

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

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SC Court of Appeals

19935

DeAndrea G. Benjamin, Circuit Court Judge

Appellate Case No. 2012-211567

Omni Insurance Group,

Appellant,

v.

La'Rissa Tidwell, and Bristol
West Insurance Company

Respondents.

RECORD ON APPEAL

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2011CP4003734

Omni Insurance Group

Larissa Tidwell

Bristol West 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. No. suit); ☐ 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 _____
- ☐ **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 PUBLIC 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 _____ Judge Code _____ Date _____

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 20 March 2012 to attorneys of record or to parties (when appearing pro se) as follows:

Douglas Edward Leadbitter

Melissa Garcia Mosier

Charles O Williams III

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court _____

Janett W. McBride

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

BRISTOL WEST INSURANCE
COMPANY,

Civil Action No. 2011-CP-40-3734

Intervening Plaintiff,

IN RE:

OMNI INSURANCE GROUP,

Plaintiff,

vs.

LA'RISSA TIDWELL,

Defendant.

**ORDER GRANTING INTERVENING
PLAINTIFF BRISTOL WEST
INSURANCE COMPANY'S MOTION
FOR SUMMARY JUDGMENT AND
DEFENDANT LA'RISSA TIDWELL'S
MOTION FOR SUMMARY
JUDGMENT**

RICHLAND COUNTY
FILED
2012 MAR 20 AM 8:29
JEANETTE W. McBRIDE
C.C.P. & G.S.

This matter comes before the Court pursuant to Summary Judgment Motion filed by Intervening Plaintiff Bristol West Insurance Company ("Bristol") and Defendant La'Rissa Tidwell ("Tidwell"). A hearing was held on January 18, 2012, in Richland County. Charles O. Williams, III, Esquire, appeared on behalf of Bristol. Melissa Mosier, Esquire, appeared on behalf of Tidwell. Douglas Leadbitter, Esquire, appeared on behalf of Plaintiff Omni Insurance Group ("Omni").

FACTS

Omni originally filed a Declaratory Judgment action against Tidwell pursuant to the Uniform Declaratory Judgment Act, South Carolina Code Ann. § 15-53-10, *et seq.*, on or about June 8, 2011. Bristol moved to intervene on or about August 17, 2011. A Consent Order allowing Bristol to intervene was entered into by the parties on or about August 22, 2011. Bristol filed its Summons and Intervener's Complaint on or about September 29, 2011. Shortly

thereafter, Omni filed an Answer to Bristol's Complaint on or about October 26, 2011. Defendant Tidwell filed an Answer to Bristol's Complaint on or about October 17, 2011. Tidwell had previously filed an Answer to Omni's Complaint on or about August 25, 2011.

The facts in this case are not in dispute. Omni insured a vehicle owned by Wendy C. Williams bearing Policy No. 3501704 ("Policy"). This policy had liability coverage of \$25,000.00 and underinsured motorist coverage of \$25,000.00. On or about April 2, 2010, the Williams vehicle, while being operated by Ajaranesh S. Williams, was involved in an accident. Defendant Tidwell was a passenger in said vehicle and was injured in that accident. Tidwell made a claim against Ajaranesh S. Williams, the operator of the vehicle. Tidwell alleged that she suffered in excess of \$23,878.50 worth of damages in that accident. Omni tendered its liability limits of \$25,000.00 to Tidwell in exchange for a Covenant Not to Execute. Tidwell then sought to pursue underinsured ("UIM") benefits on the Omni policy. The parties to this action agree that Tidwell is not a relative or resident of the Williams family and there is no familial relationship between Tidwell and Wendy C. Williams or any other named insureds on the Williams policy. The parties further agree that Tidwell is a permissive user and insured under the policy, and a Class II insured under South Carolina statutory law.

Omni filed a Declaratory Judgment action asking the Court to enforce policy provisions that would not allow Tidwell to collect both liability and UIM benefits under the Omni policy, despite the fact that Tidwell is an insured under the policy and a Class II insured under South Carolina law. Bristol and Tidwell have asserted that Tidwell is entitled to UIM coverage under this policy because of her status as an insured under the policy, and as a Class II insured under South Carolina law. Omni asserts that the subject policy contains valid and enforceable provisions in the policy that allow Omni to limit the underinsured coverage. Omni asserts that

the underinsured limitation provisions prohibit Tidwell from asserting a claim for her damages against the Omni policy underinsured provisions. Omni asserts that since underinsured coverage is not mandatory that it is permissible for Omni to limit underinsured coverage in the policy. *Burgess v. Nationwide Mut. Ins. Co.*, 373 S.C. 37, 42, 644 S.E.2d 40, 43 (2007) ("UIM coverage is entirely voluntary."); *Nationwide Mut. Ins. Co. v. Erwood*, 373 S.C. 88, 92, 644 S.E.2d 62, 63-64 (2007) ("the mandatory nature of this [UM] coverage distinguishes it from the voluntary UIM coverage"); *Garris v. Cincinnati Ins. Co.*, 280 S.C. 149, 153, 311, S.E.2d 723, 725-26 (1984) ("the language of the statute clearly indicates underinsured motorist coverage is optional coverage"); *Gambrell v. Travelers Ins. Cos.*, 280 S.C. 69, 71-72, 310 S.E.2d 814, 816 (1983) ("underinsured motorist coverage is not required but must be offered to the insured"); *Farm Mut. Auto. Ins. Co. v. Calcutt*, 340 S.C. 231, 530 S.E.2d 896 (Ct. App. 2000) ("UIM coverage is voluntary"); *State Rowzie v. Allstate Ins. Co.*, 556 F.3d 165, 170 (4th Cir. S.C. 2009) (under South Carolina law, UIM coverage is not mandatory).

Omni further argues that the underinsured coverage limitation provisions of the policy do not violate S.C. Code Ann. § 38-77-160 or any other statutory provision. *Garris v. Cincinnati Ins. Co.*, 280 S.C. 149, 153, 311 S.E.2d 723, 726 (1984).

Last, Omni argues that the underinsured coverage limitations do not offend public policy. *Burgess v. Nationwide Mut. Ins. Co.*, 373 S.C. 37, 41-42, 644 S.E.2d 40, 43 (2007).

The parties stipulate that if Omni's UIM coverage applies to Tidwell, then Bristol's UIM coverage would be secondary to Omni's primary UIM coverage.

STANDARD OF REVIEW

Summary Judgment is proper when there is no genuine issue as to any material fact and the party is entitled to judgment as a matter of law. Rule 56(c), South Carolina Rules of Civil Procedure (2008); *Osborne v. Adams*, 346 S.C. 4, 7, 550 S.E.2d 319, 321 (2001). A court may construe all ambiguities, conclusions, and inferences arising from the evidence against the moving party. *City of Columbia v. Town of Irmo*, 316 S.C. 193, 195, 447 S.E.2d 855, 856 (1994). However, the opposing party may not rest upon the mere allegations or denials, but must respond with specific facts showing a genuine issue of material fact. *Id.*

DISCUSSION

The facts in this case are not in dispute among the parties. The matter before the Court involves an issue of law. The movants, Bristol and Tidwell, assert that Tidwell, as an admitted insured under the policy and a Class II insured under South Carolina statutory law, is entitled to UIM benefits under the policy.

Omni, on the other hand, argues its policy contains a provision that limits Tidwell's ability to obtain UIM coverage.

A. Policy Language

Omni cites two provisions in its policy that Omni believes restrict Tidwell's ability to obtain UIM coverage. The first provision reads:

No one will be entitled to receive duplicate payments from the same elements of loss under this [Liability] coverage and . . . any Underinsured Motorist Coverage provided by this policy.

Part A-Liability Coverage, Limit of Liability, B.2 Page 13.

The second provision reads:

No one will be entitled to receive duplicate payments for the same elements of loss under this [UIM] coverage and Part A [Liability Coverage] . . . of this policy.

Part C(2)-Underinsured Motorist Coverage, Limit of Liability, D, Page 34.

Omni asserts this policy language restricts a Class II insured's ability to collect UIM benefits. Omni asserts that only Class I insureds can collect UIM benefits under its policy. Omni cites *Burgess v. Nationwide Mutual Ins. Co.*, 373 S.C. 37, 644 S.E.2d 42 (2007).

In *Burgess*, the named plaintiff was injured while operating his motorcycle. Burgess had not purchased UIM coverage on the motorcycle. However, he did have three other vehicles at home, each of which had \$25,000.00 in UIM coverage. The carrier for those automobiles, Nationwide, argued that an exclusion in its policy did not allow Burgess to collect UIM benefits when he was operating a vehicle that he owned, but that was not listed in the Nationwide policy. Our Supreme Court ultimately agreed and denied that Burgess was entitled to UIM coverage under his Nationwide policy. The Court further noted that UIM coverage is entirely voluntary and permits insureds, at their option, to purchase insurance for situations where they are injured by an at-fault driver who does not carry sufficient liability insurance to cover the insured's damages. *Burgess*, 373 S.C. at 42, 644 S.E.2d at 40.

Notably, Nationwide's exclusion restricted Burgess' recovery of UIM proceeds solely in a situation where Burgess operated a vehicle he owned and operated without UIM, and had UIM coverage on other vehicles not involved in the accident. (Policy language in *Burgess* limited UIM to the "lesser of the coverage limits under this policy or the coverage limits on the vehicle involved in the accident."). This court finds *Burgess* is not applicable to the facts before it today.

Specifically, *Burgess* did not restrict a Class II insured from collecting liability and UIM proceeds from the same accident.

Omni asserts the *Burgess*' reasoning should be expanded such that it restricts a Class II insured, such as Tidwell, from receiving both liability and UIM benefits for the same accident. However, the restrictive language cited by Omni does not distinguish between recovery of liability and UIM benefits for Class I and Class II insureds. That language simply reads that "no one" will be entitled to receive "duplicate payments" from the same elements of loss under liability coverage and underinsured coverage. Therefore, the language cited by Omni indicates that no one could ever recover both liability and UIM benefits, neither Class I nor Class II insureds.

Additionally, the definitions within Omni's policy do not define "duplicate payments." Bristol and Tidwell both assert the facts of this case will not result in a windfall to Tidwell such that she will be paid twice for the same damages. Omni will receive a setoff for liability benefits they previously tendered to Tidwell. Omni will only pay UIM proceeds to Defendant Tidwell if a fact-finder determines Tidwell's damages exceed \$25,000.00. An award in excess of \$25,000.00 would not require a "duplicate payment" from Omni, but would merely attempt to make Tidwell whole.

This Court rejects Omni's assertion that the policy language it cites allows for a named Class I insured to recover both liability and UIM benefits, but limits a Class II insured/permissive user to only liability coverage. Simply put, the restrictive language cited by Omni does not say that.

Notably, Part C(2)(a), (b) - Underinsured Motorist Coverage, Omni's policy states:

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

B. Insured as used in this part means:

1. You, an insured driver or any family member.
2. Any other person occupying your covered auto up to the minimum limits of liability specified by the South Carolina Financial Responsibility Act.

Part C(2)(a), (b) p. 29.

In the present case, there is no issue regarding Tidwell's permissive use of this vehicle. She is clearly defined as an insured under Part B(2) under the Underinsured Motorist Coverage provision within Omni's policy. Finally, Omni's Underinsured Motorist Coverage contains a provision titled "Conformity to Statute" which states:

This part is intended to be in full conformity with South Carolina insurance laws. If any provision of this part conflicts with that law, it is changed to comply with the law.

Underinsured Motorist Coverage—Conformity to Statute p. 36

Movants Bristol and Tidwell cite *Bratcher v. National Grange Ins. Co.*, 292 S.C. 330, 356 S.E.2d, 151 (Ct.App. 1987), to assert that an insured can collect both liability and UIM benefits arising out of the same accident. Notably, in *Bratcher*, Franklin Bratcher rode as a passenger in a vehicle driven by his father, Welton Bratcher. Franklin Bratcher was seriously injured in that accident. In that accident, Franklin Bratcher sought to obtain liability limits of \$50,000.00, in addition to UIM benefits in the same amount. The carrier, National Grange, denied Franklin Bratcher's claim for UIM benefits. National Grange attempted to argue that a policy provision excluded vehicles owned by Welton Bratcher from the definition of an underinsured motor vehicle. The trial court observed that § 56-9-831, Code of Laws of South Carolina 1976, required an insurer to provide coverage for damages sustained in excess of the liability limits carried by an at-fault insured or underinsured motorist. The Court of Appeals noted that Section 56-9-831 authorizes insurance carriers to restrict the **amount** of underinsured

motorist coverage to the limits of the liability coverage but does not authorize any other restriction on the other underinsured motorist coverage. *Bratcher*, 292 S.C. at 332-33, 356 S.E.2d at 152-53: (emphasis added). The Court went on, "For these reasons, we hold that the exception from coverage which National Grange included in its policy is invalid." *Id.*

Omni concedes that the "no one" policy language cited above is too restrictive because it would limit the ability of a Class I insured to collect liability and underinsured coverages in the same accident. Omni further concedes that the policy language should be reformed but only to the extent to comply with the holding of *Bratcher v. National Grange Ins. Co.*, 292 S.C. 330, 356 S.E.2d, 151 (Ct. App. 1987). Omni argues that reforming the policy to include all insureds (including Class II insureds) reforms the policy too far. Omni argues that it is permissible for the Court to reform the policy in accordance with *Bratcher* without invalidating and voiding the Omni policy underinsured limitation language completely. In support for this argument, Omni cites *Kay v. State Farm Mut. Auto. Ins. Co.*, 349 S.C. 446, 562 S.E.2d 676, 678 (Ct. App. 2002) as standing for the proposition that it is permissible for the Court to reform the policy. The Court in *Kay* found the insurer's limitation void and inserted statutory language. This Court finds that *Kay* properly applied only allows the Court to void policy language that is inconsistent with the UIM statute and insert statutory language in its place. Omni has not pointed to any statutory language that could be inserted to support their argument and this Court finds none. This Court disagrees with Omni's interpretation and application of *Bratcher* and *Kay* and finds Omni's arguments as to policy reformation unpersuasive.

In the present case, Tidwell and Omni assert the Williams' vehicle is underinsured. By the admission of all parties, Tidwell is an insured under the policy, albeit a Class II insured.

Notably, *Bratcher* makes no distinction between Class I and Class II insureds¹. *Bratcher* held that an insured could collect liability and UIM benefits arising out of the same accident. *See also Concrete Services, Inc. and Mickle v. USF&G Co.*, 331 S.C. 506, 498 S.E.2d 865 (1998). (In determining whether or not a Plaintiff was a Class I or Class II insured, the court noted that while a Class II insured could not stack multiple vehicles on a policy, a Class II insured was entitled to one layer of UIM coverage on the vehicle involved in the accident.).

In its underinsured motorist coverage policy, Omni states, “We will pay damages which an insured is legally entitled to recover from the owner or operator of an underinsured motor vehicle . . .” Omni Policy p. 29. Omni defines a permissive user as an insured under its policy, specifically under its underinsured motorist coverage provision. South Carolina Code Ann. § 38-77-160 (2011) describes a carrier’s duty when writing underinsured motorist coverage. The second sentence of that statute says such carrier “shall also offer, at the option of the insured, underinsured motorist coverage up to the limits of the insured liability coverage to provide coverage in the event that damages are sustained in excess of the liability limits carried by an **at-fault insured** for underinsured motorist . . .” (emphasis added).

In the present case, Tidwell is an insured under the policy. Ajaranesh Williams is an at-fault, underinsured driver. Tidwell is, therefore, entitled to underinsured coverage under the policy if a fact-finder determines her damages exceed \$25,000.00

¹ *Bratcher* is a 1987 case. Bristol and Tidwell note that *Bratcher* did not distinguish between Class I and Class II insureds in holding that an insured could collect both liability and UIM benefits. Further, movants note the distinction between Class I and Class II insureds was discussed in *Garris v. Cincinatti Ins. Co.*, 280 S.C. 149, 311 S.E.2d 723 (1984). *Garris* cited *Davidson v. Eastern Fire & Casualty Ins. Co.* 244 S.C. 472, 141 S.E.2d 135 (1965) which also discussed Class I and Class II insureds. Therefore, movants assert the *Bratcher* court was fully aware of the distinctions between Class I and Class II insureds and did not hold that only Class I insureds were allowed to collect both liability and UIM benefits.

CONCLUSIONS OF LAW

Based on the above findings, I find and conclude the following as a matter of law:

Pursuant to S.C. Code Ann. § 56-9-831 (the predecessor UIM statute which is largely consistent with the current UIM statute), § 38-77-160, and § 38-77-30(7), La'Rissa Tidwell was an insured under the Omni policy and a Class II insured and permissive user of the vehicle at the time of the accident. As an insured under the policy, and a Class II insured, pursuant to South Carolina statutory law, Tidwell is entitled to underinsured motorist coverage under Omni Policy No. 3501704.

The Court finds the policy provisions advanced by Omni to restrict UIM benefits to La'Rissa Tidwell in this action are invalid as a matter of law. The Court finds the Omni provisions that seek to prevent an insured, Class I or Class II, from recovering both liability and UIM benefits arising out of the same accident, are void as a matter of law. The Court finds these restrictions exceed that which is allowed by statute in South Carolina, and as a result, are invalid. Based upon these conclusions of law, as stated above, it is hereby **ORDERED** that Defendant La'Rissa Tidwell and Intervening Plaintiff Bristol West Insurance's Motions for Summary Judgment are **GRANTED** as a matter of law.



DeAndrea G. Benjamin
Presiding Judge, Fifth Judicial Circuit

March 15, 2012

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Omni Insurance Group,

Plaintiff(s)

vs.

La'Rissa Tidwell,

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2011 CP4003734

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

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 Circuit Court 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 | Torts - Professional Malpractice | Torts - Personal Injury | Real Property |
| ☐ Constructions (100) | ☐ Dental Malpractice (200) | ☐ Assault/Slander/Libel (300) | ☐ Claim & Delivery (400) |
| ☐ Debt Collection (110) | ☐ Legal Malpractice (210) | ☐ Conversion (310) | ☐ Condemnation (410) |
| ☐ Employment (120) | ☐ Medical Malpractice (220) | ☐ Motor Vehicle Accident (320) | ☐ Foreclosure (420) |
| ☐ General (130) | ☐ Notice/File Med Mal (230) | ☐ Premises Liability (330) | ☐ Mechanic's Lien (430) |
| ☐ Breach of Contract (140) | ☐ Other (299) | ☐ Products Liability (340) | ☐ Partition (440) |
| ☐ Other (199) | | ☐ Personal Injury (350) | ☐ Possession (450) |
| | | ☐ Wrongful Death (360) | ☐ Building Code Violation (460) |
| | | ☒ Other (399) | ☐ Other (499) |
| | | Declaratory Judgment | |

- | | | | |
|--|---|---|--|
| Inmate Petitions | Judgments/Settlements | Administrative Law/Relief | Appeals |
| ☐ PCR (500) | ☐ Death Settlement (700) | ☐ Reinstate Driver's License (800) | ☐ Arbitration (900) |
| ☐ Mandamus (520) | ☐ Foreign Judgment (710) | ☐ Judicial Review (810) | ☐ Magistrate-Civil (910) |
| ☐ Habeas Corpus (530) | ☐ Magistrate's Judgment (720) | ☐ Relief (820) | ☐ Magistrate-Criminal (920) |
| ☐ Other (599) | ☐ Minor Settlement (730) | ☐ Permanent Injunction (830) | ☐ Municipal (930) |
| ☐ Transcript Judgment (740) | ☐ Forfeiture Petition (840) | | ☐ Probate Court (940) |
| ☐ Lis Pendens (750) | ☐ Forfeiture-Consent Order (850) | | ☐ SCDOT (950) |
| ☐ Other (799) | ☐ Other (899) | | ☐ Worker's Comp (960) |
| | | | ☐ Zoning Board (970) |
| | | | ☐ Administrative Law Judge (980) |
| | | | ☐ Public Service Commission (990) |
| | | | ☐ Employment Security Comm (991) |
| | | | ☐ Other (999) |
- Special/Complex /Other**
- | | |
|--|--|
| ☐ Environmental (600) | ☐ Pharmaceuticals (630) |
| ☐ Automobile Arb. (610) | ☐ Unfair Trade Practices (640) |
| ☐ Medical (620) | ☐ Out-of-State Deposition (650) |
| ☐ Other (699) | ☐ Sexual Predator (610) |

Submitting Party Signature: _____

Date: June 8, 2011

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

RECORD ON APPEAL
000013

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Colleton, Florence, Greenville,
Hampton, Horry, Jasper, Lexington, Pickens (Family Court Only), and Richland.

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

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form or by the 210th day of filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code § 15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Case 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 no 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 had 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

COUNTY OF RICHLAND

Omni Insurance Group,

Plaintiff,

vs.

La'Rissa Tidwell

Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action No.

SUMMONS

RICHLAND COUNTY
FILED
2011 JUN -9 AM 11:12
JEANETTE W. MCLEOD
C.C.P. & C.S.

TO THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, of which a copy is served upon you, and to serve a copy of your Answer to the Complaint on the Attorney for Plaintiff, Douglas E. Leadbitter, Rogers, Townsend, Thomas, PC, Post Office Box 100200, Columbia, South Carolina 29202 within 30 days after the service, exclusive of the date of service; and if you fail to answer the Complaint within the time above, judgment by default will be rendered against you for the relief demanded in the Complaint.

ROGERS, TOWNSEND & THOMAS, PC



Douglas E. Leadbitter (SC Bar #68430)
ROGERS TOWNSEND & THOMAS, PC
220 Executive Center Drive - Suite 109 (29210)
Post Office Box 100200
Columbia, South Carolina 29202-3200
803.771.7900 Telephone
803.343.7017 Facsimile

ATTORNEYS FOR PLAINTIFF

June 8, 2011

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Omni Insurance Group,

Plaintiff,

vs.

La'Rissa Tidwell,

Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action No.

COMPLAINT
(Non-Jury Declaratory Judgment Action)

RICHLAND COUNTY
FILED
2011 JUN -9 AM 11:12
CLERK OF COURT
C.C.P. & G.S.

The Plaintiff, complaining of the Defendant, alleges as follows:

General Allegations

1. The Plaintiff is licensed by the State of South Carolina pursuant to Title 38 of the South Carolina Code of Laws to engage in insurance transactions in this State.
2. Upon information and belief Defendant is a resident and citizen of Richland County, South Carolina.
3. Upon information and belief, Defendant was a passenger in a vehicle driven by Ajaraniesh S. Williams on April 2, 2010.
4. Defendant was allegedly injured as a result of an automobile accident on April 2, 2010 while Ajaraniesh S. Williams was driving Wendy C. Williams' automobile.
5. Policy No.3501704 purchased by Wendy C. Williams from Plaintiff, has liability coverage of \$25,000/\$50,000/\$25,000 and underinsured motorist coverage of \$25,000/\$50,000/\$25,000.
6. The Declarations page for the insurance policy issued to Wendy C. Williams is hereby incorporated by reference and attached hereto as "Exhibit A".

7. The Omni Personal Auto policy issued to Wendy C. Williams is hereby incorporated by reference and attached hereto as Exhibit "B".
8. Upon information and belief, the April 2, 2010 car accident gave rise to Defendant's underlying claim for liability insurance coverage under the policy of insurance issued to Wendy C. Williams, Policy No.3501704.
9. Plaintiff has already tendered the \$25,000.00 liability limits of Policy No. 3501704 to Defendant in exchange for a Covenant Not To Execute.
10. Whether Ajaraniesh S. Williams was in fact negligent in the operation of the vehicle or whether Defendant was entitled to assert a claim for liability coverage is not at issue in this declaratory judgment action.
11. Upon information and belief, Defendant is a third party claimant under the policy of insurance issued to Wendy C. Williams, Policy No.3501704, and has asserted that she is entitled to underinsured coverage from the policy of insurance issued to Wendy C. Williams, Policy No.3501704.
12. Plaintiff has denied the Defendant's claim for payment of the Wendy C. Williams underinsured coverage because Plaintiff is informed and believes that Defendant is excluded as an insured under the underinsured provisions of the policy of insurance issued to Wendy C. Williams, Policy No.3501704.
13. Plaintiff has also denied that Defendant is entitled to coverage under both the liability and underinsured provisions because payment to third parties under both the liability and underinsured provisions for the same elements of loss are specifically is unambiguously excluded under the policy of insurance issued to Wendy C. Williams, Policy No.3501704.

14. Upon information and belief, pursuant to the South Carolina Uniform Declaratory Judgments Act, S.C. Code Ann. Section 15-53-10 *et seq.* (1995), this Court has subject matter jurisdiction over the matters raised in this Complaint and personal jurisdiction over the Parties to this action.
15. Upon information and belief, pursuant to the South Carolina Uniform Declaratory Judgments Act, S.C. Code Ann. Section 15-53-10 *et seq.* (1995), there is a justiciable controversy between the parties that requires a declaratory judgment from this Court.

FOR A FIRST CAUSE OF ACTION

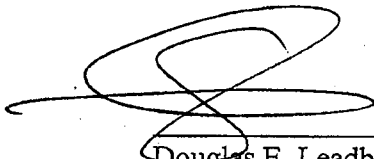
16. Plaintiff re-alleges and incorporates all prior paragraphs as if fully repeated verbatim herein.
17. Upon information and belief, Defendant is not a named insured under the policy of insurance issued to Wendy C. Williams, Policy No.3501704. *See*, Exhibit "A", Declarations Page.
18. Upon information and belief, there is no familial relationship between Defendant and Wendy C. Williams.
19. Upon information and belief, Defendant does not reside with Wendy C. Williams.
20. Upon information and belief, Defendant is not considered an "insured" under the underinsured coverage provisions of the policy of insurance issued to Wendy C. Williams, Policy No.3501704 because the underinsured provisions of the policy defines an "insured" as the named insured only. *See*, Exhibit "B", Omni Personal Auto Policy Part C2, Underinsured Motorists Coverage Endorsement, at Page 62.
21. Upon information and belief, even if Defendant was considered a "Class II insured" under the policy, Part C2, Underinsured Motorists Coverage, specifically and

unambiguously limits the liability for duplicate payments under the policy for the same elements of loss for underinsured and any other coverage under the policy. *See*, Exhibit “B”, Omni Personal Auto Policy, Part C2 – Underinsured Motorists Coverage, Limit of Liability at Page 34.

22. Upon information and belief, Plaintiff has the right to enforce exclusions by specifically defining insureds and further limiting the liability for duplicate coverage under the underinsured provisions of the policy pursuant to the holding of Nationwide Mut. Ins. Co. v. Erwood, 373 S.C. 88, 644 S.E.2d 62 (2007).
23. Underinsured motorist coverage is “excess” and “optional” or voluntary coverage that is personal and portable. *Id.*
24. Upon information and belief Plaintiff’s right to exclude coverage or limit the liability pursuant to the underinsured provisions of the policy of insurance issued to Wendy C. Williams, Policy No.3501704 does not violate any provision of the South Carolina Motor Vehicle Financial Responsibility Act, S.C. Code Ann. Section 56-9-10 *et seq.*; United Servs. Auto. Ass’n v. Markovsky, 340 S.C. 223, 530 S.E.2d 660 (Ct. App. 2000).
25. Upon information and belief, the South Carolina Supreme Court decision in Bratcher v. National Grange Mut. Ins. Co., 292 S.C. 330, 356 S.E.2d 151 (Ct. App. 1987), does not dictate that both liability and underinsured coverage be paid from the policy of insurance issued to Wendy C. Williams, Policy No.3501704 policy.
26. Unlike the claimant in the Bratcher case, Defendant is not a named insured under Policy No.3501704, does not have a familial relationship with Wendy C. Williams, and does not reside with Wendy C. Williams.

27. For all the reasons stated herein, Plaintiff asserts under the clear and unambiguous underinsured provisions of the policy of insurance issued to Wendy C. Williams, Policy No.3501704: (a) Defendant is not an insured as defined by the underinsured provisions; and (b) Defendant is not entitled to seek underinsured coverage because Defendant has already collected the liability coverage and is not entitled to duplicate payments under the underinsured provisions of the policy of insurance.
28. The exclusions and limitation of liability as stated above are in accordance with the statutory and common law of the State of South Carolina.

WHEREFORE, having fully set forth the Complaint of the Plaintiff, the Plaintiff prays for the Court to inquire into the matters raised herein find that the Defendant is not an insured under the policy and that the duplicate payment exclusion is valid and enforceable. Accordingly, Plaintiff seeks a Declaratory Judgment Order holding that Defendant is not entitled to underinsured coverage under the policy of insurance issued to Wendy C. Williams, Policy No.3501704, and for other such relief as the Court may deem just and proper.



Douglas E. Leadbitter (SC Bar #68430)
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Post Office Box 100200
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803.771.7900 Telephone
803. 343.7017 Facsimile

ATTORNEYS FOR PLAINTIFF

June 8, 2011

EXHIBIT "A"



OMNI INDEMNITY COMPANY
P.O. BOX 105440
ATLANTA, GA 30348-5440
(800) 777-6664

DECLARATIONS

INSURED NAME AND ADDRESS
WENDY C WILLIAMS
2988 BUCKFIELD DR
N CHARLESTON, SC 29406

PRODUCER
HEATH INSURANCE INC, CLIFF (1000025990)
PO BOX 30369
CHARLESTON, SC 29417

PRIVATE PASSENGER AUTO
POLICY NUMBER: 3501704
DECPAGE ID: 6

POLICY PERIOD:
March 28, 2010 12:01 A.M. to September 28, 2010 12:01 A.M.
DECPAGE EFFECTIVE:
March 28, 2010 12:01 A.M.

VEHICLE	DRIVER	DISCOUNTS / SURCHARGES
Vehicle: 1 Make: 1998 HOND Model: CIVIC DX VIN#: 2HGEJ6622WH565581 Use: Pleasure Use BI/MED/PhysDam Symbol: 290/520/11 Territory: 21 Tier: D	WENDY C WILLIAMS Birthdate: 02/15 Marital Status: /1970Single License: SC004263179 Class:	

COVERAGE (Premiums for 6 months)	LIMIT	PREMIUM Veh 1	PREMIUM	PREMIUM	PREMIUM
Premium is based on your selection of the following:					
Bodily Injury Liability	25,000 per person 50,000 per occurrence	\$ 417.22			
Medical Payments	1,000 per person	\$ 81.34			
Property Damage Liability	25,000 per occurrence	\$ 234.64			
Underinsured Motorist Bodily Injury	25,000 per person 50,000 per occurrence	\$ 57.26			
Underinsured Motorist Property Damage	25,000 per occurrence	\$ 1.06			
Uninsured Motorist Bodily Injury	25,000 per person 50,000 per occurrence	\$ 61.05			
Uninsured Motorist Property Damage	25,000 per occurrence \$ 200 deductible	\$ 13.28			
Total Premium for each vehicle:		\$ 865.85			
Total Policy Premium					\$ 865.85

ACCIDENTS/VIOLATION POINTS

Name	Date	Description	Points
WENDY C WILLIAMS	06/09/2008	Careless and Imprudent Driving	1
WENDY C WILLIAMS	09/24/2008	Speeding	1
WENDY C WILLIAMS	09/25/2008	Speeding	2
WENDY C WILLIAMS	09/25/2008	All Other Non-Moving Violations	0
WENDY C WILLIAMS	11/23/2008	MVR - Information Only	0
WENDY C WILLIAMS	08/27/2008	All Other Non-Moving Violations	0
WENDY C WILLIAMS	11/20/2008	MVR - Information Only	0
WENDY C WILLIAMS	06/09/2008	All Other Non-Moving Violations	0
WENDY C WILLIAMS	10/02/2007	MVR - Information Only	0

FORMS AND ENDORSEMENTS

0839 (11/08) - South Carolina Personal Auto Policy
0839-12 (11/08) - Best Plan Disclosure

COPY
I HEREBY ENDORSE THIS POLICY OF THE ORIGINAL
DATE 3/2/11
DATE 3/2/11
DATE 3/2/11



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:

- (1) 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
- (2) 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;
- (3) 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."

BEST PLAN DISCLOSURE

You did not receive the best possible rate from OMNI for one or more of the following reasons:
a) Named Insured has a lapse in prior insurance or has no proof of prior insurance; b) Named Insured does not have best Insurance Score; c) There has been one or more non-chargeable accidents in the last 3 years; d) The policy is Non-Owner; e) The prior insurance limits of liability and purchased limits of liability are too low; or f) The policy was issued with more drivers than vehicles.

Please be aware that if any one (1) of the above reasons applies to you, you are not eligible for OMNI's best rate tier.

If you have questions about how we rated your policy, contact OMNI Customer Service at 1-866-300-6433. If you have questions about the consumer credit information on your credit report, or if you wish to correct incorrect information on your credit report; write to ChoicePoint at ChoicePoint Consumer Disclosure, PO Box 105108, Atlanta, GA 30348-5108, or call toll free at 1-800-456-6004 (office located at 2885 Breckinridge Blvd., Suite 200, Duluth, GA 30096).

0839-12 (15/08)

RECORD ON APPEAL
000023



OMNI INDEMNITY COMPANY
P.O. BOX 105440
ATLANTA, GA 30348-5440
(800) 777-6664

DECLARATIONS

PRIVATE PASSENGER AUTO
POLICY NUMBER: 3501704
DECPAGE ID: 6

POLICY PERIOD:

March 28, 2010 12:01 A.M. to September 28, 2010 12:01 A.M.

DECPAGE EFFECTIVE:

March 28, 2010 12:01 A.M.

FORMS AND ENDORSEMENTS

A-100.1 (11/08) - Adverse Underwriting Decision Notice

Authorized Signature

OMNI SC DEC (02/07)

COPY

EXHIBIT "B"

Omni
Insurance Group

Personal
Auto Policy

Omni Indemnity
Company

**SOUTH
CAROLINA**

Form 0839 South Carolina (11/08)

COPY

THIS IS A TRUE AND CERTIFIED COPY OF THE ORIGINAL
CLIENT SERVICE MANAGER
DATE 6/13/2011

PERSONAL AUTO POLICY COVER SHEET
South Carolina

Your personal auto insurance policy is a legal contract between you and your insurance company.

READ YOUR POLICY CAREFULLY. This cover sheet provides only a brief outline of some of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth, in detail, the rights and obligations of both you and your insurance company. **IT IS THEREFORE IMPORTANT THAT YOU READ YOUR POLICY CAREFULLY.**

The following is an index of the major provisions of your policy. Page numbers refer to the location of these provisions in the policy. Amendatory endorsements may be attached to your policy to modify these provisions or provide you with additional coverage(s).

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Out of State Coverage	
Financial Responsibility	
Other Insurance	

THE COURT OF APPEALS
IN AND FOR THE DISTRICT OF COLUMBIA
DOES hereby certify that the within and foregoing
is a true and correct copy of the original
as the same appears from the records of the
Court.

RECEIVED
JUL 11 1964
U.S. COURT OF APPEALS
DISTRICT OF COLUMBIA
CLERK

RECEIVED
JUL 11 1964
U.S. COURT OF APPEALS
DISTRICT OF COLUMBIA
CLERK

RECEIVED
JUL 11 1964
U.S. COURT OF APPEALS
DISTRICT OF COLUMBIA
CLERK

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This list is not inclusive. There may be other
endorsements attached to your policy.

**READ YOUR POLICY AND ALL
ENDORSEMENTS TO YOUR POLICY
CAREFULLY.**

YOUR DUTIES AFTER AN ACCIDENT OR LOSS

We have no duty to provide coverage under this policy if the failure to comply with any of the following duties is prejudicial to us:

- A. We must be notified within 30 days, or as soon as practicable, 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 outside the presence of other interested persons or parties 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 or Underinsured Motorists Coverage must also:
 1. Notify the police within 24 hours, or as soon as practicable, 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

1. 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.

PERSONAL AUTO POLICY AGREEMENT

Your written application, the Declarations page and this policy constitute the entire agreement. We will insure you for the coverages and limits of liability for which a premium is shown on the Declarations page of this policy. 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:
 - a. The end of 30 days following the spouse's change of residency;
 - b. The effective date of another policy listing the spouse as a named insured; or
 - c. The end of the policy period.
- B. We, us and our refer to the Company providing this insurance.

Other words and phrases are defined. They are in boldface when used.

- C. **Accident** means a sudden, unexpected, and unintended occurrence. All bodily injury and property damage arising out of continuous or repeated exposure to substantially the same general conditions shall be considered as arising out of one accident.
- D. **Actual Cash Value** means the fair and reasonable market value at the time of the loss based on vehicle mileage, age, condition, original optional equipment, and comparable vehicles available for sale within a reasonable geographic radius as documented in an electronic database of publications and dealerships, less depreciation and/or betterment.
- E. **After-market Parts** means replacement auto parts not made by the original auto manufacturer of the auto or by a manufacturer authorized by the original auto manufacturer.
- F. **Auto** means:
1. A private passenger automobile; or
 2. A private passenger pickup or private passenger van, for which no other insurance policy provides coverage, that:
 - a. Has a Gross Vehicle Weight Rating of 10,000 lbs. or less;
 - b. Is designed for use mainly on public roads; and
 - c. Is not used for the delivery or transportation of persons or goods and materials unless such use is:
 - i. Incidental to your business of installing, maintaining or repairing furnishings or equipment; or
 - ii. For farming or ranching.
- G. **Betterment** means an improvement that adds value to an item.
- H. **Bodily Injury** means bodily harm, sickness or disease, including death that results.

- I. **Business** includes trade, profession or occupation.
- J. **Depreciation** means a decrease or loss of value caused by physical, technological, and/or location deterioration.
- K. **Diminution of Value** means the difference in the actual cash value of your covered auto immediately before and after loss.
- L. **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.
- M. **Insured Driver** means a person specifically identified on the Declarations page as an active driver under this policy.
- N. **Non-Owned Auto** means any auto that is not owned by you, an Insured driver, or a family member.
- O. **Occupying** means:
1. In;
 2. Upon; or
 3. Getting in, on, out or off.
- P. **Own or owned**, with respect to an auto, means:
1. Holding legal title to the auto;
 2. Having legal possession of the auto that is subject to a written security agreement with an original term of six (6) months or more; or
 3. Having legal possession of the auto that is leased to that person under a written agreement for a continuous period of six (6) months or more.
- Q. **Owner** means any person who, with respect to an auto:
1. Holds legal title to the auto;
 2. Has legal possession of the auto that is subject to a written security agreement with an original term of six (6) months or more; or
 3. Has legal possession of the auto that is leased to that person under a written agreement for a continuous period of six (6) months or more.

- R. **Property damage** means physical injury to, destruction of or loss of use of tangible property.
- S. **Trailer** means a vehicle designed to be pulled by an auto. It also means a farm wagon or farm implement while towed by an auto. A trailer does not include a mobile home, travel trailer, or any vehicle that can be lived in or is self-propelled.
- T. **Your covered auto** means:
1. Any auto that you or an insured driver own and is shown in the Declarations unless you have asked us to delete that vehicle from the policy.
 2. An additional auto.
 3. A replacement auto.
 4. Any trailer you own.
 5. 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 (T.5) does not apply to Coverage For Damage To Your Auto.
- U. **Additional auto** means an auto you acquire during the policy period shown on the Declarations page, if:
1. We insure all autos you own or lease for a term of at least 6 months;
 2. No other insurance policy provides coverage for that auto;
 3. You pay us any additional premium required when due; and
 4. The additional auto is an acceptable risk to us under our underwriting guidelines.
- If we provide coverage for an additional auto, we will provide the broadest coverage we now provide for any auto shown in the Declarations for a period of

- fourteen (14) days after you become the owner. The additional auto will include physical damage coverage under Part D only if the Declarations indicate that Part D applies to any auto on the policy. We will not provide coverage after this fourteen (14) day period, unless within this period you ask us to insure the additional auto. If you ask us to insure an additional auto after the fourteen (14) day period, any coverage we provide for an additional auto will begin at the time you request coverage. If you request coverage not already provided for any auto shown in the Declarations for the additional auto or increase your limits, these changes to your policy will not become effective until after you ask us to add the coverage or increase your limits.
- V. **Replacement Auto** means an auto you become the owner of if:
1. You acquire the auto during the policy period shown on the Declarations page;
 2. The auto that you acquire replaces one shown on the Declarations page;
 3. No other insurance policy provides coverage for that auto;
 4. You pay us any additional premium required when due; and
 5. The replacement auto is an acceptable risk to us under our underwriting guidelines.
- If the auto that you acquire replaces one shown on the Declarations page, it will have the same coverage as the auto it replaces. You must ask us to insure a replacement auto within fourteen (14) days after you become the owner. If you want to continue coverage under Part D, if you ask us to insure a replacement auto after this fourteen (14) day period, any coverage we provide under Part D for a replacement auto will begin at the time you request coverage. If you request coverage not already provided for any

auto shown in the Declarations for the replacement auto or increase your limits, it will not become effective until after you ask us to add the coverage or increase your limits.

W. Throughout the policy, minimum limits refers to the following limits of liability as required by South Carolina law, to be provided under a policy of automobile liability insurance:

1. \$25,000 for each person, subject to \$50,000 for each accident, with respect to bodily injury; and
2. \$25,000 for each accident with respect to property damage.

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, an Insured driver, or any family member for the ownership, maintenance or use of your covered auto.
2. You, an Insured driver, or any family member while operating a non-owned auto with the express or implied permission of the owner.

3. Any person using your covered auto with an Insured's express or implied permission and within the scope of the permission granted.
4. For your covered auto, any person or entity but only with respect to legal responsibility for acts or omissions of a person for whom coverage is afforded under this Part.
5. For any auto or trailer, other than your covered auto, any other person or entity but only with respect to legal responsibility for acts or omissions of you, an Insured driver, or any family member for whom coverage is afforded under this Part. This provision (B.5.) applies only if the person or entity 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** to the extent that the limits of liability for this coverage exceed the minimum limits required by the South Carolina Financial Responsibility Act.
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 or co-worker 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, maintenance, or use of a vehicle or trailer, including your covered auto, while being used to carry persons or property for compensation or a fee, including, but not limited to, delivery of newspapers, magazines, food, or any other products. This exclusion (A.5.) does not apply to a share-the-expense car pool or to a delivery by an Insured as a volunteer.
6. While employed or otherwise engaged in the business of:
 - a. Selling or leasing;
 - b. Repairing;
 - c. Servicing;
 - d. Storing;
 - e. Parking; or
 - f. Towing;

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. An Insured driver;
 - c. Any family member; or
 - d. Any partner, agent or employee of you, an insured driver 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 an auto or trailer used with an auto if a business use surcharge is shown on the Declarations page.
8. 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.
9. For **bodily injury** to you, an Insured driver or any family member.
10. For **bodily injury** or **property damage** assumed by an Insured under any contract or agreement.

11. For bodily injury or property damage resulting from the operation of farm machinery.
12. For bodily injury or property damage resulting from an Insured committing any unlawful activity (other than a traffic violation) or attempting to flee or fleeing from any law enforcement officer or agent.
13. For bodily injury or property damage arising from the operation of a vehicle by that person as an employee of the United States Government when the provisions of the Federal Tort Claims Act apply.
14. For bodily injury or property damage resulting from the ownership, maintenance or use of any vehicle by any resident, including a family member, of your household who is not listed on the Declarations page as a driver or operator.
15. For bodily injury or property damage caused by any vehicle, including your covered auto, while used in practicing, participating, or preparing for any race, speed contest or performance contest.
16. For bodily injury to the owner of any non-owned auto when being used by or driven by you, an Insured driver or a family member.
17. For bodily injury or property damage resulting from the use of a vehicle for snow removal.
18. For bodily injury or property damage sustained by an Insured while occupying any vehicle located for use or being used as a residence or premises.
19. For bodily injury or property damage resulting from the ownership, maintenance or use of any vehicle when driven by an individual who:
 - a. Is under the minimum age to obtain a valid driver's license in the state where the vehicle is garaged;

- b. Is under fifteen (15) years of age;
- c. Does not have a valid driver's license; or
- d. Has a suspended or revoked driver's license.

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; or
 - b. To any trailer.
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 Insured driver or family member; or
 - b. Furnished or available for the regular use of any Insured driver or 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 an Insured driver or family member; or
- b. Furnished or available for the regular use of an Insured driver or family member.

4. Any vehicle, including a trailer, rented for any business purpose.

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.

These limits of liability are 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 Part B or Part C1 of this policy.

C. Regardless of the limits of liability shown in the Declarations, the limits of liability for bodily injury and property damage afforded by this policy to an insured who is both a regular user of your covered auto and is not a resident of your household other than:

1. You; or
 2. An Insured driver; or
 3. Any family member;
- shall not exceed the minimum limits for bodily injury or property damage.

D. An auto and attached trailer are considered one auto. Therefore, our limits of liability will not be increased for any accident involving an auto which has an attached trailer.

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. You must reimburse us if we make a payment that we would not have made if this policy was not certified as proof of financial responsibility.

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. Any insurance we provide for a vehicle you do not own, including any vehicle while used as a temporary substitute for your covered auto, shall be excess over any other collectible insurance.

PART B - MEDICAL PAYMENTS COVERAGE

INSURING AGREEMENT

A. We will pay reasonable and customary 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 1 year from the date of the accident.

B. Reasonable and customary as used in this Part means an amount which we determine represents a customary charge for service for the geographical area in which the service is rendered. We shall determine this customary charge through the use of independent sources of our choice. Services are reasonable and customary only if the services are rendered by a licensed medical provider within the scope of the provider's practice and license and are essential in achieving maximum medical improvement for the bodily injury sustained in the accident. Reasonable and customary expenses do not include expenses:

1. For treatment, services, products or procedures that are:
 - a. Experimental in nature, for research, or not primarily designed to serve a medical purpose;
 - b. Not commonly and customarily recognized throughout the medical profession and within the United States as appropriate for the treatment of the bodily injury; or
2. Incurred for:
 - a. The use of thermography or other related procedures of a similar nature unless prescribed by that Insured's treating physician;

- b. The use of acupuncture or other related procedures of a similar nature unless prescribed by that Insured's treating physician;
- c. The purchase or rental of equipment not primarily designed to serve a medical purpose;
- d. Spinal ultrasound, also known as sonography, ultrasonography and echosonography;
- e. Surface EMG; or
- f. Dermatome Evoked Potential.

C. Insured as used in this Part means:

1. You, an insured driver, 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.

D. Accident as used in this Part means an occurrence involving an Insured and must involve the actual physical impact of the vehicle or the Insured with another object in order for coverage under this Part to apply.

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 to carry persons or property for compensation or a fee, including, but not limited to, delivery of newspapers, magazines, food, or any other products. This exclusion (2.) does not apply to a share-the-expense car pool or to a delivery by an Insured as a volunteer.
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 an insured driver or family member; or
 - b. Furnished or available for the regular use of an insured driver or family member.

However, this exclusion (6.) does not apply to you.
7. Sustained while occupying a vehicle without an insured's express or implied permission.
8. Sustained while maintaining or using any vehicle while that insured is employed or otherwise engaged in any business of an insured. This exclusion (8.) does not apply to the maintenance or use of an auto or trailer used with the auto if a business use surcharge is shown on the Declarations page.
9. Caused by or 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 using any your covered auto or non-owned auto in practicing, participating, or preparing for any race, speed contest or performance contest.
12. Sustained while any insured is committing any unlawful activity (other than a traffic violation) or attempting to flee or fleeing from any law enforcement officer or agent.
13. That is intentionally inflicted by you, an insured driver or a family member, or by anyone at your direction.
14. Sustained and resulting from the ownership, maintenance or use of your covered auto when it is driven, operated or used by a resident of your household who is not listed on the Declarations page as a driver or operator.
15. Sustained while employed or otherwise engaged in the business of:
 - a. Selling or leasing;
 - b. Repairing;
 - c. Servicing;
 - d. Storing;
 - e. Parking; or
 - f. Towing;

vehicles designed for use mainly on public highways. This includes road testing and delivery. This exclusion (15.) does not apply to the ownership, maintenance or use of your covered auto by:

 - a. You;
 - b. An insured driver;
 - c. Any family member; or
 - d. Any partner, agent or employee of you, an insured driver or any family member.
16. Sustained from the use of a vehicle for snow removal.
17. Resulting from the ownership, maintenance or use of your covered auto when it is driven, operated or used by an individual with an insured's permission if the insured knows that the operator:

- a. Is under the minimum age to obtain a valid driver's license in the state where the vehicle is garaged;
- b. Is under fifteen (15) years of age;
- c. Does not have a valid driver's license; or
- d. Has a suspended or revoked driver's license.

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 C1 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 non-owned auto, including any vehicle used as a temporary substitute for your covered auto, shall be excess over any other collectible insurance providing payments for medical or funeral expenses.

In no event will an insured be entitled to receive duplicate payments for the same element of loss.

PART C1 - UNINSURED MOTORISTS COVERAGE

INSURING AGREEMENT

A. 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. 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, an insured driver or any family member.
- 2. Any other person occupying your covered auto up to the minimum limits specified by the South Carolina Financial Responsibility Act.

No one shall be considered an insured if the person operating your covered auto does so without your express or implied permission.

C. Property damage as used in the Part means injury to or destruction of the property of an insured.

D. 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, an insured driver, or any family member;
 - b. A vehicle which you, an insured driver, 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, an insured driver, 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 within one year of the date of the accident;
 - c. Is in delinquency proceedings, suspension or receivership; or
 - d. Is proven unable to respond to a judgment.

5. For which the owner has not qualified as a self-insurer in accordance with the applicable provisions of the South Carolina Insurance Laws.

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 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.
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** or property damage sustained by any insured:

1. If that insured or the legal representative settles the **bodily injury** claim and such settlement prejudices our right to recover payment.
2. While your covered auto is operated by a resident of your household who is a regular and frequent user of your covered auto but is not listed on the Declarations page as a driver or operator.
3. Arising out of the ownership, maintenance, or use of a vehicle or trailer while being used to carry persons or property for compensation or a fee, including, but not limited to, delivery of newspapers, magazines, food, or any other products. This Exclusion (A.3.) does not apply to a share-the-expense car pool or to a delivery by an insured as a volunteer.
4. Using a vehicle without the owner's express or implied permission or outside the scope of the owner's express or implied permission. This Exclusion (A.4.) does not apply to a family member using your covered auto which is owned by you.

5. 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, an Insured driver, 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 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 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 Declarations for each accident for Property Damage Liability Uninsured Motorists Coverage.
- Subject to the maximum limit of liability set forth in Paragraph 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,

- an Insured driver, or any family member is that Insured's pro rata share of the each person or each accident limit shown in the Declarations for this coverage applicable to the vehicle that Insured was occupying at the time of the accident, that does not exceed the minimum limits required by the South Carolina Financial Responsibility Act; and
2. You, an Insured driver, 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 applicable to the vehicle that Insured was occupying at the time of the accident.

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 Declarations; or
4. Vehicles involved in the accident.

- B. If bodily injury or property damage is sustained in an accident by you, an Insured driver, 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 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 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 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 Declarations; or
4. Vehicles involved in the accident.

- C. If **bodily injury** or property damage is sustained in an accident by you, an Insured driver, or any family member while occupying a vehicle not owned by you, an Insured driver, 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 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 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 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 Declarations; or
4. Vehicles involved in the accident.

- D. If **bodily injury** or property damage is sustained by an Insured other than you, an Insured driver, or any family member in an accident in which neither you, an Insured driver, 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 that part of the each person limit of liability shown in the Declarations for **Bodily Injury Liability Uninsured Motorists Coverage** applicable to the vehicle that Insured was occupying at the time of the accident that does not exceed the minimum limits required by the South Carolina Financial Responsibility Act.
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 that part of the each accident limit of liability shown in the Declarations for **Bodily Injury Liability Uninsured Motorists Coverage** applicable to the vehicle that Insured was occupying at the time of the accident that does not exceed the

minimum limits required by the South Carolina Financial Responsibility Act.

3. Our maximum limit of liability for all property damage resulting from that accident is that part of the each accident limit of liability shown in the Declarations for Property Damage Liability Uninsured Motorists Coverage applicable to the vehicle that Insured was occupying at the time of the accident that does not exceed the minimum limits required by the South Carolina Financial Responsibility Act.
- 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 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 entities who may be legally responsible.

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, an Insured driver, 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 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.

CONFORMITY TO STATUTE

This Part is intended to be in full conformity with the South Carolina Insurance Laws. If any provision of this Part conflicts with that law, it is changed to comply with the law.

PART C2 - UNDERINSURED MOTORISTS COVERAGE

INSURING AGREEMENT

A. 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.

B. Insured as used in this Part means:

1. You, an insured driver or any family member.
2. Any other person occupying your covered auto up to the minimum limits of liability specified by the South Carolina Financial Responsibility Act.

No one shall be considered an insured if the person operating your covered auto does so without your express or implied permission.

C. Property damage as used in this Part 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.

D. 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. Owned by or furnished or available for the regular use of you or any family member.
2. Operated on rails or crawler treads.
3. Designed mainly for use off public roads while not on public roads.
4. 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 your covered auto is operated by a resident of your household who is a regular and frequent user of your covered auto but is not listed on the Declarations page as a driver or operator.
2. Arising out of the ownership, maintenance, or use of a vehicle or trailer while being used to carry persons or property for compensation or a fee, including, but not limited to, delivery of newspapers, magazines, food, or any other products. This Exclusion (A.2.) does not apply to a share-the-expense car pool or to a delivery by an insured as a volunteer.
3. Using a vehicle without the owner's express or implied permission or outside the scope of the owner's express or implied permission. This exclusion (A.3.) 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 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 Declarations for each accident for Bodily Injury Liability Underinsured Motorists Coverage.
 3. Subject to the maximum limit of liability set forth in Paragraph 1. and 2. above:
 - a. The most we will pay for bodily injury sustained in that accident by an insured other than you, an insured driver, or any family member is that insured's pro rata share of the each person or each accident limit shown in the Declarations for Bodily Injury Liability Underinsured Motorists Coverage applicable to the vehicle that insured was occupying at the time of the accident, that does not exceed the minimum limits required by the South Carolina Financial Responsibility Act; and

- b. You, an insured driver, 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 applicable to the vehicle that insured was occupying at the time of the accident.

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 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 Declarations; or
4. Vehicles involved in the accident.

- B. If bodily injury is sustained in an accident by you, an insured driver, 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 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 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 Declarations; or
4. Vehicles involved in the accident.

C. If bodily injury is sustained in an accident by you, an insured driver, or any family member while occupying a vehicle not owned by you, an insured driver, 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 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 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 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 C1 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 entities 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, an insured driver, 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:

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.

CONFORMITY TO STATUTE

This Part is intended to be in full conformity with the South Carolina Insurance Laws. If any provision of this Part conflicts with that law, it is changed to comply with the law.

**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 original manufacturer permanently installed 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. We will pay under Other Than Collision Coverage or Collision Coverage for loss to safety glass on your covered auto without applying a deductible.
- C. 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.

D. Customizing parts or equipment means permanently installed or attached equipment, parts, devices, accessories, enhancements, and changes, other than those which are original manufacturer installed.

E. Non-owned auto means:

1. Any auto or trailer not owned by or furnished or available for the regular use of you, an insured driver or any family member while in the custody of or being operated by you, an insured driver 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.

LIMITED TRANSPORTATION EXPENSES

In addition, we will pay up to \$20 per day, to a maximum of \$300, for transportation expenses incurred by you. This applies only in the event of the total theft of your covered auto. We will pay only transportation expenses incurred during the period:

1. Beginning 48 hours after the theft is reported to the police; and
2. Ending when your covered auto is returned to use or we pay for its loss.

We will not pay for the cost of transportation incurred by an insured if there is a theft of only a trailer.

EXCLUSIONS

We will not pay for:

1. Loss to your covered auto or any non-owned auto which occurs while it is used to carry persons or property for compensation or a fee, including, but not limited to, delivery of newspapers, magazines, food, or any other products. This exclusion (1.) does not apply to a share-the-expense car pool or to a delivery by an insured as a volunteer.
2. Damage due and confined to:
 - a. Wear and tear;
 - b. Freezing;
 - c. Mechanical or electrical breakdown or failure;
 - d. Road damage to tires; or
 - e. Manufacturer defects.
 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 equipment, devices, accessories, and any other personal effects which are not permanently installed or attached by brackets or bolts. This includes, but is not limited to:
 - a. tapes, compact discs, cassettes, and other recording or recorded media;
 - b. any case or other container designed for use in storing or carrying tapes, compact discs, cassettes, or other recording or recorded media;

- c. any device used for the detection or location of radar, laser, or other speed measuring equipment or its transmissions;
 - d. radios, stereos, CB radios, telephones, two-way mobile radios, scanners, televisions, video or audio cassette/DVD recorders, or personal computers; and
 - e. any compact disc systems, navigation systems, internet access systems, or video entertainment systems.
5. Loss of value in excess of \$500 to any customizing parts or equipment unless the value of the equipment has been reported to us, scheduled, and a premium has been paid for customizing parts or equipment coverage.
6. A total loss to your covered auto or any non-owned auto due to destruction or confiscation by governmental or civil authorities.
This exclusion (6.) does not apply to the interests of Loss Payees in your covered auto.
7. Loss to:
- a. A camper body or motor home; or
 - b. Facilities or equipment used with a 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 (7.) does not apply if you have identified and scheduled a value for this equipment and paid premium for an endorsement to add coverage for customizing parts or equipment.

8. Loss to your covered auto or any non-owned auto when used by you, an insured driver or any family member without the owner's express or implied permission.
9. Loss to any custom furnishings or equipment in or upon any pickup or van. Custom furnishings or equipment include but are not limited to:
- a. Special carpeting or insulation;
 - b. Furniture or bars;
 - c. Height-extending roofs including pop up roofs, raised roofs, bubble domes, and bubble windows;
 - d. Custom murals, paintwork, decals or other graphics; or
 - e. Captain chairs, swivel chairs, or tables.
- This exclusion (9.) does not apply to a cap, cover or bed liner in or upon any your covered auto which is a pickup. This exclusion does not apply if you have identified and scheduled a value for this equipment and paid premium for an endorsement to add coverage for customizing parts or equipment.
10. Loss to any non-owned auto being maintained or used by any person while employed or otherwise engaged in the business of:
- a. Selling or leasing;
 - b. Repairing;
 - c. Servicing;
 - d. Storing;
 - e. Parking; or
 - f. Towing;
- vehicles designed for use on public highways. This includes road testing and delivery.
11. Loss while your covered auto or any non-owned auto is used in practicing, participating, or preparing for any race, speed contest or performance contest.
12. Loss to, or loss of use of, a non-owned auto rented by:

- a. You;
- b. An Insured driver; or
- c. Any family member;

If a rental vehicle company is precluded from recovering such loss or loss of use, from you, an insured driver, or any family member, pursuant to the provisions of any applicable rental agreement or state law.

- 13. Loss to any non-owned auto being maintained or used by any person while employed or otherwise engaged in any business not described in exclusion 10. This exclusion (13.) does not apply to the maintenance or use by you, an insured driver, or any family member of a non-owned auto, which is an auto or trailer.
- 14. Loss to your covered auto or any non-owned auto due to or resulting from intentional acts committed by you, an insured driver, or a family member, or by anyone at your direction.
- 15. Loss to your covered auto or any non-owned auto caused while being involved in any unlawful activity (other than a traffic violation) or attempting to flee or fleeing from any law enforcement officer or agent.
- 16. Loss to your covered auto while being driven, maintained or used by any person who is a resident of your household and is not listed on the Declarations page as a driver or operator.
- 17. Loss resulting from the use of your covered auto for snow removal.
- 18. Loss to paint or discoloration of paint resulting from acid rain, smog, salt, tree sap, or animal or bird droppings unless such loss is a direct result of a collision or vandalism.
- 19. Loss caused by the theft or conversion of your covered auto by a person to whom you have voluntarily entrusted your covered auto.

20. Loss to your covered auto, non-owned auto or trailer for diminution of value.

21. Loss to your covered auto or any non-owned auto when it is driven, operated or used by an individual with the permission of you or any family member if you or the family member knows that the operator:

- a. Is under the minimum age to obtain a valid driver's license in the state where the vehicle is garaged;
- b. Is under fifteen (15) years of age;
- c. Does not have a valid driver's license; or
- d. Has a suspended or revoked driver's license.

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 at the time of loss; or
- 2. Amount necessary to repair or replace your covered auto, non-owned auto, or covered equipment with other property of like kind and quality including, but not limited to, after-market parts.

However, the most we will pay for loss to:

- 1. Any trailer is \$500.
- 2. Non-scheduled customizing parts or equipment is \$500.

B. In the event of a total loss, an adjustment for:

- 1. Depreciation and physical condition; and
 - 2. Retained salvage value;
- will be made in determining actual cash value.

C. If a repair or replacement results in better than like kind or quality, we will not pay for the amount of the betterment.

D. If coverage applies to a vehicle you do not own, our liability is limited to the highest

actual cash value of the highest-valued
your covered auto for which coverage
under this Part has been purchased.

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:

- A. You; or
- B. 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.

CAR STORAGE COVERAGE

We will pay up to a reasonable and
customary daily rate for the cost of storage of
your covered auto in the event of a loss to
your covered auto for which coverage under
this Part is provided. We will pay no more
than \$400 total for the cost of storage of your
covered auto under this section.

LOSS PAYABLE CLAUSE

Loss or damage under this policy shall be paid,
as interest may appear, to you and the loss
payee shown in the Declarations. 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.
Any return premium owed to you will be based
on the effective date of cancellation used to
give advance notice to the loss payee. When
we pay the loss payee we shall, to the extent
of payment, be subrogated to the loss payee's
rights of recovery.

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 or any
vehicle used as a temporary substitute for
your covered auto shall be excess over any
other collectible source of recovery including,
but not limited to:

- A. Any coverage provided by the owner of
the non-owned auto or any vehicle used
as a temporary substitute for your
covered auto;
- B. Any other applicable physical damage
insurance;
- C. 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 and impartial
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 - 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 filed rates.

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 Amending Endorsement.

FRAUD

A. Your policy was issued in reliance on the information you provided on your insurance application. We may void coverage under this policy if you have knowingly concealed or misrepresented any material fact or circumstance or engaged in fraudulent conduct at the time application was made or in connection with a claim.

B. If any representation contained in any notification of change or endorsement request is false, misleading, or materially affects the acceptance or rating of the risk by us, by either direct misrepresentation, omission, concealment of facts, or incorrect statements, this policy will be void from the effective date of the requested change.

C. 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. This provision shall also apply to misstatements of use and omissions of fact. However, we will provide coverage to an 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 by this policy.

D. If we are not permitted to void this policy, any first-party claims will be reduced by the amount of any additional premium owed to us. Any payments made by us as the result of your fraud or misrepresentation may be recovered from you, or from any payments due or made to you under any first-party coverage provided by 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 entity has any right under this policy to bring us into any action to determine the liability of an Insured.

OUR RIGHT TO RECOVER PAYMENT - Applies to Part A - Liability and Part D - Coverage for Damage to Your Auto

- 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 an Insured's express or implied permission and within the scope of the permission granted.
- B. If we make a payment under this policy and the person to or for whom payment is made recovers damages from another, that person shall:
1. Hold in trust for us the proceeds of the recovery; and
 2. Reimburse us to the extent of our payment. However, any reimbursement due to us shall be reduced by our pro rata share of any reasonable and necessary costs and expenses, including deposition costs, witness fees and attorney's fees, incurred in bringing the claim.

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

OUR RIGHT TO RECOVER PAYMENT - Applies only to Part C1 - Uninsured Motorists Coverage

- 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 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:
1. Whatever is necessary to enable us to exercise our rights; and
 2. Nothing after loss to prejudice them.
- B. 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.
- C. 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.
- D. 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.

- E. This provision does not apply to Part C2 - Underinsured Motorists Coverage.

PAYMENT OF PREMIUM

- A. This insurance coverage is conditional upon payment of premium. Payment of your initial premium by check, draft or other instrument is not considered payment until it is honored upon presentment. If your initial premium payment is by check, draft, or any remittance other than cash, coverage under this policy may be voidable at our election if the check, draft or remittance is not honored upon presentment.
- B. If you make a premium payment with a check and the check is returned to us because of insufficient funds, a closed account or a stop payment, a service charge will be added to your account balance.
- C. The premium stated in the Declarations is the initial premium for this policy. On each renewal, continuation or anniversary of the effective date of this policy, the premium shall be computed by us in accordance with our filed rates.
- D. If you owe us any outstanding premium balances on your expiring, expired or cancelled policy, any moneys received by us will be applied first to pay the oldest outstanding balance.

POLICY PERIOD AND TERRITORY

- A. This policy applies only to accidents and losses which occur:
1. During the policy period as shown on the Declarations; and
 2. Within the policy territory.
- B. The policy territory is:
1. The United States of America, its territories, or possessions; or
 2. 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 future 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 is 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.

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 15 days before the end of the policy period. Subject to this notice requirement, if the policy period is:

1. 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.
2. 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 the premium refund is \$10.00 or less, no refund will be sent unless you specifically request a refund. If you owe us \$10.00 or less, we will waive the amount outstanding. However, making or offering to make the refund is not a condition of cancellation. If you or we cancel your policy and a premium refund is owed to you, you will receive the refund on a pro-rata basis. If your policy is cancelled for nonpayment of premium and a refund is owed to you, you will receive the refund on a pro-rata basis minus the cancellation fee.

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

REINSTATEMENT OF POLICY WITH A LAPSE IN COVERAGE

This section only applies if reinstatements with a lapse in coverage are available in your state.

- A. If this policy is cancelled for nonpayment of premium, we will reinstate the policy with a lapse in coverage, subject to underwriting approval, if payment is received within 20 days after the cancellation effective date.
- B. For the purpose of this section, payment is considered the amount indicated that must be paid immediately on the past due payment notice.
- C. If you pay your payment through electronic means, reinstatement of your coverage will be effective the date and time your payment is received.
- D. If you mail your payment, reinstatement of your coverage will be effective at 12:01 A.M. on the day after your payment is postmarked. In the event the postmark is not present or is illegible, reinstatement of your coverage will be effective at 12:01 A.M. on the date your payment is received by us.
- E. There will be a lapse in coverage from the cancellation date to the date and time of reinstatement.
- F. If the consideration accepted by us as payment for the reinstatement is in the form of a check or draft and the bank on which the check or draft is drawn dishonors it upon presentation, the reinstatement is void as of its inception.
- G. If this policy (or any renewal thereof) is cancelled because of nonpayment of premium after any reinstatement, we reserve the right to reinstate or to not reinstate and return unearned premium.

- H. If this policy is reinstated, you will be charged a fee for reinstatement as allowed by your state law.

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.

- C. If a named Insured shown in the Declarations terminates their marital relationship, we will continue to provide coverage for the former spouse of the named Insured. Coverage applies only:

1. If we are notified of the termination of the marital relationship;
2. If the former spouse was a resident of the same household immediately prior to the termination of the marital relationship; and
3. For the lesser of 30 days or until the end of the policy period.

TWO OR MORE AUTO POLICIES

- A. 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.

- B. This provision does not apply to Part C1 - Uninsured Motorists Coverage or Part C2 - Underinsured Motorists Coverage.

- C. No one will be entitled to receive duplicate payments for the same elements of loss under Part C1 or Part C2.

OUR RIGHT TO RE-COMPUTE PREMIUM

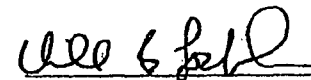
We established the premium for this policy based on the statements you made in the application for insurance. We have the right to re-compute the premium if we later obtain information which affects the premium we charged.

NOTICE

Your notice to our authorized agent shall be deemed to be notice to us.

IN WITNESS Whereof, we have caused this policy to be executed and attested.


Bruce Arneson, President


William Lockhorn, Chairman

THE FOLLOWING ENDORSEMENT ONLY APPLIES IF
FORM 0839-2 APPEARS ON THE POLICY
DECLARATIONS

RENTAL REIMBURSEMENT / TRANSPORTATION EXPENSES

In consideration of the premium charged and paid, we will pay for:

- A. Temporary transportation expenses incurred by you or an insured driver in the event of loss to your covered auto. We will pay for such expenses if the loss is caused by:
1. Other than collision only if the Declarations indicate that Other Than Collision Coverage is provided for any your covered auto.
 2. Collision only if the Declarations indicate that Collision Coverage is provided for any your covered auto.
- B. Loss of use expenses for which you or an insured driver become legally responsible in the event of loss to a non-owned auto. We will pay for loss of use expenses if the loss is caused by:
1. Other than collision only if the Declarations indicate that Other Than Collision Coverage is provided for any your covered auto.
 2. Collision only if the Declarations indicate that Collision Coverage is provided for any your covered auto.
- C. We will pay only expenses beginning when the auto is withdrawn from use for more than 24 hours. Our payment will be limited to that period of time reasonably required to repair or replace your covered auto or the non-owned auto.
- D. The limit of liability shall not exceed the limit shown for this coverage in the Declarations. The total payment under this endorsement shall not exceed the actual cash value of your covered auto or non-owned auto at the time of loss. We will

pay only if you or an insured driver rent an auto from a licensed rental car agency.

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THE FOLLOWING ENDORSEMENT ONLY APPLIES IF
FORM 0839-3 APPEARS ON THE POLICY
DECLARATIONS

TOWING AND LABOR COSTS COVERAGE

ISO PP 03 03 04 86

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 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 Declarations. We will only pay for labor performed at the place of disablement.

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THE FOLLOWING ENDORSEMENT ONLY APPLIES IF
FORM 0839-6 APPEARS ON THE POLICY
DECLARATIONS

CUSTOMIZING PARTS OR EQUIPMENT COVERAGE (ADDITIONAL EQUIPMENT)

If the Declarations page shows a specific premium charged for Customizing Parts or Equipment Coverage, we will pay for direct and accidental loss to identified and scheduled customizing parts or equipment.

This coverage is in addition to the \$500 afforded under Part D for non-scheduled customizing parts or equipment. This coverage applies only if the equipment is permanently installed or attached to your covered auto or non-owned auto at the time of loss and is caused by:

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

As used in this endorsement, customizing parts or equipment means permanently installed or attached equipment, parts, devices, accessories, enhancements, and changes, other than those which are original manufacturer installed. Equipment installed or alterations made at a conversion facility to your covered auto or any non-owned auto is not considered original manufacturer installed and must be identified and scheduled for this coverage to apply.

Customizing parts or equipment include but are not limited to:

1. Electronic equipment that receives or transmits audio, visual or data signals and is not designed solely for the reproduction of sound and any accessories used with such equipment.
2. Awnings, cabanas, cooking, dining, plumbing or refrigeration facilities, and any other facilities or equipment designed and used to provide additional living facilities.
3. Custom furnishings or equipment including:
 - a. Special carpeting or insulation;
 - b. Furniture or bars;
 - c. Height-extending roofs including pop up roofs, raised roofs, bubble domes, and bubble windows;

- d. Custom murals, paintwork, decals or other graphics;
- e. Captain chairs, swivel chairs, or tables; or
- f. Custom chroming or gold plating.
4. Custom wheels, tires or spinners.
5. Body, engine, exhaust or suspension enhancers.
6. Sun roof, moon roof, T-bar roof, or landau roof.
7. Custom grilles, louvers, side pipes, running boards, air dams, hood scoops or spoilers.
8. Satellite tracking devices if not permanently installed by the original manufacturer or their authorized representative.
9. Radios, stereos, CB radios, telephones, two-way mobile radios, scanners, televisions, video or audio cassette/DVD recorders, or personal computers.
10. Any compact disc systems, Internet access systems, or video entertainment systems.
11. Any ground effects package or suspension lowering or raising equipment.
12. Winches, anti-roll or anti-sway bars.
13. Any continental kit.

In addition, the provisions of the policy apply except:

- A. Exclusion 4, of Part D - Coverage For Damage to Your Auto does not apply to the extent that coverage is provided under this endorsement for audio, visual and data electronic equipment.
- B. Exclusion 7 and 9 of Part D - Coverage For Damage To Your Auto does not apply to coverage provided by this endorsement.
- C. The following exclusion is added:
We will not pay for loss to:
 - a. Clothing or luggage;
 - b. Business or office equipment;
 - c. Articles which are sales samples or used in exhibitions.

PART D - LIMIT OF LIABILITY is amended as follows for coverage provided by this endorsement:

LIMIT OF LIABILITY

A. IS deleted in its entirety and replaced with the following:

A. Our limit of liability for loss to customizing parts or equipment will be the lesser of:

1. The declared value of the scheduled customizing parts or equipment shown on the Declarations page;
2. The actual cash value of the stolen or damaged property; or
3. The amount necessary to repair or replace the customizing parts or equipment with other property of like kind and quality including, but not limited to, after-market parts.

The following sections are added to the **LIMIT OF LIABILITY** section in **PART D**:

- E. Our payment for loss will be reduced by any applicable deductible shown in the Declarations.
- F. If loss to more than one of your covered autos results from the same collision, only the highest applicable deductible will apply.

0839-6 Includes copyrighted materials from Insurance Services Office, Inc. with its permission

THE FOLLOWING ENDORSEMENT ONLY APPLIES IF
FORM 0839-7 APPEARS ON THE POLICY
DECLARATIONS

NAMED NON-OWNER COVERAGE

With respect to individuals and coverages described in the Declarations, the provisions of the policy apply unless modified by this endorsement.

I. DEFINITIONS

The Definitions Section is amended as follows:

The definition of your **covered auto** is replaced by the following:

Your covered auto means any auto on the date you become the owner.

This provision applies only:

- A. If you acquire the auto during the policy period; and
- B. For 14 days after you become the owner.

This insurance does not apply if other insurance applies with respect to any newly acquired autos.

II. PART A - LIABILITY COVERAGE

Part A is amended as follows:

A. The definition of Insured is amended by deleting references to Insured driver and family member.

Insured means you while operating any non-owned auto or trailer with the express or implied permission of the owner.

B. The **EXCLUSIONS** Section is amended as follows:

Exclusion B.2. is replaced by the following:

We do not provide Liability Coverage for the ownership, maintenance or use of any vehicle, other than your covered auto, which is owned by you.

C. The Out of State Coverage provision is replaced by the following:

OUT OF STATE COVERAGE

If an auto accident to which this policy applies occurs in any state or province other than where you reside, we will interpret your policy for that accident as follows:

1. If the state or province has:
 - a. 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.

- b. 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.

2. No one will be entitled to duplicate payments for the same elements of loss.

III. PART B - MEDICAL PAYMENTS COVERAGE

Part B is amended as follows:

- A. The definition of Insured is amended by deleting references to Insured driver and family member.

Insured means you:

- 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.

- B. The EXCLUSIONS Section is amended as follows:

Exclusion 5. Is replaced by the following:

We do not provide Medical Payments Coverage for any Insured for bodily injury sustained while occupying, or when struck by, any vehicle (other than your covered auto) which is owned by you.

IV. PART C1 - UNINSURED MOTORISTS COVERAGE

Part C1 is amended as follows:

- A. The definition of Insured is amended by deleting references to Insured driver and family member.

Insured means you.

- B. Part 3. of the definition of uninsured motor vehicle is replaced with the following:

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

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;
- b. A vehicle which you 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 an eyewitness other than the owner or operator of the vehicle which you were occupying at the time of the accident.

V. PART C2 - UNDERINSURED MOTORISTS COVERAGE

Part C2 is amended as follows:

- A. The definition of Insured is amended by deleting references to Insured driver and family member.
- Insured means you.

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THE FOLLOWING ENDORSEMENT ONLY APPLIES IF
FORM 0839-8 APPEARS ON THE POLICY
DECLARATIONS

ADDITIONAL INSURED - LESSOR

Any liability and any required no-fault coverages afforded by this policy for your leased auto also apply to the lessor named in the Declarations as an additional Insured. This insurance is subject to the following additional provisions:

- A. We will pay damages for which the lessor becomes legally responsible only if the damages arise out of acts or omissions of:
 - 1. You, an Insured driver, or any family member; or
 - 2. Any other person except the lessor or any employee or agent of the lessor using your leased auto.
- B. Your leased auto means:
 - 1. An auto shown in the Declarations which you or an Insured driver lease for a continuous period of at least six months under a written agreement which requires you or an Insured driver to provide primary insurance for the lessor; and
 - 2. Any substitute or replacement auto furnished by the lessor named in the Declarations.
- C. If we terminate this policy, notice will also be mailed to the lessor.
- D. The lessor is not responsible for payment of premiums.
- E. The designation of the lessor as an additional Insured shall not operate to increase our limits of liability.

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THE FOLLOWING ENDORSEMENT ONLY APPLIES IF
FORM 0839-9 APPEARS ON THE POLICY
DECLARATIONS

NAMED DRIVER EXCLUSION ENDORSEMENT

If you have asked us on your application (Form U-2 on the application) to exclude any person from coverage under this policy, then we will not pay damages, expenses or loss arising out of the maintenance or use of any auto or trailer by the excluded driver whether or not such maintenance or use was with the express or implied permission of the named Insured. This includes any claim for damages made against you, an Insured driver, family member or any other person or entity that is liable for an accident arising out of the operation of any auto by the excluded driver. This also includes any claim for damages for any negligence, which may be imputed by law to you, an Insured driver, or family member arising out of the maintenance, operation or use of a motor vehicle by the excluded person.

This Named Driver Exclusion Endorsement does not apply to Uninsured Motorists Coverage and Underinsured Motorists Coverage.

The provisions of this Named Driver Exclusion Endorsement shall remain in effect for the term of the policy and for each renewal, reinstatement, substitute, modified, replacement or amended policy, unless discontinued by us.

0839-9

Form 0839

South Carolina (11/08)



South Carolina (11/08)

Form 0839

65

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Omni Insurance Group,)
Plaintiff,)

Civil Action No.: 2011-CP-40-03734

-vs-

**ANSWER
(Non-Jury)**

La'Rissa Tidwell,)
Defendant.)

The Defendant, answering the Complaint of the Plaintiff, would respectfully show unto this Court the following:

1. Defendant denies each and every allegation of the Complaint not hereinafter explained, admitted, or qualified.
2. Defendant admits, upon current information and belief, the allegations of Paragraph 1 of the Complaint.
3. Defendant admits only so much of Paragraph 2 of the Complaint as can be construed to allege that at the time of the events that are the subject of this declaratory judgment action, Plaintiff was a resident and citizen of Richland County, South Carolina.
4. Defendant admits that she, in fact, suffered an injuries as a result of an automobile crash on April 2, 2010 while Ajareniesh S. Williams was driving Wendy C. Williams' automobile.
5. Defendant admits, upon current information and belief, the allegations of Paragraph 4 of the Complaint.
6. Defendant admits, upon current information and belief, the allegations of Paragraph 5 of

the Complaint.

7. Paragraphs 6 and 7 of the Complaint are pleading paragraphs and do not require a response.
8. Defendant admits, upon current information and belief, the allegations of Paragraph 8 of the Complaint.
9. Defendant admits the allegations of Paragraph 9 of the Complaint.
10. Defendant admits the allegations of Paragraph 10 of the Complaint.
11. Defendant admits only so much of Paragraph 11 of the Complaint as can be construed to allege that Defendant claims under the policy of insurance issued to Wendy C. Williams, and that she asserts entitlement to underinsured motorist coverage from the policy of insurance issued to Wendy C. Williams; the remaining allegation is denied.
12. Defendant admits only so much of Paragraph 12 of the Complaint as can be construed to allege that Plaintiff has denied Defendant's claim for payment of the Wendy C. Williams underinsured coverage, the remaining allegations are denied.
13. Defendant admits only so much of Paragraph 13 of the Complaint as can be construed to allege that Plaintiff has denied Defendant's ability to recover under both liability and underinsured provisions, the remaining allegations are denied.
14. Defendant admits, upon current information and belief, the allegations of Paragraph 14 of the Complaint.
15. Defendant admits, upon current information and belief, the allegations of Paragraph 15 of the Complaint.
16. Paragraph 16 of the Complaint is a pleading paragraph and does not require a response.
17. Defendant admits, upon current information and belief, the allegations of Paragraph 17 of

the Complaint.

18. Defendant admits the allegations of Paragraph 18 of the Complaint.
19. Defendant admits the allegations of Paragraph 19 of the Complaint.
20. Defendant denies the allegations of Paragraph 20 of the Complaint and craves reference to SC Code Ann. 38-77-30(7) as providing the only applicable definition of an "insured," moreover, the policy endorsement cited does not apply by virtue of the fact that it does not appear on the Declarations Page as required by the policy itself. *See* Plaintiff's Exhibit A, Declarations Page; *see also* Plaintiff's Exhibit , Omni Personal Auto Policy p. 59 "The following endorsement only applies if Form 0839-7 appears on the policy delcarations")
21. Defendant admits only so much of the allegations of Paragraph 21 as can be construed to allege that Defendant is considered a Class II insured under the policy, and denies as much of the remaining allegations as can be construed to allege that the Defendant would receive duplicate payments should Plaintiff be compelled to pay pursuant to the underinsured motorist Policy at issue.
22. Defendant, upon information and belief, denies the allegations of Paragraph 22 of the Complaint;
23. Defendant, upon information and belief admits only so much of Paragraph 23 as can be construed to allege that underinsured motorist coverage is voluntary coverage that covers damages in excess of liability limits, and that this coverage is personal and portable; the remaining allegation is denied.
24. Defendant, upon information and belief, denies the allegations set forth in Paragraph 24.
25. Defendant denies the allegations of Paragraph 25 and further asserts that *Bratcher v.*

National Grange Mut. Ins. Co., 292 S.C. 330, 356 S.E.2d 151 (Ct. App. 1987) is inapplicable to the matter *sub judice*.

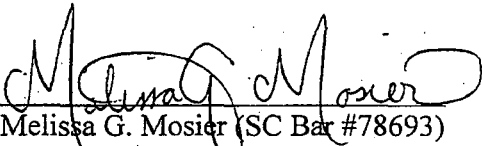
26. Defendant admits the allegations set forth in Paragraph 26 of the Complaint, and further asserts that a familial relationship was not dispositive of the coverage dispute in *Bratcher, supra*.
27. Defendant denies so much of subpart (a) of Paragraph 27 as can be construed to allege that Defendant is not an insured, and further denies that the Plaintiff may deny coverage based on a policy definition of an insured which is inconsistent with S.C. Code Ann. 38-77-30(7), Defendant denies the allegations set forth in subpart(b) of Paragraph 27.
28. Defendant, upon information and belief, denies the allegations set forth in Paragraph 28 of the Complaint.

WHEREFORE, having fully answered the Complaint, Defendant respectfully requests that this Honorable Court inquire into these matters and issue its Order:

- A. Declaring that the insurance policy that is the subject of this case provides underinsured motorist coverage in the amount of \$25,000 to compensate for those damages in excess of the liability limits;
- B Declaring that Plaintiff must reform any policy provisions against public policy or in direct contravention of South Carolina statutes and case law;
- C. Awarding Defendant a reasonable amount of attorneys' fees and costs; and
- D. For such other and further relief as this Honorable Court may deem just and proper.

Signature page following

McWHIRTER, BELLINGER & ASSOCIATES, P.A.

1
By:  Melissa G. Mosier (SC Bar #78693)
119 E. Main Street
Lexington, SC 29072
803.359.5523 (Office)
803.996.9080 (Fax)

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Omni Insurance Group

Plaintiff(s)

vs.

La'Rissa Tidwell

Defendant(s)

IN THE COURT OF COMMON PLEAS

MOTION AND ORDER INFORMATION FORM
AND COVER SHEET

C/A No: 2011-CP-40-3734

Plaintiff's Attorney:

Douglas E. Leadbitter

Address:

Post Office Box 100200

Columbia, South Carolina 29202-3200

phone: swillis@rtt-law.com fax: (803) 343-7017

e-mail: swillis@rtt-law.com

Intervener's (moving party) Attorney:

Charles O. Williams III Bar No. 69495

Address: McAngus, Gondeck & Courie, LLC

Post Office Box 12519, Capitol Station

Meridian, 1320 Main Street, 10th Floor (29201)

Columbia, South Carolina 29211-2519

(803) 779-2300

Direct number: (803) 227-2264 Fax: (803) 748-0526

e-mail: cwilliams@mgclaw.com

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

☐ **FORM MOTION, NO HEARING REQUESTED** (complete SECTIONS II and III)

☐ **PROPOSED ORDER/CONSENT ORDER** (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion to Intervene

Estimated Time Needed: 15 min. Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

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

Signature of Attorney for ☐ Plaintiff / ☐ Defendant

Date submitted

SECTION III: Motion Fee

X PAID - AMOUNT: \$25.00

☐ **EXEMPT:**

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other:

JUDGE

CODE:

Date:

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

☐ **MOTION FEE COLLECTED:** _____

☐ **CONTESTED - AMOUNT DUE:** _____

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

OMNI INSURANCE GROUP,

Civil Action No. 2011-CP-40-3734

Plaintiff,

vs.

MOTION TO INTERVENE

LA'RISSA TIDWELL,

Defendant.

TO: DOUGLAS E. LEADBITTER, ESQUIRE, ATTORNEY FOR PLAINTIFF AND
MELISSA MOSIER, ATTORNEY FOR DEFENDANT

YOU WILL PLEASE TAKE NOTICE that ten (10) days after service of this Notice upon you, or as soon thereafter as counsel may be heard, the undersigned attorney for Bristol West Insurance Company (hereinafter "Bristol"), will move before the presiding judge of the Richland County Court of Common Pleas to intervene in the above-referenced case pursuant to Rule 24 of the South Carolina Rules of Civil Procedure. Bristol moves to intervene pursuant to Rules 24(a) and 24(b) of the South Carolina Rules of Civil Procedure.

Plaintiff Omni Insurance Group has filed a Declaratory Judgment action in this court against Defendant La'Rissa Tidwell. Omni Insurance Group alleges Tidwell is not entitled to underinsured motorist coverage under Policy Number 3501704 that Omni Insurance Group issued to its insured, Wendy C. Williams.

Defendant La'Rissa Tidwell has a policy of insurance with Bristol that contains underinsured motorist coverage. Bristol is informed and believes that the adjudication of Omni Insurance Group's and La'Rissa Tidwell's rights under the South Carolina Uniform Declaratory

Civil Action No.

CERTIFICATE OF SERVICE

I hereby certify that I have this 17th day of August, 2011 served a copy of Motion to Intervene by mailing copies of same, postage prepaid, in the United States mail, with sufficient postage affixed as follows:

Douglas E. Leadbitter
Rogers Townsend & Thomas, PC
Post Office Box 100200
Columbia, South Carolina 29202-3200
Attorney for Omni Insurance Group

Melissa G. Mosier, Esquire
McWhirter, Bellinger & Associates, P.A.-Columbia
1807 Hampton Street
Columbia, South Carolina 29201
Attorney for La'Rissa Tidwell

Paula L Mathis

Paula L. Mathis
Legal Assistant to Charles O. Williams III

Judgment Act, S.C. Code Ann. § 15-53-10, *et seq.* (1995), will have an effect upon the interests of Bristol and the potential action that La'Rissa Tidwell potentially has against Wendy C. Williams and/or Ajaraniesh S. Williams pursuant to a motor vehicle accident that occurred on April 2, 2010. Specifically, Bristol maintains that underinsured motorist coverage available under the Omni Insurance Group policy must be exhausted before any underinsured motorist coverage available under the Bristol policy could be reached. If Omni Insurance Group were to be successful in their Declaratory Judgment action against La'Rissa Tidwell, that result could affect the interests and obligations of Bristol.

Accordingly, Bristol asserts it has a right to intervene in the above-referenced Declaratory Judgment action pursuant to Rule 24(a) and 24(b) of the South Carolina Rules of Civil Procedure. Bristol asserts its appearance in this case as an intervening party will not unduly delay or prejudice the adjudication of the rights of the original parties, but rather, will serve to effect justice to all parties involved. Moreover, Bristol asserts it will be prejudiced if it is not allowed to intervene in the subject Declaratory Judgment action. Bristol's motion is based upon the applicable common law and statutory law. Bristol attaches its proposed Intervener's Complaint with this Motion to Intervene.

MCANGUS GOUDELOCK & COURIE, L.L.C.



Charles O. Williams III

Post Office Box 12519, Capitol Station
Meridian, 1320 Main Street, 10th Floor (29201)
Columbia, South Carolina 29211-2519
(803) 779-2300

ATTORNEYS FOR BRISTOL WEST
INSURANCE COMPANY

August 17, 2011

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

OMNI INSURANCE GROUP,

Plaintiff,

VS.

LA'RISSA TIDWELL,

Defendant.

Civil Action No. 2011-CP-40-3734

**SUMMONS FOR INTERVENER'S
COMPLAINT
(DECLARATORY JUDGMENT)**

TO: PLAINTIFF AND DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Intervener's Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer to said Intervener's Complaint on the subscribers at their offices at Post Office Box 12519, Capitol Station, 1320 Main Street, 10th Floor, Columbia, South Carolina 29211-2519 within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Intervener's Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Intervener's Complaint.

MCANGUS GOUDELOCK & COURIE, L.L.C.

Chen O. White

Charles O. Williams III

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(803) 779-2300

ATTORNEYS FOR BRISTOL WEST
INSURANCE

August 16, 2011

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

OMNI INSURANCE GROUP,

Plaintiff,

vs.

LA'RISSA TIDWELL,

Defendant.

Civil Action No. 2011-CP-40-3734

**INTERVENER'S COMPLAINT
(DECLARATORY JUDGMENT)**

TO: PLAINTIFF AND DEFENDANT ABOVE-NAMED:

The Intervening Plaintiff, Bristol West Insurance (hereinafter "Bristol"), by and through its undersigned attorneys, hereby complains of the above-named Parties by alleging and saying as follows:

1. The Plaintiff is a corporation organized and existing in a state other than the State of South Carolina with its principal place of business in a state other than the State of South Carolina, licensed by the State of South Carolina pursuant to Title 38 of the South Carolina Code of Laws to engage in insurance transactions in this state.
2. Defendant La'Rissa Tidwell is a resident of Richland County, South Carolina.
3. The Intervening Plaintiff, Bristol, is a corporation organized and existing under the laws of a state other than the State of South Carolina, with its principal place of business in a state other than the State of South Carolina, licensed and doing business in the State of South Carolina pursuant to Title 38 of the South Carolina Code of Laws to engage in insurance transactions in this state.
4. Bristol is an Intervening Party pursuant to Rules 24(a) and 24(b) of the South Carolina Rules of Civil Procedure. Bristol asserts pursuant to Rules 24(a) and 24(b) of the South

Carolina Rules of Civil Procedure that the underlying Declaratory Judgment action filed by Omni Insurance Group could affect the interests and obligations of Bristol, and that Bristol is a necessary party pursuant to Rules 24(a) and 24(b) of the South Carolina Rules of Civil Procedure, both to protect itself, to prevent prejudice to the adjudication of the rights of the original parties, and to do justice to all parties involved.

5. This is a Declaratory Judgment action pursuant to Rule 57 of the South Carolina Rules of Civil Procedure and South Carolina Code § 15-53-10, *et seq.*, to determine the relative rights, duties and obligations of the parties hereto under an insurance policy as said insurance policy pertains to the obligations of insurance coverage and indemnification thereof between the parties and that an actual and justiciable controversy exists between the parties.

6. This Court has jurisdiction over the matters complained of herein and the parties hereto.

7. Upon information and belief, pursuant to the South Carolina Uniform Declaratory Judgment Act, South Carolina Code Ann. § 15-53-10, *et seq.* (1995), there is a justiciable controversy between the parties that requires declaratory judgment from this Court.

8. On or about April 2, 2010, La'Rissa Tidwell was a passenger in a vehicle driven by Ajaraniesh S. Williams.

9. Upon information and belief, Ajaraniesh S. Williams was driving an automobile owned by Wendy C. Williams, with Wendy C. Williams' permission.

10. Omni Insurance Group provided liability coverage and underinsured motorist coverage on the vehicle owned by Wendy C. Williams and driven by Ajaraniesh S. Williams.

11. La'Rissa Tidwell has underinsured motorist coverage with Bristol under Policy No. G002 796795.

12. Upon information and belief, Omni Insurance Group tendered its liability insurance coverage to La'Rissa Tidwell in exchange for a Covenant Not to Execute.

13. Upon information and belief, if Omni Insurance Group's underinsured motorist coverage is applicable to the claims of La'Rissa Tidwell, Omni Insurance Group's underinsured motorist coverage would be primary and Bristol's underinsured motorist coverage would be secondary.

14. Bristol asserts La'Rissa Tidwell is a Class II insured pursuant to Omni Insurance Group's policy (Policy No. 3501704), issued to Wendy C. Williams.

15. Bristol further asserts that on the date of the incident, April 2, 2010, La'Rissa Tidwell was a Class II insured under South Carolina Code Ann. § 38-77-30 (7) (1995).

16. Based upon La'Rissa Tidwell's status as a Class II insured under Policy No. 3501704, issued to Wendy C. Williams, and pursuant to South Carolina Code Ann. § 38-77-30 (7) (1995), Bristol asserts La'Rissa Tidwell is entitled to underinsured motorist coverage under the Omni Insurance Group policy, and further, that the underinsured motorist coverage applicable under the Omni Insurance Group policy is primary to any underinsured motorist coverage available under Bristol's policy.

17. Bristol asserts Part C-2, Underinsured Motorist Coverage Endorsement to Policy No. 3501704, at page 62, contained as an exhibit to Omni Insurance Company's Complaint, is inapplicable to the above-referenced case. Bristol asserts this Endorsement does not apply to Policy No. 3501704.

18. Bristol denies Omni Insurance Group's assertion that its underinsured coverage would operate as a "duplicate payment" under the Williams' policy, citing said policy at page 34.

Bristol fails to understand how available underinsured motorist coverage qualifies as "duplicate payments" under the policy. Bristol asserts this argument is without merit.

19. Bristol asserts Omni Insurance Group's reliance on the holding of Nationwide Mutual Insurance Company v. Erwood, 373 S.C. 88, 644 S.E.2d 62 (2007), is misguided. Bristol asserts that Erwood dealt with the portability of basic uninsured motorist (UM) coverage, not underinsured motorist (UIM) coverage. Therefore, Bristol asserts Erwood is inapplicable to the present case.

20. Omni Insurance Group also attempts to rely on United Servs. Auto Ass'n v. Markosky, 340 S.C. 223, 530 S.E.2d 660 (Ct.App. 2000) (incorrectly referred to as Markovsky in Omni Insurance Group's Complaint). Markosky dealt with the reduction of liability limits to the statutory minimum when an insured went into default. Bristol asserts that Markosky does not address underinsured motorist coverage at all, nor does it address language that purports to limit the applicability of underinsured motorist coverage.

21. Bristol asserts Omni Insurance Group's reliance on Bratcher v. National Grange Mut. Ins. Co., 292 S.C. 330, 356 S.E.2d 151 (Ct. App. 1987) is misguided. Bratcher ruled that exclusionary language that sought to do any more than limit the amount of available underinsured motorist coverage is void as a matter of law. Bristol argues Bratcher is inapplicable to the above-referenced case.

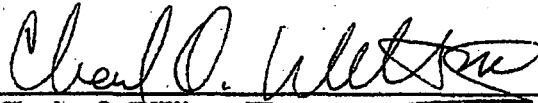
22. Bristol is informed and believes that La'Rissa Tidwell is entitled to underinsured motorist coverage under the Omni Insurance Group policy based upon her status as a Class II insured in the vehicle driven by Ajaraniesh S. Williams, and owned by Wendy C. Williams, under Policy No. 3501704. Bristol asserts there are no exclusions nor are there any endorsements under Omni Insurance Group Policy No. 3501704 that restrict or preclude of the

applicability of the underinsured motorist coverage under Omni Insurance Group's policy for the benefit of La'Rissa Tidwell.

23. Bristol further asserts the underinsured motorist coverage available under the Omni Insurance Group Policy No. 3501704 issued to Wendy C. Williams, is primary, and that the underinsured motorist coverage available under Bristol's policy is secondary.

WHEREFORE, Bristol prays this Court order La'Rissa Tidwell is entitled to underinsured motorist coverage under the Omni Insurance Group policy, and that Omni Insurance Group's underinsured motorist coverage is primary and that Bristol's underinsured motorist coverage is secondary to any damages asserted by La'Rissa Tidwell in the underlying proceeding. Bristol further prays for such other and further relief as the Court deems just and proper.

MCANGUS GOUDELOCK & COURIE, L.L.C.



Charles O. Williams III
Post Office Box 12519, Capitol Station
Meridian, 1320 Main Street, 10th Floor (29201)
Columbia, South Carolina 29211-2519
(803) 779-2300

ATTORNEYS FOR BRISTOL WEST
INSURANCE

August 17, 2011

STATE OF SOUTH CAROLINA

JUDGMENT IN A CIVIL CASE

COUNTY OF RICHLAND

CASE NO: 2011CP4003734

IN THE COURT OF COMMON PLEAS

Omni Insurance Group

vs.

Larissa Tidwell

Plaintiff

Defendant

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), SCRCP;
 SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other:
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other: _____

FILED
 RICHLAND COUNTY
 2011 SEP 22 AM 9:37
 JEANETTE W. McBRIDE
 CLERK OF COURT

☐ **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;☐ Statement of Judgment by the Court.

Dated at Columbia, South Carolina, this _____ day of _____, 2011.

PRESIDING JUDGE

This judgment was entered on the _____ day of _____, 2011, and a copy mailed first class this 22 September 2011, to attorneys of record or to parties (when appearing pro se) as follows:

Douglas Edward Leadbitter
Charles O Williams III

ATTORNEY(S) FOR THE PLAINTIFF(S)

Melissa Garcia Mosier

ATTORNEY(S) FOR THE DEFENDANT(S)

SCRCP APP-24/FORM 4

Clerk of Court

Jeanette W. McBride
 Clerk of Court

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

OMNI INSURANCE GROUP,

Plaintiff,

vs.

LA'RISSA TIDWELL,

Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2011-CP-40-3734

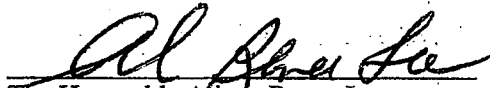
CONSENT ORDER

RICHLAND COUNTY
FILED
2011 SEP 22 AM 9:31
JEANETTE W. McBRIDE
C.C.P. & G.S.

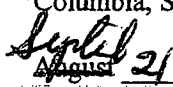
This matter appears before me on the Motion of Bristol Insurance Company and with the consent of Plaintiff and Defendant, requesting an Order allowing Bristol Insurance Company to appear as an Intervening Party in the above-captioned matter.

Now, therefore, **IT IS ORDERED** that Bristol Insurance Company be allowed to appear as an Intervening Party in the above-captioned matter.

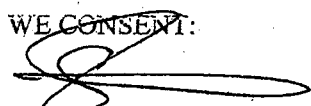
AND IT IS SO ORDERED


The Honorable Arison Renee Lee
Chief Administrative Judge, Fifth Judicial Circuit

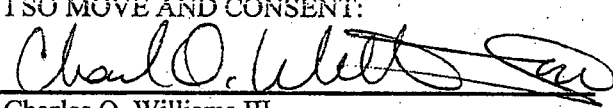
Columbia, South Carolina


August 21, 2011

WE CONSENT:


Douglas E. Leadbitter
Rogers Townsend & Thomas, PC
Attorney for Plaintiff

I SO MOVE AND CONSENT:


Charles O. Williams III
McAngus Goudelock & Courie, LLC
Attorney for Bristol Insurance Company

Melissa G. Mosier
McWhirter Bellinger & Associates, PA
Attorney for Defendant

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

OMNI INSURANCE GROUP,

Plaintiff,

vs.

LA'RISSA TIDWELL,

Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2011-CP-40-3734

CONSENT ORDER

This matter appears before me on the Motion of Bristol Insurance Company and with the consent of Plaintiff and Defendant, requesting an Order allowing Bristol Insurance Company to appear as an Intervening Party in the above-captioned matter.

Now, therefore, **IT IS ORDERED** that Bristol Insurance Company be allowed to appear as an Intervening Party in the above-captioned matter.

AND IT IS SO ORDERED


The Honorable Alison Renee Lee
Chief Administrative Judge, Fifth Judicial Circuit

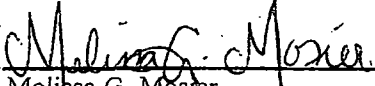
Columbia, South Carolina

~~September~~
August 21, 2011

WE CONSENT:

I SO MOVE AND CONSENT:

Douglas E. Leadbitter
Rogers Townsend & Thomas, PC
Attorney for Plaintiff



Melissa G. Mosier
McWhirter Bellinger & Associates, PA
Attorney for Defendant

Charles O. Williams III
McAngus Goudelock & Courie, LLC
Attorney for Bristol Insurance Company

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

BRISTOL WEST INSURANCE,

Intervening Party,

IN RE:

OMNI INSURANCE GROUP,

Plaintiff,

vs.

LA'RISSA TIDWELL,

Defendant.

Civil Action No. 2011-CP-40-3734

**INTERVENER'S COMPLAINT
(DECLARATORY JUDGMENT)**

RICHLAND COUNTY
FILED
2011 SEP 29 AM 10:01
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

TO: PLAINTIFF AND DEFENDANT ABOVE-NAMED:

The Intervening Plaintiff, Bristol West Insurance (hereinafter "Bristol"), by and through its undersigned attorneys, hereby complains of the above-named Parties by alleging and saying as follows:

1. The Plaintiff is a corporation organized and existing in a state other than the State of South Carolina with its principal place of business in a state other than the State of South Carolina, licensed by the State of South Carolina pursuant to Title 38 of the South Carolina Code of Laws to engage in insurance transactions in this state.

2. Defendant La'Rissa Tidwell is a resident of Richland County, South Carolina.

3. The Intervening Plaintiff, Bristol, is a corporation organized and existing under the laws of a state other than the State of South Carolina, with its principal place of business in a state other than the State of South Carolina, licensed and doing business in the State of South

Carolina pursuant to Title 38 of the South Carolina Code of Laws to engage in insurance transactions in this state.

4. Bristol is an Intervening Party pursuant to Rules 24(a) and 24(b) of the South Carolina Rules of Civil Procedure. Bristol asserts pursuant to Rules 24(a) and 24(b) of the South Carolina Rules of Civil Procedure that the underlying Declaratory Judgment action filed by Omni Insurance Group could affect the interests and obligations of Bristol, and that Bristol is a necessary party pursuant to Rules 24(a) and 24(b) of the South Carolina Rules of Civil Procedure, both to protect itself, to prevent prejudice to the adjudication of the rights of the original parties, and to do justice to all parties involved.

5. This is a Declaratory Judgment action pursuant to Rule 57 of the South Carolina Rules of Civil Procedure and South Carolina Code § 15-53-10, *et seq.*, to determine the relative rights, duties and obligations of the parties hereto under an insurance policy as said insurance policy pertains to the obligations of insurance coverage and indemnification thereof between the parties and that an actual and justiciable controversy exists between the parties.

6. This Court has jurisdiction over the matters complained of herein and the parties hereto.

7. Upon information and belief, pursuant to the South Carolina Uniform Declaratory Judgment Act, South Carolina Code Ann. § 15-53-10, *et seq.* (1995), there is a justiciable controversy between the parties that requires declaratory judgment from this Court.

8. On or about April 2, 2010, La'Rissa Tidwell was a passenger in a vehicle driven by Ajaraniesh S. Williams.

9. Upon information and belief, Ajaraniesh S. Williams was driving an automobile owned by Wendy C. Williams, with Wendy C. Williams' permission.

10. Omni Insurance Group provided liability coverage and underinsured motorist coverage on the vehicle owned by Wendy C. Williams and driven by Ajaraniesh S. Williams.

11. La'Rissa Tidwell has underinsured motorist coverage with Bristol under Policy No. G002 796795.

12. Upon information and belief, Omni Insurance Group tendered its liability insurance coverage to La'Rissa Tidwell in exchange for a Covenant Not to Execute.

13. Upon information and belief, if Omni Insurance Group's underinsured motorist coverage is applicable to the claims of La'Rissa Tidwell, Omni Insurance Group's underinsured motorist coverage would be primary and Bristol's underinsured motorist coverage would be secondary.

14. Bristol asserts La'Rissa Tidwell is a Class II insured pursuant to Omni Insurance Group's policy (Policy No. 3501704), issued to Wendy C. Williams.

15. Bristol further asserts that on the date of the incident, April 2, 2010, La'Rissa Tidwell was a Class II insured under South Carolina Code Ann. § 38-77-30 (7) (1995).

16. Based upon La'Rissa Tidwell's status as a Class II insured under Policy No. 3501704, issued to Wendy C. Williams, and pursuant to South Carolina Code Ann. § 38-77-30 (7) (1995), Bristol asserts La'Rissa Tidwell is entitled to underinsured motorist coverage under the Omni Insurance Group policy, and further, that the underinsured motorist coverage applicable under the Omni Insurance Group policy is primary to any underinsured motorist coverage available under Bristol's policy.

17. Bristol asserts Part C-2, Underinsured Motorist Coverage Endorsement to Policy No. 3501704, at page 62, contained as an exhibit to Omni Insurance Company's Complaint, is

inapplicable to the above-referenced case. Bristol asserts this Endorsement does not apply to Policy No. 3501704.

18. Bristol denies Omni Insurance Group's assertion that its underinsured coverage would operate as a "duplicate payment" under the Williams' policy, citing said policy at page 34. Bristol fails to understand how available underinsured motorist coverage qualifies as "duplicate payments" under the policy. Bristol asserts this argument is without merit.

19. Bristol asserts Omni Insurance Group's reliance on the holding of Nationwide Mutual Insurance Company v. Erwood, 373 S.C. 88, 644 S.E.2d 62 (2007), is misguided. Bristol asserts that Erwood dealt with the portability of basic uninsured motorist (UM) coverage, not underinsured motorist (UIM) coverage. Therefore, Bristol asserts Erwood is inapplicable to the present case.

20. Omni Insurance Group also attempts to rely on United Servs. Auto Ass'n v. Markosky, 340 S.C. 223, 530 S.E.2d 660 (Ct.App. 2000) (incorrectly referred to as Markovsky in Omni Insurance Group's Complaint). Markosky dealt with the reduction of liability limits to the statutory minimum when an insured went into default. Bristol asserts that Markosky does not address underinsured motorist coverage at all, nor does it address language that purports to limit the applicability of underinsured motorist coverage.

21. Bristol asserts Omni Insurance Group's reliance on Bratcher v. National Grange Mut. Ins. Co., 292 S.C. 330, 356 S.E.2d 151 (Ct. App. 1987) is misguided. Bratcher ruled that exclusionary language that sought to do any more than limit the amount of available underinsured motorist coverage is void as a matter of law. Bristol argues Bratcher is inapplicable to the above-referenced case.

~~22. Bristol is informed and believes that La'Rissa Tidwell is entitled to underinsured~~
motorist coverage under the Omni Insurance Group policy based upon her status as a Class II insured in the vehicle driven by Ajaraniesh S. Williams, and owned by Wendy C. Williams, under Policy No. 3501704. Bristol asserts there are no exclusions nor are there any endorsements under Omni Insurance Group Policy No. 3501704 that restrict or preclude of the applicability of the underinsured motorist coverage under Omni Insurance Group's policy for the benefit of La'Rissa Tidwell.

23. Bristol further asserts the underinsured motorist coverage available under the Omni Insurance Group Policy No. 3501704 issued to Wendy C. Williams, is primary, and that the underinsured motorist coverage available under Bristol's policy is secondary.

WHEREFORE, Bristol prays this Court order La'Rissa Tidwell is entitled to underinsured motorist coverage under the Omni Insurance Group policy, and that Omni Insurance Group's underinsured motorist coverage is primary and that Bristol's underinsured motorist coverage is secondary to any damages asserted by La'Rissa Tidwell in the underlying proceeding. Bristol further prays for such other and further relief as the Court deems just and proper.

MCANGUS GOUDELOCK & COURIE, L.L.C.


Charles O. Williams III
Post Office Box 12519, Capitol Station
Meridian, 1320 Main Street, 10th Floor (29201)
Columbia, South Carolina 29211-2519
(803) 779-2300

ATTORNEYS FOR BRISTOL WEST
INSURANCE

September 27, 2011

CERTIFICATE OF SERVICE

I hereby certify that I have this 27th day of September, 2011 served a copy of Summons and Intervener's Complaint by mailing copies of same, postage prepaid, in the United States mail, with sufficient postage affixed as follows:

Douglas E. Leadbitter
Douglas E. Leadbitter, LLC
Post Office Box 945
Blythewood, South Carolina 29016
Attorney for Omni Insurance Group

Melissa G. Mosier, Esquire
McWhirter, Bellinger & Associates, P.A.-Columbia
119 East Main Street
Lexington, South Carolina 29072
Attorney for La'Rissa Tidwell

RICHLAND COUNTY
FILED
2011 SEP 29 AM 10:01
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

Paula L. Mathis

Paula L. Mathis
Legal Assistant to Charles O. Williams III

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Bristol West Insurance,

Intervening Party,

In re:

Omni Insurance Group,

Plaintiff,

vs.

La'Rissa Tidwell,

Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2011-CP-40-3734

**ANSWER TO INTERVENER'S
COMPLAINT
(Non-Jury)**

RICHLAND COUNTY
FILED
2011 OCT 28 AM 9:06
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

Omni Insurance Group, answering the Complaint of the Intervener, Bristol West Insurance, would respectfully show unto the Court the following:

1. Each and every allegation in Intervener's Complaint not hereinafter specifically addressed, admitted, or clarified is denied.
2. Omni Insurance Group lacks sufficient information to form a belief as to Paragraph 1 of the Intervener's Complaint and the Paragraph is therefore denied.
3. Omni Insurance Group admits Paragraph 2 of Intervener's Complaint.
4. Omni Insurance Group lacks sufficient information to form a belief as to Paragraph 3 of the Intervener's Complaint and the Paragraph is therefore denied.
5. Omni Insurance Group admits Paragraphs 4, 5, 6, 7, 8, 9, 10, 11, and 12 of Intervener's Complaint.

6. Omni Insurance Group admits Paragraphs 13, 14, and 15 of Intervener's Complaint.
7. Omni Insurance Group denies Paragraph 16 of Intervener's Complaint.
8. Omni Insurance Group admits Paragraph 17 of Intervener's Complaint.
9. Omni Insurance Group denies Paragraphs, 18, 19, 20, 21, 22, 23 and the wherefore clause of Intervener's Complaint.

WHEREFORE, having fully set forth the Answer of Omni Insurance Group to the Intervener's Complaint, Omni Insurance Group prays for the Court to inquire into the matters raised herein find that the duplicate payment exclusion in the subject policy is valid and enforceable. Accordingly, Omni Insurance Group seeks a Declaratory Judgment Order holding that La'Rissa Tidwell is not entitled to underinsured coverage under the policy of insurance issued to Wendy C. Williams, Policy No.3501704, and for other such relief as the Court may deem just and proper.



Douglas E. Leadbitter (SC Bar #68430)
Douglas E. Leadbitter, LLC
Post Office Box 945
Blythewood, South Carolina 29016
803.348.4429 Telephone
803.333.0364 Facsimile
email: leadbitterlaw@gmail.com

ATTORNEYS FOR OMNI INSURANCE GROUP

October 26, 2011

CERTIFICATE OF SERVICE BY MAIL
Civil Action No. 11-CP-40-3734

I, the undersigned attorney, for the law firm of Douglas E. Leadbitter, LLC do hereby certify that I have served a copy of the foregoing document upon Counsel of Record for Plaintiff by U.S. Mail, postage prepaid, on October 26, 2011 at the following address:

Document Served:

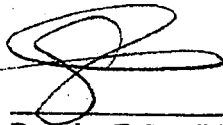
Answer to Intervener's Complaint

Counsel Served:

Melissa Mosier
McWhirter, Bellinger & Associates, P.A.
119 East Main Street
Lexington, South Carolina 29017

Charles O. Williams
McAngus Goudelock & Courie, LLC
Post Office Box 12519
Columbia, South Carolina 29211-2519

RICHLAND COUNTY
FILED
2011 OCT 28 AM 9:06
JEANNETTE W. MCBRIDE
C.C.P. & G.S.



Douglas E. Leadbitter (SC Bar # 68430)

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
Bristol West Insurance,)
)
Intervener,)
)
In re:)
)
Omni Insurance Group,)
)
Plaintiff,)
)
-vs-)
)
La'Rissa Tidwell,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Civil Action No.: 2011-CP-40-3734

**ANSWER TO INTERVENER'S COMPLAINT
(Non-Jury)**

The Defendant, answering the Complaint of the Intervener, Bristol West Insurance, would respectfully show unto this Court the following:

1. Defendant denies each and every allegation of the Complaint not hereinafter explained, admitted, or qualified.
2. Defendant admits, upon information and belief, the allegations of Paragraph 1 of the Complaint.
3. As to Paragraph 2, Defendant admits that at the time of the automobile collision leading up to this action, she was a resident of Richland County, South Carolina.
4. Defendant admits, upon information and belief, the allegations of Paragraphs 3 and 4 of the Complaint.
5. Defendant, upon information and belief, admits the allegations set forth in Paragraphs 5, 6, and 7 of the Complaint.
6. Defendant admits the allegations set forth in Paragraph 8 of the Complaint.

7. Defendant admits, upon information and belief, the allegations set forth in Paragraphs 9 and 10 of the Complaint.
8. Defendant admits, upon information and belief, the allegations set forth in Paragraph 11, and further avers that at the time of the wreck that is the subject of this dispute, she was a resident relative of the policy holder, Mildred Tidwell.
9. Defendant admits the allegations set forth in Paragraph 12 of the Complaint, and further avers that Defendant's damages are in excess of the liability limits.
10. Defendant admits so much of Paragraph 13 as can be construed to allege that Omni Insurance Group's policy appears to be primary and that the Bristol West policy appears to be secondary, and contends that both Omni Insurance Group and Bristol West's underinsured motorist coverages are indeed applicable to Defendant.
11. Defendant admits, upon information and belief, the allegations of Paragraphs 14, 15 and 16 of the Complaint.
12. Defendant admits, upon information and belief, the allegations of Paragraph 17, and further avers that the endorsement cited by Plaintiff does not appear on the Declarations Page, as required on the face of the endorsement itself. *See* Plaintiff's Exhibit B, Omni Personal Auto Policy at p. 59.
13. Defendant admits, upon information and belief, the allegations of Paragraphs 18, 19 and 20.
14. Defendant admits, upon information and belief, the allegations of Paragraph 21.
15. Defendant admits, upon information and belief, the allegations of Paragraph 22, and further avers that any endorsements or exclusions claimed by Plaintiff Omni are in irreconcilable conflict with the South Carolina laws of insurance as codified at S.C. Code

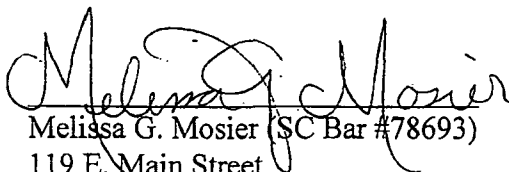
Ann. §38-77-10 *et seq.* and are further in conflict with South Carolina jurisprudence regarding insureds and underinsured motorist coverage, and are thus void as a matter of law.

16. Defendant admits, upon information and belief, the allegations of Paragraph 23.

WHEREFORE, having fully answered the Complaint, Defendant respectfully requests that this Honorable Court inquire into these matters and issue its Order:

- A. Declaring that Plaintiff Omni Insurance Group's insurance policy provides primary underinsured motorist coverage in the amount of \$25,000 to compensate for those damages in excess of the liability limits;
- B. Declaring that Bristol West Insurance's policy provides excess underinsured motorist coverage in the amount of \$50,000;
- C. Declaring that Plaintiff must reform any policy provisions against public policy or in direct contravention of South Carolina statutes and case law;
- D. Awarding Defendant a reasonable amount of attorneys' fees and costs; and
- E. For such other and further relief as this Honorable Court may deem just and proper.

McWHIRTER, BELLINGER & ASSOCIATES, P.A.

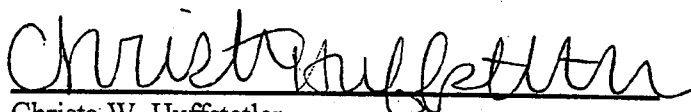
By: 
Melissa G. Mosier (SC Bar #78693)
119 E. Main Street
Lexington, SC 29072
803.359.5523 (Office)
803.996.9080 (Fax)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is the paralegal for Melissa G. Mosier, attorney for the Plaintiff in the above-entitled action, and that the foregoing Defendant's Answer to Plaintiff's Complaint was served upon the persons listed below by depositing a copy thereof in the United States Mail, with sufficient postage annexed thereto, addressed as follows:

Doug E. Leadbitter, Esquire
P.O. Box 945
Blythewood, SC 29016

Charles O. Williams, III, Esquire
McAngus, Goudelock & Courie, LLC
P.O. Box 12519
Columbia, SC 29211


Christa W. Huffstetler

October 17, 2011

20702-11001

LAW OFFICES

MCWHIRTER, BELLINGER & ASSOCIATES, P.A.

119 EAST MAIN STREET
LEXINGTON, SOUTH CAROLINA 29072
(803) 359-5523
FAX (803) 359-1248
mail@mcwhirterlaw.com

H. PATTERSON MCWHIRTER
THOMAS P. BELLINGER
GARLAND P. MCWHIRTER
STACEY TARTE MEYER
JOSEPH R. DASTA
ANGELA J. JOHNSON
JENNIFER N. WILLIAMS
L. LISA McPHERSON

ELIZABETH McMAHON PENTZ
RICHARD W. SIMMONS, II
J. TYLER LEE, JR.
CAROLINE CALLISON TIFFIN
MELISSA G. MOSIER
E. MICHAEL CARLTON
JOHN P. MEADORS

January 6, 2012

Doug E. Leadbitter, Esquire
P.O. Box 945
Blythewood, SC 29016

Charles O. Williams, Esquire
McAngus, Goudelock & Courie, LLC
P.O. Box 12519
Columbia, SC 29211

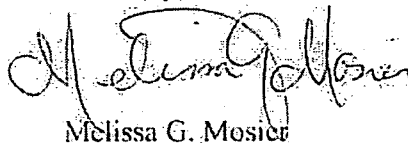
Re: Omni Insurance Group v. La'Rissa Tidwell
Civil Action No. 2011-CP-40-3734

Gentlemen:

Enclosed you will find La'Rissa Tidwell's Motion for Summary Judgment regarding the above captioned file.

If you have any questions, please call.

Sincerely,



Melissa G. Mosier

MGM:lgm

STATE OF SOUTH CAROLINA

COUNTY OF Richland

Omni Insurance Group

Plaintiff,

vs.

La'Rissa Tidwell

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CASE NO.: 2011-CP-40-03734

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney:

Melissa G. Mosier, Bar No. 78693

Address:

119 East Main Street, Lexington, SC 29072

Phone: 803-359-5522 Fax 803-359-1248

E-mail: MelissaM@mcwhirterlaw.com Other:

Defendant's Attorney:

Charles O. Williams, III, Bar No.

Address:

McAngus Goudelock & Corrie,

PO Box 12519, Columbia, SC 29211

Phone: 803-779-2300 Fax

E-mail: Other:

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

☐ **FORM MOTION, NO HEARING REQUESTED** (complete SECTIONS II and III)

☐ **PROPOSED ORDER/CONSENT ORDER** (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion for Summary Judgement

Estimated Time Needed: 20 minutes

Court Reporter Needed: ☒ YES ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

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

Melissa G. Mosier
Signature of Attorney for ☐ Plaintiff ☒ Defendant

01-06-12

Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$

☐ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other:

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____

☐ CONTESTED - AMOUNT DUE: \$ _____

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Omni Insurance Group,)

Plaintiff,)

-vs-)

La'Rissa Tidwell,)

Defendant.)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Civil Action No.: 2011-CP-40-03734

MOTION FOR SUMMARY JUDGMENT

JEANETTE W. McBRIDE
CLERK P. & C.S.

2012 JAN -6 AM 10:48

RICHLAND COUNTY
FILED

TO: CHARLES O. WILLIAMS, III, ATTORNEY FOR BRISTOL WEST INSURANCE
COMPANY, AND DOUGLAS E. LEADBITTER, ATTORNEY FOR PLAINTIFF OMNI
INSURANCE GROUP

YOU WILL PLEASE TAKE NOTICE that ten (10) days after the service of this notice upon you, or as soon thereafter as counsel may be heard, the undersigned attorney for Defendant La'Rissa Tidwell will move before the presiding judge of the Richland County Court of Common Pleas for an Order affirming that (1) Defendant La'Rissa Tidwell is entitled to underinsured motorist coverage under the Omni Insurance Group (hereinafter "Omni") policy, Policy No. 3501704, and (2) Omni's underinsured motorist coverage, Policy No. 3501704, is primary and that Bristol West Insurance Company's (hereinafter "Bristol") underinsured motorist coverage applicable to this case is secondary in nature. Defendant asserts that there are no genuine issues of material fact and that she is entitled to judgment as a matter of law.

Defendant asserts that Omni's Answer to Bristol's Intervening Complaint admits that:

1. On or about April 2, 2010 Defendant was a guest passenger in a vehicle driven by Ajaraniesh S. Williams;

2. That Ajaraniesh S. Williams was a permissive user of a vehicle owned by Wendy C. Williams;
3. That Omni provided liability and underinsured coverage on the vehicle owned by Wendy C. Williams and driven by Ajarenish S. Williams;
4. That Defendant was a guest passenger on the date of the wreck in question, and as such qualifies as a Class II insured pursuant to the Omni policy;
5. That on the date of the wreck in question, Defendant was Class II insured under S.C. Code Ann. §38-77-30(7);
6. That Part C-2, the Underinsured Motorist Coverage Endorsement to the Omni policy cited in Omni's Complaint is inapplicable to the above-referenced case;

Defendant further asserts that:

7. The Omni underinsured motorist policy applies to and covers Defendant because her damages, economic and non-economic, exceed the liability limits carried by Omni's driver;
8. That the only exceptions limiting underinsured motorist coverage are found within South Carolina Code Ann. § 38-77-160, therefore Omni's policy, purporting further exceptions upon underinsured motorist coverage, were never intended or contemplated by the Legislature, are in direct and irreconcilable conflict with the statute, and thus void as a matter of law.
9. That "where an insurance policy is issued pursuant to a statute which authorizes an exception to the coverage, all other exceptions are excluded." *McDonald v. State Farm Mut. Auto Ins. Co.*, 287 S.C. 40, 336 S.E.2d 492, 494 (Ct. App. 1995).

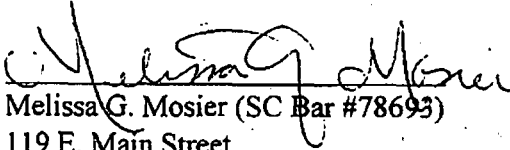
10. That Omni's own policy provides that it is intended to comply with the South Carolina law of insurance, and that if any provision conflicts with the law, it is changed to comply with the South Carolina law of insurance. *See* Omni Policy pp. 29, 36 (entitled "Conformity to Statute.")
11. That since Omni's own policy clearly contemplates that void clauses be replaced with the applicable statute, this Court may properly substitute the language of the UIM statute for the void clauses that render the UIM policy inapplicable. *See Kay v. State Farm Mut. Auto Ins. Co.*, 349 S.C. 446, 450-51, 562 S.E.2d 676, 679 (Ct. App. 2002).
12. That had the Legislature thought it wise to allow insurance companies to further curtail UIM exposure, it could have explicitly done so within the statute. Therefore our high courts have adopted a policy of construing motor vehicle insurance statutes strictly against insurers. *See Pennsylvania Nat'l Mut. Cas. Ins. Co. v. Parker*, 282 S.C. 546, 320 S.E.2d 458 (Ct. App. 1984).

According to Omni's own admissions in their Answer to Bristol's Intervening Complaint, Omni admits that Defendant is a Class II insured and her driver was a permissive user of the vehicle involved in the wreck that is the subject of this case. South Carolina Code Ann. §38-77-160 provides that Class II insureds are entitled to underinsured motorist coverage. Because the limitations on coverage set forth in the §38-77-160 are exclusive, further limitations in Omni's policy are void as a matter of law, and Omni's own policy permits this Court to reform it to comport with the South Carolina law of insurance. As a result, Defendant asserts that the pleadings and admissions of file show that there is no genuine issue as to any material fact and that Defendant is

entitled to judgement as a matter of law pursuant to Rule 56 of the South Carolina Rules of Civil Procedure. As such, Defendant urges this court to grant Summary Judgment in favor of the Defendant and find that Omni's policy applies and is primary, and that Bristol's policy is secondary. Defendant reserves the right to submit a memorandum of law in support of her Motion prior to the hearing.

McWHIRTER, BELLINGER & ASSOCIATES, P.A.

By:


Melissa G. Mosier (SC Bar #78693)

119 E. Main Street

Lexington, SC 29072

803.359.5523 (Office)

803.996.9080 (Fax)

Attorney for Defendant

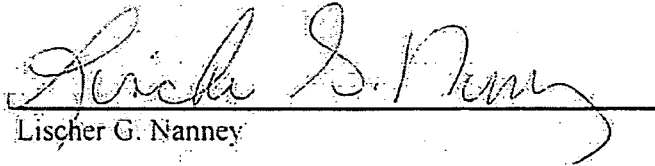
January 6th, 2012

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is the paralegal for Melissa G. Mosier, attorney for the Plaintiff in the above-entitled action, and that the foregoing Defendant La'Rissa Tidwell's Motion for Summary Judgment was served upon the persons listed below by depositing a copy thereof in the United States Mail, with sufficient postage annexed thereto, addressed as follows:

Doug E. Leadbitter, Esquire
P.O. Box 945
Blythewood, SC 29016

Charles O. Williams, III, Esquire
McAngus, Goudelock & Courie, LLC
P.O. Box 12519
Columbia, SC 29211


Lischer G. Nanney

January 6, 2012

COUNTY OF RICHLAND

Omni Insurance Group

Plaintiff(s)

vs.

La'Rissa Tidwell

Defendant(s)

IN THE COURT OF COMMON PLEAS

MOTION AND ORDER INFORMATION FORM
AND COVER SHEET

C/A No: 2011-CP-40-3734

Plaintiff's Attorney:
Douglas E. Leadbitter
Address:
Post Office Box 945
Blythewood, South Carolina 29016
phone: leadbitterlaw@gmail.com fax: (803) 333-0364
e-mail: leadbitterlaw@gmail.com

Intervener's (Bristol) Attorney:
Charles O. Williams III Bar No. 69495
Address: McAngus, Goudelock & Courie, LLC
Post Office Box 12519, Capitol Station
Meridian, 1320 Main Street, 10th Floor (29201)
Columbia, South Carolina 29211-2519
(803) 779-2300
Direct number: (803) 227-2264 Fax: (803) 748-0526
e-mail: cwilliams@mgclaw.com

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

☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)

☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion for Summary Judgment

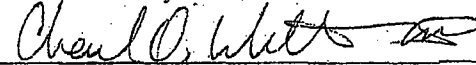
Estimated Time Needed: 15 min. Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☒ X Written motion attached

☐ Form Motion/Order

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



Signature of Attorney for ☒ Plaintiff / ☐ Defendant

12/15/11

Date submitted

SECTION III: Motion Fee

☒ X PAID - AMOUNT: \$25.00

☐ EXEMPT:
(check reason)

- ☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other:

JUDGE

CODE:

Date:

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

☐ MOTION FEE COLLECTED: _____

☐ CONTESTED - AMOUNT DUE: _____

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

OMNI INSURANCE GROUP,

Plaintiff,

vs.

LA'RISSA TIDWELL,

Defendant.

Civil Action No. 2011-CP-40-3734

BRISTOL WEST INSURANCE
COMPANY'S MOTION FOR
SUMMARY JUDGMENT

TO: DOUGLAS E. LEADBITTER, ATTORNEY FOR PLAINTIFF OMNI INSURANCE GROUP and MELISSA G. MOSIER, ATTORNEY FOR DEFENDANT LA'RISSA TIDWELL

YOU WILL PLEASE TAKE NOTICE that ten (10) days after service of this notice upon you, or as soon thereafter as counsel may be heard, the undersigned attorney for Bristol West Insurance Company ("Bristol") will move before the presiding judge of the Richland County Court of Common Pleas for an Order affirming that (1) Defendant La'Rissa Tidwell is entitled to underinsured motorist coverage under the Omni Insurance Group ("Omni") policy, Policy No. 3501704, and (2) Omni's underinsured motorist coverage, Policy No. 3501704, is primary and that Bristol's underinsured motorist coverage applicable to this case is secondary to any damages asserted by La'Rissa Tidwell in the underlying proceeding. Bristol asserts there are no issues of material fact and they are entitled to judgment as a matter of law.

Bristol asserts that Omni's Answer to Bristol's Intervening Complaint, admits the following:

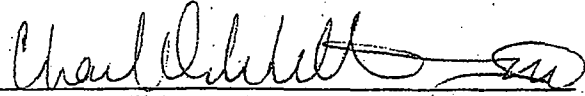
1. That on or about April 2, 2010, La'Rissa Tidwell was a passenger in a vehicle driven by Ajaraniesh S. Williams;

2. That Ajaraniesh S. Williams was driving an automobile owned by Wendy C. Williams with Wendy C. Williams' permission;
3. That Omni provided liability coverage and underinsured motorist coverage on the vehicle owned by Wendy C. Williams and driven by Ajaraniesh S. Williams;
4. That if Omni's underinsured motorist coverage is applicable to the claims of La'Rissa Tidwell, Omni Insurance's underinsured motorist coverage would be primary and Bristol's underinsured motorist coverage would be secondary;
5. That La'Rissa Tidwell is a Class II insured pursuant to Omni's policy (Policy No. 3501704), issued to Wendy C. Williams;
6. That on the date of the incident, April 2, 2010, La'Rissa Tidwell was a Class II insured under South Carolina Code Ann. § 38-77-30(7) (1995); and
7. That Part C-2, Underinsured Motorist Coverage Endorsement to Policy No. 3501704, contained as an exhibit to Omni's Complaint is inapplicable to the above-referenced case.

Per Omni's admissions in their Answer to Bristol's Intervening Complaint, Omni admits that La'Rissa Tidwell was a Class II insured and permissive user of the vehicle in question at the time of the accident. As a Class II insured, Tidwell is entitled to underinsured motorist coverage under Omni's policy pursuant to South Carolina Code Ann. § 38-77-160, Code of Laws 2002. As such, Bristol asserts that there is no issue of law and summary judgment should be granted pursuant to Rule 56 of the South Carolina Rules of Civil Procedure. Bristol's Motion is based on

the pleadings, discovery, affidavits, exhibits, deposition transcripts and all other admissible evidence as well as the applicable common law and statutory law. Bristol reserves the right to submit a Memorandum in support of its Motion prior to hearing.

McANGUS GOUDELOCK & COURIE, L.L.C.



Charles O. Williams III
Post Office Box 12519, Capitol Station
Meridian, 1320 Main Street, 10th Floor (29201)
Columbia, South Carolina 29211-2519
(803) 779-2300

ATTORNEYS FOR BRISTOL WEST
INSURANCE COMPANY

December 15, 2011

CERTIFICATE OF SERVICE

I hereby certify that I have this 15th day of December, 2011 served a copy of the foregoing Motion for Summary Judgment by mailing copies of same, postage prepaid, in the United States mail, with sufficient postage affixed as follows:

Melissa G. Mosier, Esquire
McWhirter, Bellinger & Associates, P.A.-Columbia
119 East Main Street
Lexington, South Carolina 29072
Attorney for La'Rissa Tidwell

Douglas E. Leadbitter
Douglas E. Leadbitter, LLC
Post Office Box 945
Blythewood, South Carolina 29016
Attorney for Omni Insurance Group

2011 DEC 16 AM 10:53
JEANETTE W. McBRIDE
C.C.P. & G.S.

Paula L. Mathis

Paula L. Mathis
Legal Assistant to Charles O. Williams III

Richland County Common Pleas
Clerk : Jeanette W. McBride
Richland County Judicial Center
Columbia, SC 29201
(803) 576-1999

Received From: Williams, Charles O III
Mc Angus Goudelock & Courie, L L C
Columbia, SC 29211

Date : 12/16/2011
RECEIPT # 133959
Clerk: COCMETTS

Paying for: Omni Insurance Group,
Transaction Type: Payment

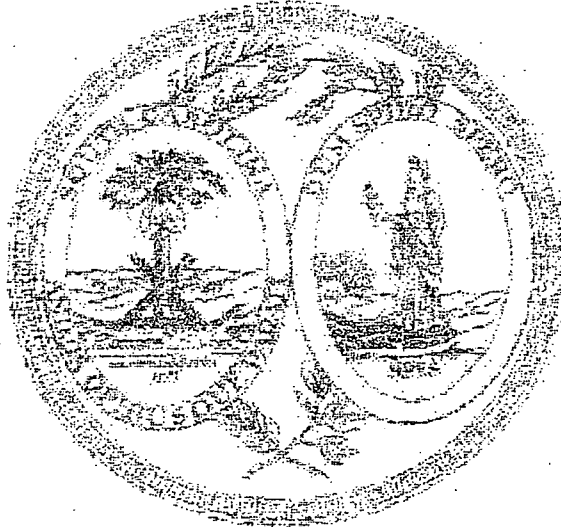
Payment Type: Check \$25.00

Total Paid \$25.00

Reference # 166192

Comment:

<u>Case #</u>	<u>Caption</u>	<u>Previous Balance</u>	<u>Amount Paid</u>	<u>Balance Due</u>
2011CP4003734	Omni Insurance Group vs Larissa Tidwell , defendant, et al	\$25.00	\$25.00	\$0.00



Total Cases:	1	\$25.00	\$25.00	\$0.00
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STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

BRISTOL WEST INSURANCE
COMPANY,

Intervening Plaintiff,

IN RE:

OMNI INSURANCE GROUP,

Plaintiff,

vs.

LA'RISSA TIDWELL,

Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2011-CP-40-3734

**INTERVENING PLAINTIFF BRISTOL
WEST'S MEMORANDUM IN
SUPPORT OF MOTION FOR
SUMMARY JUDGMENT**

This matter is before the Court on the Motion of Intervening Plaintiff Bristol West Insurance Company ("Bristol") for Summary Judgment. Bristol hereby submits its Memorandum in Supports of its Motion for Summary Judgment.

I. FACTS

On or about April 2, 2010, La'Rissa Tidwell was riding as a passenger in a vehicle driven by Ajaraniesh S. Williams. Ajaraniesh S. Williams was a permissive user of the vehicle owned by Wendy C. Williams. Omni Insurance Group provided liability and underinsured coverage for the vehicle owned by Wendy C. Williams and operated by Ajaraniesh S. Williams. Upon information and belief, La'Rissa Tidwell was injured in a motor vehicle accident that occurred on April 2, 2010, while a guest passenger in the vehicle in question. The Omni Insurance policy number, issued to Wendy C. Williams, was Policy No. 3501704. Prior to filing their Declaratory Judgment action, Omni Insurance Group tendered liability proceeds to La'Rissa Tidwell in the amount of \$25,000.00 in exchange for a Covenant Not to Execute.

II. ISSUES

1. Does La'Rissa Tidwell, a Class II insured on the policy of Wendy C. Williams, qualify for underinsured motorist coverage under Omni Insurance Policy No. 3501704 as a result of the accident that occurred on April 2, 2010?

III. LEGAL ARGUMENT

Prior to arguing issues of law, Bristol asserts it is important to note the admissions that Omni made in its Answer to Bristol's Intervening Complaint. In its Answer to Bristol's Intervening Complaint, Omni admitted:

1. That on or about April 2, 2010, La'Rissa Tidwell was a passenger in a vehicle driven by Ajaraniesh S. Williams;
2. That Ajaraniesh S. Williams was driving an automobile owned by Wendy C. Williams with Wendy C. Williams' permission;
3. That Omni provided liability coverage and underinsured coverage on the vehicle owned by Wendy C. Williams and driven by Ajaraniesh S. Williams;
4. That if Omni's underinsured motorist coverage is applicable to the claim of La'Rissa Tidwell, Omni's underinsured motorist coverage would be primary and Bristol's underinsured motorist coverage would be secondary;
5. That La'Rissa Tidwell is a Class II insured pursuant to Omni's policy (Policy No. 3501704, issued to Wendy C. Williams);
6. On the date of the incident, April 2, 2010, La'Rissa Tidwell was a Class II insured under S. C. Code Ann. § 38-77-30(7)(1995); and

7. That Part C-2, Underinsured Motorist Coverage Endorsement Policy No. 3501704, contained as an exhibit to Omni's Complaint at p. 63 of Omni's policy, is inapplicable to the above-referenced case.

Bristol asserts these admissions are important because Omni admits that La'Rissa Tidwell is a Class II insured pursuant to Omni's policy and South Carolina law. Having narrowed the contested issues in this case by their admissions, the only real issues before the Court are:

(A) Whether Omni's policy can restrict the definition of "insured," such that it conflicts with the definition contained in S.C. Code Ann. § 38-77-30(7), thus restricting Tidwell's ability to recover underinsured motorist coverage under said policy; and

(B) Whether Omni's policy contains any valid exclusions that restrict Tidwell's ability to collect underinsured motorist coverage on the policy in question?

A. Omni asserts in Paragraph 20 that Tidwell is not an insured under its UIM provision because that provision defines "insured" as the named insured only. Omni cites Exhibit "B," *Omni Personal Auto Policy Part C-2, Underinsured Motorist Coverage Endorsement*, at page 62 of its policy.

In its Intervening Complaint, Bristol asserts this Endorsement is not applicable to Policy No. 3501704. A plain reading of the restrictions of this section, and Omni's Policy Declarations, reveal this language does not apply to this policy. Page 59 of Omni's policy contains the following language:

The following endorsement only applies if Form 0839-7 appears in the Policy Declarations.

Omni's Policy Declarations do not contain Form 0839-7. Omni's Declarations page asserts only that Form 0839 and 0839-12 apply to Policy No. 3501704.

Further, even if Omni's Declarations contained that endorsement, the endorsement would not be valid under South Carolina law. "If a provision in the insurance contract excluding coverage is in conflict with the requirements of the statute, the statute controls the rights of the parties, *Hogan v. Home Ins. Co.*, 260 S.C. 157, 160, 194 S.E.2d 890, 891 (1973). As noted above, Omni has already admitted that Tidwell falls within the statutory definition of a Class II insured.

B. Second, Omni asserts that even if Tidwell is considered a Class II insured, under the policy, Part C-2 *Underinsured Motorist Coverage*, specifically limits Omni's liability for duplicate payments under the policy.

Notably, Part C-2 – *Underinsured Motorist Coverage* begins at page 29 of Omni's policy. Omni appears to argue that its limiting language will not allow for duplicate payments as defined under Section C(2)(d). Section C(2)(d) states:

No one will be entitled to receive duplicate payments for the same elements of loss under this coverage (underinsured motorist coverage) and Part A, Part B, Part C(1) or Part D in this policy.

Notably, Part A of Omni's policy is titled *Liability Coverage*. Parts B and C of Omni's policy are not relevant to this discussion.

As agreed to by the parties, Omni tendered its liability limits of \$25,000.00 to Tidwell in exchange for a Covenant Not to Execute. Omni appears to argue that payment of additional underinsured proceeds from its policy would constitute "duplicate payments." Bristol does not understand this argument. Further, Bristol asserts there is no issue as to duplicate payment because Omni, or any UIM carrier for that matter, will receive a \$25,000.00 setoff at trial. There can be no duplicate payment when the UIM carrier is receiving a setoff.

C. In its Declaratory Judgment Action, Omni references case law that allegedly supports Omni's argument that its UIM proceeds are not applicable to Tidwell.

1. *Nationwide Mutual Insurance Company v. Erwood*, 373 S.C. 88, 644 S.E.2d 62 (2007). Omni relies on *Erwood* in Paragraph 22 of its Declaratory Judgment Action, stating it has the right to enforce exclusions by specifically defining insureds, and further limiting its liability for duplicate coverage under the underinsured provisions of its policy. Bristol asserts the holding in *Erwood* does not apply to this case. *Erwood* dealt with the portability of basic uninsured (UM) coverage. *Erwood* did not involve underinsured (UIM) coverage. As a result, *Erwood* is inapplicable to the present case.

2. *United Services Auto Association v. Markosky*, 340 S.C. 223, 530 S.E.2d 660 (Ct. App. 2000). Omni asserted in Paragraph 24 of its Declaratory Judgment Action that it can exclude coverage and limit liability pursuant to the underinsured motorist provisions of the policy issued to Wendy C. Williams, and further asserted that this exclusion does not violate any provision of the South Carolina Motor Vehicle Financial Responsibility Act, S.C. Code Ann. § 56-9-10, *et seq.* Omni references *Markosky* in Paragraph 24.

Markosky involved the reduction of liability limits to the statutory minimum when an insured went into default. Further, Bristol asserts that *Markosky* does not address underinsured motorist coverage or the limitations of underinsured motorist coverage at all, nor does contain language purporting to limit the applicability of underinsured motorist coverage.

3. *Bratcher v. National Grange Mutual Insurance Company*, 292 S.C. 330, 356 S.E.2d 151 (Ct. App. 1987). Omni asserts in Paragraph 25 of its Declaratory Judgment Action that *Bratcher* held that liability and underinsured motorist coverage are not required to be paid from the same policy of insurance.

Bratcher simply stated that exclusionary language within its policy that sought to do more than limit the amount of available underinsured motorist coverage was void as a matter of law. Bristol asserts the limited holding in *Bratcher* is not applicable to this case. Notably, in *Bratcher*, the Supreme Court invalidated the exclusion that National Grange attempted to argue and allowed the guest passenger (son of named insured) to collect both liability and underinsured motorist benefits.

IV. CONCLUSION

La'Rissa Tidwell is a permissive user and Class II insured under S.C. Code Ann. § 38-77-30(7)(1995). Tidwell is entitled to UIM coverage pursuant to S.C. Code Ann. § 38-77-160. As a result of Tidwell's status as a Class II insured under the policy, and under the applicable statutes, Bristol asserts Tidwell is entitled to underinsured motorist coverage under Omni Policy No. 3501704. South Carolina law further recognizes that a carrier cannot impose greater restrictions in a UIM policy than what is allowed by statute. See *Hogan v. Home Ins. Co.*, 260 S.C. 157, 160, 194 S.E.2d 890, 891 (1973), and *Pennsylvania Nat. Mut. Cas. Ins. Co. v. Parker*, 282 S.C. 546, 320 S.E.2d 458 (Ct. App. 1984).

MCANGUS GOUDELOCK & COURIE, L.L.C.



Charles O. Williams III
Post Office Box 12519, Capitol Station
Meridian, 1320 Main Street, 10th Floor (29201)
Columbia, South Carolina 29211-2519
(803) 779-2300

ATTORNEYS FOR BRISTOL WEST
INSURANCE COMPANY

January 12, 2012

CERTIFICATE OF SERVICE

I hereby certify that I have this 12th day of January, 2012 served a copy of Memorandum in Support of Motion for Summary Judgment by mailing copies of same, postage prepaid, in the United States mail, with sufficient postage affixed as follows:

Douglas E. Leadbitter, Esquire
Douglas E. Leadbitter, LLC
Post Office Box 945
Blythewood, South Carolina 29016
Attorney for Omni Insurance Group

Melissa G. Mosier
McWhirter, Bellinger & Associates, P.A.-Columbia
119 East Main Street
Lexington, South Carolina 29072
Attorney for La'Rissa Tidwell

Paula L. Mathis

Paula L. Mathis
Legal Assistant to Charles O. Williams III

1 STATE OF SOUTH CAROLINA)

2 COUNTY OF RICHLAND)

COURT OF COMMON PLEAS
2011-CP-40-03734

3
4 Omni Insurance Group,)

5 Plaintiff,)

6 vs.)

7 La'Rissa Tidwell,)

8 Defendant.)

TRANSCRIPT OF RECORD

9 January 18, 2012
10 Columbia, South Carolina

11
12
13 B E F O R E:

14 THE HONORABLE DEANDREA G. BENJAMIN, JUDGE.

15
16
17 A P P E A R A N C E S:

18 DOUGLAS E. LEADBITTER, ESQ.
Attorney for the Plaintiff

19 MELISSA G. MOSIER, ESQ.
Attorney for the Defendant
20 La'Rissa Tidwell

21 CHARLES O. WILLIAMS, III, ESQ.
Attorney for the Defendant
22 Bristol West Insurance Company

23
24 DEBORAH M. McCURDY, RPR
25 Official Court Reporter

I N D E X O F W I T N E S S E S

(WHEREUPON, no witnesses were called
during these proceedings.)

E X H I B I T S

(WHEREUPON, no exhibits were introduced
during these proceedings.)

1 JANUARY 18, 2012

2 THE COURT: All right. I have one motion for
3 summary judgment. You said there was two?

4 MS. MOSIER: Yes, Your Honor. I did file a
5 motion for summary judgment on behalf of the
6 Defendant as well, La'Rissa Tidwell.

7 THE COURT: And when was that filed? Because
8 it is not scheduled for today.

9 MR. LEADBITTER: Your Honor, I think she filed
10 it about ten days ago.

11 THE COURT: Are you prepared to go forward
12 with both of them today or --

13 MR. LEADBITTER: Well, I think so, since it is
14 really -- it is a matter of law. And if he wins,
15 then she is going to win. I mean, their positions
16 are pretty much -- I think they are really tied
17 together really. So I'm prepared to go forward if
18 you want to hear her motion as well.

19 MS. MOSIER: Your Honor, I do have a copy. It
20 is the only copy I think that I have here right
21 now, if you would like me to approach and bring
22 that to you.

23 THE COURT: And, Mr. Williams, who do you
24 represent?

25 MR. WILLIAMS: Your Honor, I represent the

1 intervening Plaintiff in this case, Bristol West
2 Insurance Company.

3 THE COURT: Somebody give me some background.

4 MR. WILLIAMS: Sure, Your Honor. I would be
5 happy to. Again, Bo Williams, with McAngus,
6 Goudelock and Courie here on behalf of Bristol West
7 Insurance Company, who intervened in the present
8 case, which is a declaratory judgment action.

9 And, Your Honor, I filed a motion for summary
10 judgment, and I have got a memorandum. I have
11 copies of those if you don't have them immediately
12 before you.

13 THE COURT: I have them.

14 MR. WILLIAMS: Okay. Your Honor, this case
15 arises out of a car accident that occurred on
16 April 2nd, 2010. The car in question was owned by
17 a lady named Wendy Williams and the car was driven,
18 as I understand it, by her son or relative named
19 Ajarniesh Williams.

20 In that vehicle the current Defendant,
21 La'Rissa Tidwell, was a passenger. Ms. Tidwell was
22 pregnant at the time and was injured in that
23 accident.

24 As I understand it from her attorney,
25 Ms. Mosier, she incurred about \$16,000 in damages,

1 medical damages in that case.

2 As a result of filing suit in that case, or
3 the posture of that case, Omni Insurance Group, as
4 represented by Mr. Leadbitter, tendered their
5 liability limits of \$25,000 on that case.

6 Omni Insurance also had underinsured motorist
7 coverage, UIM coverage of \$25,000 on the same
8 vehicle.

9 That is the basic facts, Your Honor. Omni
10 Insurance has denied that the UIM benefits are
11 applicable to Ms. Tidwell.

12 Based upon that, they filed a declaratory
13 judgment action initially only against Ms. Tidwell.
14 Ms. Tidwell's attorney, Ms. Mosier, made my
15 carrier, Bristol West, aware of the declaratory
16 judgment action because my carrier insured Ms.
17 Tidwell and would also have another layer of
18 underinsured motorist coverage applicable.

19 Having learned of that, we intervened Bristol,
20 and we intervened as the Plaintiff, filed earlier
21 as a Plaintiff in this case, which addressed the
22 allegations made in Omni's complaint and served
23 them with allegations of our own.

24 Your Honor, that is the basic factual
25 situation. Omni has tendered their liability

1 limits. They are disputing whether or not there is
2 UIM coverage is applicable to Ms. Tidwell.

3 The parties have agreed and stipulated to a
4 lot of facts in this case. Omni -- we have alleged
5 and Omni agrees that Ms. Tidwell is a Class 2
6 insured in South Carolina.

7 Really, Your Honor, the sole matter at issue
8 in this case is whether there is limiting language
9 in Omni's insurance policy that does not allow Ms.
10 Tidwell to collect underinsured motorist coverage.
11 And we believe as matter of law South Carolina
12 provides that a Class 2 insured is able to collect
13 UIM coverage.

14 The specific language that Omni cites, Your
15 Honor -- and this is in their memorandum and also
16 in their complaint -- refers to language that says
17 that an insured cannot collect, quote, duplicate
18 payments for the same elements of loss under their
19 policy. And they term the liability coverage of 25
20 and the UIM coverage of 25 as being duplicate
21 payments.

22 And, really, that is I think the sole issue
23 that this case turns on. And it is our position
24 that that limitation does not agree with the
25 statute. There is a place, Your Honor, that the

1 statute says that the only real limitation you can
2 apply to UIM coverage is outlined in the statute
3 and anything above that and beyond that is not
4 allowed.

5 The Bratcher case talks about that, Your
6 Honor. If I may approach. I have outlined a
7 couple of portions. Bratcher is fairly consistent
8 with the facts of our case, Your Honor, with the
9 exception that Bratcher and the Bratcher passenger
10 was actually a named insured. However, Bratcher,
11 the named insured, the son of the at-fault driver,
12 his father, obtained liability insurance and they
13 obtained UIM coverage. Again, the sole difference
14 is that in this case we're just a permissive user.

15 But really, Your Honor, if you look at what is
16 being put forth by Omni as the limiting language of
17 their policy, then no insured, be it a Class 1 or
18 Class 2 insured, would ever be able to recover
19 liability or UIM insurance because they would be
20 considered duplicate coverages -- or according to
21 his argument.

22 Your Honor, I just don't think that is what
23 the statute says. It is really pretty simple, Your
24 Honor. And the parties have stipulated that if in
25 fact the Omni coverage applies, that our coverage

1 will be secondary, that the Bristol West
2 coverage -- we think it is pretty straightforward
3 and simple and agrees with Bratcher, Your Honor,
4 that as a Class 2 insured under the statute and
5 under their definition of an insured and Omni's own
6 policy, Ms. Tidwell is entitled to 25,000 -- well,
7 to be eligible to receive the UIM coverage, and
8 that must be exhausted before to get the Bristol
9 West coverage.

10 I understand that Ms. Tidwell has about
11 \$16,000 in damages in this case and she was
12 pregnant at the time of the accident. They seem to
13 be indicating that because I guess the liability
14 payments were in excess of \$16,000 of damages that
15 this would be a double recovery somehow.

16 Well, no jury has decided, you know, what the
17 value of this case is. You know, that is less than
18 two times the damages if that is the decision of
19 the jury, which we think is highly unlikely. That
20 doesn't provide for any pain and suffering or
21 anything on behalf of Ms. Tidwell.

22 Your Honor, that is essentially the position.
23 It is pretty straightforward. It is simply whether
24 the portions in their memorandum cited on Page 4
25 can limit the applicability of UIM coverage in

1 South Carolina. We don't believe they can.

2 THE COURT: All right. Yes, ma'am?

3 MS. MOSIER: Your Honor, the only thing I
4 really have to add, and it is outlined in my motion
5 for summary judgment, is that Omni's own policy
6 says that if any provision is merely in conflict
7 with our South Carolina statutes, that the policy
8 is subservient to the law of our state and it ought
9 to be reformed in order to comply with the law of
10 our state.

11 And Mr. Williams, the attorney for Bristol
12 West, and I both agree that the statute is very
13 clear that Ms. Tidwell is an insured according to
14 38-77-37, and that when you look at the definition
15 of an underinsured motor vehicle, under that same
16 statute and Subsection 15, that all that is
17 required to trigger the UIM coverage is that the
18 damages are in excess of the liability limit.

19 And for that reason, Your Honor, we believe
20 that their coverage does indeed apply and that it
21 is primary.

22 Thank you.

23 THE COURT: Thank you.

24 Yes, sir?

25 MR. LEADBITTER: Thank you, Your Honor. I'm

1 Doug Leadbitter on behalf of Omni. May it please
2 the Court?

3 Your Honor, what Mr. Williams has stated about
4 the facts I completely agree. Basically he boiled
5 it down to what the issue is.

6 And the issue is this. The UIM policy that
7 covers -- and it is a policy that was purchased by
8 Wendy Williams, it was purchased for Wendy
9 Williams. There is nothing that they have cited
10 to, no case, no indication in the statute of
11 38-77-160 that says that Omni cannot limit its
12 liability or its exposure under this policy for
13 UIM.

14 In fact, there is a number of cases that have
15 been cited in my brief -- and, by the way, I need
16 to hand up another brief for you because there is a
17 couple of typos on the references to the policy
18 that I corrected that were kind of confusing. I
19 changed Page 4.

20 But there is nothing in this language, this
21 limiting language, that says no one will receive a
22 duplicate payment. It is not a duplicate recovery,
23 it is a duplicate payment under two separate and
24 distinct provisions of the policy.

25 This policy is personal and portable to Wendy

1 C. Williams. It wasn't purchased for a third
2 party. Essentially their argument is that because
3 Wendy C. Williams negotiated for underinsured
4 coverage on her policy, that they as a third party
5 are able to step in and take advantage of that.

6 They cite the Bratcher case. Well, the
7 Bratcher case is pretty old. It is around 20
8 something years old. It was back in the 80's. And
9 it has largely been overturned. If any portion of
10 the Bratcher case still is applicable to this, I
11 think it stands for the exact proposition that they
12 say it does not, in that the Bratcher case was
13 dealing with some exclusionary language.

14 And the Court said that the reason that that
15 exclusionary language didn't apply was because you
16 were dealing with a named insured or a Class 1
17 insured, a family member. We have already
18 stipulated that that is not what we have here.

19 Wendy C. Williams and her family, which is
20 Ajarniesh -- I can't pronounce his name, whatever
21 his name is -- the driver of the vehicle, that is
22 who this policy was purchased for and that is who
23 it covers. That is that -- UIM is personal and
24 portable. It applies to them and to them only.

25 They are trying to say as a third party, even

1 though they have their own UIM coverage through
2 Bristol West for the -- La'Rissa Tidwell has her
3 own UIM coverage, she is saying, oh, wait a minute,
4 I'm also entitled to Wendy C. Williams' UIM
5 coverage.

6 We have got language in our policy that says
7 that no one is entitled to receive payments under
8 the liability and the UIM.

9 And if you ask yourself, wait a minute, who
10 did Wendy C. Williams -- who is she insuring
11 against. Her liability policy was exactly what has
12 already been tendered. That was to cover against a
13 third party making a claim against her.

14 Now they are saying that UIM coverage that she
15 bought for her, to cover in case someone else hit
16 her, that that is applicable to them and to their
17 client.

18 Our language in our policy is very clear.
19 There is a number of cases, Your Honor. I cite
20 them in my brief. There is a ton of them that say
21 that UIM coverage in South Carolina is not
22 mandatory. If it is not mandatory, then you can
23 add limiting language in your policy.

24 They said it is not against public policy to
25 limit the language. There is cases in South

1 Carolina that say that.

2 The Gambrell versus the Travelers case
3 recognizes the distinction between third parties
4 and the purchaser of the policy being the named
5 insured.

6 The Gambrell test says one who buys
7 underinsurance coverage to protect himself in case
8 of an at-fault driver has liability coverage, but
9 the amount is insufficient to cover the damages.
10 This is the protection for the additional premium
11 paid for the underinsured motorist coverage.

12 That is for the named insured. That is not
13 for third parties to tap into.

14 The public policy is in South Carolina, that
15 the Supreme Court has repeatedly said, is to
16 encourage people to buy their own personal and
17 portable underinsured coverage that goes with that
18 person, not with the vehicle. It shouldn't cover
19 the vehicle.

20 Her -- Wendy C. Williams' underinsured
21 coverage is for her and anybody in her family, her
22 Class 1 insureds, the people that that goes to. A
23 Class 2 passenger who is neither a family member
24 and who is not a -- or a resident relative, I think
25 is the criteria for that, those people aren't

1 entitled to collect against a UIM policy.

2 There is six -- I cited six different opinions
3 in my brief, Your Honor, that say that UIM coverage
4 is not mandatory coverage. The Burgess case, the
5 Garriss case, Gambrell case, Farm Mutual versus
6 Calcutt.

7 There is also case law that says if it is not
8 mandatory coverage, insureds can limit what they
9 can and cannot pay under that liability policy and
10 underinsured.

11 So our language that states specifically that
12 no one can collect under liability and UIM, no one
13 is entitled to receive both of those.

14 And that is exactly what they are trying to
15 do. They are trying to ignore the clear -- I don't
16 know what other spin that you can put on that --
17 very clear language of the policy that says no one
18 is entitled to collect under the liability and the
19 UIM.

20 They cited nothing that contradicts the UIM
21 statute. I put the UIM statute in my brief. It is
22 quoted in there. I don't know what they are saying
23 about our language that if allowed by the Courts to
24 limit the UIM statute what is in conflict with that
25 UIM statute.

1 Our position is there is nothing. They
2 pointed to nothing. They said that there is a
3 public policy. I don't even know what that public
4 policy is. The public policy by the Court, by the
5 clear case law that I cited in the brief, says that
6 our public policy is to allow UIM because it is not
7 mandatory coverage to be limited if they so choose,
8 which they did. That language doesn't conflict to
9 anything. There is no reason under a public policy
10 exception or a conflict of the statute.

11 They cited nothing other than just to stay,
12 well, they should have coverage. And, by the way,
13 not only should there be coverage, but it should be
14 first coverage.

15 Well, to accept that position you have to
16 accept the position that the coverage would cover
17 the vehicle and not the person. And that is also
18 in the case law. It doesn't cover it. That is
19 what personal and portable means. It covers the
20 person, not the vehicle.

21 So, Your Honor, I would ask the Court, you
22 know, this is a summary judgment motion, but it
23 really goes as a matter of law, you know, I don't
24 think there is really any fact in dispute here, as
25 a matter of law I think that they cannot establish

1 that our limiting language in our policy that
2 allows us to exclude or to limit the liability or
3 the coverage under the UIM is really applicable.

4 And she's got UIM coverage. She's already got
5 it. La'Rissa Tidwell has UIM. That is Bristol
6 West. That is what it was for. She bought that
7 coverage to cover her.

8 Well, we're just asking for the same thing.
9 Omni has a policy that is Wendy Williams' to say it
10 covers Wendy Williams and her family, not a third
11 party passenger that is in the vehicle.

12 We are not arguing about the definition of an
13 insured. Clearly she is the definition -- she fits
14 the definition of an insured, La'Rissa Tidwell
15 does, under the policy, but that is a Class 2
16 insured, not a Class 1 insured. She fits the --
17 she is going to be an insured. We have given her
18 the liability limits. She has already collected
19 those.

20 We are not arguing that there is double
21 damages or that they are double dipping, per se, we
22 are just saying that the coverage isn't there
23 because there is limiting language in the policy.

24 THE COURT: All right.

25 MR. LEADBITTER: Thank you, Judge.

1 THE COURT: Yes, sir?

2 MR. WILLIAMS: Your Honor, just in reply.

3 I think perhaps one thing that is at issue
4 here is, he refers to Ms. Tidwell numerous times in
5 his memorandum as a third-party claimant.

6 Well, she is an insured. She is a Class 2
7 insured. Insureds -- Class 2 insureds can collect
8 UIM benefits. They simply can't stack. A Class 1
9 insured can stack. If they had multiple vehicles
10 under the policy, they could stack those coverages.
11 She can't stack them. That is the limitation to
12 her. She can't stack.

13 They raise numerous cases, Your Honor, in
14 their complaint, most of which do not even refer to
15 UIM policy.

16 Burgess involved an insured who was driving a
17 motorcycle that did not even have UIM benefits on
18 it. It didn't involve a passenger who was a Class
19 2 insured. In his memorandum he claims that
20 Burgess overrules Bratcher. Burgess doesn't even
21 mention Bratcher in that opinion.

22 Your Honor, the statute itself, 38-77-160
23 states that automobile insurance carriers shall
24 offer at the option of the insured uninsured
25 motorist coverage up to the limits of the insured's

1 liability coverage in addition to the mandatory
2 coverage prescribed by 38-77-150.

3 They shall also offer at the option of the
4 insured underinsured motorist coverage up to the
5 limits of the insured's liability coverage to
6 provide coverage in the event that damages are
7 sustained in excess of liability limits carried by
8 an at-fault insured.

9 And in this case, Ajarniesh Williams is an
10 at-fault insured, or an underinsured motorist.

11 If a jury determines that damages in this case
12 are in excess of \$25,000, the Williams' vehicle is
13 an underinsured vehicle. As a Class 2 insured,
14 which they are admitting she is, she's entitled to
15 UIM benefits. He is entitled to a setoff. There
16 are no duplicate payments.

17 If you apply the language he is arguing in his
18 memorandum, Your Honor, then Wendy Williams could
19 never recover liability benefits and UIM benefits,
20 nor could Ajarniesh Williams.

21 There is no limitation that says in this
22 language he has cited that it has to be a Class 1
23 or a Class 2 insured. The language he is citing
24 says that no one will be entitled to receive
25 duplicate payments for the same elements of loss

1 under UIM coverage and liability coverage.

2 That flies completely in the face of what the
3 statute requires in South Carolina. So he's not
4 limiting it just to Class 2 insureds, their
5 language is trying to limit it to Class 1 insureds
6 as well. Class 2 insureds are entitled to collect
7 UIM benefits, Your Honor.

8 You know, if this policy does not define
9 duplicate payments -- and to the extent the
10 statute -- the policy doesn't define it, it is
11 going to be construed against them.

12 Your Honor, I'm not sure what else to say
13 other than it is -- I understood it was always
14 accepted that a Class 2 insured was entitled to UIM
15 benefits. I think the Bratcher case states that.
16 It has never been overruled. I looked at it today.
17 Burgess doesn't mention Bratcher, much less
18 overrule it. It is good law.

19 Mr. Leadbitter has not cited a single case
20 that upholds the duplicate payments language that
21 he is trying to advance in this situation.

22 Obviously UIM coverage is optional.
23 Ms. Williams chose to purchase UIM coverage on this
24 vehicle to cover insureds. Ms. Tidwell was an
25 insured of her vehicle. She is a Class 2 insured

1 so she cannot stack. To the extent that Ms.
2 Williams had an extra vehicle on that policy, she
3 can't stack those policies, but she is entitled to
4 one layer of coverage.

5 That's all I have, Your Honor.

6 MR. LEADBITTER: Your Honor, if I can, just
7 one more comment -- or a couple of more.

8 The stacking part is really inapplicable.
9 That has nothing to do with anything. We're not
10 taking the position the Class 2 having to do with
11 stacking. That would be stacking on her own
12 policy. She can't stack her UIM coverage and my
13 coverage. We are talking about two different
14 policies, two different insureds that stacking
15 would even be applied. So that doesn't have
16 anything to do with anything.

17 The issue about no one is entitled to receive
18 duplicate payments, Your Honor, we're not taking
19 the position that a Class 1 insured wouldn't be
20 able to collect, because that is what Bratcher
21 says. And I admit that. I stipulated to that.
22 Bratcher stands for the proposition that a Class 1
23 insured can get to their own underinsured coverage,
24 because you have a son who is a named insured suing
25 his dad.

1 The reasoning in court was in Bratcher is that
2 the son was covered under the policy so that he can
3 get the underinsured, but he also can make a
4 liability claim against his dad because his dad was
5 the at-fault driver. That is why it applied in
6 that case, Class 1 insured. Completely different
7 from this.

8 Bratcher actually stands for the proposition
9 that supports my position, that a Class 2 cannot
10 get to the underinsured.

11 Thank you, Your Honor.

12 MR. WILLIAMS: Your Honor -- Mr. Leadbitter,
13 show me in Bratcher where it discusses Class 1
14 versus Class 2 insurance. Can you show me where in
15 the opinion it discusses that?

16 Your Honor, I will represent to the Court,
17 Your Honor, that Bratcher makes no distinction
18 between Class 1 and Class 2 insureds.

19 THE COURT: All right. And I have reviewed
20 the statute and the motions. And my understanding
21 of I guess UIM -- maybe my law clerk, since he just
22 took the bar, understands UIM. And based on my
23 understanding, I guess I should say, I am going to
24 grant the motion for summary judgment. I do think
25 that under the statute that as a Class 2 insured

1 that she of course would not be able to stack it,
2 but would be entitled to the UIM insurance. And I
3 don't think that the policy limits what the law of
4 this state is.

5 For that reason -- for those reasons I will
6 grant those -- I guess Mr. Williams' and
7 Ms. Mosier's motion for summary judgment.

8 All right. Thank you.

9 MS. MOSIER: Thank you.

10 THE COURT: And if one of you all can get me
11 an order. All right. And run it by
12 Mr. Leadbitter.

13 MR. LEADBITTER: Thank you, Your Honor.

14 THE COURT: Thank you.

15 MS. MOSIER: Thank you.

16 (WHEREUPON, the proceedings were concluded.)
17
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24

25 (END OF TRANSCRIPT)

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, Deborah M. McCurdy, Official Court Reporter for the Fifth 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 for Richland County, South Carolina, on the 18th day of January, 2012.

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

May 3, 2012

Deborah M. McCurdy, RPR
Fifth Circuit Court Reporter

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Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

August 15, 2012



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

DeAndrea G. Benjamin, Circuit Court Judge

Appellate Case No.2012-211567

Omni Insurance Group,

Appellant,

v.

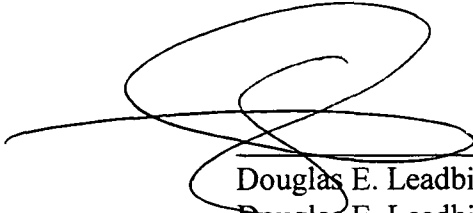
La'Rissa Tidwell and Bristol
West Insurance Company,

Respondents.

PROOF OF SERVICE OF RECORD ON APPEAL

I certify that I have served the Record on Appeal on Respondents La'Rissa Tidwell and Bristol West Insurance Company by delivering a copy of it via hand delivery on August 17, 2012, addressed to the attorneys of record, Melissa Mosier, McWhirter, Bellinger & Associates, P.A., 119 East Main Street, Lexington, SC 29017; and Charles O. Williams, Helen Hiser, and Weston Adams, III, McAngus Goudelock & Courie, LLC Post Office Box 12519, Columbia SC 29211-2519

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