions of uninsured and underinsured vehicles as found in the policies and in statutory law.

Considering the definitions of "uninsured motor vehicle" in the Old Dominion policy and in S.C. Code Ann. § 38-77-30, the Trezona vehicle in which Connelly was riding was not uninsured because there was bodily injury and property damage liability insurance in or exceeding statutorily required amounts on the vehicle. In addition, Connelly is not "legally entitled to recover" damages from Trezona because she is immune from suit pursuant to § 42-1-540. Immunity of the tortfeasor does not render the vehicle uninsured, especially when the

legislature chose not to include a provision allowing UM/UIM coverage in the Workers' Compensation Act.

CONCLUSION

In moving for Summary Judgment, Old Dominion acknowledges the marked split in authority over the issue presented in this case and urges the Court to adopt the view that gives effect to South Carolina's legislative intent and statutory definition of "uninsured motor vehicle". An "uninsured motor vehicle" means a "vehicle as to which there is not bodily injury liability insurance and property damage liability insurance" in amounts mandated by statute. S.C. Code Ann. § 38-77-30. The definition does not include vehicles driven by tortfeasor's immune from suit. The Trezona vehicle was an insured vehicle because it carried bodily injury and property damage coverage. Further, giving effect to the exclusivity provision of S.C. Code Ann. § 42-1-540, Plaintiffs' sole remedy is the Workers' Compensation Act. For these reasons, Old Dominion contends there is no genuine issue of any material fact that Plaintiffs are not entitled to UM coverage under the Old Dominion policy and respectfully requests an order granting Summary Judgment in its favor.

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*Attorneys for Defendants Old Dominion
Insurance Company and Main Street America
Group*

March 2, 2017

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Stephany A. Connelly and James M. Connelly,
Plaintiffs,

VS:

The Main Street America Group; Old
Dominion Insurance Company; Allstate Fire
and Casualty Insurance Company; Debbie
Cohn; and Freya Trezona,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
C/A#: 2016-CP-40-5885

**ALLSTATE FIRE AND CASUALTY
INSURANCE COMPANY'S MOTION
FOR SUMMARY JUDGMENT AND
MEMORANDUM IN SUPPORT**

RICHLAND COUNTY
FILED
MAR -8 PM 12:47
J. METTE W. MCORRIDE
CLERK & C.S.

PLEASE TAKE NOTICE that the defendant, Allstate Fire and Casualty Insurance Company ("Allstate"), by and through its undersigned counsel, will move the Court, at a date and time to be set by the Court, but not sooner than ten (10) days after service hereof, for an order pursuant to Rule 56 of the South Carolina Rules of Civil Procedure granting summary judgment in its favor inasmuch as there is no genuine issue as to any material fact and Allstate is entitled to judgment as a matter of law on the following grounds:

Plaintiffs are not entitled to uninsured motorist coverage because the exclusivity of the Workers' Compensation Act does not render the vehicle in which Connelly was riding uninsured and Plaintiffs are not "legally entitled to recover damages."

This motion is based upon the pleadings and discovery in this case, Rule 56 of the South Carolina Rules of Civil Procedure, all applicable common and statutory law, Allstate's Memorandum in Support of Summary Judgment and all exhibits and cases attached thereto.

For the foregoing reasons, Allstate respectfully requests that this Court grant its motion for summary judgment.

(SIGNATURE PAGE TO FOLLOW)

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March 10, 2017

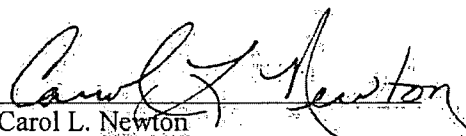
CERTIFICATE OF SERVICE

The undersigned hereby certifies that she served a copy of **ALLSTATE FIRE AND CASUALTY INSURANCE COMPANY'S MOTION FOR SUMMARY JUDGMENT AND MEMORANDUM IN SUPPORT** on all known counsel of record by placing a copy in the United States Mail, with due and proper postage affixed thereto and addressed as follows this the 6 day of March, 2017:

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2017 MAR -8 PM 12:47
JANETTE W. MODRIDGE
C.C.P. & G.S.
MICHLAND COUNTY
FILED

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Stephany A. Connelly and James M. Connelly,

Plaintiffs,

vs.

The Main Street America Group; Old
Dominion Insurance Company; Allstate Fire
and Casualty Insurance Company; Debbie
Cohn; and Freya Trezona,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
C/A#: 2016-CP-40-5885

**ALLSTATE FIRE AND CASUALTY
INSURANCE COMPANY'S
MEMORANDUM IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT**

2017 MAR -8 PM 12:4
JEANETTE M. HOSKINS
C.C.P. 2.6.5.
RICHLAND COUNTY
FILED

Defendant Allstate Fire and Casualty Insurance Company (hereinafter "Allstate") submits the following memorandum in support of its Motion for Summary Judgment. Allstate seeks a ruling from the Court that Plaintiffs cannot recover under Allstate's Uninsured Motorist coverage because Stephany Connelly was not involved in an accident with an uninsured motorist and she is not legally entitled to recover damages from the owner or operator of an uninsured automobile.

BACKGROUND

This case arises out of an automobile accident that occurred on February 24, 2015, in Columbia, South Carolina. The following facts have been stipulated by the parties (See, Joint Stipulations of Fact, Exhibit A):

Plaintiff Stephany Connelly was injured in an automobile accident while riding as a passenger in a vehicle operated by Freya Trezona and co-owned by Debbie Cohn ("Cohn") and Freya Trezona ("Trezona"). Connelly and Trezona were co-employees working within the course and scope of their employment with Apple One Employment Agency at the time of the accident. As a result of Trezona's negligent operation of the vehicle, Connelly incurred

damages. At the time of the accident, the vehicle Trezona was driving was insured under a policy of liability insurance issued by Old Dominion Insurance Company ("Old Dominion") to Cohn with liability limits in compliance with S.C. Code Ann. § 38-77-140¹.

After the accident, Connelly applied for and began receiving benefits under the South Carolina Workers' Compensation Act (the "Act"). Pursuant to S.C. Code Ann. § 42-1-540², Connelly is not legally entitled to recover damages from Trezona, because she is Connelly's co-employee.³

However, Plaintiffs also made a third party claim against Trezona and sought liability coverage from the Old Dominion policy. Old Dominion denied the claim because on the ground that Trezona cannot be legally responsible to Connelly due to her immunity under the Workers' Compensation Act.⁴ Plaintiffs then sought uninsured motorist ("UM") benefits from the Old Dominion policy. Old Dominion denied the UM claim on the grounds that the vehicle Trezona was driving was not an uninsured vehicle and workers' compensation is her exclusive remedy in South Carolina.

¹ Defendant Freya Trezona is the daughter of Cohn and is an insured under the policy.

² S.C. Code Ann. § 42-1-540 states: "The rights and remedies granted by this title to an employee when he and his employer have accepted the provisions of this title, respectively, to pay and accept compensation on account of personal injury or death by accident, shall exclude all other rights and remedies of such employee, his personal representative, parents, dependents or next of kin as against his employer, at common law or otherwise, on account of such injury, loss of service or death."

³ South Carolina courts have held that the same immunity from civil suit provided to employers under the Workers' Compensation Act also extends to co-employees. *See, e.g., Posey v. Proper Mold & Engineering, Inc.*, 378 S.C. 210, 661 S.E.2d 395 (Ct. App. 2008); *Nolan v. Daley*, 222 S.C. 407, 73 S.E.2d 449 (1952) (holding a co-employee who negligently injures another employee while in the scope of employment is immune under the Act and cannot be held personally liable).

⁴ It is important to note that Old Dominion did not deny *coverage* for the accident. Rather, Old Dominion asserted (correctly) that Trezona has no personal *liability* for the accident.

Allstate issued an automobile policy to Plaintiffs James and Stephany Connelly with policy limits in the amount of \$250,000 each person and \$500,000 each accident. (Exhibit B). The Allstate policy contained an uninsured motorist endorsement with the same coverage limits. Connelly presented ("UM") claims to Allstate. Allstate also denied the claim on the grounds that the vehicle Trezona was driving was not uninsured at the time of the accident and that workers' compensation is Connelly's exclusive remedy in South Carolina.

In response to Old Dominion's and Allstate's denials of coverage, Plaintiffs instituted this action alleging the denial of UM benefits constitutes a breach of contract and seeking a declaration that Connelly is entitled to UM benefits under both policies. However, as a matter of law, Connelly was not involved in an accident with an uninsured motorist and she is not legally entitled to recover damages from the owner or operator of an uninsured automobile.

STANDARD OF REVIEW

The determination of coverage under an insurance policy is an action at law. *Nationwide Mut. Ins. Co. v. Prioleau*, 359 S.C. 238, 241, 597 S.E.2d 165, 167 (Ct. App. 2004); *see also Morehead v. Doe*, 324 S.C. 559, 568, 479 S.E.2d 817, 821 (Ct. App. 1996) (holding an action for breach of an insurance contract is an action at law); *Johnson v. State Farm Mut. Auto Ins. Co.*, 260 S.C. 24, 193 S.E.2d 806 (1973) (holding the construction of an unambiguous insurance policy is a matter for the trial judge). Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Rule 56(c), SCRCP; *Russell v. Wachovia Bank, N.A.*, 353 S.C. 208, 217, 578 S.E.2d 329, 334 (2003). A court considering summary judgment neither makes factual determinations nor considers the merits of competing testimony; however,

summary judgment is completely appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner. *David v. McLeod Reg'l Med. Ctr.*, 367 S.C. 242, 250, 626 S.E.2d 1, 5 (2006).

ARGUMENT

The exclusivity of the Workers' Compensation Act does not render the Trezona vehicle uninsured and Plaintiffs are not "legally entitled to recover damages."

The issue of whether a co-employee/tortfeasor's immunity under the Workers' Compensation Act renders a vehicle uninsured for purposes of UM coverage has not yet been addressed in South Carolina. A review of decisions from other jurisdictions addressing this issue reveals a split in authority. However, a finding that a co-employee's statutory immunity under the Act does not implicate uninsured motorist coverage is required to adhere to South Carolina's statutory definition of "uninsured motor vehicle," uninsured motorist statutes and the legislative intent of the Workers' Compensation Act.

The statutory requirements for uninsured motorist coverage in South Carolina are found in S.C. Code Ann. § 38-77-10 et. al. S.C. Code Ann. § 38-77-150 states,

No automobile insurance policy or contract may be issued or delivered unless it contains a provision by endorsement or otherwise, herein referred to as the uninsured motorist provision, undertaking to pay the insured all sums which he is *legally entitled to recover* as damages from the owner or operator of an uninsured motor vehicle, within limits which may be no less than the requirements of Section 38-77-140.

S.C. Code Ann. § 38-77-150(A) (emphasis added). Plaintiff's quest for uninsured motorist benefits must fail for two reasons: (1) the Trezona vehicle was not uninsured at the time of the accident and (2) Plaintiffs are not legally entitled to recover damages from Trezona.

I. The Trezona vehicle was not an uninsured motor vehicle at the time of the accident in which Connelly was injured.

S.C. Code Ann. § 38-77-30 provides the following definition:

(14) "Uninsured motor vehicle" means a motor vehicle as to which:

- (a) there is not bodily injury liability insurance and property damage liability insurance both at least in the amounts specified in Section 38-77-140; or
- (b) there is nominally that insurance, but the insurer writing the same successfully denies coverage thereunder; or
- (c) there was that insurance, but the insurer who wrote the same is declared insolvent, or is in delinquency proceedings, suspension, or receivership, or is proven unable fully to respond to a judgment; and
- (d) there is no bond or deposit of cash or securities in lieu of the bodily injury and property damage liability insurance;
- (e) the owner of the motor vehicle has not qualified as a self-insurer in accordance with the applicable provisions of law.

A motor vehicle is considered uninsured if the owner or operator is unknown. However, recovery under the uninsured motorist provision is subject to the conditions set forth in this chapter.

Any motor vehicle owned by the State or any of its political subdivisions is considered an uninsured motor vehicle when the vehicle is operated by a person without proper authorization.

In addition, S.C. Code Ann. § 56-9-20 of the South Carolina Financial Responsibility Act contains the following definition:

(1) "Insured motor vehicle": A motor vehicle as to which there is bodily injury liability insurance and property damage liability insurance, meeting all of the requirements of item (7) of this section, or as to which a bond has been given or cash or securities delivered in lieu of such insurance or as to which the owner has qualified as a self-insurer in accordance with the provisions of § 56-9-60;

S.C. Code Ann. § 56-9-20;

Consistent with the statutory definition of "uninsured motor vehicle," the Allstate policy issued to Plaintiffs states:

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** ...
5. a phantom **motor vehicle**

(Policy p. 12, attached as Exhibit #1.)

The Trezona vehicle does not meet the definition of an uninsured vehicle under § 38-77-30 or Allstate's policy. Rather, it falls squarely into the definition of an insured vehicle as defined by the Financial Responsibility Act. It is undisputed that the vehicle was covered by a policy of insurance with liability limits in compliance with §38-77-140 at the time of the accident.

Further, Old Dominion did not deny coverage for the accident. Old Dominion denied *liability* for the accident. It is undisputed that Trezona cannot be legally responsible to Connelly, because she is immune from personal liability under the exclusivity provisions of the Workers' Compensation Act. *Nolan v. Daley*, 222 S.C. 407, 73 S.E.2d 449 (1952) ("a co-employee who negligently injures another employee while in the scope of employment is immune under the Act and cannot be held personally liable"); *Dickert v. Metro. Life Ins. Co.*, 311 S.C. 218; 428 S.E.2d 700 (1993).⁵

As a result, there is no statutory or contractual basis for the contention that the Trezona vehicle can be considered an uninsured motor vehicle under the facts of this case. To reach such a conclusion would be contrary to both South Carolina statutory law and Allstate's insurance policy.

⁵ It is not alleged that this was a hit and run accident or a phantom vehicle.

II. Allstate's uninsured motorist coverage is not triggered by this accident, because Connelly is not legally entitled to recover damages from Trezona.

Consistent with the "legally entitled to recover" language found in § 38-77-150, the Allstate policy states:

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.**

(Policy p. 11.)

As previously discussed, it is undisputed - in fact it has been stipulated - that Connelly is not legally entitled to recover damages from Trezona due to her immunity under the Workers' Compensation Act. (See Joint Stipulations of Fact # 13). Again, this is not an issue of lack of coverage, but an issue of lack of legal liability. Because the Plaintiffs are not legally entitled to recover damages from Trezona *and* she was not operating an uninsured vehicle at the time of the accident, the Plaintiffs are prohibited from collecting uninsured motorist benefits under the facts of this case.

This determination is consistent with decisions in jurisdictions containing the same or similar UM statutes. In *State Farm Mutual Automobile Insurance Co. v. Slusher*, 325 S.W.3d 318 (Ky. 2010), the Kentucky supreme court addressed a factually similar situation involving the right of an employee to recover under his personal UM or UIM policy for injuries sustained in a work-related motor vehicle accident caused by the negligence of a co-employee. The employee in *Slusher* was injured during the course and scope of his employment when his co-employee's truck rolled into the building in which the decedent was working. The employee's estate

received workers' compensation benefits from the employer's carrier and was unable to assert a wrongful death claim against the co-employee due to the exclusive remedy provision of the Workers' Compensation Act⁶. When the employee's estate sought payment under his personal UM and UIM policies, the carrier denied on the grounds the policy limited UM and UIM liability to damages the estate was legally entitled to collect from the owner or operator of an uninsured or underinsured vehicle. Like S.C. Code Ann. § 38-77-150(A), Kentucky's statutory law eliminated the estate's legal entitlement to collect any damages from the employer or a co-worker in excess of the workers' compensation benefits paid.

Citing the exclusivity statute, the *Slusher* court found that except for the workers' compensation benefits that had already been awarded, the employee's estate is not "legally entitled to collect" any further amounts from either the employer or the co-employee. Consequently, the estate could not collect under its UM or UIM coverage because the contractual language of the policy afforded payment of those benefits only for "bodily injury an insured is legally entitled to collect from the driver of an uninsured motor vehicle."

In reaching this conclusion, the *Slusher* court sided with a majority of other jurisdictions. *Slusher*, 325 S.W.3d at 324 n. 12 (citing *Ex parte Carlton*, 867 So.2d 332 (Ala. 2003) (employee injured as a passenger in a vehicle driven by a co-employee was, under Workers' Compensation Act, not legally entitled to recover from owner or operator of uninsured vehicle, for purposes of

⁶ KRS 342.690(1) states: "If an employer secures payment of compensation as required by this chapter, the liability of such employer under this chapter shall be exclusive and in place of all other liability of such employer to the employee, his legal representative, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from such employer at law or in admiralty on account of such injury or death The exemption from liability given an employer by this section shall also extend to such employer's carrier and to all employees, officers or directors of such employer or carrier" See also *Travelers Indemnity Co. v. Reker*, 100 S.W.3d 756, 760 (Ky. 2003) (holding the effect of this statute is to "shield a covered employer and its insurer from any other liability to a covered employee for damages arising out of a work-related injury.").

uninsured motorist statute, and, therefore not entitled to UM benefits under his insurance policy); *Wachtler v. State Farm Mut. Auto. Ins. Co.*, 835 So.2d 23 (Miss. 2003) (insured was not "legally entitled to recover" from co-employee driving truck that struck insured and, therefore, was not entitled to UM benefits under personal automobile policies; the exclusive remedy provision of the Workers' Compensation Act barred recovery from co-employee); *Williams v. Thomas*, 370 S.E.2d 773 (Ga. App. 1987) (an employee who suffered an on-the-job injury when struck by a motor vehicle owned by his employer and operated by his co-employee while in the scope of employment, and for which the employee was awarded workers' compensation benefits, held not entitled to recover uninsured motorist benefits under his own automobile insurance policy); *Williams v. Country Mut. Ins. Co.*, 328 N.E.2d 117 (Ill. App. 1975) (collision between two employees' automobiles on their employer's premises in the course of employment, was within the purview of the state workers' compensation law; the injured employee's sole recourse was under the workers' compensation statute, and there was no coverage under the injured employee's UM coverage, even though the co-employee was uninsured); *Lee v. Allstate Ins. Co.*, 467 So.2d 44 (La. App. 1985) (employee injured in an automobile accident caused by co-employee held not entitled to recover from his co-employee's insurer or from his own UM carrier as both insurers were entitled to avail themselves of the exclusive remedy provision of the state workers' compensation statute.)).

In determining the worker's estate was not legally entitled to recover UM and/or UIM benefits due to the exclusivity provision in the Workers' Compensation Act, the *Slusher* court distinguished cases applying an "essential facts" approach. *Id.* Under this approach, some courts have interpreted the phrase "legally entitled to recover," or its equivalent, to allow an insured to collect UM coverage merely by establishing fault on the part of the tortfeasor and the

amount of the insured's damages. *Id* at 322. Under the "essential facts" approach, the tortfeasor's immunity does not preclude UM coverage.⁷

Noting the shortcomings of the essential facts analysis, the *Slusher* court found that the abridgment of the essential facts approach "fails to properly consider an individualized analysis of a particular policy's language and its interplay with statutory public policy exemptions to tort liability, such as the exclusive remedy provisions of the Workers' Compensation Act." *Slusher*, 325 S.W.3d at 324 n. 11; *see also Williams v. State Farm Mut. Auto. Ins. Co.*, 641 A.2d 783, 787 (Conn. 1994) ("In order to recover uninsured motorist benefits, the plaintiff must prove, pursuant to the applicable statutes and regulations, as well as the contract, that he is 'legally entitled to collect' damages from the uninsured motorist... 'Legally entitled to collect damages from the owner or driver of an uninsured motor vehicle,' means that in order to recover under the policy, the plaintiff must prove: (1) that the other motorist was uninsured; (2) that the other motorist was legally liable under the prevailing law; and (3) the amount of liability.").

The reasoning in *Slusher* and other cases accounting for statutory immunity in a "legally entitled to recover" analysis is applicable to this case and in accord with South Carolina law and legislative intent. Applying the "essential facts" approach in South Carolina would completely defeat the statutory and policy definitions of uninsured motorist coverage and uninsured motor vehicle.

Proof of the legislative intent that the Workers' Compensation Act is an employee's exclusive remedy against a co-employee is further evidenced by the fact the General Assembly

⁷ Representative of the essential facts approach is *Borjas v. State Farm Mutual Automobile Insurance Co.*, 33 P.3d 1265 (Colo. Ct. App. 2001), which held "legally entitled to recover" means the insured need only establish fault of the motorist gave rise to damages and the extent of those damages.

did not include a provision in the Workers' Compensation Act entitling workers injured by co-employees to seek additional recovery from uninsured and/or underinsured motorist carriers.

The General Assembly certainly could have included such a provision with the Act, just as it chose to do so within the South Carolina Tort Claims Act, the exclusive remedy against governmental employees and entities.⁸ S.C. Code Ann. § 15-78-190, entitled "Compensation of plaintiff pursuant to underinsured or uninsured defendant provisions of plaintiff's insurance policy", provides:

If the amount of the verdict or judgment is not satisfied by reason of the monetary limitations of this chapter upon recovery from the State or political subdivision thereof, the plaintiff's insurance company, subject to the underinsured and uninsured defendant provisions of the plaintiff's insurance policy, if any, shall compensate the plaintiff for the difference between the amount of the verdict or judgment and the payment by the political subdivision. If a cause of action is barred under § 15-78-60 of the 1976 Code, the plaintiff's insurance company must compensate him for his losses subject to the aforementioned provisions of his insurance policy.

The South Carolina Supreme Court construed this statute in *Cain v. Nationwide Property & Casualty Insurance Co.*, and held that "by enacting section 15-78-190, the Legislature assured that an insurance company could not cite the 'exclusive civil remedy portion' of section 15-78-20 to deny payment from the plaintiff's uninsured or underinsured motorist coverage where recovery pursuant to the Tort Claims Act was insufficient." 378 S.C. 25, 31, 661 S.E.2d 349, 352 (2008).

If the General Assembly had intended that co-employees could circumvent the exclusivity provision of the Workers Compensation Act and recover uninsured or underinsured motorist benefits, it would have placed a similar provision within the Workers' Compensation Act. The fact that the General Assembly chose not to insert a similar provision into the Workers'

⁸ Section 15-78-20(b) states: "The remedy provided by this chapter is the exclusive civil remedy available for any tort committed by a governmental entity, its employees, or its agents except as provided in § 15-78-70(b)."

Compensation Act is fatal to the Plaintiff's argument. See *State v. Thomas*, 372 S.C. 466, 469, 642 S.E.2d 724, 725 (2007) (holding that the inclusion of specific provisions to prohibit suspension of sentences in other statutes and omission of any such provision in the proximity statute, indicates the legislature did not intend to limit the general authority to suspend sentences); *Branch v. City of Myrtle Beach ex rel. Attorney Gen. of S.C.*, 340 S.C. 405, 410, 532 S.E.2d 289, 292 (2000) (holding that by including definition of public employee in other sections but not in right-to-work statute, legislature did not intend to cover public employees).⁹

The Workers' Compensation Act is the exclusive remedy for workers injured in the course and scope of employment. The Tort Claims Act provides the exclusive remedy against governmental entities. Unlike the Tort Claims Act, the Workers' Compensation Act does not include a provision permitting the collection of UM or UIM benefits in accidents involving at-fault co-employees or employers. Although the purpose of these coverages is to compensate an individual when the at-fault motorist is uninsured or does not have enough insurance, the determination of coverage in UM/UIM policies still turns on the definitions of uninsured and underinsured vehicles as found in the policies and in statutory law.

Considering the definitions of "uninsured motor vehicle" in the Allstate policy and in S.C. Code Ann. § 38-77-30, the Trezona vehicle in which Connelly was riding was not uninsured, because there was bodily injury and property damage liability insurance in or exceeding statutorily required amounts on the vehicle. In addition, Connelly is not "legally

⁹ The *Cain* opinion is instructive in that it also analyzed the statutory definitions of uninsured and underinsured vehicles. The Court recognized that "the sole purpose of these kinds of insurance is to provide compensation where the at-fault motorist either is not insured or does not have enough insurance." *Id.* Relying on the definitions of uninsured and underinsured vehicles in the plaintiff's policy and corresponding statutory definitions, the *Cain* Court held plaintiff was not entitled to recover under the UM section of his policy because the tortfeasor's vehicle had insurance protection greater than the minimum limits but less than plaintiff's damages and was, therefore, "underinsured". *Id.* at 32, 661 S.E.2d at 353.

entitled to recover" damages from Trezona because she is immune from suit pursuant to § 42-5-10. Immunity of the tortfeasor does not render the vehicle uninsured, especially when the legislature chose not to include a provision allowing UM/UIM coverage in the Workers' Compensation Act.

CONCLUSION

In moving for Summary Judgment, Allstate acknowledges the marked split in authority over the issue presented in this case and urges the Court to adopt the view that gives effect to South Carolina's legislative intent and statutory definition of "uninsured motor vehicle". An "uninsured motor vehicle" means a "vehicle as to which there is not bodily injury liability insurance and property damage liability insurance" in amounts mandated by statute. S.C. Code Ann. § 38-77-30. The definition does not include vehicles driven by tortfeasor's immune from suit. The Trezona vehicle was an insured vehicle because it carried bodily injury and property damage coverage.

Further, our legislature has adopted a public policy in favor of no-fault recovery for employees while injured on the job. The trade-off for this no-fault recovery is that the Workers Compensation Act is the employee's exclusive remedy against employers and co-employees. Giving effect to the exclusivity provision of S.C. Code Ann. § 42-1-540, Plaintiffs' sole remedy is the Workers' Compensation Act. For these reasons, Allstate contends there is no genuine issue of any material fact that Plaintiffs are not entitled to UM coverage under the Allstate policy and respectfully request an order granting Summary Judgment in its favor.

GALLIVAN, WHITE & BOYD, P.A.

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March 6, 2017

COPY

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) FOR THE FIFTH JUDICIAL CIRCUIT

Stephany A. Connelly and James M.) Civil Action No.: 2016-CP-40-05885
Connelly,)

Plaintiffs,)

v.)

The Main Street America Group, Old) Plaintiffs' Memorandum in Opposition to All
Dominion Insurance Company, Allstate) Summary Judgment Motions and Cross
Fire and Casualty Insurance Company,) Motion for Summary Judgment
Debbie Cohn, and Freya Trozona,)

Defendants.)

RICHLAND COUNTY
FILED
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JENNIFER W. MCBRIDE
C.P. & G.S.

This matter comes before the Court initially on a motion for summary judgment by The Main Street America Group and Old Dominion Insurance Company (hereinafter "Old Dominion"). Subsequently, Allstate Fire and Casualty Insurance Company (hereinafter "Allstate") filed a similar motion for summary judgment. Now, Plaintiffs Stephany A. Connelly and James M. Connelly (hereinafter "the Connelys") respond in opposition to Old Dominion's and Allstate's motion for summary judgment and file a cross motion for summary judgment in their favor.

The Connelys are entitled to uninsured motorist coverage ("UM coverage") from both Old Dominion and Allstate as a matter of law because 1) Stephany Connelly was an insured; 2) the vehicle she was occupying was an uninsured vehicle; and 3) Freya Trozona was at fault in causing a motor vehicle wreck which injured Stephany Connelly¹; and 4) a showing of fault is all that is necessary to trigger UM coverage under South Carolina Code §38-77-150(A).

¹ James M. Connelly has a loss of consortium claim.

STIPULATED FACTS

The parties have engaged in a written joint stipulation as to the operative facts of this case. See attached Joint Stipulations of Fact, Exhibit 1. On February 24, 2015 Stephany Connelly was riding as a passenger in a Jeep Compass vehicle owned and being operated by Freya Trozona. Ms. Connelly was occupying the vehicle with permission of Ms. Trozona. The vehicle had liability and UM coverage under an Old Dominion policy. Ms. Connelly maintained UM coverage under an Allstate policy by virtue of paying premiums. Ms. Trozona negligently caused a motor vehicle wreck resulting in injuries to Ms. Connelly. At the time of the wreck, Ms. Connelly and Ms. Trozona were co-employees, both working within the course and scope of their employment with Apple One Employment Agency. Ms. Connelly made a claim and received benefits under the South Carolina Workers' Compensation Act. Given the Workers' Compensation Act's exclusive remedy provision, Ms. Connelly was not able to recover damages from Ms. Trozona. Ms. Trozona was immune from suit. The Connelys had made claims for damages under the liability coverage and later under the UM coverages of both the Old Dominion and Allstate policies. Both carriers denied all claims on the grounds that workers' compensation was Ms. Connelly's exclusive remedy and the Trozona vehicle was not an uninsured vehicle. Following the denial of claims, the Connelys filed a Declaratory Judgment Action, as well as a breach of contract action, against Old Dominion and Allstate. The Connelys seek an order denying Old Dominion's and Allstate's summary judgment motion. Further, the Connelys urge this Court to grant their motion for summary judgment against both carriers, finding entitlement to UM benefits as a matter of law.

SCOPE OF REVIEW

A suit for declaratory judgment is neither legal nor equitable per se; the nature of the suit, therefore, is determined by the underlying issue. *Felts v. Richland County*, 303 S.C. 354, 400 S.E.2d 781 (1991). The issue here involves the determination of UM coverage. Therefore, the action is at law. *Horry County v. Ins. Reserve Fund*, 344 S.C. 493, 54 S.E.2d 637 (Ct. App. 2001). The parties' Joint Stipulations of Fact leave only a question of law for the trial court. *WDW Props. V. City of Sumter*, 342 S.C.6, 535 S.E.2d 631 (2000). Summary judgment is appropriate where the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Turner v. Milliman*, 392 S.C. 116, 122, 708 S.E.2d 766, 769 (2011); see Rule 56(c), SCRPC.

I. THE TROZONA VEHICLE WAS AN UNINSURED VEHICLE

Old Dominion and Allstate deny that the Trozona Jeep Compass vehicle was an uninsured motor vehicle. The definition is controlled by statute. South Carolina Code §38-77-30(14)(b) provides that an uninsured motor vehicle means a motor vehicle as to which... "there is nominally that insurance, but the insurer writing the same successfully denies coverage thereunder..." Here, Old Dominion provided liability coverage on the Trozona vehicle but denied the Connellys' claims, relying on the exclusivity provision of the Workers' Compensation Act with its grant of immunity to Ms. Trozona. With denial of the liability claims, the Trozona vehicle's UM coverage became operable. The Trozona vehicle falls within the plain language of the statute because Old Dominion successfully denied any liability coverage.

Our Supreme Court has recognized the uninsured coverage on a vehicle can become operable depending upon the status of the driver. In *Unisun Ins. Co. V. Schmidt*, 339 S.C. 362, 529 S.E.2d 280 (2000) a non-permissive driver operating a BMW vehicle caused a wreck injuring the passenger. State Farm provided liability coverage for the BMW but nonetheless denied the passenger's liability claim. The passenger then initiated a UM claim, arguing the denial of liability coverage rendered the BMW an uninsured motor vehicle. The trial court agreed. The Court of Appeals reversed, without reaching the issue whether the BMW was an uninsured vehicle. The Supreme Court reversed, finding the passenger was an "insured", the BMW was an uninsured vehicle and the passenger was entitled to UM benefits. The ruling was based upon the statute and public policy. Citing S.C. Code Ann. §38-77-30(13)(b)² defining an uninsured motor vehicle to mean a vehicle as to which there is nominally that insurance but the insurer denies coverage thereunder, the Court found the BMW vehicle:

[F]alls within the plain language of the statute because respondent successfully denied liability coverage. See also *Allstate Ins. Co. V. Wilson*, 259 S.C. 586, 593, 193 S.E.2d 527, 531 (1972)(appellant's uninsured motorist coverage became operative when respondent Allstate successfully denied liability for the other vehicle on ground that it was being driven without the consent of the insured).

Unisun, 339 S.C. at 367, 529 S.E.2d at 282.

So, if the BMW owner had been operating the vehicle there would have been coverage for the passenger. However, there was no liability coverage when the non permissive user took the wheel. See *Omni Insurance Company v. Evans*, 2014 WL 8335952 (S.C. Com.Pl.)(Trial Order, Judge Nettles)[Based upon the driver's non-permissive use of the vehicle, the insurance carrier's denial of

²Currently, this statutory language has been codified as §38-77-(14)(b).

liability converted the vehicle otherwise insured into an uninsured motor vehicle pursuant to S.C. Code Ann. §38-77-30(14)(1b)].³

With these cases in mind, consider the Old Dominion statement in its brief: "It is clear under South Carolina law that a vehicle cannot be both insured and uninsured". (Old Dominion Memorandum in Support of Motion for Summary Judgment, page 4). To the contrary, a vehicle's insurance status may change depending up the status of the driver. It should make no difference whether liability coverage was denied due to a non-permissive driver or because of a driver protected by workers' compensation immunity. From Ms. Connelly's point of view, there is no difference. The result would be the same: no compensation from either. Yet it would frustrate the intention of the Legislature and the parties for the Old Dominion and Allstate UM policies to pay for damages only caused by a non-permissive driver. Following the reasoning of *Unisun* and *Omni*, the Trozona vehicle was uninsured.

II. MS. CONNELLY WAS AN INSURED UNDER BOTH POLICIES

Ms. Connelly was occupying the Trozona vehicle as a passenger with permission of its owner. As such, she must be deemed an insured. An insured is defined by S.C. Code Ann. §38-77-30(7): "Insured" means the named insured and, while resident of the same household, the spouse of any named insured and relatives of either, while in a motor vehicle or otherwise, and any person who uses with the consent, expressed or implied, of the named insured the motor vehicle to which the policy applies and a guest in the motor vehicle to which the policy applies or the personal

³ Allstate strains to distinguish between coverage and liability, saying Old Dominion denied the latter and not the former. Allstate memorandum, page 6. Old Dominion could not have denied liability for the wreck given that it stipulated Trozona was negligent and the cause of injuries and damages suffered by Connelly. Allstate seems to lose sight of its argument when it declared on page 3 of its memorandum "In response to Old Dominion's and Allstate's *denials of coverage*, Plaintiffs instituted this action..." (emphasis added).

representative of any of the above". Old Dominion and Allstate stipulated that Ms. Connelly was an insured under the Old Dominion policy by virtue of her occupancy of the vehicle. See Joint Stipulations of Fact, paragraph 17. Ms. Connelly was a named insured under the Allstate policy.

III. THE S.C. UM STATUTE REQUIRES ONLY A FINDING OF FAULT TO TRIGGER COVERAGE

A. South Carolina Public Policy Is to Protect Motorists From Uninsured Drivers

The South Carolina UM statute S. C. Code § 38-77-150(A) provides: No automobile insurance policy or contract may be issued or delivered unless it contains a provision by endorsement or otherwise, herein referred to as the uninsured motorist provision, *undertaking to pay the insured all sums which he is legally entitled to recover as damages from the owner or operator of an uninsured motor vehicle*, within limits which may be no less than the requirements of Section 38-77-140. The uninsured motorist provision must also provide for no less than ten thousand dollars' coverage for injury to or destruction of the property of the insured in any one accident but may provide an exclusion of the first two hundred dollars of the loss or damage. The director or his designee may prescribe the form to be used in providing uninsured motorist coverage and when prescribed and promulgated no other form may be used. (Emphasis added.)

The novel question presented by this case is whether an innocent injured motor vehicle passenger is entitled to UM coverage where her at-fault driver is immune from suit pursuant to the South Carolina Workers' Compensation Act. In other words, in the context of the UM statute, is Ms. Connelly *legally entitled to recover damages* from Ms. Trozona? Clearly, Old Dominion and Allstate answer the question in the negative. If Ms. Trozona is immune from suit, the argument goes, then Ms. Connelly cannot be legally entitled to recover damages from her. Indeed, Ms. Connelly has stipulated that she cannot recover damages for her injuries from Ms. Trozona. However, the statute is ambiguous. It is not clear whether the language requires for example, procurement of a judgment against an uninsured driver as a condition precedent for UM benefits eligibility or simply a finding of fault against the adverse driver upon which damages would be legally premised.

The cardinal rule of statutory interpretation is to ascertain and effectuate the intention of the legislature. *Sloan v. Hardee*, 371 S.C. 495, 498, 640 S.E. 2d 457, 459 (2007). If the statute is

ambiguous then courts must construe the terms of the statute. *Town of Mt. Pleasant v. Roberst*, 393 S.C. 332, 342, 713 S.E.2d 278, 283 (2011). The South Carolina UM statute § 38-77-150(A) is ambiguous. While not addressed directly in South Carolina, the *legally entitled to recover* language has been construed by other courts and found to be ambiguous. See *U. S. Fidelity and Guaranty Co., v. Preston*, 26 S.W.3d 145 (2000)(where a three judge panel of the Kentucky Court of Appeals expressed three separate interpretations of the critical language); *Jenkins v. City of Elkins*, 230 W.Va. 335, 345, 738 S.E.2d 1, 11 (2012)(The lack of a statutory or policy definition for the phrase “legally entitled to recover”, and the parties’ conflicting interpretation of the same, suggest to this court that the phrase is sufficiently ambiguous.”); *see*, cases cited by Old Dominion and Allstate on pages 8-9 of their respective briefs interpreting *legally entitled to recover* as a condition precedent to UM coverage, whereas cases cited in this memorandum in footnote 5 suggest a more liberal interpretation commensurate simply with a finding of fault by the adverse driver.

When interpreting the language of the UM statute the Court must settle on a meaning that is consistent with the intent of the Legislature. The UM statute is remedial in nature, enacted for the benefit of the injured persons, and is to be liberally construed so that the purpose intended may be accomplished. *Gunnels v. American Liberty Ins. Co.*, 251 S.C. 242, 247, 161 S.E.2d 822, 824 (1968).

The purpose of uninsured motorist coverage is to provide benefits and protection against the peril of injury or death by an uninsured motorist to an insured motorist, his family and the permissive users of his vehicle. *Ferguson v. state Farm Mut. Auto. Ins. Co.*, 261 S.C. 96, 100, 198 S.E.2d 522, 524 (1973). An uninsured motorist is a “financially unresponsive motorist”. *O’Neill v. Smith*, 388 S.C. 246, 254, 695 S.E.2 531, 535 (2010). A substantive immunity may render the driver of an

insured vehicle in effect uninsured. *State Farm Mut. Auto. Ins. Co. V. Jeffers*, 686 So.2d 248 (Ala. 1996).

In South Carolina, UM coverage occupies a lofty well respected place in the state's jurisprudence. Its importance is demonstrated by its mandatory nature. Every policy of motor vehicle insurance must contain a UM endorsement. *Nationwide Mutual Insurance Co. v. Smith*, 376 S.C. 60, 66, 654 S.E.2d 837, 840 (Ct. App. 2009) ("Initially, we note that in South Carolina all automobile insurance policies are statutorily required to contain UM coverage"). South Carolina mandates that UM coverage must be provided in an amount equal to the minimum liability limits and requires insurance carriers to offer, at the option of the insured, UM coverage up to the limits of the insured's liability coverage. *Id.* Further, contractual provisions attempting to restrict UM benefits are either void or themselves limited. For example, an insured's UM carrier is not entitled to outright exclude or reduce UM benefits if that insured is also receiving workers' compensation benefits. *Ferguson v. state Farm Mut. Auto. Ins. Co.*, 261 S.C. 96, 100, 198 S.E.2d 522, 524 (1973)(finding any limiting language in an insurance contract which had the effect of providing less protection than made obligatory by the statutes is contrary to public policy and is of no force and effect). Efforts to deny UM benefits because of the exclusivity provision of the S.C. Workers' Compensation Act were rebuffed in *Wright v. Smallwood*, 308 S.C. 471, 419 S.E.2d 219 (1992) (concluding that the statutorily imposed contractual liability of UM coverage was consistent with the purpose and policy of the Workers' Compensation law). *Antley v. Nobel Ins. Co.*, 350 S.C. 621, 567 S.E.2d 872 (Ct. App. 2002) reiterated the notion that an insurance carrier cannot rely on the exclusivity provision of the Workers' Compensation Act to deny UM benefits, nor can it exclude outright UM coverage in its policy. However, some reduction of UM benefits is permissible pursuant to S.C. Code §38-77-220

which allows an employer to offset benefits under its own UM coverage by the amount its employee receives in workers' compensation. The rationale was to eliminate an employer from paying double premiums and creating a windfall to an employee⁴. The workers' compensation offset in an employer purchased policy may permissibly reduce an employee's UM benefits below the statutory mandatory minimum. *Sweetser v. South Carolina dept. of Ins. Reserve Fund*, 390 S.C. 632, 703 S.E.2d 509 (2010).

The cases discussed above, *Ferguson*, *Wright*, and *Sweetser*, demonstrate the important role UM coverage plays in protecting South Carolina citizens from uninsured drivers and the Legislature's sparring allowance of permitting limitations on access to UM coverage. Given the remedial nature of the UM statute §38-77-150 and public policy aimed at preserving coverage, Old Dominion's and Allstate's interpretation of the UM statute should be rejected. Both interpretations lead to a total foreclosure of any UM coverage for Ms. Connelly. Such a view of the statute is inconsistent with the expressed policy of the state *to provide benefits and protection against the peril of injury or death by an uninsured motorist*. Ms. Connelly was an innocent passenger, injured by an at fault driver who was in effect "uninsured". Notably, neither the Old Dominion nor the Allstate policy was purchased by Ms. Connelly's employer. As such, neither is entitled to the workers' compensation offset described in *Antley* or *Sweetser*.

B. Numerous Jurisdictions Allow UM Coverage Despite an Immune Adverse Driver

South Carolina courts have not directly addressed the questions whether an at-fault driver causing injury, who is immune from suit, can nonetheless trigger the *legally entitled to recover* language of the UM statute, resulting in UM coverage. However, numerous cases from other

⁴ In dealing with underinsured motor vehicle coverage (UIM) the court in *Williamson v U.S. Fire Ins. Co.*, 314 S.C. 215, 442 S.E.2d 587 (1994) allowed a workers' compensation offset for an employer purchased UIM policy.

jurisdictions have answered this question. To promote the public policy of protecting motorists injured by uninsured drivers, these courts interpret the *legally entitled to recover* language as simply requiring a showing of fault by the adverse driver. For example, in *Borjas v. State Farm Mut. Auto. Ins. Co.*, 33 P.2d 1265 (Colorado Ct. App. 2001) an injured insured was allowed to collect her own UM coverage after being hit by a vehicle driven by a police officer, despite the officer being cloaked with immunity under the Colorado Governmental Immunity Act (CGIA). Colorado's UM statute provided coverage for persons who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness, or disease, including death, resulting therefrom. §10-4-609(1)(a), C.R. S. 2000. State Farm argued its UM coverage was not available because the injured plaintiff was not *legally entitled to recover damages* from the at-fault driver who was immune from liability under the CGIA. State Farm cited various cases denying UM coverage because of immunity. In rejecting State Farm's position, the Court found such an interpretation was inconsistent with the public policy expressed by the legislature. "If we were to follow that line of cases, members of the public would be deprived of the opportunity to protect themselves from loss under the circumstances presented here, a result not intended by the General Assembly". *Borjas*, 33 P.3d at 1269. The Court noted the policy underlying the statute was to compensate innocent drivers for injuries received at the hands of one from whom damages cannot be recovered. *Borjas*, 33 P.3d at 1267. The Court stated:

It is entirely consistent with this public policy to construe §10-4-609 to require that UM insurance coverage apply even though the tortfeasor is immune from liability under the CGIA. Negligent drivers and their employers who are immune from liability under the CGIA may not be financially irresponsible in the sense that they lack the ability to pay, but from the perspective of the injured innocent driver, the lack of legal responsibility has the same effect.

Borjas, 33P.3d at 1268.

Finally the *Borjas* court listed several other justifications for allowing UM coverage despite a claim of immunity. Citing 1 A. Widiss, *Uninsured and Underinsured Motorist Insurance* §7.14, at 388-90 (2d ed. 2001) the Court noted, 1) while tort immunity protects the tortfeasor, it should have no effect on an insurance company providing first party UM insurance coverage; 2) it is consistent with the strong public policy of providing insurance coverage to protect drivers when no compensation is available from the negligent tortfeasor; 3) tort immunities are personal to the tortfeasor and therefore cannot be raised by an insurer; and finally, 4) the immune tortfeasor is unaffected by providing UM coverage, while at the same time, those disadvantaged by the immunity can protect themselves by purchasing UM insurance. The court concluded that the phrase *legally entitled to recover damages* as used in the UM statute, simply meant that the insured injured motorist must be able to establish the fault of the uninsured motorist as the cause of her damages⁵.

C. An Insured's Own UM Coverage Is Available Despite an At Fault Co-Worker Driver with Immunity Based Upon Workers' Compensation.

In *Barfield v. Barfield*, 742 P.2d 1107 (Oklahoma Sup. Ct. 1987) the widow of a deceased passenger killed by his at-fault co-employee driver was allowed to recover under her husband's UM policy despite receipt of workers' compensation benefits. The court found that tort immunity under the Workers' Compensation Act did not preclude recovery under one's own contract of insurance. Protection under a UM policy is a contractual right resting in the insured and co-existent with the

⁵ The *Borjas* court cited numerous cases interpreting similar statutes and finding UM coverage despite an at fault driver cloaked with governmental immunity: *Watkins v. US*, 462 F.Supp. 980 (S.D. Ga. 1977)(under a similar Georgia UM statute although the tortfeasor was immune under a federal statute, UM insurance coverage applied); *State Farm Automobile Insurance Co., v Baldwin*, 470 So.2d 1230 (Ala. 1985)(under a similar Alabama UM statute an insured was legally entitled to recover under a UM policy even though recovery from the tortfeasor was barred by governmental immunity); *Michigan Millers, Mutual Insurance Co., v. Bourke*, 607 So.2d 418 (Fla. 1992); *West American Insurance Co. v. Pops*, 108 Md. App. 73, 670 A.2d 1021 (1996), aff'd 352 Md. 455, 723 A.2d 1 (1998); *Williams v. Holsclaw*, 128 N.C. App. 205, 495 S.E.2d 166 (1998); *Kmok-Sullivan v. State Farm Mutual Automobile Insurance Co.*, 746 A.2 1118 (Pa. Super.Ct. 1999)(petition for appeal granted Jan 3, 2001).

protection under the workers' compensation act. An UM carrier does not stand in the tortfeasor's shoes and thus does not enjoy the benefits of the tortfeasor's immunity. The conditions for recovery under the UM policy can be satisfied even if the insured cannot prove all the elements of the tort against the uninsured driver. Interpreting the Oklahoma UM statute⁶, the court found "[T]he words 'legally entitled to recover' simply mean that the insured must be able to establish fault on the part of the uninsured motorist which gives rise to damages and prove the extent of those damages." *Barfield*, 742 P.2d at 1112. Recovery is based upon a contractual promise by the insurer to the insured to provide coverage in the event of injury or death resulting by fault of an uninsured motorist. "It would be manifestly unjust to permit the insurer to avoid its contractual duty as well as its statutorily imposed liability under 36 O.S. 1981 §3636, by its assertion of entitlement to third party tort immunity which would deny the insured's widow receipt of that for which the decedent has paid a premium". *Barfield*, 742 P.2d at 1113.

D. An Employer's UM Coverage Is Available Despite an At-Fault Co-Worker Driver with Immunity Based Upon Workers' Compensation

The Oklahoma Supreme Court found the estate of a fatally injured worker eligible for employer provided UM coverage even though a co-employee negligently caused the deadly wreck within the course and scope of employment. *Torres v. Kansas City Fire and Marine*, 849 P.2d 407

⁶ The Oklahoma statute, 36 O.S. 1981, §3636(A) and (B), very similar to the South Carolina UM statute, S.C. Code Annon. §38-77-150, reads as follows:

(A) No policy insuring against loss resulting from liability imposed by law for bodily injury or death suffered by any person arising out of the ownership, maintenance or use of a motor vehicle shall be issued, delivered, renewed, or extended in this state with respect to a motor vehicle registered or principally garaged in this state unless the policy includes the coverage described in subsection (B) of this section.

(B) The policy referred to in subsection (A) of this section shall provide coverage therein or supplemental thereto for the protection of persons insured thereunder who are *legally entitled to recover damages* from the owners or operators of uninsured motor vehicles and hit-and-run motor vehicles because of bodily injury, sickness or disease, including death, resulting therefrom. (Emphasis added).

(Oklahoma Sup Ct. 1993). There, the decedent was a passenger in a company owned vehicle driven by a co-employee. The passenger's estate filed for and received workers' compensation benefits. The estate also brought an action against the carrier for the employer which had a UM endorsement on the vehicle. The UM carrier admitted the wreck was caused by the negligence of the co-employee driver. The carrier admitted the passenger was an insured under the policy by virtue of his occupancy in the vehicle. The trial court ruled as a matter of law recovery was proper under the UM endorsement and the matter of damages was tried to a jury. A jury verdict resulted for estate. The UM carrier appealed, arguing the UM endorsement was inapplicable because the negligent co-employee was immune from liability by virtue of the exclusivity provisions of the workers' compensation laws and thus the insured was not legally entitled to recover damages from the wrongdoer. Under the Oklahoma UM statute, the carrier was obligated to provide coverage to an insured who is "legally entitled to recover damages from the owners or operators of uninsured motor vehicles⁷..." The court of appeals affirmed. The Supreme Court of Oklahoma found the estate was entitled to benefits under the UM policy despite the co-employee negligent driver being immune from suit under the exclusivity provision of the state's workers' compensation act.

Relying on a previous decision, *Uptegraft v. Home Insurance Company*, 622 P.2d 681 (Oklahoma Sup. Ct. 1983), the Court stated, "[W]e said the words legally entitled to recover simply mean that the insured must be able to establish fault on the part of the uninsured motorist which gives rise to damages and prove the extent of those damages". *Torres*, 849 P.2d at 410. The Court rejected the view the phrase required an insured to establish all the elements of a viable claim in tort.

⁷ See Oklahoma statute referenced in footnote 6.

The rationale for the court's decision was based upon contract interpretation aimed at effectuating the intention of the parties. The decedent was a passenger in the vehicle and thus an insured under the UM policy. The intention of the passenger, purchaser of the policy, and carrier, was for the insurance carrier to bear the loss for injury to an insured person uncompensated by an uninsured wrongdoer. Interpreting the phrase *legally entitled to recover damages* as simply requiring a showing of fault promotes the parties intention of providing coverage. To require more would result in the insured bearing the loss. Further, the court noted that UM benefits were recoverable despite the fact that the passenger did not pay any premiums for the UM coverage.

Given South Carolina's policy of protecting UM benefits, it is likely the "fault" requirement would prevail in interpreting the UM statute. A judgment is not a condition precedent for UM coverage. See *Ferguson v. State Farm*, 261 S.C. at 102, 198 S.E.2d at 525 (UM coverage where the liability of the uninsured motorist has been *established*). See *Otterbacher v. Snyder*, Unpublished Opinion, 2015 WL 4068204 (Ct. App.) (discussing liability coverage and finding that until Otterbacher obtained a judgment against a person insured under the Selective policy, *or otherwise establishes liability* of an insured, she cannot bring an action against Selective.)

More importantly, allowing recovery of UM benefits to the Connellys furthers the intent of the Legislature of protecting injured motorists from those who are uninsured, while at the same time doing no harm to the workers' compensation statutory scheme. The workers' compensation agreement was to deliver swift and predetermined amounts of benefits to injured workers in exchange for employer immunity from tort liability. *Parker v Williams and Madjanik, Inc.*, 275 S.C. 65, 267 S.E.2d 524 (1980). Providing UM benefits to the Connellys does nothing to disrupt that agreement.

Old Dominion and Allstate argue the legislative intent to deny UM benefits can be inferred from the inclusion in the South Carolina Tort Claims act of §15-78-190, specifically addressing the availability of UM benefits under that Act while failing to include a similar provision under the South Carolina Workers' Compensation Act. The argument misses the mark. The purposes of §15-78-190 was to assure that an insurance company could not cite the exclusive civil remedy portion of the S.C. Tort Claims Act to deny payment from the plaintiff's uninsured or underinsured motorist coverage where recovery under the Act was insufficient. *Cain v. Nationwide Property and Casualty Ins. Co.*, 378 S.C. 25, 661 S.E.2d 349 (2008). Likewise, the South Carolina Workers' Compensation Act also provides a remedy to injured plaintiffs due to the limited nature of recovery available under the Act. §42-1-560 allows an injured plaintiff to seek an action against a third party despite receiving workers' compensation benefits⁸. Certainly, this section is broader than §15-78-190 in that it allows recovery against more than simply a UM or UIM carrier. §42-1-560 demonstrates a legislative intent, under the Workers' Compensation Act, to permit other recovery despite the exclusivity provisions contained in the Act.

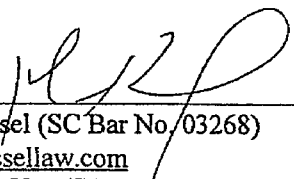
⁸ (a) The right to compensation and other benefits under this title shall not be affected by the fact that the injury or death is caused under circumstances creating a legal liability in some person, other than the employer or another person exempt from liability under Section 42-1-540 to pay damages therefor, the person so liable being hereinafter referred to as the third party. The respective rights and interests of the injured employee, or, in the case of his death, his dependents and any person entitled to sue therefor, and of the employer or person, association, corporation or carrier liable for the payment of compensation and other benefits under this title, hereinafter called the "carrier," in respect to the cause of action and the damages recovered shall be as provided by this section.

IV. CONCLUSION

The public policy expressed by the Legislature in enacting the South Carolina Uninsured Motorist statute, §38-77-150 is to protect motorists harmed by uninsured drivers. Uninsured drivers can include those who are without liability coverage and financially irresponsible, as well as drivers cloaked with immunity from a tort suit. From the perspective of the injured motorist, the outcome from meeting either type of driver on the roadway is the same: no compensation. To effectuate the intent of the Legislature this Court must interpret the critical language *legally entitled to recover* as simply a requirement to demonstrate fault. Such an interpretation protects a passenger occupying a vehicle with permission despite her driver being cloaked with workers' compensation immunity from a tort suit. At the same time, recovery of UM benefits does not frustrate the goals of the workers' compensation statutes. Moreover, allowing UM recovery meets the expectation of the parties and certainly allows those who paid for UM insurance premiums the benefit of their bargain.

For these reasons, Stephany and James Connelly respectfully request that this Court issue an Order denying Old Dominion's and Allstate's motion for summary judgment. Further, the Connelys respectfully request that this Court issue an Order finding that Ms. Connelly was an insured under the UM endorsement of both the Old Dominion and Allstate policies; that the Trezona Jeep Compass vehicle was an uninsured vehicle due to denial of coverage; that the stipulation of fact finding Ms. Trezona at fault in operating her vehicle and causing the Connelys' injuries and damages, triggered the application of UM benefits under §38-77-150. In short, the Connelys seek an Order granting them summary judgment on their entitlement to UM benefits as a matter of law. Finally, the Connelys seek an Order setting this matter for trial on the sole issue of damages.

[Signature appears on the following page.]



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ATTORNEYS FOR PLAINTIFFS

March 21, 2017

Columbia, South Carolina.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

COPY
IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Stephany A. Connelly and James M. Connelly,

Plaintiffs,

v.

The Main Street America Group, Old
Dominion Insurance Company, Allstate
Fire and Casualty Insurance Company,
Debbie Cohn, and Freya Trozona,

Defendants.

Civil Action No.: 2016-CP-40-05885

CERTIFICATE OF SERVICE

RICHLAND COUNTY
FILED
2017 MAR 21 AM 11:35
JEANETTE W. MCBRIDE
C.C.P. & G.S.

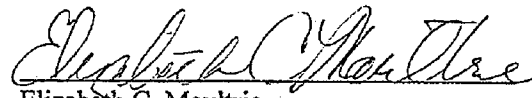
I, Elizabeth C. Moultrie, Paralegal, an employee of Kassel McVey Attorneys at Law, counsel for Plaintiffs in the above-entitled matter, do hereby certify that on the 21st day of MARCH 2017, I caused the attached **PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT** and **PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT AND IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT** to be served upon counsel for Defendants by depositing a true and correct copy in the United States Mail, First Class, with postage pre-paid, return address clearly printed on the envelope, and addressed as follows:

Thomas F. Dougall, Esquire
Law Office of Thomas Dougall
1700 Woodcreek Farms Road, Suite 100
Elgin, South Carolina 29045

A. Johnston Cox, Esquire
Gallivan White & Boyd
1201 Main Street Suite 1200
Columbia, South Carolina 29201

March 21, 2017

Columbia, South Carolina.


Elizabeth C. Moultrie

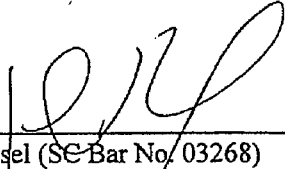
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	
Stephany A. Connelly and James M. Connelly,	)	Civil Action No.: 2016-CP-40-05885
	)	
Plaintiffs,	)	
	)	
v.	)	PLAINTIFFS' NOTICE OF MOTION
	)	AND MOTION FOR SUMMARY
	)	JUDGMENT
The Main Street America Group, Old Dominion Insurance Company, Allstate Fire and Casualty Insurance Company, Debbie Cohn, and Freya Trozona,	)	
	)	
Defendants.	)	

RICHLAND COUNTY
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 JEANETTE W. MCBRIDE
 C.C.P. & G.S.

YOU WILL PLEASE TAKE NOTICE that on the tenth day hence, or as soon thereafter as they may be heard, Plaintiffs, by and through their undersigned counsel, will move before this Honorable Court under Rule 56 of the *South Carolina Rules of Civil Procedures* for its Order granting summary judgment in their favor. Specifically, Plaintiffs move for summary judgment on their claim for uninsured motorist coverage ("UM coverage") from both The Main Street America Group, Old Dominion Insurance Company, and Allstate Fire and Casualty Insurance Company, as a matter of law because, 1) Stephany Connelly was an insured under both policies; 2) the vehicle she was occupying at the time of the motor vehicle collision that caused her injuries was uninsured; and, 3) Freya Trozona was at fault in causing the motor vehicle wreck that caused Stephany Connelly's injuries; and 4) a showing of fault is all that is necessary to trigger UM coverage under South Carolina Code §38-77-150(A).

This Motion is made pursuant to Rule 56 of the *South Carolina Rules of Civil Procedure* and is based on the Joint Stipulation of Facts filed by the parties as well as the accompanying Memorandum.

[Signature appears on the following page.]



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March 21, 2017

Columbia, South Carolina.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Stephany A. Connelly and James M. Connelly,
Plaintiffs,

vs.

The Main Street America Group; Old
Dominion Insurance Company; Allstate Fire
and Casualty Insurance Company; Debbie
Cohn; and Freya Trezona,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
C/A#: 2016-CP-40-5885

**ALLSTATE FIRE AND CASUALTY
INSURANCE COMPANY'S
MEMORANDUM IN OPPOSITION TO
PLAINTIFFS' MOTION FOR SUMMARY
JUDGMENT AND IN REPLY TO
PLAINTIFFS' OPPOSITION TO ALL
SUMMARY JUDGMENT MOTIONS**

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FILED
RICHLAND COUNTY

Defendant Allstate Fire and Casualty Insurance Company (hereinafter "Allstate") submits the following memorandum in opposition to Plaintiff's Motion for Summary Judgment and in reply to Plaintiffs' Opposition to all Summary Judgment Motions. Allstate seeks a ruling from the Court that Plaintiffs cannot recover under Allstate's Uninsured Motorist coverage because Stephany Connelly was not involved in an accident with an uninsured motorist and she is not legally entitled to recover damages from the owner or operator of an uninsured automobile.

ARGUMENT

I. The Trezona vehicle was not an uninsured motor vehicle at the time of the accident in which Connelly was injured.

The argument that the Trezona vehicle was uninsured ignores the undisputed facts of this case. According to the Joint Stipulation of Facts, the Trezona vehicle was insured by an automobile liability insurance policy issued to Debbie Cohn. *See* Stipulation ¶ 1. The policy issued to Cohn included bodily injury and property damage liability insurance with limits in compliance with S.C. Code Ann. § 38-77-140. *Id.* at ¶ 3. It is further stipulated that "[t]he

Vehicle was an insured vehicle under the Old Dominion Policy.” *Id.* at ¶ 6. Despite the existence of insurance coverage, Connelly’s claim against Trezona was denied because Trezona “cannot be legally responsible to Connelly due to her immunity under the Act.” *Id.* at ¶ 14¹. In other words, the Old Dominion policy provided coverage for the injuries Connelly sustained, but Connelly is not legally entitled to recover against her co-employee, Trezona, because she is not legally liable for the accident.

Contrary to Plaintiffs’ argument, the exclusivity provision of the Act does not convert an insured motorist into an uninsured motorist. As explained in the following section, UM coverage is not triggered until legal liability is established. According to the South Carolina Supreme Court, “recovery under the uninsured endorsement is subject to the condition that the insured establish legal liability on the part of the uninsured motorist.” *Vernon v. Harleysville Mut. Cas. Co.*, 244 S.C. 152, 135 S.E.2d 841 (1964). Plaintiffs cannot establish legal liability on the part of Trezona because Trezona is immune from personal liability under the exclusivity provisions of the Workers’ Compensation Act².

Moreover, Connelly does not need the Court to deem Trezona’s vehicle uninsured in order to recover damages from the accident. The South Carolina legislature has guaranteed

¹ As noted by Plaintiffs in footnote 3 of their Memorandum, Allstate’s reference to a denial of coverage on page 3 of its Memorandum in Support of Motion for Summary Judgment was an error as it contradicts the parties’ Joint Stipulations of Fact. The use of the word “coverage” was a scrivener’s error. Allstate relies on the Stipulation to establish the facts of this case.

² Legal liability is what distinguishes this case from the case relied upon by Plaintiffs, *Unisun Ins. Co. v. Schmidt*, 339 S.C. 362, 529 S.E.2d 280 (2000). The carrier in *Unisun* denied coverage to the driver, because he was driving the car without permission of the named insured, and thus did not meet the policy definition of an insured person. Because the driver was not covered by a liability policy, he became an uninsured motorist. The injured party in *Unisun* established the liability of the at-fault driver and was entitled to UM coverage. In this case, Trezona was not uninsured and Connelly cannot establish the liability of Trezona. Therefore, she is not entitled to UM coverage.

Connelly recovery by passing the Workers' Compensation Act. The Act ensures that an employee riding in a vehicle with a co-employee is *never* in an uninsured situation because it ensures that an employee always has a remedy, regardless of lack of fault of the co-employee. The Worker's Compensation Act also limits her remedies – the co-employee is immune from personal liability. That is the trade-off to South Carolina's public policy that all injured employees receive workers compensation benefits, even when the employee herself may be at fault.

As explained by the Court of Appeals, the Act strikes a balance between exclusive rights and remedies and "wholly" substitutes Connelly's common law rights:

The Workers' Compensation Act was founded upon a recognition that it is desirable to discard the common law doctrines of tort liability in the employer-employee relationship and substitute a duty of the employer, regardless of fault, to compensate the employee, in predetermined amounts based upon his wages, for loss of earnings resulting from accidental injury arising out of and in the course of his employment.

In effect, the Workers' Compensation Act shifts from the employee to the employer the risk of work related injuries incident to modern industrial activity. In return, it requires the worker, as a condition for receiving the benefits of the Act, to surrender his right to sue at common law. This balancing of advantages is embodied in the exclusive rights and remedies provision of the Act....

[The exclusivity] provision bars all actions against an employer where a personal injury to an employee comes within the Act. It makes the Act the exclusive means of settling all such claims. In some cases, the amount of compensation available under the Act may be substantially less than could be recovered in a successful common law action; but in other cases the employee will receive benefits he would not otherwise have enjoyed because of his inability to establish the employer's common law liability. This is a balance struck by the Legislature in order to afford the widest practical coverage for work related injuries.

The Workers' Compensation Act provides an exclusive system of compensation in derogation of common law rights and is not cumulative or supplemental thereto, but wholly substitutinal. The compensation afforded by the Act is statutory in character, and the right of any claimant thereto is dependent upon the terms and conditions of the statute. These include the

procedures for adjudicating a compensation claim as well as the terms and conditions of substantive entitlement.

Cook v. Mack's Transfer & Storage, 291 S.C. 84, 86-87, 352 S.E.2d 296, 298 (Ct. App. 1986) (internal citations omitted) (emphasis added).

The Iowa Supreme Court distinguished a case relied upon by Plaintiffs, *Barfield v. Barfield*, 742 P.2d 1107 (Okla. Sup. Ct. 1987), and held that the insured was not "legally entitled to recover" damages from his co-employee within the meaning of his UM policy, because the exclusivity provision of the workers' compensation statute provided a substantive bar to any legal claim against his co-employee for his injuries. In doing so, the Iowa Supreme Court stated:

In this case, our legislature has adopted the workers' compensation system. This system supplants the common law, and we no longer recognize a cause of action for negligence by an employee against the employer or co-employee. Thus, Otterberg never had any legal right to recover against the driver of the ambulance.

Otterberg v. Farm Bureau Mut. Ins. Co. 696 N.W.2d 24, 30 (Iowa 2005) (internal citations omitted); see also *Wachtler v. State Farm Mut. Auto. Ins. Co.*, 835 So. 2d 23, 27 (Miss. 2003) ("The holding of the Oklahoma Supreme Court [in *Barfield*] is contrary to a majority of the jurisdictions in this country and to this Court's holding and interpretation of 'legally entitled to recover.'"); *State Farm Mut. Auto. Ins. Co. v. Royston*, 817 P.2d 118 (Haw. 1991) (identifying *Barfield* as "a sharply divided five to four decision" and siding with an "overwhelming majority" as well as the dissent in *Barfield* by holding the unambiguous UM statute and legislative history confirm that "tort liability of the uninsured owner or operator is a prerequisite for recovery.").

The South Carolina legislature also chose to supplant the common law. The long-established policy of the Act to provide compensation to injured employees regardless of fault substitutes and supplants Connelly's common law right of recovery against Trezona and overshadows the policy of the uninsured motorist statute. In fact, Connelly need not draw on the

policy of the UM statute to afford her coverage when she is already protected and guaranteed coverage by the Workers' Compensation Act. *See, e.g., State Farm Mut. Auto. Ins. Co. v. Royston*, 817 P.2d 118 (Haw. 1991) (holding legislative intent of UM statute was to provide for instances where persons suffered injuries for which no compensation or recourse would be available due to the financial irresponsibility of the guilty motorist and finding no need to "torture the meaning" of the UM statute to provide a remedy when one has already been provided by the workers' compensation act). Connelly is guaranteed benefits and protection because she and her co-employee are subject to the Act. Thus, the Act does not convert an insured motorist into an uninsured motorist. Rather, it ensures that an employee like Connelly is never in an uninsured situation.

II. Allstate's uninsured motorist coverage is not triggered by this accident because Connelly is not legally entitled to recover damages from Trezona.

Plaintiffs present as the main issue in this case the following question: "[I]n the context of the UM statute, is Ms. Connelly legally entitled to recover damages from Ms. Trezona?" They then exhaust ten pages of their Memorandum on this question without recognizing that it has already been answered. Plaintiffs stipulated that "Connelly is not legally entitled to recover damages from Trezona, because Trezona is immune from suit as a co-employee under the exclusivity provision of the Act." Plaintiffs should be bound by this stipulation. *See* Stipulation ¶ 13; *Belue v. Fetner*, 251 S.C. 600, 606, 164 S.E.2d 753, 755 (1968) ("When counsel enter into an agreed stipulation of fact as a basis for decision by the court, both sides will be bound by such agreed stipulation, and the court will not go beyond such stipulation to determine the facts upon which the case is to be decided."); *Kirkland v. Allcraft Steel Co.*, 329 S.C. 389, 392, 496 S.E.2d 624, 626 (1998) ("Stipulations, of course, are binding upon those who make them.").

In the event the Court does not bind Plaintiffs to the Stipulation, Allstate asks the Court to give effect to the unambiguous terms of both the UM statute³ and Allstate's policy. Contrary to Plaintiffs' argument, S.C. Code Ann. § 38-77-150 makes the requirements and procedure for obtaining UM coverage clear:

(B) No action may be brought under the uninsured motorist provision unless copies of the pleadings in the action establishing liability are served in the manner provided by law upon the insurer writing the uninsured motorist provision. The insurer has the right to appear and defend in the name of the uninsured motorist in any action which may affect its liability and has thirty days after service of process on it in which to appear. The evidence of service upon the insurer may not be made a part of the record.

Based on section 38-77-150(B), a UM claim is commenced by filing suit against the at-fault party and serving the UM carrier with a copy of the complaint. In this case, Plaintiffs cannot commence a UM claim because they cannot file suit against Trezona. Thus, Trezona's immunity under the Act does not render Trezona uninsured. It simply means she is not legally liable for the accident.

Analyzing similar facts, a Utah court provided helpful instruction:

If an insured is injured by an uninsured motorist, the insured may recover damages from his own insurance company upon showing that he is "legally entitled" to recover those damages from the uninsured tortfeasor. This showing of legal entitlement typically entails a lawsuit against the uninsured tortfeasor to litigate the issues of liability and damages. A judgment favorable to the insured

³ Plaintiffs' reference to *U.S. Fidelity and Guaranty Co. v. Preston*, 26 S.W.3d 145 (Ky. 2000), to support their argument that the UM statute is ambiguous misses the mark. This Kentucky case was distinguished by the more recent case of *State Farm Mutual Automobile Insurance Co. v. Slusher*, 325 S.W.3d 318 (Ky. 2010), which held a co-worker's estate was not legally entitled to recover UM benefits due to the exclusivity of the workers' compensation act and found no ambiguity in the interplay between the policy language and the exclusive remedy provision of the act. The *Slusher* court distinguished the case cited by Plaintiffs because it involved a latent ambiguity in the phrase "legally entitled to collect" when confronted with applicable laws of foreign jurisdictions that reflected public policies of those jurisdictions. For the same reasons, *U.S. Fidelity and Guaranty* is distinguished from this case and does not support Plaintiffs' ambiguity argument.

fixes the insurer's contractual duty to satisfy that judgment, within the policy limits.

Peterson v. State Farm Bureau Ins. Co., 927 P.2d 192, 195 (Utah Ct. App. 1996) (distinguishing case relied upon by Plaintiffs, *Torres v. Kansas City Fire and Marine*, 849 P.2d 407 (Okla. Sup. Ct. 1993), and citing *Lima v. Chambers*, 657 P.2d 279 (Utah 1982)); *see also* *Dodson v. Aetna Casualty & Surety Co.*, 851 F.2d 736 (4th Cir. 1988) (applying Virginia law and holding the phrase "legally entitled to recover" interposed a requirement that the insured have a legally enforceable right to recover damages). Connelly cannot obtain a judgment against Trezona. Consequently, she lacks legal entitlement to UM coverage.

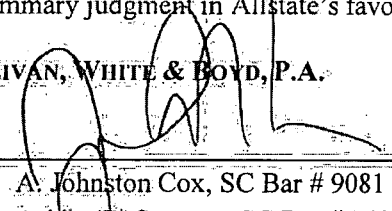
The requirement of legal liability as a prerequisite to UM coverage is supported by cases cited by Plaintiffs. For instance, in *Ferguson v. State Farm Mutual Automobile Insurance Co.*, the South Carolina Supreme Court analyzed the interplay of UM coverage and the Workers' Compensation Act in terms of liability: "[I]nsurer's liability under the uninsured motorist endorsement ... arises after the liability of the uninsured motorist has been established." 261 S.C. 96, 102, 198 S.E.2d 522, 525 (1973) (holding insurer of injured employee could not offset statutorily required UM coverage by amount of workers' compensation benefits for accident involving uninsured third party after employee obtained a judgment against the third party); *see also* *Wright v. Smallwood*, 308 S.C. 471, 419 S.E.2d 219 (1992) (holding exclusivity provision of the Act did not bar injured employee's claim for UM benefits under his employer's policy after obtaining a judgment against an at-fault third party); *Antley v. Nobel Ins. Co.*, 350 S.C. 621, 567 S.E.2d 872 (Ct. App. 2002), *overruled in part by* *Sweetser v. S.C. Dep't of Ins. Reserve Fund*, 390 S.C. 632, 703 S.E.2d 509 (2010) (allowing injured employee to pursue UM claim under his employer's policy after employee filed a John Doe action against an unknown driver); *Sweetser*, 390 S.C. 632, 703 S.E.2d 509 (allowing offset of recovery in tort suit against

uninsured driver against workers' compensation benefits). Although these cases reflect a policy against limiting statutorily required coverage, they do not support Plaintiffs' arguments in this case because each of these cases involves *legally liable third parties* and not statutorily immune co-workers. Unlike the injured employees in the cases cited by Plaintiffs, Connelly cannot assert an UM action against Trezona because Trezona is statutorily immune from suit and liability. Therefore, Connelly cannot claim entitlement to UM coverage.

CONCLUSION

The unambiguous terms of the UM statute require Connelly to establish Trezona's legal liability before she can claim entitlement to UM coverage. Because the Workers' Compensation Act substitutes Connelly's common law rights, providing her exclusive remedy and rendering Trezona immune from liability, Connelly is not entitled to UM coverage under the Allstate policy. If the legislature had intended that Connelly could pursue UM or UIM coverage against a co-employee, it would have placed such a provision in the Workers' Compensation Act, just as it did in the Tort Claims Act. For the reasons stated above and in Allstate's Memorandum in Support of Motion for Summary Judgment, Allstate respectfully requests denial of Plaintiffs' Motion for Summary Judgment and an order granting summary judgment in Allstate's favor.

GALLIVAN, WHITE & BOYD, P.A.

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STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Stephany A. Connelly and James M. Connelly,

Plaintiffs,

vs.

The Main Street America Group; Old Dominion
Insurance Company; Allstate Fire and Casualty
Insurance Company; Debbie Cohn; and Freya
Trozona,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
C/A#: 2016-CP-40-5885

CERTIFICATE OF SERVICE

2017 APR -3 PM 1:23
RICHLAND COUNTY
FILED

I, the undersigned employee of Gallivan, White & Boyd, P.A., do hereby certify that I have caused the below referenced to be served via U.S. mail, postage prepaid, or by other delivery as indicated, to all parties of record at the address(es) shown below.

DOCUMENT(S) AND PARTIES SERVED:

- ALLSTATE FIRE AND CASUALTY INSURANCE COMPANY'S
MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT AND IN REPLY TO PLAINTIFFS' OPPOSITION
TO ALL SUMMARY JUDGMENT MOTIONS**

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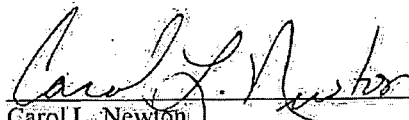
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STATE OF SOUTH CAROLINA	)	
	)	
COUNTY OF RICHLAND	)	IN THE CIRCUIT COURT
	)	
STEPHANY A. CONNELLY and	)	
JAMES CONNELLY,	)	Civil Action No.: 2016-CP-40-05885
	)	
Plaintiffs,	)	
	)	
v.	)	MAIN STREET AMERICA GROUP
	)	AND OLD DOMINION INSURANCE
	)	COMPANY'S ADOPTION OF ALLSTATE'S
THE MAIN STREET AMERICA	)	MEMORANDUM IN OPPOSITION TO
GROUP; OLD DOMINION INSURANCE	)	PLAINTIFF'S MOTION FOR SUMMARY
COMPANY; ALLSTATE FIRE AND	)	JUDGMENT AND IN REPLY TO
CASUALTY COMPANY; DEBBIE	)	PLAINTIFF'S OPPOSITION TO ALL
COHN; and FREYA TROZONA	)	SUMMARY JUDGMENT MOTIONS
	)	
Defendants.	)	

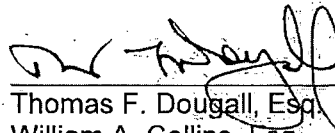
Defendants Main Street America Group and Old Dominion Insurance Company (hereinafter "Old Dominion") hereby adopts as if fully stated verbatim herein, Allstate Fire & Casualty Company's Memorandum in Opposition to Plaintiff's Motion for Summary Judgment and Reply to Plaintiff's Opposition to all summary judgment motions dated March 29, 2017.

For the reasons stated therein, Connelly is not entitled to Uninsured Motorist ("UM") coverage under Old Dominion's insurance policy because the unambiguous terms of the UM statute require that Connelly establish Trezona's legal liability before she can claim entitlement to UM coverage and the Workers' Compensation Act wholly substitutes Connelly's common law rights, providing her exclusive remedy and rendering Trezona immune from liability. Therefore Connelly cannot be entitled to UM coverage under Old Dominion's policy.

Accordingly, Old Dominion respectfully requests that the Court deny Plaintiff's Motion for Summary Judgment and enter an order granting summary judgment in favor of Old Dominion.

Respectfully submitted,

DOUGALL & COLLINS



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March 29, 2017

Columbia, South Carolina

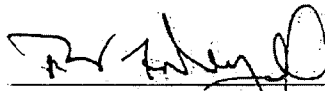
CERTIFICATE OF SERVICE

This is to certify that the foregoing Main Street America Group and Old Dominion Insurance Company's Adoption of Allstate's Memorandum in Opposition to Plaintiff's Motion for Summary Judgment and Reply to Plaintiff's Opposition to All Motions for Summary Judgment was served in the above-referenced case by depositing a copy of the same in the United States mail, postage prepaid, on the 29th day of March, 2017 addressed as follows:

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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
C/A#: 2016-CP-40-5885

Stephany A. Connelly and James M. Connelly,
Plaintiffs,

vs.

The Main Street America Group; Old
Dominion Insurance Company; Allstate Fire
and Casualty Insurance Company; Debbie
Cohn; and Freya Trozona,

Defendants.

**DEFENDANT ALLSTATE FIRE AND
CASUALTY INSURANCE COMPANY'S
SUPPLEMENTAL MEMORANDUM IN
SUPPORT OF MOTION FOR SUMMARY
JUDGMENT**

The South Carolina Supreme Court issued an opinion on April 26, 2017, answering certified questions from the District Court and interpreting the interplay between the Workers' Compensation Act (the "Act") and the Uniform Contribution Among Tortfeasors Act, *Machin v. Carus Corp.*, Op. No. 27714 (S.C. Sup. Ct. filed April 26, 2017) (Shearouse Adv. Sh. No. 17 at 18). The issue in *Machin* was whether the defendant (the supplier of the product which injured plaintiff) could argue an empty chair defense placing responsibility for plaintiff employee's injuries on his employer from whom he had already received workers' compensation benefits without any argument or jury instructions about workers' compensation. In holding the defendant can argue the empty chair defense suggesting plaintiff's employer is the wrongdoer and that the jury can hear an explanation of how the Workers' Compensation scheme had already determined the employer's legal responsibility, the Supreme Court provided helpful, timely guidance for the instant case.

Specifically, the Court explained how the exclusivity provision of the Workers' Compensation Act extinguishes the legal liability of the employer. In doing so, the Court initially recognized that the Act replaces "the common law idea of tort liability":

"The Workers' Compensation Act was designed to supplant tort law by providing a no-fault system focusing on quick recovery, relatively ascertainable awards, and limited litigation." ... The concept of workers' compensation is "founded upon recognition of the advisability, from the standpoint of society as well as of employer and employee, of discarding the common law idea of tort liability in the employer-employee relationship and of substituting therefor the principle of liability on the part of the employer, regardless of fault, to compensate the employee, in predetermined amounts based upon his wages, for loss of earnings resulting from accidental injury arising out of and in the course of employment ... The employee receives the right to swift and sure compensation; the employer receives immunity from tort actions by the employee ... This quid pro quo approach to [workers'] compensation has worked to the advantage of society as well as the employee and the employer."

Machin at 22 (citing *Nicholson v. S.C. Dep't of Soc. Servs.*, 411 S.C. 381, 389, 769 S.E.2d 1, 5 (2015) and *Parker v. Williams and Madjanik, Inc.*, 275 S.C. 65, 69-70, 267 S.E.2d 524, 526 (1980)). Thus, the Act and its exclusivity provision limit the injured employee's rights and remedies to those provided by the Act. *Id.* at 23. Also, by enacting the Act's exclusivity provision, the legislature has pre-determined "that for policy reasons the employer may not be the legal cause of the plaintiff's injuries." *Id.* at 27 (citing *Snyder v. LTG Lufttechnische GmbH*, 955 S.W.2d 252, 256 (Tenn. 1997)).

The same principles apply to this case in which the Court is asked to interpret the interplay of the Workers' Compensation Act and the Uninsured Motorist (UM) statute. As recognized in *Machin*, Connelly's common law rights and remedies in tort liability are limited and supplanted by the Act. And for the policy reasons undergirding the Act, the legislature has already determined that Trezona may not be the legal cause of Connelly's injuries. If Trezona is not the legal cause of Connelly's injuries, then Connelly is not legally entitled to recover from Trezona.

The *Machin* opinion not only clarifies the difference between legal cause and cause in fact, but it also emphasizes the importance of interpreting statutes based on legislative intent even when “compelling policy argument[s]” are presented. *Id.* at 32. The obligation of the *Machin* Court to harmonize the Uniform Contribution Among Tortfeasors Act with the Workers’ Compensation Act is the same obligation this Court has to harmonize the UM statute with the Workers’ Compensation Act. *See Id.* at 33 (“To construe a ‘potential tortfeasor’ [in subpart (D)] as including the plaintiff’s employer would create an irreconcilable conflict with the language and purpose of our Workers’ Compensation Act and would be inconsistent with this Court’s obligation to harmonize statutory scheme when such a construction is consistent with legislative intent.”).

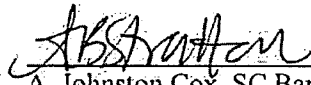
Effectuating the legislature’s intent requires this Court to refrain from adding a provision to the Workers Compensation Act like the one contained in the Tort Claims Act that allows for recovery under an individual’s UM or UIM policy “[i]f the amount of the verdict or judgment is not satisfied by reason of the monetary limitations [of the Tort Claims Act].” *See* S.C. Code Ann. § 15-78-190; *Machin* at 33 (“To be sure, the legislature could characterize a plaintiff’s employer in a way that would permit inclusion of the employer on the verdict form, but the exclusivity provision of the Workers’ Compensation Act forecloses the possibility of an employer ever being a ‘potential tortfeasor.’”). The fact that the legislature included such a provision in the Tort Claims Act and not in the Workers’ Compensation Acts evinces the intent to limit an injured employee’s right and remedies to those provided by the Workers’ Compensation Act. Thus, despite Connelly’s “compelling policy argument”, this Court, like the *Machin* Court, is bound by legislative intent to limit Connelly’s rights and remedies to the Act.

Conclusion

Allstate brings the *Machin* opinion to the Court's attention because it guides this Court's decision on the parties' respective Motions for Summary Judgment. Because *Machin* is an applicable and controlling legal authority, Allstate asks this Court to consider it and to grant summary judgment in its favor.

Although Old Dominion's policy provides liability coverage for the accident that occurred, Trezona has no legal liability to Connelly. Because Trezona has no legal liability under South Carolina law, Connelly is not legally entitled to recover damages from Trezona. Because the vehicle was not uninsured at the time of the accident and Connelly is not legally entitled to recover damages against Trezona, uninsured motorist coverage does not apply.

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May 5, 2017

CERTIFICATE OF SERVICE

I, the undersigned employee of Gallivan, White & Boyd, P.A., do hereby certify that I have caused **DEFENDANT ALLSTATE FIRE AND CASUALTY INSURANCE COMPANY'S SUPPLEMENTAL MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT** to be served via U.S. mail, postage prepaid, *or by other delivery as indicated*, to all parties of record at the address(es) shown below on May 5, 2017.

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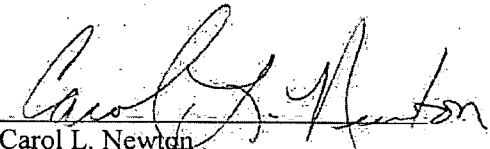
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2017 MAY -8 AM 11:33
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FILED
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STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND) COURT OF COMMON PLEAS NONJURY

STEPHANY A. CONNELLY AND JAMES M.
CONNELLY,

PLAINTIFFS,

VS.

THE MAIN STREET AMERICA GROUP, OLD
DOMINION INSURANCE COMPANY; ALLSTATE
FIRE AND CASUALTY INSURANCE COMPANY;
DEBBIE COHN; AND FREYA TROZONA,

DEFENDANTS.

TRANSCRIPT
OF
RECORD

2016-CP-40-5885

May 17th, 2017
Columbia, South Carolina

B E F O R E:

THE HONORABLE JOCELYN NEWMAN, Judge.

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

2 JOHN D. KASSEL
3 ESQ.
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PAMELA E. GREEN
Circuit Court Reporter
Seventh Judicial Circuit

INDEX OF WITNESSES

(There were no exhibits marked or testimony taken during this hearing.)

P R O C E E D I N G S

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2
3 THE COURT: All right. I'm ready to hear from whoever.

4 MR. DOUGALL: Your Honor, Tom Dougall on behalf of Old
5 Dominion Insurance Company. Basically I think we have
6 resolved the motion to dismiss.

7 Is that correct, John?

8 MR. KASSEL: Yes.

9 MR. DOUGALL: Freya Trozona, who is named as a
10 defendant, and Debbie Cohn, who is named as a defendant, are
11 to be dismissed. I think you can do that by a simple Form
12 4.

13 THE COURT: Okay.

14 MR. DOUGALL: And that will just leave us with our
15 cross motions for summary judgment.

16 THE COURT: Okay.

17 MR. DOUGALL: And, basically, Your Honor, this case --
18 I thought I was gonna get to argue my motion to dismiss
19 again today, but the motions for summary judgment are
20 actually, kind of interesting. Plaintiff's counsel has come
21 up with a unique theory of law that I think he understands
22 we disagree with him.

23 But basically what happened was, in February 20 -- on
24 February 24th of 2015, there was an automobile accident
25 here in Columbia. The car was driven by Freya Trozona, who

1 was a named insured on the Old Dominion policy, and I
2 represent Old Dominion Insurance Company. Her passenger was
3 a lady named Stephany Connelly, who is the plaintiff in this
4 case.

5 At the time of the accident, Freya Trozona and Stephany
6 Connelly were co-employees acting within the course and
7 scope of their employment, and I've presented to the court
8 also, I just want to briefly mention it, a stipulation -- a
9 joint stipulation of facts. The parties agree that those
10 are the facts.

11 Ms. Trozona and Ms. Connelly were co-employees. They
12 were acting within the course and scope of their employment
13 going to a meeting, and they were involved in an accident.
14 And Ms. Trozona was the at-fault driver, allegedly, and I
15 think we would agree, the at-fault driver of the vehicle.

16 Ms. Connelly then filed -- Ms. Connelly sustained
17 injuries and filed a workers' comp claim. She was paid
18 those worker comp benefits, and now, through this suit, she
19 is trying to claim that she's entitled to uninsured motorist
20 coverage from my policy, the Old Dominion policy, that
21 insured Freya Trozona, the at-fault driver, and Mr. Cox's
22 Allstate policy, which was her at home automobile policy.

23 Now, as we have previously mentioned, they're basically
24 two outcomes from the, the accident. First, Ms. Connelly
25 has received all the workers' comp benefits that she has

1 applied for, but Ms. Trozona, as a co-employee, is immune
2 from suit, and that's in the stipulation of facts. The
3 plaintiffs agree that she can not be sued.

4 So, basically, when Ms. Connelly tendered the claim to
5 Old Dominion Insurance Company, which was Ms. Trozona's
6 carrier, they denied the claim on liability saying there
7 can't be liability for an immune co-employee. Then, because
8 she had no liability, tort liability under the workers' Comp
9 Act, the plaintiffs have come up with this theory that,
10 because she doesn't have liability coverage, the vehicle has
11 now miraculously become an uninsured vehicle. And that's
12 really what this case is about.

13 She then presented an -- a UM claim to Old Dominion
14 insurance policy, which, again, we denied due to the fact
15 that there's no legal liability for Ms. Trozona because
16 she's immune from suit as a co-employee. They then tendered
17 the same claim to Allstate who also denied it on the same
18 basis. There's no legal liability.

19 Basically, our argument is that the exclusivity
20 provisions of the workers' comp claim, the workers' Comp
21 Act, can not render the Trozona vehicle uninsured and the
22 plaintiff, Ms. Connelly, is not legally entitled to recover
23 damages.

24 Now, providentially, there's a case I passed up to you
25 just a minute ago that has the little blue tab with it.

1 THE COURT: Uh-huh. (Affirmative).

2 MR. DOUGALL: And that's the Machin case, which came
3 out about two weeks ago, April 26th. It was on a certified
4 question from the U.S. District Court. And, for some
5 reason, when it prints out, it doesn't print out numbers on
6 the pages but, on Page 11, it really answers the question.

7 Now, if you look at that first paragraph that starts
8 with the defendants, right about the middle of the page, and
9 if you substitute co-employee for the employer, because
10 they're talking about the workers' Comp Act, then what you
11 would get, and also substituting South Carolina for
12 Tennessee, that paragraph would then read the defendants
13 here wanted the jury to assess fault against the co-employee
14 by arguing that the co-employee's actions were the proximate
15 or legal cause of the plaintiff's injuries. Of course, the
16 co-employee can not be found to be the proximate or legal
17 cause of the plaintiff's injuries because the co-employee is
18 immune from tort liability under the exclusivity provision
19 of the South Carolina Workers' Compensation Act.

20 By enacting the exclusivity provision, the Legislature
21 has already determined that, for policy reasons, the
22 co-employee may not be the legal cause of the plaintiff's
23 injuries, and basically we can go back and we can argue,
24 which I don't think we need to, whether the vehicle was
25 insured or not, but if you even read through the insurance

1 policy in South Carolina Code 38-77-30, which talks about
2 what is an uninsured vehicle, this was not an uninsured
3 vehicle, and, in fact, the parties have stipulated to that.

4 Old Dominion provided 100,000/300,000 liability, and
5 the only reason they denied the claim is because Ms. Trozona
6 can not legally be responsible for damages to her
7 co-employee. And I don't think there's any significant
8 issue about whether this vehicle is insured or not.

9 That follows with our argument on the insurance --
10 insuring agreements, which basically say we'll pay if
11 somebody is legally entitled to recover damages from the
12 insurance. Trozona is the insured under my policy, but the
13 plaintiff can't legally recover damages from Trozona, and
14 that's the entire crux of our argument. That if she can't
15 be legally liable, we don't have to pay and you can't take
16 an insured vehicle and turn it into an uninsured vehicle
17 just because the workers' comp provisions don't allow you to
18 recover damages, and we've cited several provisions from
19 different states, particularly on Page 5 of our memo, that
20 basically go through this whole litany.

21 And when you look at our act, it says basically, under
22 the workers' Compensation Act, we have abolished any tort
23 liability for the co-employee just as we abolished tort
24 liability for the employer due to sound policy reasons,
25 which are stated, again, in this Machin case that I handed

1 up to you that it's -- the reason we enacted the South
2 Carolina Workers' Compensation Act was to ensure that the
3 employees could get benefits, could get them quickly under
4 the guise that there would be no tort liability against
5 their employer, but there would be an automatic right to
6 recover for injuries sustained in the scope and course of
7 employment, and Machin goes back through all of that.

8 The only twist I think you will find, and we've cited
9 it in our brief, if you go through to the South Carolina
10 Tort Claims Act, the Legislature actually has a different
11 decision and provision in there that says, under the Tort
12 Claims Act, you could recover but you can't under the
13 Workers' Comp Act, and the Legislature has made that
14 decision.

15 And why they made it, I don't know. I wasn't here when
16 they did it, don't really care, but the South Carolina
17 Workers' Comp Act says you can't get it under the Workers'
18 Comp Act. So, you've got a situation where the same
19 Legislature, looking at two different statutes, provided for
20 two different remedies for people claiming under those
21 statutes. But it's very clear that, under the Workers' Comp
22 Statute, they do not allow that co-employee to sue the other
23 co-employee for any damages. Therefore, Old Dominion
24 Insurance can not be liable to Ms. Connelly because she
25 can't sue Freya Trozona.

1 In fact, if you look at the stipulation of facts, the
2 parties agree that Ms. Trozona is absolutely immune from
3 suit.

4 So, how would we even get to a liability case because
5 they can't name her as an employee -- I mean they can't name
6 her as a defendant because she's absolutely immune from
7 suit. And you can't do it as a John Doe because we know who
8 the at-fault party was. You're gonna have to name somebody
9 who's immune from suit, which just opens you up to an easy
10 motion to dismiss.

11 So, I don't even know how we would get to the UM case.

12 THE COURT: Okay.

13 MR. DOUGALL: And I think that's the gist of my
14 argument but I'll let you -- Mr. Cox finish up as he sees
15 fit.

16 THE COURT: Yes, sir.

17 MR. COX: Thank you, Your Honor.

18 If I could, and I'd maybe like to walk through this a
19 little more step-by-step, okay, as far as the, the statutes
20 go.

21 We have two interplaying statutes here, which is the,
22 the UM Statute and the Workers' Comp Statute. He -- Ms.
23 Connelly can not recover under either one. And so, I want
24 to walk through both of these and kind of tell you why.

25 Our UM Statute, which is 38-77-150, states very clearly

1 that, in order to be able to get UM or -- it requires the
2 policy to be issued to pay the insured all sums which he is
3 legally entitled to recover as damages from the owner or
4 operator of an uninsured motor vehicle.

5 So, first, under the UM Statute, the insured has to
6 show that he is legally entitled to recover damages from the
7 operator of an uninsured motor vehicle, and, in this
8 instance, Ms. Connelly can do neither.

9 Ms. Connelly has already stipulated, in our stipulation
10 of facts, that she can not legally recover damages from Ms.
11 Trozona. So, as far as I'm concerned, that issue is, is
12 over. There, there is no reason to discuss that issue any
13 further but we will just in case.

14 And the other issue is, and I will discuss that in a
15 second, the operator -- it must be an operator of an
16 uninsured motor vehicle.

17 Okay. We have a very specific definition in our UM
18 statutes of what a uninsured motor vehicle is.

19 Okay. I, I -- it's, it's 38-77-30. That's in my
20 brief. I'm not gonna go through all that, but it's clear
21 that this situation, this vehicle being driven by Ms.
22 Trozona, does not fall within any of these individual
23 categories of an insured vehicle either before or after the
24 accident.

25 Mr. Kassel tries to argue that because Ms. Trozona is,

1 is not legally liable, that that somehow transforms this
2 vehicle into an insured motor vehicle but it doesn't because
3 it still -- it does not meet any of the definitions of an
4 insured motor vehicle under South Carolina Statute. It was
5 not an uninsured motor vehicle. If there had been a third
6 person sitting in the back seat that was not an employee or
7 co-employee of Ms. Trozona and Ms. Trozona was at fault in
8 this accident, there's liability coverage on that car, and
9 Ms. Connelly has stipulated that the liability coverage is
10 in a sufficient amount to satisfy 38-77-140, which is what's
11 required as a minimum limits.

12 So --.

13 THE COURT: Well, let me go ahead and interrupt --

14 MR. COX: Yeah.

15 THE COURT: -- in anticipation of plaintiff's argument.

16 Why does it not meet the definition of a vehicle that
17 has insurance but the insurer writing the same successfully
18 denies coverage thereunder?

19 MR. COX: Because there is no coverage denial. It's a
20 liability denial. There is no liability. They're not
21 denying that there's liability coverage applicable to the
22 vehicle. They're denying that there's any liability on the
23 part of the person driving the vehicle.

24 THE COURT: Okay.

25 MR. COX: So, that's the difference and that's the

1 difference between the cases that Mr. Kassel cites. He
2 cites the -- I think it's Unisun Schmidt. He doesn't cite
3 Rollison but I was involved in that case and we could cite
4 that one.

5 Those were situations where -- I think both of those
6 were single car accidents. The person driving the car did
7 not have permission to drive the car. So, the carrier
8 denied coverage because the operator was driving without
9 permission.

10 THE COURT: Got you.

11 MR. COX: So, they denied coverage. There was no
12 liability coverage that applied to the car. Therefore, it
13 becomes an uninsured motorist vehicle.

14 THE COURT: Understood.

15 MR. COX: Okay. So, that's the difference is that
16 there's no coverage denial. There was a liability denial.

17 THE COURT: Okay.

18 MR. COX: All right. So, there is no insured motor
19 vehicle. It -- this vehicle does not meet the definition
20 under our statutes. In fact, it meets the definition of an
21 insured vehicle under our statutes.

22 The second issue is this issue of whether or not she
23 can leave -- she's legally entitled to recover damages from
24 Ms. Trozona, and this is something that is absolutely
25 controlled by the Workers' Comp Act. The Machin case and

1 the other cases we've cited in our briefs talk about how the
2 workers' Comp Act is completely supplanted toward law in
3 this area. There is no tort law in this area. There's only
4 statutory law.

5 Okay. Determining the rights of co-employees or, or
6 employees to sue their employer or co-employees.

7 Okay. There, there is no tort law in law. So, it's
8 only by statute can you determine whether you can recover.

9 All right. The workers' Comp Statute very clearly and
10 plainly states that an employee can't sue a co-employee and
11 an employee can not sue a -- an employer. You are not
12 legally entitled to recover damages.

13 The Machin case goes on and talks about how the
14 employer/employee can't be a tortfeasor period. There --
15 they, they can not be a tortfeasor, which was one of the
16 reasons that the Supreme Court decided that you could not
17 put an employer or a co-employee on the verdict form for the
18 purpose of allocating fault.

19 All right. So, they're not tortfeasors.

20 There is no provision whatsoever in the workers' Comp
21 Act that allows a co-employee to recover damages from
22 another co-employee period. It doesn't say oh, you can't
23 sue the co-employee. Well, but you can sue the co-employee
24 to get underinsured or uninsured motor coverage. It doesn't
25 say that. There is no tort recovery period against a

1 co-employee.

2 Now, as, as Tom said, completely different under the
3 Tort Claims Act.

4 Okay. The Legislature, in that situation, decided and
5 specifically included a provision, and I've cited the
6 provision number in our brief, that specifically says if, if
7 a, an injured party's damages exceed the, the tort claims
8 cap, they can make a claim, if any, against uninsured
9 motorist coverage or underinsured motorist coverage.

10 okay. Specifically stated that.

11 The fact that that is not included in the UM Statute, I
12 mean, I'm sorry, in the Workers' Comp Statute is actually
13 fatal to any argument that they might have because they
14 easily could of done that. The Legislature easily could of
15 done that.

16 The Kane case, which actually we both cited, is Kane
17 versus Nationwide. It is pretty instructive in this. It
18 was a case about whether or not -- clarifying whether you
19 could bring an under or uninsured motorist claim in the
20 context of the Tort Claims Act, and, in that case, it said
21 yes, you can, but the vehicle still has to meet the
22 definition of either an insured motor vehicle or an
23 underinsured motor vehicle.

24 Okay. And, in that case, they said it doesn't meet the
25 definition of an uninsured motor vehicle because there was

1 insurance on the vehicle. So, if anything, it has to be an
2 underinsured claim under the Tort Claims Act, okay, because
3 there was what, three hundred thousand in coverage on the
4 governmental vehicle or whatever, but the, the -- but the
5 important part of that decision from the Supreme Court is
6 you still have to show that it meets the definition of an
7 uninsured motor vehicle to even consider under the Tort
8 Claims Act, which specifically allows going after UM and UIM
9 to, to, to be able to do that.

10 One more thing on the issue of, of the legal, legally
11 entitled to recovery. Lawson versus Porter, a Supreme Court
12 case, says recovery under a UM is subject to the condition
13 that the insured establish legal liability of the uninsured
14 motorist. Legal liability..

15 Okay. And, and Mr. Kassel's gonna argue that he
16 doesn't have to do that. He's gonna, he's gonna argue well,
17 all I got to do is show that they're at fault, and, and,
18 therefore, if they're at fault, then I can pursue an
19 uninsured motorist claim. Not in South Carolina. You have
20 to prove legal liability. Our Courts have already
21 determined that Ms. Trozona has no legal liability.

22 THE COURT: Okay. Tell me that case name again please.

23 MR. COX: I'm sorry.. Which one?

24 The last one?

25 THE COURT: The last one.

1 MR. COX: Lawson versus Porter. It's at 180 S.E.2d
2 642.

3 THE COURT: Okay.

4 MR. COX: And we cited another case. It says the same
5 thing. Vernon versus Harleysville. It's in our briefing.

6 THE COURT: Okay. Thank you.

7 Yes, sir.

8 MR. KASSEL: May it please the Court, Your Honor.

9 I'm John Kassel. Pleasure to be with you and these
10 fine lawyers. They gave me way too much credit that I came
11 up with a unique theory of law. Everything I'm gonna tell
12 you I have taken from other cases.

13 My argument is based on case law of other cases. I say
14 that on the up front, number one.

15 Number two. This isn't a tort claim I'm bringing.

16 Okay. I'm not suggesting I'm bringing some kind of
17 tort action against the driver for negligently driving and
18 looking for tort damages from her. What I am doing is I'm
19 bringing a contract action, and the South Carolina
20 Compensation Act does not, by its terms, preclude contract
21 actions.

22 Interestingly, also the Tort Claims Act that this Kane
23 case is, is based upon doesn't preclude a contract action.
24 It says so by its very terms. That's important to
25 understand and see as we go through this, judge.

1 This is an issue of whether Ms. Connelly is entitled to
2 UM uninsured motorist coverage, which our South Carolina
3 Courts have determined to be a contract action. It's a
4 contract action. She contracted with Johnston's carrier,
5 paid them money for UM coverage. She has the benefit of, of
6 Tom Dougall's client's Old Dominion UM coverage cause she's
7 a passenger in the car, permissive passenger with a right to
8 be there, and so her expectation is that she's entitled to
9 UM through both of these unless they can convince you
10 otherwise.

11 So, that's what this is about. Ms. Trozona caused a
12 wreck. She caused injury to Ms. Connelly and now she is
13 immune from a tort action because of workers' comp. I
14 understand that and I'm not fighting that. She's immune.
15 As a co-employee, she's immune. That doesn't mean I can't
16 go after uninsured, uninsured coverage. And, in fact, the
17 case law that I cite in my brief makes a correlation between
18 immunity with being the same thing as uninsured. Both are
19 devoid of paying benefits.

20 It doesn't matter to Ms. Connelly whether she has
21 immunity, her driver, or whether her driver can't respond
22 because she has no money. The result is the same and the
23 cases I've cite say that. And so, that's the basis of the
24 argument, that an immune driver is really the same thing as
25 an uninsured driver.

1 THE COURT: Because she is immune, there's no coverage
2 available which is the same as uninsured?

3 MR. KASSEL: Right, and I---

4 THE COURT: Okay.

5 MR. KASSEL: Right.

6 And I cite this Jenkins case and it's in the brief,
7 judge. It's a West Virginia case and the reason I'm doing
8 this is that, in South Carolina, there are no cases. This
9 is the first. There are no cases that talk about this very
10 issue of whether you can go after UM coverage from an immune
11 negligent driver who's shielded by workers' comp.

12 So, we're all looking to other jurisdictions, and I
13 will tell you, just as a road map, what I did was I looked
14 and there is a plethora of cases out there that talk about
15 ability to get UM coverage when there is governmental
16 immunity, and I can discuss those with you. And, in fact,
17 the majority of cases fall in the position helpful to the
18 plaintiff that you can get UM coverage if there's
19 governmental immunity.

20 There is a difference, and I admit this, I'm in the
21 minority when it comes to workers' compensation, and I've
22 cited -- there are the two cases that speak to allowing UM
23 coverage from a -- even though you've been hurt by a
24 co-employee in a workers' comp setting.

25 This Jenkins case that I was gonna mention to Your

1 Honor, listen to this language. Immunity from liability is
2 no different than failure to purchase liability insurances
3 for purposes of their statute in West Virginia. I cite this
4 Colorado case, it's in the Borjas, negligent drivers and
5 their employers who are immune from liability under the
6 Colorado immunity statute may not be financially
7 irresponsible in the sense that they lack the ability to
8 pay, but from the prospective of the insured innocent
9 driver, the lack of legal responsibility has the same
10 effect.

11 Now, if immunity triggers the same thing as uninsured,
12 then we have to look at the South Carolina Uninsured
13 Motorist Statute and that's this 38-77-150, and that statute
14 says that we will pay -- that any, anyone who writes a
15 policy of insurance has to have this provision, and it says
16 that this provision will pay all sums which the insured is
17 legally entitled to recover as damages from the owner of an
18 uninsured vehicle.

19 What are we legally entitled to recover from an owner
20 of an uninsured vehicle?

21 If, you know, if, if we're just gonna practice bumper
22 sticker law and go no deeper than that, you know, maybe they
23 win, but the moment you scratch the surface, if you are
24 tempted, you will find that a majority of cases dealing with
25 governmental immunity interpret that very language. This

1 language, all sums which he is legally entitled to recover,
2 is nation wide. I find it in every jurisdiction. It's not
3 a creature of South Carolina. It's in our statute but it's
4 in statutes across this country.

5 Where our case -- our Courts have not interpreted that
6 statute in workers' comp setting, other -- or in a
7 governmental immunity setting, a lot of cases from other
8 jurisdictions have, and there is a conflict on how that
9 term, that term, statute, has been interpreted. And once
10 there's an ambiguity there, then it's up to the Courts to
11 construe it.

12 What does it mean?

13 What does it mean in this UM setting?

14 It is as straightforward as they, my friends, the
15 defendants, want to say?

16 They can't -- you can't recover from Ms. Trozona, your
17 driver, then you can't get UM or is it a little bit more
18 complicated than that?

19 And I'm sorry to say it's a little bit more complicated
20 than that.

21 If you look at these cases in the context of UM, there
22 are a slight majority of cases that interpret that language
23 as saying I don't have to prove legal liability. I don't
24 have to get a judgment. All I have to do is demonstrate
25 fault. It's that element of fault by the driver that will

1 trigger the UM statute. I didn't -- you know, that's not my
2 theory. That's from the case law.

3 For example, in this Jenkins case, this is the Court
4 writing, our research indicates that a slight majority of
5 Courts that have considered the issue have determined that
6 the phrase legally entitled to recover or its equivalent
7 means that an insured is entitled to uninsured motorist
8 coverage merely by establishing fault on the part of the
9 tortfeasor in the amount of the insured damages. All I can
10 do is find fault.

11 Now -- but what -- and, and that language is also in
12 this Borjas case that I cited, which is the Colorado case.
13 We conclude, the Court says, that the phrase legally
14 entitled to recover damages means that the insured must be
15 able to establish the fault of the insured motorist that
16 gave rise to the damages and the extent of those damages.

17 And I would argue to Your Honor that Nation, the case
18 that's been cited here today, essentially says the same
19 thing. Nation was not an uninsured motorist case. It was a
20 product liability case about what defendants go on a verdict
21 form, and it did say, of course, that an employer -- cause
22 what happens in those cases when you bring a third party
23 action that the defendant, product manufacturer, always
24 wants to blame the employer as the cause, and the question
25 was can you put the employer actually on the verdict form,

1 and, finally, that question got answered in that case.

2 And they said no, you know, he's not a proximate cause,
3 if not legally liable, under our -- because of workers'
4 compensation.

5 But you know what the Court said?

6 You can argue their fault even though they're not the
7 proximate cause. You can still argue to the jury their
8 fault, which is what I'm attempting to do here. So, I think
9 Nation helps me do that.

10 So, I think the real question for you, Your Honor, is,
11 with these two interpretations, do I have to show I can get
12 a judgment against Trozona or do I merely have to show that
13 she was at fault?

14 The question for Your Honor is what would be the rule
15 in South Carolina, and I think that way you -- the answer to
16 that question is you say I'm gonna look to the intent of the
17 Legislature.

18 What did they mean by this UM statute?

19 What is the purpose of the UM statute?

20 And it's clear, when you look at cases like Ferguson
21 versus State Farm that talk about the UM cases and the
22 statute, the purpose is to protect motorist from the carnage
23 and injury delivered by uninsured motorists, and that we
24 want to protect those folks with some compensation. And so,
25 we created this notion of uninsured coverage through our

1 statute and we hold this pretty wholly.

2 In South Carolina, uninsured motorist coverage holds a
3 lofty place in our jurisdiction, and I say that to argue
4 that you don't do away with it easily. Look. Uninsured
5 motorist coverage is mandatory in South Carolina. You have
6 to include it in your, in your coverage if you're gonna
7 write insurance in this state. The limits of uninsured
8 motorist coverage are mandatory in South Carolina.

9 The statute that provides uninsured motorist coverage
10 is a remedial statute that has to be interpreted liberally
11 to provide coverage, and we have determined that you can't
12 even -- you can't limit, by policy, uninsured coverage to do
13 away with it. And Ferguson versus State Farm is an example
14 of that. You can't write it out but by putting in, as they
15 try to do in Ferguson, well, if you collect it, workers'
16 compensation, in an amount greater than the UM, you can no
17 longer get UM.

18 That's what they tried to do in Ferguson and the
19 Supreme Court said you can't do that. This is uninsured
20 coverage. You can't undermine uninsured coverage.

21 Now, Your Honor, this is -- Ferguson was not a case
22 involving the exclusivity of workers' compensation but a
23 second case came out. And this is an old case. It's a 1992
24 case from South Carolina, Wright versus Smallwood. And the
25 reason I'm telling you this, judge, is when you try to make

1 a determination of whether South Carolina would require just
2 a showing of mere fault or something more, I think the clues
3 to that answer lie in these cases.

4 Smallwood -- Wright versus Smallwood is an important
5 case in that regard because it -- it was an attempt by an
6 insurance carrier to raise the workers' comp exclusivity
7 provision to bar payment of UM. Now, it's not exactly on
8 point because we've never had the case exactly on point.

9 In the Wright case, Mr. Wright was a city employee who
10 was on-the-job. He was hit by an uninsured driver. He
11 collected comp from the City. The City also underwrote the
12 workers' comp but also was self-insured for auto. He
13 collected his comp and he brought a DJ action against his
14 employer, against the City, to determine if they owed him
15 uninsured coverage, and the City defended by saying you
16 can't sue us. You can't sue your employer. Exclusivity
17 provision of comp. You can't sue your co-employee as
18 they're telling us here. Exclusivity provision of comp.

19 Our Supreme Court said no. The exclusivity provision
20 of comp does not prevent Mr. Wright from suing his employer
21 to get UM. 1992.

22 why?

23 Because the exclusivity provision of comp only applies
24 to torts. It does not apply to contract actions.
25 Mr. Wright is bringing a contract action. He's bringing a

1 claim for UM and they allowed that.

2 We are not suing Ms. Trozona, the driver, for any
3 money. In fact, we've dismissed our claim against her.

4 THE COURT: Okay.

5 MR. KASSEL: We are not even suing her employer, the
6 common employer, which was Apple One. They're not even
7 parties. We are bringing a claim against an entity called
8 Old Dominion and Allstate, not the employer, not the
9 co-employee, for UM benefits.

10 Now, Your Honor, without wearing you out with all of
11 this in this argument, I just want to point out that, when
12 you look at the body of case law that deals with the
13 governmental immunity, there is an over -- there is a
14 majority of cases that allow one to go after UM as well as
15 comp. When you get to the area of cases that specifically
16 deal with our situation where you have one employee who's
17 injured by a negligent co-employee, we're in the minority.
18 My position is in the minority.

19 It doesn't mean that I'm wrong despite the reaction
20 from my---

21 MR. COX: No.

22 MR. DOUGALL: No, you're doing great.

23 MR. KASSEL: South Carolina has often adopted the
24 minority position and the reasons you adopt the minority
25 positions is that you're right.

1 And so, I cite to the Court two cases that are both
2 from the State of Oklahoma. They both involve one employee
3 getting injured by another employee.

4 One case, the Barfield case, allowed the employer to go
5 after her own UM coverage. The second case was the Torres
6 case that allowed the employee to go after the employer's UM
7 coverage.

8 Now, in -- I would say that this, you know, when you
9 look at the equities of this, judge, is there a difference
10 between going after your own carrier for UM that you paid
11 money for in premium versus going after the UM coverage of
12 the vehicle you're in?

13 You know, someone may argue that.

14 Does -- do the Connellys have a stronger position
15 against Allstate because they're not getting the benefit of
16 their bargain?

17 Remember. The Connellys went out to protect
18 themselves. They didn't have -- they, they went out and
19 they purchased this UM. They got this UM. They paid for
20 it. They wanted to protect themselves and now the defense
21 position is you don't get the benefit of that protection.
22 You have to be pleased with a limited recovery of workers'
23 comp. Thank you very much.

24 Those two cases allow the plaintiff to get UM coverage
25 and why?

1 what is the rationale?

2 Here it is. Because if you allow UM coverage, then you
3 further the legislative intent to protect people from injury
4 from those that can't get minor -- the uninsured or the
5 immune. You protect that. And that's what our Legislature
6 attempts to do.

7 We have historical precedent like the Wright versus
8 Smallwood case allowing UM actions despite the exclusivity
9 of comp. You have that. Allowing UM does nothing to
10 interfere with the balance carefully crafted by workers'
11 comp. You know, the balance in workers' comp was the
12 employee gave up his rights to sue the employer in exchange
13 for what was suppose to be fast, determined compensation,
14 and, in exchange, the employer didn't have to be burdened by
15 liability for tort and didn't have to look at punitive
16 damages.

17 If Ms. Connelly gets UM coverage, how will it upset
18 that balance?

19 It can't.

20 If she gets UM coverage, it does nothing to, to that or
21 will affect any of the values that we're trying to protect
22 in the comp action. If you don't allow UM coverage, it does
23 grave harm to the folks that need the protection of UM. So,
24 it, it doesn't hurt to provide it but it hurts greatly to
25 deny it.

1 Your Honor, briefly, and I want to sit down, but just
2 two quick points, and I'm sorry that my argument is a bit
3 long because it isn't the bumper sticker argument. There is
4 nuance to it.

5 Was this an uninsured, uninsured vehicle?

6 It has to be an uninsured vehicle in order to get
7 uninsured coverage and was it?

8 And, you know, how can this be an insured vehicle if
9 there's liability coverage on it?

10 Well, I rely on the Unisun versus Schmidt case. It's a
11 South Carolina case. There was a BMW that had bunches of
12 coverage on it. It was being driven by a non-permissive
13 driver. It caused injury to a passenger. The passenger
14 made a claim. Coverage was denied. The Court said that's
15 an uninsured vehicle in Schmidt. The Court said that's an
16 uninsured vehicle.

17 How can that be?

18 You have liability coverage. You pay for it. Dad
19 bought that BMW. You know he had full coverage. Permissive
20 driver. The status of the driver changed whether that
21 vehicle was now insured or uninsured. The driver brought a
22 liability claim. It was denied. She brought a UM claim.
23 She was allowed to go forward.

24 Well, they say well, they're not denying coverage.
25 They're denying liability. That's a distinction we need to

1 spend time on.

2 They are clearly denying liability. They stipulated to
3 the denial of liability. All I have to do is prove fault in
4 this case. I've done that. They've stipulated. They
5 stipulated that Ms. Trozona was negligent. They stipulated
6 that her negligence was the cause of these injuries. That's
7 stipulated in the record. And, as such, you can not deny
8 liability once you've stipulated to those facts.

9 And I would further argue to you, Your Honor, that this
10 notion of whether we denied liability or denied coverage is
11 a little bit like dancing angels on the head of a pin.
12 Those concepts, in the Schmidt case, when you read the case,
13 almost use those terms interchangeably.

14 You can't -- a vehicle can be uninsured if there's no
15 liability coverage, and it can be uninsured if you
16 successfully deny coverage. And we think they've done both
17 in this case. And I want to make sure I argue this to the
18 Court that both of these grounds are covered.

19 Our statute says uninsured motor vehicle means a
20 vehicle as to which there's no bodily injury liability
21 insurance and property damage liability insurance both, at
22 least, in the specified amounts. So, if there's no
23 coverage, it can be an uninsured vehicle. Again, in that
24 Jenkins case, they had almost an identical statute and they
25 said this. we believe the definition of uninsured motor,

1 motor vehicle, under our statute, is broad enough to
2 encompass tortfeasor, feator who is immune from liability.

3 So, we think that it's an uninsured vehicle because
4 this tortfeasor is immune. We have that language from that
5 case to support it. And we think it's an uninsured vehicle
6 by virtue of the fact that they denied coverage.

7 And, finally, Your Honor and I'll sit down, this
8 notion -- there's an argument that my friends are making
9 that, under the Tort Claims Act, they have a specific
10 provision, this Section 190, that says that, under the Tort
11 Claims Act, it has an exclusivity provision, you can still
12 bring a claim for underinsured or uninsured motorist
13 coverage and such provision does not exist in the workers'
14 comp code. And, therefore, it envisions a legislative
15 intent not to include it in comp because they included it in
16 tort claims.

17 I think there's something wrong with that argument and
18 it's this that I don't need that provision in workers' comp
19 allowing me to bring an uninsured motorist case. I don't
20 need a Section 190 in the comp provision to bring this.

21 Again, I go back to Wright versus Smallwood, that 1992
22 case, where the injured employee was allowed, despite the
23 exclusivity provision of comp, to sue his employer for UM,
24 and look what the purpose of 190 is, that section, from the
25 Kane case where I cited it. The purpose of section 190 was

1 to ensure that an insurance company could not cite the
2 exclusive civil remedy portion of the South Carolina Tort
3 Claims Act to deny payment from the plaintiff's uninsured or
4 underinsured motorist coverage for recovery under the act
5 was sufficient.

6 They could not rely on the exclusivity provision, and
7 that's why they have that Section 190 in it. I don't need
8 that. I already have the Wright versus Smallwood opinion
9 that says exactly the same thing, and that was in 1992 that
10 we had that opinion. So, it's understandable why the
11 Legislature didn't put it in comp. They didn't need to.

12 The Courts -- our Supreme Court have offered an opinion
13 that allowed an employee to sue his employer for a comp --
14 for, for UM because it's a contractual action. And
15 certainly, under the Tort -- under the Workers' Comp
16 Statute, we have third party claims and that's been well
17 established for years that recognizes the limited recovery
18 of comp and it allows individual to go after third parties.

19 I submit these folks are gonna be a third party and I
20 should be able to bring my case against them. And like the
21 gentleman in Wright versus Smallwood, if you brought a DJ
22 action, you brought it against the employer. I brought a DJ
23 action. I brought it against two carriers.

24 I ask the Court to grant my motion for summary judgment
25 and allow me to have a hearing on damages is with the

1 element I need to prove and go forward.

2 THE COURT: Yes, sir.

3 MR. DOUGALL: Your Honor, just very quickly.

4 I think Mr. Kassel, in his arguments, has now admitted
5 that he has absolutely no tort claim. I don't think we need
6 to argue that anymore and I think it's very clear, from our
7 cases and our statute, that he can't have a tort claim, and
8 he's now saying this is purely a contract issue.

9 well, then let's go back to the provisions of the
10 contract and he cites this Wright case. I want, I want to
11 quickly handle that one because, in Wright, you had an
12 at-fault third party who could be found liable for damages.
13 It wasn't a co-employee. It wasn't an employer. It was an
14 at-fault third party. You don't have that here and, in
15 fact, he admits he has to dismiss the employee because he
16 has no cause of action against that employee.

17 If you go to Schmidt, there's a whole different issue
18 in Schmidt. In Schmidt, you had a car that was insured, and
19 daddy let his daughter drive that car to a party, and, at
20 all times, she was insured under the contract. She was
21 insured for liability coverage. She was insured for UM
22 coverage. She was insured for UIM coverage.

23 But while she was at the party, imagine a bunch of high
24 school kids who got drunk and one of the drunk guys, who
25 didn't have permission from daddy to drive his BMW, took off

1 in the BMW and injured another child who was at the party.
2 So, the insurance company's legally, under those policy
3 provisions, which I'll go into in a second, said there is no
4 liability coverage for the nonpermissive driver. Therefore,
5 the vehicle now becomes uninsured under the statute.

6 It wasn't because there was an exclusive provision. It
7 was because they were interpreting the actual language of
8 the contract, and when there was no liability coverage for
9 the third party not at fault in the back seat, then the UM
10 provisions came into play. That is not what we have here.

11 What we have here are two co-employees who can't sue
12 each other because there's no legal liability. So, let's go
13 to the factual provisions of the insuring agreements, and
14 basically I think our provisions are not significantly
15 different although there may be some different pronouns, but
16 the policy itself says we will pay those damages that an
17 insured person is legally entitled to recover from the owner
18 or operator of an uninsured auto because of bodily injury
19 sustained by an insured person.

20 Now, you got several problems there. First off, Ms
21 Trozona -- I mean, excuse me, Ms. Connelly is not legally
22 entitled to recover damages from the owner or operator. Ms.
23 Trozona was the owner and operator of that vehicle but she
24 can't be sued.

25 So, when the claim is presented to Old Dominion

1 Insurance Company, there's no legal liability to recover
2 damages. So, the possible -- and Mr. Kassel, very
3 effectively, tries to convince the Court that there's no
4 difference between legally entitled to recover and just all
5 I got to do is show there was an accident and there were
6 damages.

7 That's not the case. You've got to show legal
8 liability to recover and we cite to you the Slusher case out
9 of Kentucky. State Farm Mutual Automobile Insurance Company
10 versus Slusher, which is at 325 S.W.3d 318. And basically
11 the Slusher Court addressed the exact same situation we have
12 here, which Mr. Kassel admits is the majority position in
13 the country, and what you had in Slusher was a worker trying
14 to recover under a UIM, UIM or UM policy for injuries
15 sustained in a work related motor vehicle accident caused by
16 the negligence of a coworker, the exact same case that you
17 have before you right now.

18 And just like this case, the -- basically the Court
19 said you can't do that and the carriers in that case also
20 defied liability under the liability provisions and refused
21 to pay. Kentucky statutory law, like ours, eliminated a
22 legal entitlement to collect any damages from the employer
23 or co-worker. In citing the exclusivity of that statute,
24 the Court found that, except for the compensation benefits,
25 the worker's estate was not legally entitled to collect any

1 further amounts from either the employer or the co-worker.
2 Therefore, the estate could not collect under either the UM
3 or the UIM coverage because of the contractual language of
4 the policy.

5 So, if Mr. Kassel wants to make this a contract case,
6 we'd be more than happy to argue that with you too because
7 the majority of law says you lose on that one also cause you
8 go to look at the contract, and the contract says you can't
9 legally recover damages from Ms. Trozona, the operator of
10 the vehicle, because she's immune from suit. She's immune
11 not only from tort suit, she's immune from a contract
12 action. She is immune because the South Carolina
13 Legislature said she was immune.

14 THE COURT: Well, for whatever reason she's immune, let
15 me ask Mr. Kassel, and I know I'm interrupting you---

16 MR. DOUGALL: That's okay.

17 THE COURT: ---but let me ask Mr. Kassel what am I to
18 make of this stipulation of facts that may of been, I, I
19 don't know if it was a gotcha you moment or part of the
20 defense counsel or, or, you know, or that was intentional on
21 everyone's part, but it, in fact, uses the language legally
22 entitled to recover. Paragraph 13 admits or there's an
23 agreement, a stipulation, that Connelly is not legally
24 entitled to recover damages, and if the contract requires,
25 the insurance contract requires her to be legally entitled

1 to recover damages, explain.

2 MR. KASSEL: The contract has to be in compliance with
3 the statute.

4 THE COURT: Okay.

5 MR. KASSEL: Very clear.

6 THE COURT: Okay.

7 MR. KASSEL: So, they can't write a contract that is --
8 that does any violence to the statute. The statute language
9 is what we've been arguing to Your Honor for an hour
10 cause -- what that language means. I stipulated, in 13,
11 that Ms. Connelly can't recover from Ms. Trozona because
12 that's the law. She can't sue Ms. Connelly -- Ms. Connelly
13 can't sue Ms. Trozona because Ms. Trozona has this immunity.
14 I get that. I mean I'm not arguing against that. I'm just
15 saying, in the UM context---

16 THE COURT: Okay. I understand.

17 MR. KASSEL: ---that, that language could mean just
18 simply fault.

19 THE COURT: I understand.

20 MR. DOUGALL: And, Your Honor, going further with
21 Slusher, basically Slusher talked about those two competing
22 positions, and it said, in that case, in determining that
23 the worker's estate was not legally entitled to recover UM
24 or UIM due to exclusivity, exclusivity provisions of the
25 workers' Comp Act, it distinguished two types of cases. It

1 distinguished cases applying an essential facts test where
2 some Courts have interpreted the phrase, as Mr. Kassel wants
3 you to interpret it here today, that the phrase legally
4 entitled to recover basically only means you have to
5 establish fault on the part of the tortfeasor, and the
6 amount of the insured's damages.

7 Again, that's the essential facts test. That's what
8 Mr. Kassel here is trying to argue.

9 But the Slusher Court, noting the shortcomings of that,
10 found that the abridgment of the essential facts approach
11 fails to properly consider the individualized analysis of a
12 particular policy's language. So now we're back to the
13 contract case again, and it -- you have to analyze that
14 particular policy's language and it's interplayed with a
15 statutory public policy exceptions in tort liability such as
16 exclusive remedy provisions of the Workers' Comp Act.

17 And then, going down to Page 7, we then cite to you the
18 majority of cases which say you don't follow that. You
19 follow the statute. You follow the contract language. And
20 if you've got a party who's not legally entitled to recover
21 damages, then the insurance company doesn't have to pay UM
22 benefits.

23 And Mr. Kassel tries to get around all of that by
24 saying I'm not suing Ms. Trozona. Well, he's not cause he
25 can't but we insure Ms. Trozona. We have a contract with

1 her and Ms. Connelly can not legally recover damages from
2 Ms. Trozona. Therefore, under our contract, under the clear
3 policy as interpreted by the majority of the Courts who have
4 looked at this issue, we have no legal liability to pay, and
5 it becomes as simple as that.

6 THE COURT: All right. Mr. Cox.

7 MR. COX: Very, very briefly, Your Honor.

8 THE COURT: Yes, sir.

9 MR. COX: Just because he's done a good job.

10 Yeah, I just want to -- Mr. Kassel says he's not gonna
11 upset any apple carts. I've heard a lot today from
12 Mr. Kassel that would upset a lot of apple carts.

13 He's trying to actually tell you, judge, that, that he
14 doesn't have to sue the at-fault motorist in order to get UM
15 coverage. He's saying he can sue the insurance company
16 directly. He can not.

17 Under 38-77-150, it clearly says you have to sue the
18 at-fault driver and you have to establish legal liability of
19 the at-fault driver. He can't end run the entire statutory
20 scheme and bring a DJ action and, and not sue the at-fault
21 driver for UM coverage. It's -- he -- that -- I don't
22 know -- I don't know if it's bumper sticker law or bumper
23 sticker argument but that's -- I guess that's a good phrase.
24 I've never heard---

25 THE COURT: Me either.

1 MR. COX: ---law actually referred to as bumper
2 sticker.

3 THE COURT: Me either but I like it.

4 MR. COX: Right. I do too but---

5 MR. KASSEL: I think there's a political derivation
6 from it.

7 THE COURT: Certainly.

8 MR. COX: But, but the fact of the matter is, judge, we
9 have law. We have statutory law and it's very clear as to,
10 as to what has to happen here.

11 You know, there, there is no question that if, if Ms.
12 Connelly had been involved in an accident with a third
13 person, who did not have insurance, that, that she'd be
14 entitled to go after some uninsured motorist. She'd have to
15 sue that person, right. She'd have to sue that person in
16 order to commence a UM action.

17 And -- but that's just not the case here. All the
18 cases that he cited are third party actions against -- that,
19 that area allowed specifically by the UM statute -- I mean
20 by the -- I'm sorry. The Workers' Comp Statute that you can
21 go after -- you can sue third parties, and, if applicable,
22 you can get UIM and you can get UM but this is not that
23 situation cause, cause this is just not a, a third party.

24 Ms. Connelly is absolutely getting the benefit of the
25 bargain in her loss. If she had been involved with an

1 uninsured motorist, as defined by South Carolina statutory
2 law, it would be available to her. That she's not being
3 deprived any bargain under her policy as, as clearly
4 written, and, and I hear what you're saying about the
5 stipulation, legally entitled to recover damages, and the
6 statute is the exact same language as in Allstate's policy.

7 So, they're not doing any harm to the, to the statutory
8 language. In fact, they took the language from the statute
9 and put it in the policy. So, there, there is harm and, and
10 just the status of the driver argument.

11 He said oh, well, in Rollison and Schmidt case, the
12 status of the driver. And so, the status of the driver is
13 what matters.

14 Well, what's important about the status of the driver
15 in those cases is that that driver did not meet the
16 definition of an insured person under a policy. Ms., Ms.
17 Connelly -- you know, I mean -- I'm sorry. Ms. Trozona
18 meets the definition of an insured person in this case.
19 She, she's an insured person under, under the Old Dominion
20 policy.

21 So, it's a -- that is a coverage issue, right. She did
22 not have coverage because she was not an insured person in
23 the Unisun case or the, or the Schmidt case.

24 Does that make sense?

25 I think I've confused you.

1 THE COURT: No.

2 MR. COX: The issue.

3 THE COURT: I understand.

4 MR. COX: Here, there's just no liability.
5 Okay?

6 THE COURT: Got it.

7 MR. COX: Got it.

8 Oh. And the other cases from other jurisdictions, very
9 quickly, he is right. He's in the minority, the vast
10 minority. There's only one or two jurisdictions that have,
11 that have gone along with that, with that. In those cases,
12 the cases that we've cited in our briefs, they talk about
13 why those cases really don't make any sense. And one of the
14 reasons is there's no discussion in those cases at all, and
15 maybe it's because they don't have specific definitions of
16 what an insured motor vehicle is in their statutory scheme
17 like we do. There's no discussion at all of how the vehicle
18 is magically transformed into an underinsured motor vehicle.

19 Our statute specifically requires that they have to be
20 driving an uninsured motor vehicle as defined in our
21 statutory scheme and we don't have that, Your Honor.

22 THE COURT: Okay. I'll let y'all know something.

23 MR. COX: Thank you very much.

24 MR. KASSEL: Thank you, Your Honor.

25 THE COURT: A lot to chew on.

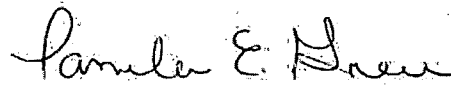
1 MR. COX: It is. It's an interesting issue.
2 THE COURT: It is.
3 MR. DOUGALL: Thank you for your time.
4 THE COURT: Absolutely.
5 Good seeing all of you.
6 MR. COX: Good to see you.
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9 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *
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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas Nonjury for Richland County, South Carolina, on the 17th day of May, 2017.

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

November 1st, 2017



PAMELA E. GREEN, Court Reporter

THE STATE OF SOUTH CAROLINA
In the Court of Appeals
Case Tracking No. 2017-002234

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SC Court of Appeals

APPEAL FROM RICHLAND COUNTY COURT OF COMMON PLEAS
Civil Action No. 2016-CP-40-5885
Jocelyn Newman, Circuit Court Judge

Stephany A. Connelly and James M. Connelly Plaintiffs

v.

The Main Street America Group; Old Dominion Insurance Company;
Allstate Fire and Casualty Insurance Company; Debbie Cohn; and
Freya Trezona Defendants

Of whom, Allstate Fire and Casualty Insurance Company; The Main
Street America Group; and Old Dominion Insurance Company are Appellants
and

Of whom, Stephany A. Connelly and James M. Connelly are Respondents

**APPELLANT ALLSTATE FIRE AND CASUALTY INSURANCE COMPANY'S
CERTIFICATION AS TO RECORD ON APPEAL**

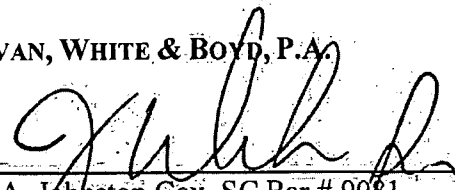
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Pursuant to Rule 210(g), Counsel for Appellant, Allstate Fire and Casualty Insurance Company, hereby certifies that the Record on Appeal served on the parties of record on March 28, 2018 contains all material proposed to be included by any of the parties and not any other material.

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March 28, 2018