

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

Case No.: 2011-CP-40-1022
(Appeal Tracking No.:2013-000821)

Robin E. Otterbacher.....Appellant.

v.

Jeremy and Tamara Snyder, individually and as guardians and parents of Blaze Kendall Snyder,
Blaze Kendall Snyder individually, and Selective Insurance Company of America and Auto
Owners Insurance Company.....Respondents.

RECORD ON APPEAL

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Counsel of Record

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Jeremy and Tamara Snyder-Pro Se
609 Chesnut Street
Camden, SC 29020

RECEIVED
OCT 11 2013
South Carolina Court of Appeals

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OF SOUTH CAROLINA
OF RICHLAND
THE COURT OF COMMON PLEAS

FORM 4

JUDGM. IN A CIVIL CASE

CASE NUMBER: 2011CP4001022

Robin E Otterbacher

Selective Insurance Company of America

PLAINTIFF(S)

Jeremy Snyder

DEFENDANT(S)

Submitted by: _____

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

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____
- ☐ **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 26 March 2013 to attorneys of record or to parties (when appearing pro se) as follows:

Bradley Davis Hewett

Andrew F. Lindemann

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court

Jeanette W. McBride

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Robin E. Otterbacher,

Plaintiff,

v.

Jeremy and Tamara Snyder, individually
and as guardians and parents of
Blaze Kendall Snyder, Blaze Kendall
Snyder individually, Selective Insurance
Company of America and
Auto-Owners Insurance Company,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Civil Action No. 2011-CP-40-1022

ORDER

RICHLAND COUNTY
FILED
2013 MAR 26 AM 9:24
JEANETTE W. McBRIDE
C.C.P. & G.S.

This matter is before this Court on the cross motions for summary judgment filed by the Plaintiff Robin E. Otterbacher and the Defendant Selective Insurance Company of America ("Selective"). A hearing was held with all counsel of record present on December 13, 2012. After a review of the pleadings, the parties' motions, the written submissions by the parties, and the oral arguments of counsel, this Court grants the Defendant Selective's motion for summary judgment and dismisses this action with prejudice.¹

The Plaintiff Robin E. Otterbacher commenced this declaratory judgment action to determine, in part, whether the Defendant Selective Insurance Company owes coverage to Jeremy Snyder, Tamara Snyder, and/or Blaze Kendall Snyder for injuries the Plaintiff is alleged to have sustained in a November 13, 2010 motor vehicle accident. At the time of the accident, Blaze Kendall Snyder, the minor child of Jeremy and Tamara Snyder, was operating a 2000 Chevrolet truck, VIN 1GCGC34R9YR194762, which he was operating with a learner's permit. His father, Jeremy Snyder, was also in the vehicle. The Snyders were driving to Mr. Snyder's place of employment, Columbia Commercial Tire a/k/a Lugoff Tire Company. See Snyder Depo., p. 19.

¹ By Order filed January 22, 2013, this Court has previously granted the motion for summary judgment filed by the Defendant Auto-Owners Insurance Company.

Selective Insurance Company of America issued a Personal Auto Policy to the named insureds, Jeremy Snyder and Tamara Snyder, bearing Policy Number F-5127609, which was in effect at the time of the November 13, 2010 motor vehicle accident. It is undisputed that the 2000 Chevrolet truck was not owned by Jeremy Snyder, Tamara Snyder, or Blaze Kendall Snyder. Instead, the truck was owned by Jeremy Snyder's employer, Columbia Commercial Tire a/k/a Lugoff Tire Company. See Snyder Depo., p. 17. It is also undisputed that the 2000 Chevrolet truck is not listed as a "covered auto" on the declarations of the Selective policy.

In his deposition, Jeremy Snyder testified that the 2000 Chevrolet truck was furnished or available for his regular use by his employer. Mr. Snyder testified that the truck was assigned to him by the company and that he had been driving that particular vehicle for five or six months. See Snyder Depo., pp. 17-18. He further testified that throughout his employment he was provided a company truck that he was allowed to take home. His job included providing 24 hour road service, and as a result, it was common for him to leave on-service calls from his home. See Snyder Depo., pp. 17-18. Mr. Snyder further testified that the 2000 Chevrolet vehicle was furnished to him by the company for him to drive to and from work, to use for business purposes, and for making business calls. See Snyder Depo., pp. 21-22.

Selective Insurance Company maintains that the Plaintiff's claims against the Snyders are excluded by Exclusion B.2, which provides:

- B. We do not provide Liability Coverage for the ownership, maintenance or use of:
 - 2. Any vehicle, other than "your covered auto," which is
 - a. Owned by you; or
 - b. Furnished or available for your regular use.

Selective denied coverage for the Plaintiff's claim against the Snyders because the vehicle involved in the accident was not a "covered auto" as defined by the Personal Auto Policy and because that vehicle was furnished or available for Jeremy Snyder's regular use. This Court agrees with Selective's position and finds that coverage for the Snyders is barred by operation of Exclusion B.2.

In applying Exclusion B.2, the Court recognizes that the term "you" is defined by the policy as referring to the named insured and the spouse of the named insured. The named insureds listed on the declaration pages are Jeremy and Tamara Snyder. Thus, "you" for this

policy refers to Jeremy and Tamara Snyder only. The "covered autos" under the policy are a 1995 Chevrolet pick-up, a 1998 Isuzu Trooper, and a 2004 GMC Sierra. The vehicle involved in the November 13, 2010 accident was a 2000 Chevrolet pick-up owned by Columbia Commercial Tire a/k/a Lugoff Tire Company. That vehicle is not listed as a "covered auto" on the declaration pages of the Selective policy. A company truck, as Mr. Snyder testified, was furnished for his regular use. He was always provided with a company vehicle although the vehicles would change. See Snyder Depo., pp. 17-18. Because a company truck was furnished or available for Mr. Snyder's regular use, no coverage is provided under the Personal Auto Policy issued by Selective on the Snyders' personal vehicles.

South Carolina case law has upheld similar exclusions barring coverage for automobiles not listed on the policy but which are furnished or available for the regular use of an insured. See e.g., *Willis v. Fidelity & Casualty Co. of New York*, 253 S.C. 91, 169 S.E.2d 282 (1969); *Tollison v. Reaves*, 277 S.C. 443, 289 S.E.2d 163 (1982). In *Tollison*, the Supreme Court explained the purpose of such an exclusion:

The purpose of automobile policy provisions excluding coverage for injuries sustained while occupying an automobile "furnished for the regular use of" an insured or relative is clear. It is to afford coverage for the infrequent and casual use of vehicles other than the one described in the policy, but *not to cover the insured with respect to his use of another vehicle which he frequently uses or has the opportunity to use*. It is to protect the insurer from a situation whereby an insured could purchase a policy covering one automobile and be covered without qualification as to all automobiles available for his use.

289 S.E.2d at 165. (Emphasis added).

However, the Plaintiff argues that the 2000 Chevrolet truck was not furnished or available for the regular use of Jeremy Snyder or Blaze Snyder based upon the deposition testimony of Danny Lyell, the owner of Columbia Commercial Tire a/k/a Lugoff Tire Company. In his testimony, Mr. Lyell believed that the truck involved in the accident was not permanently assigned to Mr. Snyder but rather was a truck available for use by all employees. Although he was not certain, Mr. Lyell testified that the 2000 Chevrolet truck may have been temporarily assigned to Mr. Snyder, but he admittedly could not dispute Mr. Snyder's testimony that Snyder had been driving that vehicle for six months. See Lyell Depo., pp. 12, 42-46. Mr. Lyell, however, was certain that Mr. Snyder had been assigned a company vehicle at all times during

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his employment. *See* Lyell Depo., pp. 42-43. Given Mr. Lyell's and Mr. Snyder's testimony, it is undisputed that Jeremy Snyder was always assigned a company vehicle (although the exact vehicle could change), and that a company vehicle was involved in the accident. Hence, this Court finds no coverage by operation of Exclusion B.2.

The Court's conclusion is supported by case law from other jurisdictions addressing similar issues involving fleet or pool vehicles. In *Hall v. Southern Farm Bureau Casualty Ins. Co.*, 670 S.W.2d 775 (Tex. App. 1984), the court held as follows:

If an employee regularly drives a vehicle in his or her employment, and if the driving of such a motor vehicle constitutes the principal duty of the employment, and if a number of vehicles in a pool are available to that employee, subject either to random assignment or assignment based upon the nature of the job involved, or selection by the employee, then all vehicles in the pool are considered as a matter of law to be vehicles furnished for the employee's regular use.

670 S.W.2d at 777. Similarly, in *Galvin v. Amica Mut. Ins. Co.*, 11 Mass. App. Ct. 457, 417 N.E.2d 34 (1981), the court explained that "all motor vehicles in a pool, any one of which is available to the person insured, [are treated] as within the regular use exclusion." 417 N.E.2d at 36. The court found that "an automobile will be excluded under such policy provisions although it is only one of a group of automobiles from which an automobile is regularly furnished to the named insured by his employer." 417 N.E.2d at 37. *See also*, *Ryan v. State Farm Mut. Automobile Ins. Co.*, 397 Ill. App. 3d 48, 921 N.E.2d 458, 461 (2009) (recognizing "cases involving similar fact situations and policy language have been addressed by a number of other jurisdictions, which have held that a vehicle is available for the insured's regular use if it is one of a pool of vehicles and the insured regularly uses vehicles from that pool"). This authority supports this Court's conclusion that the 2000 Chevrolet truck, even if it were not specifically assigned to Jeremy Snyder, it was one of a pool or fleet of company vehicles that were furnished or available for his regular use as part of his employment.

Additionally, instead of Exclusion B.2, the Plaintiff focuses on Exclusion B.3, which this Court finds does not apply. Specifically, Exclusion B.3 applies to vehicles furnished or available for the regular use of "family members." The term "family member" is defined by the policy as a person related by blood, marriage or adoption to the named insured and who is a resident of the named insured's household. This Court concludes that Exclusion B.3 is not applicable because

and
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the 2000 Chevrolet was not furnished to a "family member" but to the named insured himself (Jeremy Snyder).

Moreover, relying on Mr. Lyell's testimony, the Plaintiff also argues that the 2000 Chevrolet was a "temporary substitute" vehicle based on the definition of "your covered auto" set forth in Paragraph J.4 of the "Definitions" section of the Selective policy. According to Paragraph J.4, in order to qualify as a "temporary substitute" vehicle, the vehicle must be replacing "any other vehicle described in this definition." Therefore, even if the 2000 Chevrolet was temporarily replacing another company truck, as Danny Lyell's testimony appears to suggest, it did not replace a "covered auto" under the Selective policy. *See, Nationwide Mut. Ins. Co. v. Douglas*, 273 S.C. 243, 255 S.E.2d 828, 830 (1979) ("under a temporary substitute automobile clause, a vehicle cannot qualify as a temporary substitute unless *the automobile described in the policy* is withdrawn from normal use on the date of the accident"). (Emphasis added). This Court accordingly concludes that the vehicle involved in the accident was not a "temporary substitute" that is under the Selective policy, and as a result, Paragraph J.4 of the policy has no applicability.

THEREFORE, IT IS ORDERED that the Motion for Summary Judgment filed by the Defendant Selective Insurance Company is hereby **GRANTED**, and the Plaintiff's Complaint is dismissed with prejudice. This Court further enters a declaratory judgment and declares that Selective Insurance Company does not owe a duty to defend nor a duty to indemnify to Jeremy Snyder, Tamara Snyder, and/or Blaze Kendall Snyder with respect to any claims arising from the November 13, 2010 motor vehicle accident which is the subject of this action including any claims made by the Plaintiff.

IT IS FURTHER ORDERED that the Plaintiff's Motion for Summary Judgment is hereby **DENIED**.

AND IT IS SO ORDERED.


ALISON RENEE LEE
Circuit Court Judge,
Fifth Judicial Circuit

ad
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Columbia, South Carolina
March 25, 2013

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

Robin E Otterbacher

PLAINTIFF(S)

FORM 4

JUDGM T IN A CIVIL CASE

CASE NUMBER: 2011CP4001022

Selective Insurance Company of America

Auto Owners Insurance Company

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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Dismissal);
☐ 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 _____
- ☐ **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

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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 22 January 2013 to attorneys of record or to parties (when appearing pro se) as follows:

Bradley Davis Hewett

Andrew F. Lindemann
Janice Holmes

John Thomas Lay

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court _____

Jeanette W. McBride

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Robin E. Otterbacher,

Plaintiff,

v.

Jeremy Snyder, Individually and as guardian and
parent of Blaze Kendall Snyder, Blaze Kendall
Snyder individually, Selective Insurance
Company of America, and Auto-Owners
Insurance Company,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Docket No. 2011-CP-40-1022

**ORDER GRANTING DEFENDANT AUTO-
OWNERS INSURANCE COMPANY'S
MOTION FOR SUMMARY JUDGMENT
AND DENYING PLAINTIFF'S MOTION
FOR SUMMARY JUDGMENT AS TO
AUTO-OWNERS**

RICHLAND COUNTY
FILED
2013 JAN 22
JEANETTE
C.C. ELLIOTT
CLERK

This matter came before the Court on cross motions for summary judgment filed by Plaintiff Robin E. Otterbacher ("Plaintiff") and Defendant Auto-Owners Insurance Company ("Auto-Owners") pursuant to Rule 56, SCRPC. A hearing was held before me on December 13, 2012, in the Richland County Court of Common Pleas. Appearing for Plaintiff was Brad D. Hewett of the firm Mike Kelly Law Group, LLC, and appearing for Auto-Owners was John T. Lay of the firm Gallivan, White, and Boyd, P.A. Based upon the arguments of counsel, pleadings, exhibits, applicable law, and the record in this case, Auto-Owners' Motion for Summary Judgment is granted, and Plaintiff's Motion for Summary Judgment is denied.

"Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law." *S.C. Prop. & Cas. Guar. Assoc. v. Yensen*, 345 S.C. 512, 518, 548 S.E.2d 880, 883 (2001) (citing Rule 56(c), SCRPC). The burden of proving that coverage exists under the policy rests with the Plaintiff. *See State Auto. Mut. Ins. Co. v. Allstate Ins. Co.*, 298 S.C. 267, 270, 379 S.E.2d 739, 740 (1989). Viewing the facts in the light most favorable to Plaintiff, Plaintiff has not met her burden of demonstrating she is entitled to

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coverage under the policy.

The undisputed testimony clearly demonstrates that the route truck was to be operated only by authorized employees. Blaze Snyder was not authorized to use the route truck. Because he was not a permissive user, he was not an insured under the Auto-Owners' policy. *See Liberty Mut. Ins. Co. v. Edwards*, 294 S.C. 368, 370, 364 S.E.2d 750, 751 (1988); *Am. Mut. Fire. Ins. Co. v. Reliance Ins. Co.*, 268 S.C. 310, 315, 233 S.E.2d 114, 117 (1977); and *State Farm Bureau Cas. Ins. Co. v. Hartford Acc. & Indem. Co.*, 255 S.C. 427, 431, 179 S.E.2d 454, 455 (1971).

Further, Plaintiff has the burden of demonstrating that the use of the route truck was within the confines of permitted use of the vehicle. *See U.S. Fire Ins. Co. v. Macloskie*, 320 S.C. 459, 462, 465 S.E.2d 759, 761 (Ct.App. 1995). The undisputed evidence demonstrates that on November 13, 2010 at the time of the accident, the route truck was not being used on company business and therefore, the use of the vehicle exceeded the scope of the permitted use. *See State Auto., supra*, 298 S.C. at 270, 379 S.E.2d at 741.

THEREFORE, IT IS ORDERED that Auto-Owners Insurance Company's Motion for Summary Judgment is hereby **GRANTED**. Plaintiff Robin E. Otterbacher's Complaint is **DISMISSED WITH PREJUDICE** as to Auto-Owners Insurance Company.

IT IS SO ORDERED.


ALISON RENEE LEE
Circuit Court Judge

Columbia, South Carolina
January 18, 2013.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Robin E. Otterbacher,

Plaintiff,

vs.

Jeremy Snyder, individually and as guardian
and parent of Blaze Kendall Snyder, Blaze
Kendall Snyder individually, Selective
Insurance Company of America and Auto-
Owners Insurance Company,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2011-CP-40-1022

**AMENDED COMPLAINT
(Declaratory Judgment Action)**

JEANETTE M. MCBRIDE
C.C.P. & G.S.

2012 FEB 10 PM 12:15

RICHLAND COUNTY
FILED

**TO: JOHN T. LAY, ESQ., ATTORNEY FOR DEFENDANT AUTO-OWNERS
INSURANCE COMPANY, ANDREW LINDEMANN, ESQ., ATTORNEY FOR
DEFENDANT SELECTIVE INSURANCE COMPANY**

JURISDICTION AND VENUE

1. Plaintiff Robin E. Otterbacher is a citizen and resident of the County of Kershaw, South Carolina and resides in Elgin, South Carolina.

2. Upon information and belief, Defendant Blaze Kendall Snyder is minor under the age of eighteen (18) and a citizen and resident of Kershaw County, South Carolina.

3. Upon information and belief, Jeremy and Tamara Snyder are citizens and residents of Kershaw County, South Carolina and are the parents of Defendant Blaze Kendall Snyder.

4. Upon information and belief, Defendant Selective Insurance Company of America is a company organized and existing pursuant to the laws of the State of New Jersey and licensed in South Carolina engaged in the business of providing insurance services for a profit.

5. Upon information and belief, Defendant Auto-Owners Insurance Company is a company organized and existing pursuant to the laws of the State of Michigan and licensed in South Carolina engaged in the business of providing insurance services for a profit.

6. Jurisdiction and venue are proper over the Defendants.

FACTUAL BACKGROUND

7. On or about November 13, 2010, Plaintiff was driving her automobile on Interstate 77 in Richland County, South Carolina when she was struck in the rear by a vehicle driven by Blaze Kendall Snyder. Blaze Kendall Snyder was operating a 2000 Chevrolet, VIN 1GCGC34R9YR194762 (the "vehicle") at the time of the accident. Defendant Jeremy Snyder furnished and maintained the vehicle for the general use and convenience of his family and granted Defendant Blaze Snyder permission and authority to drive the vehicle. Plaintiff sustained bodily injury and property damage as a result of the subject accident.

8. At the time of the accident, the vehicle driven by Blaze Kendall Snyder was insured by Defendant Auto-Owners. Defendant Auto-Owners insured the at fault vehicle through a policy issued to Lugoff Tire Inc. Defendant Auto-Owners denied coverage for Plaintiff's claim, asserting that Blaze Kendall Snyder did not have permission to use the subject vehicle at the time of the accident.

9. Blaze Kendall Snyder was also insured through a personal policy issued by Defendant Selective Insurance to Jeremy Snyder, the father of Blaze Kendall Snyder. Defendant Selective Insurance denied coverage for Plaintiff's claim on the premise that Defendant Selective did not insure the vehicle involved in the collision.

10. This incident caused Plaintiff to suffer injuries, including but not limited to her brain, head, abdomen, chest, shoulder, and arm. Plaintiff has incurred medical expenses, emotional distress and impairment of health and bodily efficiency. Plaintiff also incurred property loss as a result of this incident.

FOR A FIRST CAUSE OF ACTION

(Declaration Judgment – Determination of Coverage)

11. Plaintiff incorporates by reference, as if fully set forth, each and every allegation in the preceding paragraphs.

12. As aforementioned, Plaintiff was struck by a vehicle driven by Blaze Kendall Snyder and insured by Defendant Auto-Owners. At the time of the subject accident, Blaze Kendall Snyder was insured by a personal insurance policy issued by Defendant Selective Insurance.

13. Plaintiff is entitled to a declaratory judgment that one or both of the respective policies issued by Defendants affording coverage for the at fault vehicle and the at fault driver personally were at all times valid and enforceable and afford coverage to Plaintiff at the time of the subject accident.

WHEREFORE, Plaintiff prays that this Court enter a declaratory judgment against Defendants, in favor of Plaintiff, which declares that the contract of insurance covering either or both at fault vehicle and at fault driver personally were at all times valid and enforceable and afforded liability coverage at the time of the subject accident.

Respectfully Submitted,

MIKE KELLY LAW GROUP, LLC

BY:



Brad D. Hewett

P.O. Box 8113

Columbia, SC 29202

803/726-0123

Attorney for Plaintiff

Columbia, South Carolina

February 9, 2012

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

Robin E. Otterbacher,

Plaintiff,

v.

Jeremy and Tamara Snyder, individually
and as guardians and parents of
Blaze Kendall Snyder, Blaze Kendall
Snyder individually, Selective Insurance
Company of America and
Auto-Owners Insurance Company,

Defendants.

Civil Action No. 2011-CP-40-1022

**ANSWER TO AMENDED COMPLAINT
OF DEFENDANT SELECTIVE
INSURANCE COMPANY**

The Defendant Selective Insurance Company of America ("Selective") answers the Plaintiff's Amended Complaint herein as follows:

FOR A FIRST DEFENSE

1. The Defendant Selective denies each and every allegation of the Plaintiff's Amended Complaint not hereinafter specifically admitted, qualified, or explained.
2. As to the allegations set forth in Paragraph 1 of the Plaintiff's Amended Complaint, the Defendant Selective lacks sufficient information to admit or deny that the Plaintiff is a resident and citizen of Kershaw County.
3. The allegations set forth in Paragraphs 2 and 3 of the Plaintiff's Amended Complaint are, upon information and belief, admitted.
4. The allegations set forth in Paragraph 4 of the Plaintiff's Amended Complaint are admitted.

5. The allegations set forth in Paragraph 5 of the Plaintiff's Amended Complaint are, upon information and belief, admitted.

6. The allegations set forth in Paragraph 6 of the Plaintiff's Amended Complaint are jurisdictional matters, to which no response is required.

7. As to the allegations set forth in Paragraph 7 of the Plaintiff's Amended Complaint, the Defendant Selective lacks sufficient information at this time to ascertain the truth of these allegations and, therefore, denies the allegations.

8. As to the allegations set forth in Paragraph 8 of the Plaintiff's Amended Complaint, the Defendant Selective lacks sufficient information at this time to ascertain the truth of these allegations and, therefore, denies the allegations.

9. As to the allegations set forth in Paragraph 9 of the Plaintiff's Amended Complaint, the Defendant Selective denies that Blaze Kendall Snyder was insured under the Personal Auto Policy, as issued by the Defendant Selective to the named insureds; Jeremy Snyder and Tamara Snyder, at the time of the alleged motor vehicle accident occurring on November 13, 2010. As to the second sentence of Paragraph 9, the Defendant Selective admits that it has denied coverage for the Plaintiff's claim against Blaze Kendall Snyder because the vehicle involved in the accident was not a "covered auto" as defined by the Personal Auto Policy and because that vehicle was furnished or available for Jeremy Snyder's regular use.

10. As to the allegations set forth in Paragraph 10 of the Plaintiff's Amended Complaint, the Defendant Selective lacks sufficient information at this time to ascertain the truth of these allegations and, therefore, denies the allegations.

11. As to the allegations set forth in Paragraph 11 of the Plaintiff's Amended Complaint, the Defendant Selective reiterates and realleges each corresponding paragraph of this Answer set forth herein.

12. As to the allegations set forth in the first sentence of Paragraph 12 of the Plaintiff's Amended Complaint, the Defendant Selective lacks sufficient information at this time to ascertain the truth of these allegations and, therefore, denies the allegations. The second sentence of Paragraph 12 is denied.

13. The allegations set forth in Paragraph 13 of the Plaintiff's Amended Complaint are denied. Further answering, the Court is requested to issue a declaratory judgment that the Defendant Selective does not owe a duty to defend nor a duty to indemnify for any claims arising from the November 13, 2010 motor vehicle accident which is the subject of this action

14. The allegations and relief as set forth in the prayer for relief are denied as stated.

FOR A SECOND DEFENSE

15. The Defendant Selective alleges that there is no coverage under the Personal Auto Policy, as issued by the Defendant Selective to the named insured, Jeremy Snyder and Tamara Snyder, because the vehicle involved in the November 13, 2010 motor vehicle accident was not a "covered auto" as defined by that Personal Auto Policy.

FOR A THIRD DEFENSE

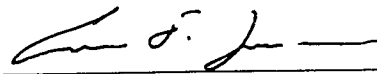
16. The Defendant Selective alleges that there is no coverage under the Personal Auto Policy, as issued by the Defendant Selective to the named insured, Jeremy Snyder and Tamara Snyder, because the alleged claim and damages asserted by the Plaintiff are excluded under Exclusion B.2 of the Personal Auto Policy.

FOR A FOURTH DEFENSE

17. The Defendant Selective alleges that there is no coverage under the Personal Auto Policy, as issued by the Defendant Selective to the named insured, Jeremy Snyder and Tamara Snyder, because the alleged claim and damages asserted by the Plaintiff are excluded under Exclusion B.3 of the Personal Auto Policy.

WHEREFORE, the Defendant Selective Insurance Company of America prays that the Amended Complaint be dismissed with prejudice; that the Court issue a declaratory judgment that the Defendant Selective Insurance Company of America does not owe a duty to defend nor a duty to indemnify for any claims arising from the November 13, 2010 motor vehicle accident which is the subject of this action; for the costs of this action, including reasonable attorney's fees; and for such other and further relief as the Court deems just and proper.

DAVIDSON & LINDEMANN, P.A.

BY: 

ANDREW F. LINDEMANN
1611 Devonshire Drive
Post Office Box 8568
Columbia, South Carolina 29202
(803) 806-8222

*Counsel for Defendant Selective Insurance
Company of America*

Columbia, South Carolina

March 27, 2012

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

Robin E. Otterbacher,
Plaintiff,

Civil Action No. 2011-CP-40-1022

v.

Jeremy and Tamara Snyder, individually
and as guardians and parents of
Blaze Kendall Snyder, Blaze Kendall
Snyder individually, Selective Insurance
Company of America and
Auto-Owners Insurance Company,
Defendants.

CERTIFICATE OF SERVICE

The undersigned employee of Davidson & Lindemann, P.A., attorneys for the Defendant, Selective Insurance Company of America, does hereby certify that service of the **Answer to Amended Complaint of Defendant Selective Insurance Company** in the above-captioned matter was made upon all known counsel of record by placing copies in the United States Mail, first class postage prepaid, at the below listed addresses clearly indicated on said envelopes this the 27th day of March 2012:

Brad D. Hewett, Esquire
D. Michael Kelly, Esquire
Mike Kelly Law Group, LLC
500 Taylor Street - 4th Floor
Post Office Box 8113
Columbia, South Carolina 29202

John T. Lay, Jr., Esquire
Gallivan, White, & Boyd, P.A.
1201 Main Street - Suite 1110
Post Office Box 7368
Columbia, South Carolina 29202



STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Robin E. Otterbacher,

Plaintiff,

vs.

Jeremy Snyder, Individually and as guardian
and parent of Blaze Kendall Snyder, Blaze
Kendall Snyder individually, Selective
Insurance Company of America, and Auto-
Owners Insurance Company,

Defendants.

IN THE COURT OF COMMON PLEAS
OF THE FIFTH JUDICIAL CIRCUIT

C.A. No. 2011-CP-40-1022

**DEFENDANT AUTO OWNERS
INSURANCE COMPANY'S ANSWER TO
AMENDED COMPLAINT**

Defendant Auto-Owners Insurance Company ("Defendant"), answers the Amended Complaint of Robin E. Otterbacher ("Plaintiff"), as follows:

FOR A FIRST DEFENSE
(General Denial)

1. Each and every paragraph of Plaintiff's Complaint not specifically admitted, qualified, or explained is denied.
2. The allegations in Paragraph 1 are admitted upon information and belief.
3. The allegations in Paragraph 2 are admitted upon information and belief.
4. The allegations in Paragraph 3 are admitted.
5. The allegations in Paragraph 4 are admitted upon information and belief.
6. Defendant admits that it is a mutual insurance company organized and existing pursuant to the laws of the State of Michigan and licensed to do business in the State of South Carolina providing insurance services. Defendant denies the remaining allegations in Paragraph 5.

7. The allegations in Paragraph 6 are jurisdictional in nature and therefore do not require a response.

8. As to Paragraph 7, it is admitted only that on or about November 13, 2010 Plaintiff was involved in an automobile accident with Blaze Kendall Snyder. The remaining allegations in Paragraph 7 call for legal conclusions to which no response is required. To the extent a response is required, Defendant denies the remaining allegations in Paragraph 7. As to any alleged injuries of the Plaintiff the Defendant is without information regarding these allegations and therefore denies same and demands strict proof of the alleged injuries.

9. As to Paragraph 8, it is denied any insurance coverage is available through Auto-Owners Insurance Company and Blaze Kendall Snyder did not have permission to use the vehicle at the time of the accident. It is admitted that the Defendant Auto-Owners Insurance Company has denied coverage for the Plaintiff's claim.

10. As to Paragraph 9, Defendant lacks sufficient information at this time as to these allegations and therefore denies same and demands strict proof thereof.

11. As to any alleged injuries of the Plaintiff the Defendant is without information regarding these allegations and therefore denies same and demands strict proof of the alleged injuries.

12. As to Paragraph 11, Defendant realleges each and every paragraph of its answer to the Plaintiff's complaint.

13. As to Paragraph 12, it is admitted that the vehicle driven by Blaze Kendall Snyder was an insured vehicle under a policy of insurance issued by Defendant Auto-Owners, under certain circumstances. However, there was no coverage through this insurance policy as to this

incident because Mr. Snyder did not have permission to use the vehicle at the time of the accident.

14. The allegations in Paragraph 13 are denied.

FOR A SECOND DEFENSE

15. The Defendant affirmatively pleads that Plaintiff is not entitled to insurance proceeds through the Auto-Owners Insurance policy because Blake Kendall Snyder did not have permission to use the vehicle at the time of the accident.

FOR A THIRD DEFENSE

16. The Defendant affirmatively pleads that Blaze Kendall Snyder was not an insured under any Auto-Owners Insurance Policy.

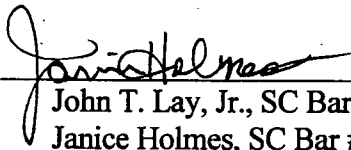
FOR A FOURTH DEFENSE

17. The Defendant expressly reserves any and all defenses and/or counterclaims including but not limited to any exclusions and conditions in the Auto-Owners Insurance policy.

WHEREFORE, the Defendant Auto-Owners Insurance Company prays that the Complaint be dismissed with prejudice; that the Court issue a declaratory judgment that the Defendant Auto-Owners Insurance Company does not owe a duty to defend nor a duty to indemnify for any claims arising from the November 13, 2010 motor vehicle incident which is the subject of this action; for the costs of this action, including recoverable attorney fees, and such other relief as this Court may deem just and proper.

Respectfully submitted,

GALLIVAN, WHITE & BOYD, P.A.

By: 
John T. Lay, Jr., SC Bar #64526
Janice Holmes, SC Bar #75038
1201 Main Street, Suite 1200
Post Office Box 7368
Columbia, South Carolina 29202
TEL: (803) 779-1833

ATTORNEYS FOR DEFENDANT AUTO
OWNERS INSURANCE COMPANY

Columbia, South Carolina

April 27, 2012

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Robin E. Otterbacher,

Plaintiff,

vs.

Jeremy Snyder, Individually and as guardian and
parent of Blaze Kendall Snyder, Blaze Kendall
Snyder individually, Selective Insurance Company of
America, and Auto-Owners Insurance Company,

Defendants.

IN THE COURT OF COMMON PLEAS
OF THE FIFTH JUDICIAL CIRCUIT

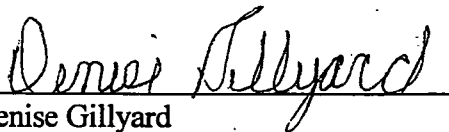
C.A. No. 2011-CP-40-1022

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on April 27, 2012, she served a copy of Defendant Auto Owners Insurance Company's Answer to Amended Complaint on all known counsel of record by placing a copy in the United States Mail, with due and proper postage affixed thereto and addressed as follows:

Brad D. Hewett, Esq.
Mike Kelly Law Group, LLC
P.O. Box 8113
Columbia, SC 29202

Andrew F. Lindemann, Esq.
Davidson & Lindemann, PA
P.O. Box 8568
Columbia, SC 29202


Denise Gillyard

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

Case No.: 2011CP4001022

Robin E. Otterbacher.....Appellant,

v.

Jeremy and Tamara Snyder, individually and as guardians and parents
of Blaze Kendall Snyder, Blaze Kendall Snyder individually, and
Selective Insurance Company of America.....Respondents.

NOTICE OF APPEAL

Pursuant to Rule 203 of the South Carolina Appellate Court Rules, Plaintiff Robin E. Otterbacher ("Appellant") hereby appeals the orders of the Honorable Alison Renee Lee dated March 25, 2013, granting summary judgment on behalf of Respondent Selective Insurance Company of America.

Copies of the order granting summary judgment on behalf of Respondent Selective Insurance Company is attached hereto and incorporated herein as Exhibit A.

RECEIVED

APR 08 2013

SC Court of Appeals

Respectfully Submitted,

By:



Brad D. Hewett

Mike Kelly Law Group, LLC

500 Taylor Street

Post Office Box 8113

Columbia, South Carolina 29202

(803) 726-0123

Attorney for Appellant

April 2, 2013

Other Counsel of Record:

Andrew F. Lindemann, Esq.

Davidson & Lindemann, PA

P.O. Box 8568

Columbia, SC 29202-8568

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

ROBIN E. OTTERBACHER,

PLAINTIFF,

-vs-

SELECTIVE INSURANCE COMPANY
OF AMERICA,
AUTO OWNERS INSURANCE
COMPANY,

DEFENDANTS.

DOCKET NUMBER:
2011-CP-40-01022

TRANSCRIPT

DECEMBER 13, 2012
COLUMBIA, S. C.

BEFORE:

HONORABLE ALLISON LEE, JUDGE

APPEARANCES:

BRADLEY HEWETT
Attorney for Plaintiff

ANDREW F. LINDEMANN
Attorney for the Defendant
Selective Insurance Co. of America

JOHN T. LAY
Attorney for the Defendant
Auto Owners Insurance Co.

PATRICIA A. NYE
COURT REPORTER.

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I N D E X

<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
FOR PLAINTIFF:				
1.				
2.				
FOR DEFENDANT:				
1.				
2.				

EXHIBITSFOR IDIN EVID

NONE OFFERED

1 (WHEREUPON, COURT WAS CONVENED WITH ALL PARTIES PRESENT.)

2 THE COURT: Okay, we are here this morning and this is
3 Robin Otterbacher versus Selective Insurance Company and Auto
4 Owners Insurance Company. The Plaintiff is represented by Brad
5 Hewett, Auto Owners is represented by John Lay and Selective
6 Insurance is represented by Andrew Lindemann. I understand we're
7 here on a Motion for Summary Judgment that has been filed by all
8 three parties. And so, they're all filed about the same time.
9 Mr. Hewett, I believe that you had potentially indicated that
10 you may be able to shorten?

11 MR. HEWETT: That's correct Your Honor. May it please the
12 Court?

13 THE COURT: Yes, sir.

14 MR. HEWETT: We filed a Motion for Summary Judgment as to
15 the Defendant Selective Insurance Company as well as Auto Owners
16 premised on a DJ action that we filed in a form of an amended
17 complaint back in February. As to Auto Owners it issued a policy
18 directly on the vehicle involved in a collision, the named
19 insured was Luguff Tire. Mr. Jeremy Snyder was an employee of
20 Luguff Tire, was in the vehicle at the time. He allowed his son,
21 Blaze Snyder to drive the vehicle. We filed suit after we made
22 the claim on behalf of Robin Otterbacher to Selective as well as
23 Auto Owners and received denial letters from each.

24 Selective Insurance Company denied it on the basis saying
25 this was not a covered auto. Selective is the personal insurer

1. for Mr. Snyder, he had three of his own vehicles on that policy.
2. They issued a denial letter saying this was not a covered auto.
3. Auto Owners covered the 2000 Chevy truck and issued a denial
4. letter on the basis that the fifteen year-old Blaze Snyder was
5. not a permissive user of the vehicle. So we filed a Declaratory
6. Judgment Action in a form of non-jury action asking the Court to
7. decide upon coverage as to both respective insurers. We filed a
8. Motion for Summary Judgment against Defendant, Auto Owners, on
9. the basis that Blaze Snyder was a permissive user. We briefed
10. it, I've researched it, I've reviewed Mr. Lay's memo and
11. unfortunately -- and after the testimony of Jeremy Snyder the
12. father of Blaze and Daniel Liale (Phonetic Spelling) who is the
13. owner of Luguff Tire and is in essence the named insured, I
14. can't in good faith go forward certainly on my motion for
15. Summary Judgment, and withdraw that motion at the time. And Mr.
16. Lay and Mr. Liale, I don't think I can in good faith argue
17. against his Motion for Summary Judgment because Jeremy Snyder
18. testified in his deposition that he knew there were company
19. guidelines and policies that no -- any non-employee could not
20. use the vehicle, including his son. His son did not know that
21. and was operating the vehicle with what he thought was
22. permission of not only his father, but the company, perhaps, as
23. well. But Daniel Liale confirmed Jeremy Snyder's testimony in
24. his deposition so we do have policies where if you are a non-
25. employee you are not to use the vehicle. And so we filed a

1 Motion for Summary -- and Daniel Liale also did not know that
2 Blaze Snyder was using the vehicle. He did not know until after
3 the incident that Jeremy Snyder's son had used the vehicle that
4 was involved in the accident. He never approved of it, never
5 gave his permission and I hate to make Mr. Lay's argument for
6 him, but that is simply the evidence in this case. And looking
7 at the policy -- I believe Mr. Snyder is here as well. He was
8 candid in his deposition, said that he made a mistake, he
9 allowed his son to drive, trying to get him some driving time
10 and so that he could work as well; they were on their way back
11 to the shop in Columbia. In looking at Mr. Liale's testimony,
12 looking at the policy and as much as I tried to create an
13 argument for implied permission since the son thought he had
14 permission to use the vehicle and he did from his father, but
15 that implied permission and any expressed permission flows
16 through the named insured which is Luguff Tire and Daniel Liale.
17 So for those reasons, we are withdrawing our Motion for Summary
18 Judgment as to Defendant Auto Owners because no matter how we
19 skew the facts in the evidence, there was no permission to Blaze
20 Snyder to operate the vehicle whether implied or expressed. I
21 don't know whether there's a need for Mr. Lay to go forward with
22 his Motion for Summary Judgment but, in all honesty, I don't
23 have much of a defense to it.

24 I'd like to go forward with our motion as to the personal
25 insurer, Selective Insurance, but I don't know what order you

1 want to take those.

2 THE COURT: I was looking to see when they were filed. I
3 usually go by file date.

4 MR. HEWETT: I can go forward with our motion as to
5 Defendant, Selective Insurance, which is the personal insurer
6 for Mr. Snyder and perhaps even the focus of my memorandum is
7 misplaced. Because what we have, Your Honor, is we have a
8 company, Luguff Tire, which Mr. Snyder worked for and was
9 working for them on the date of the incidence. And by way of
10 background, my client is an elementary school teacher for
11 Pontiac Elementary. She was stopped on I-20 for an accident
12 ahead of her which I believe actually killed a firefighter, when
13 she was struck from behind by the vehicle driven by Blaze
14 Snyder, who was fifteen years old and had a learner's permit.
15 She had severe closed-head trauma, still has headaches, has
16 medical expenses around \$30,000 and retained us after the
17 accident.

18 We deposed Daniel Liale, who is the president of the
19 company after we filed suit, after we determined that Selective
20 Insurance was the personal insurer for Mr. Snyder. The operative
21 provisions of the policy if you have them, I think Selective
22 Insurance Policy is Exhibit One to Plaintiff's memo. The
23 operative provision is on page two of fourteen listed in the
24 right hand corner. It provides that -- it's part A Liability
25 Coverage captioned Insurer Agreement. In paragraph A it provides

1 that, "We will pay for damages, bodily injury, property damage
2 for which any insured becomes legally responsible because of an
3 auto accident." And then if you go down to paragraph B,
4 "Insured, as used in this forum means you or any family member
5 for the ownership/maintenance or use of any auto or trailer."
6 Now, we premised our motion, our memorandum, on the fact that
7 this was a covered auto because the vehicle he was driving, the
8 2000 Chevy truck, was a temporary substitute vehicle for his
9 typical service truck. After looking at Mr. Lindemann's
10 memorandum and reviewing the policy again we can't make the
11 argument that this was a temporary substitute vehicle because it
12 would have had to substitute for a covered auto, a newly
13 acquired auto or a trailer. So as much as I would like to
14 present the case that this was a temporary substitute truck that
15 he was using on the day, we can't because it was not replacing a
16 vehicle that was otherwise defined in the policy. So our
17 argument lies in part A Liability Coverage, Part B "Where
18 insured is using this car means that you or any family member
19 for the ownership, maintenance or use of any auto or trailer
20 regardless of whether it's a covered auto or temporary
21 substitute."

22 THE COURT: I'm sorry, where are you reading from?

23 MR. HEWETT: That is part A, Liability Coverage, paragraph
24 B which quotes insured as used in this means and goes down to --

25 THE COURT: You say that's page two of fourteen?

1 MR HEWETT: Yes, there are several sections --

2 THE COURT: I see it. Part A Liability Coverage?

3 MR. HEWETT: That's correct. And then looking at paragraph
4 A and B, insured -- and Blaze Snyder is the son of Jeremy
5 Snyder, lives with him and he would be considered an insured,
6 he's a family member and was operating -- this is an auto, it's
7 not a covered auto under the policy, it's any auto or trailer.
8 He would still be covered under Selective though barring any
9 exclusions for the use of this vehicle. Mr. Lindemann premises
10 and Selective for that matter, premises their exclusion on the
11 basis that this was a vehicle that was furnished or made
12 available to Jeremy Snyder for his regular use through his
13 employer. I think that's where the realm of this case lies, is
14 whether this truck that he was using, or his son was using, on
15 the day of the accident was furnished or made available for the
16 regular use of Jeremy Snyder, the employee. And there's factual
17 disputes as to why it's not and there's reasonable
18 interpretations of the policy that would bring Jeremy Snyder and
19 his son within the confines of being considered an insured
20 because of Daniel Liale, who is the owner of the company, the
21 owner of the truck, gave testimony and I've quoted excerpts of
22 that in our memorandum. I'll jump around a little bit, this is
23 an argument number one, and obviously it's premised on the law
24 which I know you're familiar with that a clause of inclusion is
25 to be broadly construed for any insurer than nonbinding

1 coverage. If there's an exclusion, as Selective is asserting in
2 this case, then it's to be strictly construed, strictly
3 interpreted, when there can be more than one meaning behind a
4 provision, the courts are to view it in terms of providing
5 coverage for the insured, so all that is based on that legal
6 precedent. And if you look at Daniel Liale's testimony, the
7 owner of the company, and several parts of his testimony in the
8 deposition he goes on to say, and I'm looking at the beginning
9 of paragraph six of our memorandum which starts with the
10 excerpts of Mr. Liale. He provides that, I don't think that
11 vehicle was permanently assigned, referring to the truck that
12 was involved in the incident, and the reason he goes on to
13 qualify that is because Mr. Snyder would drive a service truck
14 that was usually equipped with an air compressor. And on the day
15 of the accident he was driving what they call route truck, it
16 did not have an air compressor on it, it was not his typical
17 service truck. Mr. Liale goes on to describe the truck he was
18 driving that day as one that usually sat in the parking lot
19 quite a bit. It was garaged at Luguff Tire, it was used by other
20 employees, it was used by Mr. Liale himself. And Mr. Liale
21 states several times that that vehicle was not permanently
22 assigned to Mr. Snyder, it was one that was used by other
23 employees and it's not one that Mr. Snyder normally drove.

24 He also goes on to say, if you look at page seven at the
25 first incomplete paragraph, the first paragraph on the page, He

1 quotes, That if he was driving it, it would have been on a
2 temporary basis. That's not the type of truck that he would
3 drive fulltime. And he goes on in the next paragraph, Mr. Liale
4 says, There was no specific truck assigned to Mr. Snyder. He
5 didn't know his particular service truck had broken down. And he
6 goes on to say again, I don't believe it was assigned to
7 anybody, I don't see how it could have been permanently assigned
8 to him and other people had driven it. And he goes on to
9 provide throughout the course of his deposition that the truck
10 is garaged at Luguff, he used it himself quite a bit, and that
11 Mr. Snyder might have used it once a week. And so, you got to
12 look at his deposition testimony when construing the provision
13 which would exclude coverage for him being furnished with this
14 car made available for his regular use. We obviously contend
15 that it was not and at a minimal the policy is susceptible to a
16 reasonable interpretation that this was not a vehicle that was
17 furnished and made available for his regular use.

18 Mr. Lindemann has provided me with some case law this
19 morning extending from Texas and maybe another state where
20 there's a pool of vehicles provided by an employer and the
21 insurer, the employee uses one of the vehicles here and there
22 and that can constitute regular use. There's no controlling law
23 in South Carolina to that effect and certainly not controlling
24 in this case because I believe the policy speaks to a particular
25 vehicle, not a pool of vehicles. We're talking about this route

1 truck, the truck that he was driving on the date of the incident
2 or that his son was driving on the date of the incident. And I
3 believe that when you look at Mr. Liale's testimony, who owned
4 the truck that this was not a truck that he regularly drove. He
5 drove it every now and again and perhaps if his service truck
6 was broken down, he would drive this truck. But when you're
7 construing a policy in favor of coverage, and you're giving it
8 strict interpretation as to the exclusionary provision, I
9 certainly think that the Court should issue a judgment declaring
10 that there is coverage under the Selective policy because this
11 is not a truck that was made available or furnished for Jeremy
12 Snyder's regular use.

13 Also have, and I failed to include these in the memorandum,
14 but they are excerpts from the deposition of Jeremy Snyder and
15 I'll just read a portion of that quickly. It's page thirty-three
16 of Jeremy Snyder's deposition and there are a few questions to
17 him about the particular truck involved in the accident. The
18 question is: Now did you pay taxes or insurance on the vehicle?
19 Answer: No, sir. Did you make any monthly payments on it?
20 Answer: No, sir. Have you ever paid for or made any repairs
21 yourself to the truck? Answer: No, sir. You wouldn't claim to be
22 the owner of the vehicle? Answer: No, sir. On page thirty-four
23 he was asked the question, Was the 2000 Chevy truck made
24 available to Blaze for his regular use, his son. The answer is,
25 No, sir.

1 So Your Honor, given the testimony of Daniel Liale,
2 looking at the policy, following our court's precedent of these
3 types of exclusionary provisions that are to be strictly
4 construed and when there's more than one susceptible meaning of
5 the policy and provision that the Court should side in favor of
6 coverage. We believe this was not a vehicle that was furnished
7 and made available to Jeremy Snyder for his regular use;
8 therefore, he and his son would be covered under that Selective
9 policy. So for those reasons, Your Honor, I'd ask that the Court
10 grant our Motion for Summary Judgment, this declaratory judgment
11 action as it pertains to Selective Insurance.

12 THE COURT: Mr. Lindemann.

13 MR. LINDEMANN: Thank you, Your Honor. May it please the
14 Court? Andrew Lindemann on behalf of Selective Insurance
15 Company. My arguments will be both, obviously in opposition to
16 his motion as well of in support of Selective's Motion for
17 Summary Judgment. Your Honor, the facts are largely undisputed.
18 The -- as Mr. Hewett just conceded, and correctly so, the
19 vehicle that was involved in the accident was not owned by the
20 named insured's of the Selective policy and that is Jeremy
21 Snyder and his wife, Cameron Snyder. The vehicle was not owned
22 by their fifteen year-old son who was driving with a learner's
23 permit at the time of the accident. It was a company owned
24 vehicle owned by Luguff Tire. So therefore, it was not a quote
25 covered auto under the Selective policy and I believe that was

1 just conceded by Plaintiff's counsel. So this case does turn on
2 exclusion B(2). And exclusion B(2) under the Selective policy
3 which as Mr. Hewett explained to the Court, is the personal auto
4 policy for the Snyder family. The named insured on that policy
5 are Mr. and Mrs. Snyder. And that exclusion provides, listed on
6 page four of fourteen of the Selective personal auto policy
7 form, it --

8 THE COURT: I need to make sure I'm with you. Under page
9 four of fourteen, okay.

10 MR. LINDEMANN: Top of the column.

11 THE COURT: Under B?

12 MR. LINDEMANN: Under B. It says, we do not provide
13 liability coverage for the ownership, maintenance, or use of --
14 And the applicable section is section two, Any vehicle other
15 than your covered auto which is owned by you or furnished or
16 available for your regular use. Now you, under this policy if
17 you look at the very first page of the policy, provides the
18 definition at the very top. It says, Throughout this policy, you
19 or your refer to the named insured shown in the declarations and
20 the spouse who is a resident of the same household. Well in this
21 particular policy, Mr. Snyder and his spouse were both actually
22 named as named insureds. So Mr. and Mrs. Snyder are the you. So
23 the issue is whether or not the vehicle involved in the
24 accident, clearly was not owned by them, but the question is
25 whether or not it was furnished or available for their regular

1 use. And our contention is that the facts, even taken in a
2 light most favorable to the Plaintiff, demonstrate this vehicle
3 was furnished or available for Mr. Snyder's regular use.

4 We took Mr. Snyder's deposition and we took Mr. Liale's
5 deposition and various portions of both of those depositions
6 have been submitted to the Court. Mr. Snyder, incidentally, the
7 named insured, actually concedes that Selective's position is
8 correct. Was joined as a necessary party in this litigation but
9 has not made an appearance, but in his deposition he conceded
10 that that was a correct decision and he himself or his wife,
11 whose also been named as a Defendant in the case and has not
12 appeared, they do not contest that coverage decision. Mr.
13 Snyder's testimony is very clear. He says that he's been working
14 for that company for about five years. During the entire time
15 that he was working for the company he was assigned a company
16 vehicle. He was assigned a company vehicle that he could take
17 home at night and he did drive it home at night and drive it
18 back to work the next day. The reason for that is even though he
19 had all kinds of duties and included among his duties was 24/7
20 road service calls. So he would, at times, have to take his
21 vehicle out in the middle of the night from his home and make
22 service calls. So it was customary throughout his entire
23 employment to have a company vehicle assigned to him. Mr. Liale
24 admits that, as well, in his testimony, the owner of the
25 company, that Mr. Snyder always had a company vehicle assigned

1 to him. Now the evidence is that that company vehicle would
2 change from time to time and there was also evidence that there
3 was a vehicle called the route truck that was kept at the Luguff
4 Tire Company premises, that was used by numerous employees to
5 make deliveries and that Mr. Snyder would from time to time,
6 approximately several times a week, use the route truck to make
7 deliveries separate and apart from the truck that may have been
8 assigned to him. Now, the truck that was involved in the
9 accident was a 2000 Chevrolet pickup truck. Mr. Snyder's
10 testimony in his deposition is that that truck had been actually
11 assigned to him by the company and that he'd been using that
12 truck on a regular basis for five to six months prior to the
13 accident, and that that was the vehicle involved in the
14 accident. So according to Mr. Snyder's testimony, it's without
15 question that the vehicle that was provided -- that was involved
16 in the accident was furnished to him and available to him and
17 used by him on a regular basis for the previous five to six
18 months.

19 Mr. Liale's deposition was taken after Mr. Snyder's
20 deposition and he testified -- this is the testimony that the
21 Plaintiff is attempting to rely on and I'll indicate to the
22 Court in a few minutes why I don't believe that's material and
23 precludes summary judgment in this case. Mr. Liale testified
24 that he had heard Mr. Snyder say that that truck was assigned to
25 him for five or six months and that it surprised him, because he

1 didn't believe that to be the case. But he also stated numerous
2 times in his deposition that he couldn't refute it. If you look
3 at page twelve of his deposition he was asked, and this is
4 starting on line seven. This is Mr. Liale again, Was he actually
5 assigned the vehicle by the company? Yes, he was. Do you have a
6 record of what vehicle he was assigned at that time? No, I do
7 not. He has testified, meaning Mr. Snyder, has testified that
8 the vehicles assigned to him and he had been driving it on a
9 regular basis for about six months prior to the accident?
10 Answer: That may be true. Do you have any way of disputing his
11 testimony? Answer: No I really don't. I do not know that he's
12 shifted out different vehicles in the past. I don't really
13 recall exactly if we assigned that vehicle to him permanently or
14 not. So while Mr. Liale questioned whether that particular
15 vehicle which he called the route truck, whether or not it was
16 assigned permanently to Mr. Snyder, he couldn't say conclusively
17 that it was not. Later on page forty-three of the deposition and
18 these excerpts are attached to my memorandum. Did the Court get
19 my memorandum yesterday because I have an additional copy.

20 THE COURT: I believe there was a copy in the file.

21 MR. LINDEMANN: Okay.

22 THE COURT: Well, I didn't get the memorandum. I got the
23 motion and the deposition is attached.

24 MR. LINDEMANN: So, you do have my memo?

25 THE COURT: No, I don't think I have the memo

1 (MR. LINDEMANN HANDING UP DOVUMENTS TO THE COURT.)

2 MR. LINDERMANN: The motion itself has portions of Mr.
3 Snyder's deposition attached to it, the memo has the portions of
4 Mr. Liale's deposition that I'm relying on. And if you look at,
5 going back to where I was, if you look at page forty-three of
6 Mr. Liale's deposition, he again is referring to the truck
7 involved in the accident as the route truck. He is asked as
8 follows: And as far as the route truck, as you're referring to
9 it, that would have been available as well to Jeremy Snyder in
10 order to make deliveries, correct? Answer: Correct, yes. And is
11 it your testimony that he would regularly use that vehicle to
12 make deliveries? Not daily, but usually on a regular basis. So
13 Mr. Liale was confirming that even that vehicle was used. While
14 he was questioning whether it was permanently assigned to Mr.
15 Snyder, it was a truck that he drove on a regular basis and was
16 available for him on a regular basis. And recall the term in the
17 insurance policy is whether or not the vehicle is furnished or
18 available for the regular use. He goes on to the next page, page
19 forty-four, he was asked, So then that route truck, again using
20 your terminology, would be a vehicle that was available for him
21 to use when he needed it? Yes, it was. So it wasn't unusual for
22 him to be seen driving that vehicle? No, it was not. And then
23 later on page forty-five of Mr. Liale's deposition I went back
24 and just confirmed with him that he could not refute what Mr.
25 Snyder said. And I asked, and this is at line thirteen, You

1 talked earlier that that vehicle may have been temporarily
2 assigned to him and you just are not sure, right? I'm not, no
3 I'm not sure. And as you sit here today you can't say how that
4 vehicle had been assigned? Answer: I'm surprised that he said he
5 had been driving it for six months, but he may be correct on
6 that. I'm not sure. And then he goes on and discusses that
7 further. So, Mr. Liale's testimony, our first point would be,
8 does not bring material issue of fact in dispute and frankly the
9 Court should take as the facts in the case what Mr. Snyder had
10 said. And that is clearly the vehicle involved in the accident
11 had been permanently assigned to him for five or six months. He
12 clearly was provided for and furnished by the company and it was
13 available to him and he used it on a regular basis. However, the
14 reason that we don't believe that Mr. Liale's questioning of
15 whether or not that's accurate or not is not material and does
16 not preclude Summary Judgment.

17 Even if the Court were to adopt Mr. Liale's speculative
18 testimony, meaning that this was the route truck that was
19 involved in the accident and it wasn't the vehicle that was
20 permanently assigned to Mr. Snyder but was a truck that was at
21 the tire company's premises and would be used by other employees
22 as well as Mr. Snyder to make deliveries and as the excerpt I
23 just read, would be used by Mr. Snyder at least several times a
24 week and was available for his use to make deliveries. None of
25 that precludes Summary Judgment because that vehicle is still

1 available and furnished for his regular use according to Mr.
2 Liale's testimony. In addition to that, Your Honor, after I
3 submitted my memorandum to the Court I started to think about it
4 and I was like even though we don't have a case in South
5 Carolina with this type of factual pattern, even though we do
6 have a number of cases where our Supreme Court and Court of
7 Appeals have applied and upheld this exact exclusion and I've
8 cited a couple of those in my memo. But it occurred to me that
9 perhaps they were cases from other jurisdictions that would deal
10 with this situation where people were trying to obtain coverage
11 under their personal auto policy for an accident that involved a
12 company assigned vehicle or a company car. And there are a lot
13 of cases out there. And I'm handing up to the Court some, I've
14 already provided Mr. Hewett some of those cases. And on the very
15 top of that stack is a section from Couches on Insurance which
16 is regarded, I know, as authoritative and our appellate courts
17 have cited Couches on numerous occasions. And granted, it talks
18 about, just like an amateur cjs talks about the case law in a
19 very general fashion. But the first sentence of that section I
20 handed up sums up the -- It says the concept of regular use does
21 not necessarily require the furnishing of a single identified
22 automobile, but extends to cars within a pool or class any of
23 which may be used by the person for whose use it is claimed the
24 vehicle was furnished.

25 If I can just quote from a few of the cases I cited from

1 other jurisdictions, Your Honor. What I found when I looked at
2 this last evening is I couldn't find any cases that suggested,
3 that would have supported the Plaintiff's position in this
4 particular case. The case was from these various jurisdictions
5 seem to be very one-sided and the way they are discussed in the
6 cases seem to be one-sided. And there a lot of cases out there I
7 didn't even give the Court. You can see in the decisions I've
8 handed up, for instance the Massachusetts case of Galvin versus
9 Amica Mutual Insurance Company, the Massachusetts Court of
10 Appeals in that particular case cited probably about thirty or
11 forty cases that support this proposition. And if I could quote
12 from that Galvin case, it says as follows: A heavy majority of
13 the decisions elsewhere interpret such words and closely similar
14 policy language. It's talking about this furnishing for regular
15 use exclusion. As treating all motor vehicles in a pool anyone
16 of which is available to the person insured as within the
17 regular use exclusion. The Court went on to explain as follows:
18 In order to be excluded under this exclusionary clause,
19 automobile need not be a single particular automobile regularly
20 furnished to the named insured. Thus that automobile will be
21 excluded under such policy provisions although it is only one of
22 a group of automobiles from which an automobile is regularly
23 furnished to the named insured by his employer.

24 I'm not going to quote from all of these, but here's
25 another one from Paul versus Southern Farm Bureau. It's the

1 Court of Appeals of Texas decision. And it says as follows: If
2 an employee regularly drives a vehicle in his or her employment
3 and if the driving is such a motor vehicle constitutes a
4 principle duty of the employment and if a number of vehicles in
5 a pool are available for that employee, subject either to random
6 assignment or assignment based upon the nature of the job
7 involved or selection by the employee, then all vehicles in the
8 pool are considered as a matter of law to be vehicles furnished
9 for the employees regular use. So even if this Court were to
10 conclude that Mr. Liale is correct, and he's not even certain
11 he's correct, that that was just a vehicle that was within the
12 pool of company vehicles that was available to Mr. Snyder to
13 use. The case law, nationally, indicates that that falls within
14 the furnished for regular use exclusion. And if you think about
15 it, it makes sense. If you had an employee who wasn't assigned a
16 particular vehicle and essentially drove a different vehicle
17 every day and while driving a company vehicle there happened to
18 be an accident, that doesn't all of a sudden become covered
19 under his personal auto policy. And so the fact that in this
20 particular case, Mr. Snyder was assigned a vehicle and may have
21 been driving another company vehicle at that particular time,
22 whether it was a permanent assignment or temporary assignment
23 because his vehicle had broken down, who knows the reasons. Mr.
24 Liale doesn't know the reasons. But that doesn't take it outside
25 this exclusion. And as I mentioned earlier, Your Honor, South

1 Carolina Supreme Court has upheld this particular exclusion and
2 I invite the Court to look at the decision of Tollison versus
3 Reeves and I only have one copy of it. I'll hand it up after I
4 quote from it. And the main quote is actually in my memo. This
5 is a 1982 case with the South Carolina Supreme Court and it
6 applied this particular exclusion. If I could read just two
7 sentences, it explains why we have this provision and this case
8 is right on all fours as to why you have a provision in
9 insurance policies such as this. It says, "The purpose of the
10 automobile policy provision excluding coverage for injuries
11 sustained while occupying an automobile furnished for the
12 regular use of an insured or relative. It's clear it is to
13 afford coverage for the infrequent and casual use of vehicles
14 other than the one described in the policy but not to cover the
15 insured with respect to his use of another vehicle which he
16 frequently uses or has the opportunity to use. It is to protect
17 the insurer from a situation whereby an insured can purchase a
18 policy covering one automobile and be covered without
19 qualification as to all automobiles available for his use."
20 Again, the Court is stressing the words available, stressing the
21 words opportunity, the policy exclusion itself says furnished or
22 available for use.

23 I don't believe, and I'll submit to this Court that there
24 is a material issue of fact in this. Even if the Court reads Mr.
25 Liale's testimony for what it is, there is clear evidence that

1 the truck that was involved in this particular accident was
2 furnished or available for Mr. Snyder's use. It was a company
3 vehicle that he either drove for the last five or six months or
4 it was available to him to drive to make deliveries. It was a
5 company vehicle that he -- and it's undisputed that at all times
6 he had a company vehicle whether it was that particular one or
7 another one; he had a company vehicle assigned to him for the
8 five years that he worked for that company. And based upon those
9 facts, they fall squarely within that exclusion, Your Honor. And
10 the case law we found from other states supports the premise
11 that when you're dealing with company vehicles, whether they're
12 pools or fleets or numerous vehicles that the employees have the
13 availability to drive that they fall within that furnished for
14 regular use exclusion. We would submit that is the same as the
15 fact pattern in this particular case. Again, even if you give
16 great weight to Mr. Liale's very questionable testimony which he
17 questions himself as to whether or not it's accurate. So based
18 on that, Your Honor, we believe that exclusion clearly applies
19 and bars coverage under the personal auto policy. Obviously, if
20 the Snyders had been using one of their personal vehicles that
21 was insured under their policy, that's the risk of Selective
22 Insurers. But Selective does not extend their risk to insure a
23 company vehicle that is assigned or used by Mr. Snyder in this
24 particular case. And it's unfortunate that under the sets of
25 circumstances -- I mean typically in a situation like this the

1 insurance flows with the vehicle and in this particular case
2 Auto Owners would cover this because it was a vehicle that they
3 insured that was involved in this accident. So, you know
4 unfortunately for Ms. Otterbacher they're circumstances where
5 Select -- Auto Owners was able to deny coverage because of lack
6 of permission, but that doesn't all of a sudden transfer the
7 exposure to the personal auto policy. It is still a company
8 vehicle that was furnished for the direct use of Mr. Snyder and
9 we submit to the Court that that is a proper basis for Selective
10 to deny coverage and we ask the Court issue a Declaratory
11 Judgment to that effect. Thank you.

12 THE COURT: Mr. Hewett any response?

13 MR. HEWETT: Very briefly, Judge Lee. Mr. Snyder in his
14 initial questioning by Mr. Lindemann in his testimony did state
15 that he wouldn't think that Selective would have coverage
16 because he had known that car wasn't on the policy. Later in my
17 questioning, and he had never seen the policy or actually read
18 through the entire policy, I asked him a question on page 38 of
19 his deposition at the bottom. My question was: If indeed there
20 was a provision in the Selective policy which entitled Blaze and
21 yourself coverage for his use of the vehicle, that was not a
22 covered auto and was not owned by you, would you expect
23 Selective to provide you coverage for this claim? He answered,
24 If I paid for the coverage, Yes, sir. So he recanted his
25 testimony earlier that he wouldn't necessarily assume Selective

1 would have coverage it was something that was in the policy and
2 he paid for that particular amount of coverage.

3 Mr. Lindemann talks about this theory of a fleet of
4 vehicles and this is based on other cases concerning other facts
5 and other policies; we're talking about this policy. Nowhere in
6 that exclusion does it refer to a fleet of vehicles it refers to
7 a vehicle. If they wanted to associate it fleet or pool of
8 vehicles provided by an employer with that exclusion they could
9 have done so in the policy and they didn't. They refer to one
10 vehicle, we're talking about a vehicle involved in the accident
11 that was the route truck. Not a pool of vehicles that may have
12 been available to him. He was not -- and Mr. Liale stated
13 numerous times in his deposition, This is not a truck that's
14 permanently assigned to Jeremy Snyder, which gives way to a
15 reasonable susceptible interpretation of coverage in this case.
16 Not only that, Selective could define what regular use
17 constituted in the policy; they didn't do that. Which is why
18 it's up to the Court to determine based on Mr. Liale's testimony
19 that this truck sat in the parking lot, was used by other
20 employees, was used by Mr. Liale, himself, and was used
21 infrequently by Mr. Snyder maybe once a week or once a month,
22 that that does not constitute regular use. That's up to the
23 Court, you don't have to rely on cases in Texas or other
24 jurisdictions concerning pools of vehicles, we're talking about
25 this vehicle, this route truck.

1 And again, Your Honor, based on Mr. Liale's testimony and
2 I know there's divergent testimony between Mr. Snyder and Mr.
3 Liale, I certainly think it gives rise to a reasonable
4 interpretation that this was not a vehicle made available to Mr.
5 Snyder for his regular use such that there would be coverage.
6 For those reasons, I would ask the Court to declare a judgment
7 against Selective Insurance that this is coverage for his
8 personal policy as to this particular accident. Thank you, Your
9 Honor.

10 THE COURT: Mr. Liale's entire deposition is in the record
11 is Mr. Snyder's entire deposition -- do I need his entire
12 deposition?

13 MR. LINDEMANN: I did not include his entire deposition as
14 an attachment. I did not bring the original with me, but I can
15 certainly provide it to the Court.

16 MR. HEWETT: I included excerpts, Mr. Lay I noticed
17 submitted a memorandum to the Court, I don't know if he --

18 THE COURT: Mr. Lay's memo has the entire deposition of Mr.
19 Liale that's where I see that.

20 MR. LINDEMANN: Okay. I can submit it.

21 THE COURT: And I don't know necessarily that I need the
22 entire one, but it may be helpful.

23 THE COURT: Mr. Lay I know you've been given a gift and
24 been quite which is very hard for you.

25 MR. LAY: It is, but I have learned.

1 THE COURT: Is there anything you would like to say.

2 MR. LAY: We stand on our Motion for Summary Judgment. It's
3 undisputed the name insured did not provide permission to the
4 driver of the vehicle. The name insured has testified to that
5 effect, the father of the driver has testified to that effect,
6 there is no permission, it's undisputed, therefore it's
7 appropriate to declare there is no coverage here.

8 THE COURT: And Mr. Hewett, as I understand your
9 preliminary comments, you've indicated that there's not a legal
10 basis for you to challenge the motion that was made by --

11 MR. HEWETT: Based on the testimony of Jeremy Snyder and
12 Mr. Liale, I have no reason to dispute that he was not a
13 permissive user whether expressed or implied as much as I would
14 like to create a permissive user and he certainly used the
15 vehicle with permission from the father, but when you apply
16 South Carolina case law that permission is from Mr. Liale, so I
17 can't dispute their contention that he was not a permissive user
18 in this case.

19 THE COURT: And so therefore under those circumstances, you
20 think that Summary Judgment would be appropriate as to Auto
21 Owners?

22 MR. HEWETT: Yes, as to Auto Owners, Your Honor. And
23 certainly we preserve any claims we have against Luguff Tire or
24 Mr. Snyder, or Commercial Columbia Tire in their respective
25 positions, but as to Auto Owners I'm not going to dispute his

1 Motion for Summary Judgment.

2 THE COURT: Then Mr. Lay I guess you get to prepare the
3 order as to Auto Owners.

4 MR. LAY: Yes, ma'am.

5 THE COURT: I will review the memorandum that's been
6 provided to me by Selective Insurance.

7 MR. HEWETT: Thank you, Your Honor.

8 MR. LINDEMANN: Thank you.

9 (WHEREUPON THE MATTER IN THE ABOVE CAPTIONED CASE WAS
10 CONCLUDED.)

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STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND)

Robin E. Otterbacher,)

Civil Action No. 2011-CP-40-1022

☐ Plaintiff,)

**MOTION & ORDER INFORMATION
FORM COVER SHEET**

v.)

Selective Insurance Company of America)
and Auto-Owners Insurance Company,)

☒ Defendants.)

Plaintiff's Attorney:

Brad D. Hewett, Esquire
Mike Kelly Law Group, LLC
Post Office Box 8113
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Moving Counsel:

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F: 803-806-8855
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- ☒ **MOTION HEARING REQUESTED** (attach written motion and complete SECTIONS I and III)
☐ **FORM MOTION, NO HEARING REQUESTED** (complete SECTIONS II and III)
☐ **PROPOSED ORDER/CONSENT ORDER** (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion for Summary Judgment

Estimated Time Needed: 30 minutes¹

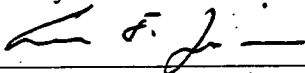
Court Reporter Needed: ☒ Yes / ☐ No

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.



December 5, 2012

Signature of Attorney for Defendant Selective

Date Submitted

SECTION III: Motion Fee

☒ **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

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: _____

☐ CONTESTED - AMOUNT DUE: _____

SCCA/233 (11-03)

¹ Judge Barber has set hearing for 12-13-12 at 9:30 a.m. with Judge Lee

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

Robin E. Otterbacher,

Plaintiff,

v.

Jeremy and Tamara Snyder, individually
and as guardians and parents of
Blaze Kendall Snyder, Blaze Kendall
Snyder individually, Selective Insurance
Company of America and
Auto-Owners Insurance Company,

Defendants.

Civil Action No. 2011-CP-40-1022

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

TO: BRAD D. HEWETT, ESQUIRE, COUNSEL FOR PLAINTIFF

YOU WILL PLEASE TAKE NOTICE that the undersigned attorney for the Defendant Selective Insurance Company of America ("Selective") will move before the Presiding Judge of the Fifth Judicial Circuit at the Richland County Judicial Center, Columbia, South Carolina, at such time and place as may be set by the Court, for an Order, pursuant to Rule 56, SCRPC, granting summary judgment to the Defendant Selective. The Defendant Selective prays that the Court dismiss the Amended Complaint with prejudice and further that the Court issue a declaratory judgment that the Defendant Selective does not owe a duty to defend nor a duty to indemnify for any claims arising from the November 13, 2010 motor vehicle accident which is the subject of this action.

The Defendant Selective's motion is based on the following grounds:

1. There is no coverage under the Personal Auto Policy, as issued by the Defendant Selective to the named insured, Jeremy Snyder and Tamara Snyder, because the vehicle involved in the November 13, 2010 motor vehicle accident was not a "covered auto" as defined by that Personal Auto Policy.

2. There is no coverage under the Personal Auto Policy, as issued by the Defendant Selective to the named insured, Jeremy Snyder and Tamara Snyder, because the alleged claim and damages asserted by the Plaintiff are excluded under Exclusion B.2 of the Personal Auto Policy.

3. There is no coverage under the Personal Auto Policy, as issued by the Defendant Selective to the named insured, Jeremy Snyder and Tamara Snyder, because the alleged claim and damages asserted by the Plaintiff are excluded under Exclusion B.3 of the Personal Auto Policy.

The Defendant Selective's motion is based upon the pleadings filed in this case, the rules of court, the Deposition of Jeremy Snyder (excerpts attached), a supporting memorandum to be submitted to the Court, and such other matters as may be properly presented to the Court at the time of the hearing.

DAVIDSON & LINDEMANN, P.A.

BY: 

ANDREW F. LINDEMANN
1611 Devonshire Drive
Post Office Box 8568
Columbia, South Carolina 29202
(803) 806-8222

*Counsel for Defendant Selective Insurance
Company of America*

Columbia, South Carolina

December 5, 2012

1

ROBIN E. OTTERBACHER,

VS.

Defendants.

DATE: May 30, 2012

TIME: 10:09 a.m. to 10:56 a.m.

LOCATION: Davidson & Lindemann, P.A.
1611 Devonshire Drive
Second Floor
Columbia, South Carolina 29204

REPORTED BY: Lorraine A. Wharton



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- 1 A Fifteen for two more days.
- 2 Q By whom are you employed?
- 3 A Columbia Commercial Tire.
- 4 Q And what do you do for them?
- 5 A Night shift road service supervisor.
- 6 Q How long have you been employed by
- 7 Columbia Commercial Tire?
- 8 A Five and a half years.
- 9 Q Has your job changed during that five and
- 10 half years?
- 11 A As far as?
- 12 Q Your job title --
- 13 A Title.
- 14 Q -- or your job duties.
- 15 A Yes, just a couple of times.
- 16 Q Tell me what your initial position was
- 17 with the company.
- 18 A Mechanic.
- 19 Q How long did you hold that job?
- 20 A About six months.
- 21 Q And then you received a promotion?
- 22 A Yes, sir.
- 23 Q And promoted to what?
- 24 A Counter assistant manager.
- 25 Q And how long did you hold that position?



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1 A Three and a half years.

2 Q And then you changed to your current
3 position?

4 A Yes, sir.

5 Q And you said that was a night shift road
6 supervisor?

7 A Yes, sir.

8 Q Was that a promotion?

9 A It's basically the same as what I was
10 doing behind the counter. I just manage a different
11 group of people.

12 Q So basically a lateral move?

13 A Yes, sir.

14 Q And how long have you held the current
15 position?

16 A A couple of years.

17 Q Who is your supervisor?

18 A Derek Drinkall, D-E-R-E--K.

19 Q Give that to me again.

20 A Drinkall, D-R-I-K-A-L-L.

21 Q What's his position with the company?

22 A General manager.

23 Q Who is Danny Lyell?

24 A Lyell? Owner.

25 Q Does he have any involvement in the



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1 running of the company?

2 A He owns it. I mean, he -- he makes all
3 final decisions.

4 Q So he actually works in the company and --

5 A Yes, sir.

6 Q Mr. Drinkall reports to him?

7 A Yes, sir.

8 Q Does Columbia Commercial Tire go by
9 another name?

10 A It goes by a lot of different names.

11 Q And tell me --

12 A Commercial Truck Service, Lugoff
13 Commercial Tire, Columbia Commercial Truck Center.
14 We use Knoxville Commercial Truck. Knoxville
15 Commercial Truck Service, Charlotte Commercial Truck
16 Service, Atlantic Commercial Truck Service,
17 Greensboro Commercial Truck Service. There's
18 just -- there's a lot of small entities that are all
19 combined into a whole.

20 Q And so Lugoff Tire Company, is that part
21 of --

22 A They're the --

23 Q -- the same entity?

24 A They're the home office. They are the
25 primary.



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1 Q And all these businesses are all owned by
2 Mr. Lyell?

3 A Yes.

4 Q Who is your actual employer?

5 A Columbia Commercial Tire.

6 Q And where is that located?

7 A 111 Plumbers Road, Columbia.

8 Q Is there more than one location in the
9 Columbia area?

10 A No, sir.

11 Q And are there locations in other areas?
12 You mentioned Knoxville and Charlotte.

13 A Mobile service only.

14 Q So the headquarters and the only actual
15 location --

16 A Physical location.

17 Q -- physical location --

18 A Is Lugoff Tire and Columbia Commercial
19 Tire..

20 Q And that's on Plumbers Drive?

21 A Columbia Commercial is on Plumbers Road.
22 Lugoff Tire's in Lugoff.

23 Q Where in Lugoff?

24 A 39 Boulware Road.

25 Q And what location do you work out of?



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1 A Columbia Commercial, the Columbia's
2 location.

3 Q Has that been true for the entire five and
4 a half years?

5 A Yes, sir.

6 Q Let me get a little bit more background
7 information. How much education do you have?

8 A High school and a couple of -- a couple of
9 short courses in -- for college.

10 Q When did you graduate from high school?

11 A '90.

12 Q What high school?

13 A Lincolnview.

14 Q Where is that located?

15 A Middle Point, Ohio.

16 Q And you said you have some college
17 courses?

18 A Northwestern University, Lima, Ohio.

19 Q How many credits or how many years?

20 A About three semesters and a short stint in
21 the Marine Corps after that.

22 Q When were you in the Marines?

23 A December 8th, 1990 to June of '91.

24 Q What kind of discharge?

25 A Medical.



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1 Q What was the basis of that?

2 A Broken left third metatarsal that'll never
3 heal.

4 Q When did you come to South Carolina?

5 A Five and a half -- five or -- five and a
6 half years ago, September, Labor Day weekend.

7 Q And what was the reason for moving to
8 South Carolina?

9 A It's cold in Ohio, man.

10 Q I can believe it. So you moved South for
11 the weather?

12 A At 15 years doing road service in Ohio,
13 laying in snow drifts on the side of the road
14 underneath trucks, body and mind wouldn't take it
15 anymore. It was time to find someplace warmer.

16 Q I understand. So the entire time you've
17 been in South Carolina you've been employed by
18 Columbia Commercial Tire?

19 A Yes, sir.

20 Q As I mentioned earlier, this lawsuit
21 involves an automobile accident that occurred
22 back -- at least I have the date as November 13th,
23 2010; is that right?

24 A Yes, sir.

25 Q And that was an accident -- well, tell me



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1 about the accident real quickly. Why don't you
2 briefly explain to me how the accident happened.

3 A Coming westbound on I-20, approaching
4 Clemson Road, I had -- was on my way into the shop
5 to do some work and trying to do two things at one
6 time. Let my son do some driving on his permit and
7 get my job done at the same time, which was a
8 mistake on my part, and I see that now. We'd come
9 upon the accident that was on the other side of the
10 road and everybody stopped, and he didn't see them.
11 I glanced over to make sure -- we were coming
12 through where 20 goes from 70 to 60, where it
13 reduces speed, and I had looked over to make sure he
14 had slowed down, and when I looked back, it was too
15 late.

16 Q And so what exactly happened?

17 A He hit the brakes and rear ended two or
18 three cars.

19 Q And you said you were westbound on I-20?

20 A Yes, sir.

21 Q But there was an existing accident on the
22 eastbound side?

23 A Yes, sir. It was the accident where that
24 woman ran over the firefighter.

25 Q And so what was impeding traffic on the



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1 westbound lanes, just people rubbernecking?

2 A In layman's -- in layman's terms, gawkers'
3 block.

4 Q Had traffic actually come to a dead stop
5 on the westbound lanes?

6 A I don't know. I literally looked at the
7 speedometer, and when I looked back it was -- there
8 was -- they were either going very, very slow or
9 completely stopped. There wasn't time for me to
10 tell one way or the other.

11 Q Well, you were in the passenger seat?

12 A Yes, sir.

13 Q And your son was driving?

14 A Yes, sir.

15 Q And which son was that?

16 A Blaze Kendall.

17 Q And how old was he at the time?

18 A Uh, he's 17 now. He turned 17 in March,
19 16. He'd had to have been 16.

20 Q I believe --

21 A The math doesn't add right.

22 Q I believe I had him at 15.

23 A He might have been 15, and then turned 16
24 that March, and now he's 17. He would have been 15
25 at the time.



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1 Q And he had a learner's permit?

2 A He had a learner's permit, yes, sir.

3 Q And you said you were doing paperwork at
4 the same time; is that what I understood?

5 A No. I was on my way to the office to do
6 paperwork. What -- I had glanced down to make sure
7 he had slowed down, that he had noticed the speed
8 change from 60 to -- or 70 to 60.

9 Q Were you doing anything else while riding
10 with him?

11 A Just watching him, trying to make sure he
12 was all right.

13 Q And so why is that you let him drive that
14 day?

15 A Trying to kill two birds with one stone.
16 He needed driving time experience, and I was -- I --
17 I work 18 hours a day, seven days a week. I just
18 don't have time to be a parent, and I'm trying to
19 mix business and -- and fatherhood at the same time.

20 Q So you were just giving him time behind
21 the wheel?

22 A Yes, sir.

23 Q And you needed to go to the office, so he
24 went with you?

25 A Yes, sir.



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1 Q And what vehicle were you in?

2 A A 2000 Chevrolet. I think it was a 2000
3 Chevrolet.

4 Q What kind of Chevrolet?

5 A A 3500 pickup truck, regular cab, long
6 bed.

7 Q And who owns that vehicle?

8 A Lugoff Tire Company.

9 Q What day of the week was this?

10 A Sunday, I believe. It had to be a
11 Saturday afternoon or a Sunday. It's the only day I
12 would have had time to be with him.

13 Q About what time of day?

14 A After lunch, two, three o'clock.

15 Q If I'm reading this right, it looks like
16 it's 3:00; does that sound about right?

17 A Right in that ballpark, yes, sir.

18 Q Was this particular Chevrolet pickup --
19 was that assigned to you by the company?

20 A Yes, sir.

21 Q How long had you been driving that
22 vehicle?

23 A I'm not sure. I've driven so many of the
24 different vehicles for the company I've lost track
25 of how long each one I had. I suppose I had it



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1 five, six months.

2 Q Do you still have that vehicle?

3 A No, sir.

4 Q Was it repaired after the accident?

5 A No, sir.

6 Q Now, as far as company assigned vehicles,
7 were you able to take that home?

8 A Yes, sir.

9 Q What were the rules regarding your use of
10 the vehicle at that particular time?

11 A No -- not for personal use, for work
12 company use only.

13 Q But you could take the vehicle home?

14 A Yes, sir.

15 Q Is that what you did?

16 A Yes, sir. We provide 24 hour road
17 service, so rather than have somebody have to go to
18 the shop to open it up, we leave straight from the
19 house.

20 Q So you'd take calls directly from home?

21 A Yes, sir.

22 Q Is that fairly common?

23 A For what we do, yes, sir.

24 Q So are you on 24/7 call?

25 A Yes, sir.



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1 Q And were you at that time?

2 A Yes, sir.

3 Q And when you would take a call, would you
4 use the 2000 Chevrolet pickup to make the calls?

5 A Yes, sir.

6 Q And why were you using the vehicle that
7 day, was it because you were going to the office?

8 A I was on my way to the office.

9 Q So that was a proper use?

10 A Yes, sir.

11 Q Did the company have any rules or
12 regulations regarding you allowing family members to
13 drive the truck?

14 A Yes, sir.

15 Q And what were those rules?

16 A No one but company employees to drive the
17 vehicles.

18 Q So then your son, Blaze, was not
19 authorized to drive the vehicle at the time of the
20 accident?

21 A No, sir.

22 Q Is that correct?

23 A Yes, sir.

24 Q Are the rules regarding company
25 vehicles -- are they written somewhere?



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1 A Derek is my boss, but Danny Lyell is --
2 is -- I caught it from Danny and Derek.

3 Q So you got chewed out by both of them?

4 A Yes, sir. In fact, the only reason I
5 still have my job is -- is my being an asset to the
6 company. Had it been anyone else, they'd probably
7 have been terminated.

8 Q So am I correct then, Mr. Snyder, that
9 that 2000 Chevrolet vehicle was furnished to you by
10 the company for your regular use?

11 A Yes, sir.

12 Q That's a correct statement?

13 A Yes, sir, for company use.

14 Q For company use?

15 A Right.

16 Q But whenever you --

17 A Not to go to the grocery store, not to go
18 to the mall, not to go to the movies, for business
19 use..

20 Q But you used it on a regular basis for
21 your business purposes?

22 A Yes, sir.

23 Q And that included going home at night from
24 the office?

25 A Yes, sir.



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1 Q And going to work?

2 A Yes, sir.

3 Q And making calls?

4 A Making calls, delivering product. I do a
5 lot of -- of -- my job's not just to sit behind a
6 desk. I deliver tires and parts to all the
7 satellite units. I deliver -- get out of bed at
8 three in the morning and drive to the store, get a
9 tire out for one of the guys here, one of the units
10 here in Columbia, there or at Lugoff, that doesn't
11 have a tire on their truck that they need. I gather
12 parts, deliver. I mean, I do a lot of different
13 things, and I still run road calls.

14 Q Did you also have a personal vehicle?

15 A At the time, yes, sir.

16 Q How many personal vehicles did your family
17 have at that time?

18 A A Ford GMC, '77 Isuzu. The GMC, the
19 Isuzu, the Chevrolet, the Z '71, and I don't think
20 we had the Blazer at that time. I know we didn't.

21 Q And the Chevrolet you just referred to is
22 not the --

23 A It's a --

24 Q -- company truck?

25 A No. I have a 1977 Chevrolet, a '77, '78



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1 Chevrolet pickup.

2 Q And how many drivers did you have in the
3 household at that point?

4 A Tamara, myself, Blake, Brittany, and Blaze
5 was on his learner's permit.

6 Q So that would be a total of four licensed
7 drivers and Blaze on his learner's permit?

8 A Yes, sir.

9 Q Now you understand Selective Insurance
10 Company has denied coverage?

11 A Yes, sir.

12 Q Do you disagree with that decision in any
13 respect?

14 MR. HEWITT: Object to the form.

15 A Selective is my insurance. That's who
16 covers my vehicles, correct?

17 BY MR. LINDEMANN:

18 Q That's correct.

19 A Yeah. I understand why they didn't. They
20 weren't involved. It wasn't their vehicle. The
21 vehicle and myself wasn't covered under the policy.

22 Q And you understand that?

23 A Yes, sir.

24 Q And you agree with that?

25 A Yes, sir.



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1 driving, correct, regardless of the vehicle?

2 A Not --

3 MR. LINDEMANN: Object to the form.

4 A -- not Selective, but the company vehicle.

5 BY MR. HEWETT:

6 Q And you mentioned that you spoke with an
7 agent for Selective?

8 A Now to drive my vehicles, he was -- I was
9 told he was covered to drive my vehicles, my insured
10 vehicles.

11 Q And I believe you testified that this
12 vehicle was furnished to you for the regular use --
13 this 2000 Chevy truck was made available to you for
14 your regular use, correct?

15 A For -- for company use, yes, sir.

16 Q But not for personal use?

17 A No, sir.

18 Q And at the time of the accident Blaze was
19 with you in the car occupying the vehicle; is that
20 correct?

21 A Yes, sir.

22 Q You answered a question by Ms. Holmes that
23 you didn't believe you had the authority to grant
24 permission to Blaze to operate the vehicle. Did he
25 ever question your authority when you asked him to



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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

Robin E. Otterbacher,
Plaintiff,

Civil Action No. 2011-CP-40-1022

v.

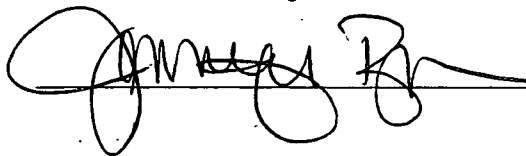
CERTIFICATE OF SERVICE

Jeremy and Tamara Snyder, individually
and as guardians and parents of
Blaze Kendall Snyder, Blaze Kendall
Snyder individually, Selective Insurance
Company of America and
Auto-Owners Insurance Company,
Defendants.

The undersigned employee of Davidson & Lindemann, P.A., attorneys for the Defendant, Selective Insurance Company of America, does hereby certify that service of the **Notice of Motion and Motion for Summary Judgment** in the above-captioned matter was made upon all counsel of record by email and by placing copies in the United States Mail, first class postage prepaid, at the below listed addresses clearly indicated on said envelopes this the 5th day of December 2012:

Brad D. Hewett, Esquire
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John T. Lay, Jr., Esquire
Janice Holmes, Esquire
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*Also Admitted In North Carolina
[†]Certified Mediator

December 12, 2012

Writer's Email: alindemann@dml-law.com

The Honorable Jeanette W. McBride
Clerk of Court
Richland County
Post Office Box 2766
Columbia, South Carolina 29202

RE: Robin E. Otterbacher v. Jeremy and Tamara Snyder, individually and as guardians and parents of Blaze Kendall Snyder, Blaze Kendall Snyder individually; Selective Insurance Company of America and Auto-Owners Insurance Company
Civil Action Number: 2011-CP-40-1022
Claim Number: 21062140
Our File Number: 307.8676

Dear Ms. McBride:

Please find enclosed for filing the original and one copy of the **Memorandum in Support of Motion for Summary Judgment of Defendant Selective Insurance Company** in the above referenced matter. Please file the original and return a clocked-in copy to me in the enclosed envelope.

By copy of this letter, I am serving copies on all counsel of record.

Thank you for your assistance in this matter.

Sincerely,

DAVIDSON & LINDEMANN, P.A.



Andrew F. Lindemann

AFL/jmb
Enclosures

cc: Brad D. Hewett, Esquire (w/ Enclosure)
John T. Lay, Jr., Esquire (w/ Enclosure)
Janice Holmes, Esquire (w/ Enclosure)

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

Robin E. Otterbacher,

Plaintiff,

v.

Jeremy and Tamara Snyder, individually
and as guardians and parents of
Blaze Kendall Snyder, Blaze Kendall
Snyder individually, Selective Insurance
Company of America and
Auto-Owners Insurance Company,

Defendants.

Civil Action No. 2011-CP-40-1022

**MEMORANDUM IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT
OF DEFENDANT SELECTIVE
INSURANCE COMPANY**

The Plaintiff Robin E. Otterbacher commenced this declaratory judgment action to determine, in part, whether the Defendant Selective Insurance Company owes coverage to Jeremy Snyder, Tamara Snyder, and/or Blaze Kendall Snyder for injuries the Plaintiff is alleged to have sustained in a November 13, 2010 motor vehicle accident. At the time of the accident, Blaze Kendall Snyder, the minor child of Jeremy and Tamara Snyder, was operating a 2000 Chevrolet truck, VIN 1GCGC34R9YR194762, which he was operating with a learner's permit. His father, Jeremy Snyder, was also in the vehicle. The Snyders were driving to Mr. Snyder's place of employment -- Columbia Commercial Tire a/k/a Lugoff Tire Company. *See*, Snyder Depo., p. 19.

Selective Insurance Company of America issued a Personal Auto Policy to the named insureds, Jeremy Snyder and Tamara Snyder, bearing Policy Number F-5127609, which was in effect at the time of the November 13, 2010 motor vehicle accident. It is undisputed that the

2000 Chevrolet truck was not owned by Jeremy Snyder, Tamara Snyder, or Blaze Kendall Snyder. Instead, the truck was owned by Jeremy Snyder's employer, Columbia Commercial Tire a/k/a Lugoff Tire Company. *See*, Snyder Depo., p. 17. It is also undisputed that the 2000 Chevrolet truck is not listed as a "covered auto" on the declarations of the Selective policy.

In his deposition, Jeremy Snyder testified that the 2000 Chevrolet truck was furnished or available for his regular use by his employer. Mr. Snyder testified that the truck was assigned to him by the company and that he had been driving that particular vehicle for five or six months. *See*, Snyder Depo., pp. 17-18. He further testified that throughout his employment he was provided a company truck that he was allowed to take home. His job included providing 24 hour road service, and as a result, it was common for him to leave on service calls from his home. *See*, Snyder Depo., pp. 17-18. Mr. Snyder further testified:

Q. So am I correct then, Mr. Snyder, that that 2000 Chevrolet vehicle was furnished to you by the company for your regular use?

A. Yes, sir.

Q. That's a correct statement?

A. Yes, sir, for company use.

Q. For company use?

A. Right.

Q. But whenever you —

A. Not to go to the grocery store, not to go to the mall, not to go to the movies, for business use.

Q. But you used it on a regular basis for your business purposes?

A. Yes, sir.

- Q. And that included going home at night from the office?
- A. Yes, sir.
- Q. And going to work?
- A. Yes, sir.
- Q. And making calls?
- A. Making calls, delivering product. I do a lot of -- of -- my job's not just to sit behind a desk. I deliver tires and parts to all the satellite units. I deliver -- get out of bed at three in the morning and drive to the store, get a tire out for one of the guys here, one of the units here in Columbia, there or at Lugoff, that doesn't have a tire on their truck that they need. I gather parts, deliver. I mean, I do a lot of different things, and I still run road calls.

See, Snyder Depo., pp. 21-22.

Selective Insurance Company has taken the position that the Plaintiff's claim is excluded by Exclusion B.2, which provides:

- B. We do not provide Liability Coverage for the ownership, maintenance or use of:
2. Any vehicle, other than "your covered auto," which is
- a. Owned by you; or
 - b. Furnished or available for your regular use.

Selective denied coverage for the Plaintiff's claim against the Snyders because the vehicle involved in the accident was not a "covered auto" as defined by the Personal Auto Policy and because that vehicle was furnished or available for Jeremy Snyder's regular use.

The term "you" is defined by the policy as referring to the named insured and the spouse of the named insured. As indicated, the named insureds listed on the declaration pages are Jeremy and Tamara Snyder. Thus, "you" for this policy refer to Jeremy and Tamara Snyder

only. The "covered autos" under the policy are a 1995 Chevrolet pick-up, a 1998 Isuzu Trooper, and a 2004 GMC Sierra. The vehicle involved in the November 13, 2010 accident was a 2000 Chevrolet pick-up owned by Columbia Commercial Tire a/k/a Lugoff Tire Company. That vehicle is not listed as a "covered auto" on the declaration pages. A company truck, as Mr. Snyder testified, was furnished for his regular use. He was always provided with a company vehicle although the vehicles would often change. *See*, Snyder Depo., pp. 17-18. Because the company truck was furnished or available for Mr. Snyder's regular use, no coverage is provided under the Personal Auto Policy issued by Selective on the Snyders' personal vehicles.

South Carolina case law has upheld similar exclusions barring coverage for automobiles not listed on the policy but which are furnished or available for the regular use of an insured. *See e.g., Willis v. Fidelity & Casualty Co. of New York*, 253 S.C. 91, 169 S.E.2d 282 (1969); *Tollison v. Reaves*, 277 S.C. 443, 289 S.E.2d 163 (1982). In *Tollison*, the Supreme Court explained the purpose of such an exclusion:

The purpose of automobile policy provisions excluding coverage for injuries sustained while occupying an automobile "furnished for the regular use of" an insured or relative is clear. It is to afford coverage for the infrequent and casual use of vehicles other than the one described in the policy, but *not to cover the insured with respect to his use of another vehicle which he frequently uses or has the opportunity to use*. It is to protect the insurer from a situation whereby an insured could purchase a policy covering one automobile and be covered without qualification as to all automobiles available for his use.

289 S.E.2d at 165. (Emphasis added).

In this case, the named insured, Jeremy Snyder, is not contesting the denial of coverage by Selective. Mr. Snyder testified that he understood and agreed with Selective's denial of coverage for the November 13, 2010 accident. *See*, Snyder Depo., p. 23.

However, in her motion for summary judgment, the Plaintiff appears to argue that the 2000 Chevrolet truck was not furnished or available for the regular use of Jeremy Snyder or Blaze Snyder and that the vehicle was a temporary substitute vehicle. The Plaintiff relies on the deposition testimony of Danny Lyell, the owner of Columbia Commercial Tire a/k/a Lugoff Tire Company, who believed that the truck involved in the accident was not permanently assigned to Mr. Snyder but rather was a truck available for use by all employees. Although he was not certain, Mr. Lyell testified that the 2000 Chevrolet truck may have been temporarily assigned to Mr. Snyder, but he admittedly could not dispute Mr. Snyder's testimony that Snyder had been driving that vehicle for six months. *See, Lyell Depo.*, pp. 12, 42-46. Mr. Lyell, however, was certain that Mr. Snyder had been assigned a company vehicle at all times during his employment. *See, Lyell Depo.*, pp. 42-43. At any rate, it is undisputed that Jeremy Snyder was always assigned a company vehicle (although the exact vehicle would change), and that a company vehicle was involved in the accident. Hence, there is no coverage under Exclusion B.2.¹

Relying on Mr. Lyell's testimony, the Plaintiff also appears to argue that the 2000 Chevrolet was a "temporary substitute" vehicle. However, in order to qualify as a "temporary substitute" vehicle, the vehicle must be replacing "any other vehicle described in this definition" which is a reference to the definition of "Your covered auto." Even if the 2000 Chevrolet was temporarily replacing another company truck, as Danny Lyell was speculating, it did not replace a "covered auto" under the Selective policy. *See, Nationwide Mut. Ins. Co. v. Douglas*, 273 S.C. 243, 255 S.E.2d 828, 830 (1979) ("under a temporary substitute automobile clause, a vehicle

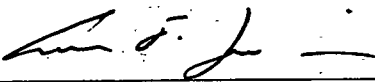
¹ The Plaintiff appears to rely on Exclusion B.3 which applies to vehicles furnished or available for the regular use of "family members." The term "family member" is defined by the policy as a person related by blood, marriage or adoption to the named insured and who is a resident of the named insured's household. Exclusion B.3 is not applicable because the vehicle in question was not furnished to a "family member" but to the named insured himself (Jeremy Snyder).

cannot qualify as a temporary substitute unless *the automobile described in the policy* is withdrawn from normal use on the date of the accident"). (Emphasis added). Thus, the vehicle involved in the accident was not a "temporary substitute" that is covered under the Selective policy issued to Jeremy and Tamara Snyder.

Based on the foregoing discussion, the Defendant Selective Insurance Company respectfully requests that the Court grant its motion for summary judgment and issue a declaratory judgment that Selective Insurance Company does not owe a duty to defend nor a duty to indemnify for any claims arising from the November 13, 2010 motor vehicle accident which is the subject of this action. The Court is also requested to deny the Plaintiff's motion for summary judgment on the same bases.

Respectfully submitted,

DAVIDSON & LINDEMANN, P.A.

BY: 

ANDREW F. LINDEMANN
1611 Devonshire Drive
Post Office Box 8568
Columbia, South Carolina 29202
(803) 806-8222

*Counsel for Defendant Selective Insurance
Company of America*

Columbia, South Carolina

December 12, 2012

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
)
COUNTY OF RICHLAND) C/A NO.: 2010-CP-40-1022

ROBIN E. OTTERBACHER,

Plaintiff,

vs.

JEREMY AND TAMARA SNYDER, INDIVIDUALLY
AND AS GUARDIANS AND PARENTS OF BLAZE
KENDALL SNYDER, BLAZE KENDALL SYNDER
INDIVIDUALLY, SELECTIVE INSURANCE COMPANY
OF AMERICA AND AUTO-OWNERS INSURANCE
COMPANY,

Defendants.

DEPOSITION OF
DANNY LYELL

DATE: May 30, 2012
TIME: 11:58 a.m. to 12:53 p.m.
LOCATION: Davidson & Lindemann, P.A.
1611 Devonshire Drive
Second Floor
Columbia, South Carolina 29204

REPORTED BY: Lorraine A. Wharton



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1 trailer, you know, hauling some tires around, and we
2 just used it mainly for deliveries. That's not a
3 truck that Jeremy normally drove. I don't really
4 remember why he was driving it that day. It could
5 have been that he needed it to make a delivery. I'm
6 not sure. I just don't remember.

7 Q Was he actually assigned a vehicle by the
8 company?

9 A Yes, he was/

10 Q Do you have a record of what vehicle he
11 was assigned at that time?

12 A No, I do not.

13 Q He has testified that that vehicle was
14 assigned to him, and he had been driving it on a
15 regular basis for about six months prior to the
16 accident.

17 A That may be true.

18 Q Do you have any way of disputing his
19 testimony?

20 A No, I really don't. I do know that
21 he's -- he's shifted out of different vehicles in
22 the past, and I don't really recall exactly if we
23 assigned that vehicle to him permanently or not.

24 Q Well, you have just testified that thought
25 that that was not a vehicle that was assigned to



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1 at our companies that aren't allowed to get in a --
 2 in a company vehicle. So not only do you have to --
 3 you know, you have to have a driving record. You
 4 have to be approved by us before you can climb into
 5 one of our vehicles.

6 Q And that would be something Jeremy Snyder
 7 would know?

8 A Yes, it would.

9 MR. HEWETT: Object to the form.

10 MS. HOLMES: That's all I have.

11 R-E-E-X-A-M-I-N-A-T-I-O-N

12 BY MR. LINDEMANN:

13 Q Just a couple of follow-ups, Mr. Lyell.
 14 Are you aware of any pictures of the 2000 Chevrolet
 15 pickup truck that we've been talking about?

16 A I don't think I've seen any pictures of
 17 it.

18 Q You didn't keep pictures of your vehicles?
 19 Is that not something you regularly kept?

20 A No, sir.

21 Q And you haven't seen any photographs of
 22 the truck after the accident?

23 A I have not, no.

24 Q As I understand your testimony, Mr. Snyder
 25 clearly would have been assigned a company vehicle



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1 during his employment with your company; is that
2 right?

3 A Yes.

4 Q And if it wasn't the 2000 Chevrolet truck,
5 he was assigned some vehicle?

6 A Yes, uh-huh.

7 Q And that vehicle was assigned to him for
8 his regular use for company purposes; is that right?

9 A It was -- it's assigned for, you know,
10 company business, mostly service truck -- service
11 calls or deliveries.

12 Q And as far as the route truck, as you were
13 referring to it, that would have been available as
14 well to Jeremy Snyder in order to use to make
15 deliveries, correct?

16 A Correct, yes.

17 Q And is it your testimony that he would
18 regularly use that vehicle to make deliveries?

19 A Not daily, but usually on a regular basis.

20 Q And that was part of his employment?

21 A It was not his primary job, no, but he
22 would occasionally make -- make deliveries. He --
23 he mainly made -- he -- he -- you know, he lives in
24 Camden, and our shop is in Lugoff. And our other
25 shop is in Columbia, so he comes right by our shop



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1 in Lugoff, which is a large building with a lot of
2 warehouse space. We warehoused a lot of tires
3 there, and he would mainly deliver -- bring tires
4 from that warehouse to Columbia, because he was --
5 he was already coming through there. And on an
6 occasion he would leave his service truck at the
7 Lugoff shop and switch over to the route -- route
8 truck -- I'm using their terminology -- and make
9 that delivery -- and make that delivery.

10 Q And so then that route truck -- again,
11 using that terminology -- would be a vehicle that
12 was available for him to use when he needed it?

13 A Yes, it -- it was, uh-huh.

14 Q So it wasn't unusual for him to be seen
15 driving that vehicle?

16 A No, it was not.

17 Q Who would have keys to that 2000 Chevrolet
18 truck? Would more than one person?

19 A We probably only had one set. If we had a
20 spare set, we kept them in the office in a drawer
21 with spare keys.

22 Q Who would have had the permanent set?

23 A Who would have had the -- the key to the
24 truck?

25 Q That's right.



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1 A Well, typically the -- our vehicles are
2 parked inside at night, and we'll typically leave
3 the keys in them at night when we bring them in the
4 building, so --

5 Q Would Mr. Snyder have had a set of keys to
6 that 2000 Chevrolet truck if it had not been
7 permanently assigned to him?

8 A No.

9 Q But if it had been assigned to him, even
10 on a temporary basis, then he would have had a set
11 of keys for that truck?

12 A He probably had the only set to it.

13 Q And you talked earlier that that vehicle
14 may have been temporarily assigned to him, and you
15 just are not sure, right?

16 A I'm not. No, I'm not sure.

17 Q And as you sit here today, you can't say
18 how that that vehicle had been assigned --

19 A I'm surprised that he said he'd been
20 driving it for six months, but he may be correct on
21 that. I'm not sure. And I don't know why. If
22 that's true, then I don't know why he would have
23 driven that truck for six months, because it's
24 not -- it's not a truck that you typically -- you
25 know, with tool boxes down the side that you



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1 typically use for service.

2 Q But you indicated you don't have a basis
3 to dispute what he had said?

4 A No. No, I really don't.

5 MR. LINDEMANN: I have no further
6 questions. Thank you.

7 E-X-A-M-I-N-A-T-I-O-N

8 BY MR. HEWETT:

9 Q How often would Mr. Snyder make
10 deliveries? You said on an occasional basis. Is
11 that once or twice a month?

12 A Maybe -- maybe more than that. He might
13 come by on his way to work and just pick up a couple
14 of tires.

15 Q And I'm sorry. This is using specifically
16 this 2000 Chevy truck, the route truck?

17 A Right.

18 Q You said on occasion he would use it. How
19 often are we talking about?

20 A I don't know, to tell you -- I really
21 don't know.

22 Q If you had to approximate how many times a
23 month he'd be using that particular truck --

24 MR. LINDEMANN: Object to the form.

25 A You know, it wasn't very often, I didn't



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STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Robin E. Otterbacher,)

Plaintiff,)

v.)

Jeremy and Tamara Snyder, individually)
and as guardians and parents of)
Blaze Kendall Snyder, Blaze Kendall)
Snyder individually, Selective Insurance)
Company of America and)
Auto-Owners Insurance Company,)

Defendants.)
_____)

Civil Action No. 2011-CP-40-1022

CERTIFICATE OF SERVICE

The undersigned employee of Davidson & Lindemann, P.A., attorneys for the Defendant, Selective Insurance Company of America, does hereby certify that service of the **Memorandum in Support of Motion for Summary Judgment of Defendant Selective Insurance Company** in the above-captioned matter was made upon all counsel of record by email and by placing copies in the United States Mail, first class postage prepaid, at the below listed addresses clearly indicated on said envelopes this the 12th day of December 2012:

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STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Robin E. Otterbacher,

Plaintiff,

vs.

Jeremy and Tamara Snyder, individually and
as guardians and parents of Blaze Kendall
Snyder, Blaze Kendall Snyder individually,
Selective Insurance Company of America
and Auto-Owners Insurance Company,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2011-CP-40-1022

**MEMORANDUM OF LAW IN SUPPORT
OF PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

Plaintiff in the above-referenced action, by and through the undersigned counsel, hereby respectfully submits this Memorandum of Law in Support of her Motion for Summary Judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure on the grounds that there are no genuine issues of material fact in dispute between the parties as to whether insurance maintained by the individual Defendants with Defendant Selective Insurance Company ("Selective Insurance") of America and Auto-Owners Insurance Company ("Auto-Owners") covered the claims of Plaintiff for an automobile collision that occurred on November 13, 2010.

FACTUAL BACKGROUND

On November 13, 2010, Robin Otterbacher was driving her automobile on Interstate 77 in Richland County, South Carolina when she was struck in the rear by a vehicle driven by Blaze Kendall Snyder and owned by Lugoff Tire Company. Blaze Kendall Snyder was operating a 2000 Chevrolet, VIN 1GCGC34R9YR194762 ("Vehicle") at the time of the accident. Plaintiff sustained serious bodily injuries and property damage to her vehicle as a result of this accident.

Blaze Kendall Snyder is the son of Jeremy Snyder. Jeremy Snyder was employed by Lugoff Tire Company at the time of the accident. Jeremy Snyder gave permission to Blaze Snyder to operate the vehicle and was riding with his son when the accident occurred. The Vehicle was directly insured by Defendant Auto-Owners Insurance Company and Defendant Jeremy Snyder maintained a personal policy with Defendant Selective Insurance at the time of the accident.

Plaintiff filed an Amended Complaint on February 10, 2012. Defendant Auto Owners filed an Answer on April 30, 2012 denying that insurance coverage was available for this accident on the grounds that Defendant Blaze Kendall Snyder did not have permission to use the vehicle at the time of the accident. Defendant Selective Insurance filed an Answer on March 29, 2012 denying that Blaze Kendall Snyder was insured under the personal policy issued to Defendant Jeremy Snyder and Tamara Snyder. Defendant Selective Insurance further denied coverage on the grounds that the Vehicle involved in the accident was not a "covered auto" as defined by the personal policy and because the Vehicle was furnished or available for Defendant Jeremy Snyder's regular use.

STANDARD OF REVIEW

Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Fleming v. Rose, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002); Rule 56(c), SCRPC (summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law"). "The purpose of summary judgment is to

expedite disposition of cases which do not require the services of a fact finder.” George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001).

Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent’s case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. Peterson v. West American Ins. Co., 336 S.C. 89, 94, 518 S.E.2d 608, 610 (Ct. App. 1999). Rather, the nonmoving party must come forward with specific facts showing there is a genuine issue for trial. Regions Bank v. Schmauch, 354 S.C. 648, 660, 582 S.E.2d 432, 438 (Ct. App. 2003).

The court must look to the “pleadings and documents before the court” to determine whether a genuine issue of material fact exists. Gilmore v. Ivey, 290 S.C. 53, 57, 348 S.E.2d 180, 183 (S.C. Ct. App. 1986). “In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the nonmoving party.” Hancock v. Mid-South Mgmt. Co., 381 S.C. 326, 329-30, 673 S.E.2d 801, 802 (2009). Summary judgment should only be granted in those cases where plain, palpable and indisputable facts exist on which reasonable minds cannot differ. Williams v. Chesterfield Lumber Co., 267 S.C. 607, 230 S.E.2d 447 (1976).

ARGUMENT

- I. There is coverage for this accident under the policy issued by Defendant Selective Insurance because Defendant Blaze Kendall Snyder was an insured under the Selective Policy and the Vehicle was not owned by Defendant Blaze Kendall Snyder nor furnished or made available for Defendant Blaze Snyder’s regular use.**

There is coverage under the Policy issued by Defendant because the Vehicle was not owned by Defendant Blaze Snyder nor furnished or made available for Defendant Jeremy Snyder or Blaze Snyder’s regular use. Rather, Defendant Jeremy Snyder appeared to have used the vehicle sporadically according to his supervisor, Danny Lyell. Defendant Blaze Snyder used the

vehicle much more sparingly than Defendant Jeremy Snyder. In fact, Defendant Blaze Snyder had only used the vehicle five or six times according to his father. Accordingly, there is coverage for this accident under the Policy F5127609 issued by Defendant Selective Insurance to Defendant Jeremy Snyder. Neither Defendant Jeremy Snyder nor Defendant Blaze Snyder owned the vehicle or made payments on the vehicle and the vehicle was not furnished to either for regular use.

“Where a clause is one of inclusion, it should be broadly construed for the benefit of the insured while in exclusion cases the same clause is given a more restricted interpretation.” Buddin v. Nationwide Mut. Ins. Co., 250 S.C. 332, 338, 157 S.E.2d 633, 635 (1967). “This is necessary because in both situations the courts favor an interpretation in favor of coverage.” Id. “When an insurance policy such as this one is susceptible to more than one reasonable interpretation, one of which would provide coverage, the court must hold as a matter of law in favor of coverage.” Gaskins v. Blue Cross-Blue Shield of South Carolina, 271 S.C. 101, 108; 245 S.E.2d 598, 602 (1978). “Insurance policies are construed in favor of coverage, and exclusions in an insurance policy are construed against the insurer.” M&M Corp. v. Auto-Owners Ins. Co., 390 S.C. 255, 259, 701 S.E.2d 33 (2010).

The pertinent provisions of Defendant Selective’s Policy are outlined below:

Definitions Part J. “Your covered auto” means:

4. Any auto or “trailer” you do not own while used as a **temporary substitute** for any other vehicle described in this definition which is out of normal use because of its:
 - a. Breakdown;
 - b. Repair;
 - c. Servicing;

- d. Loss; or
- e. Destruction

* * * *

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.”...
- B. “Insured” as used in this Part means:
 - 1. ~~You or any “family member” for the ownership, maintenance or use of any auto or “trailer”.~~
 - 2. Any person using “your covered auto.”
 - 3. For “your covered auto”, any person or organization but only with respect to legal responsibility for acts or omissions of a person for whom coverage is afforded under this Part.
 - 4. For any auto or “trailer”, other than “your covered auto”, any other person or organization but only with respect to legal responsibility for acts or omissions of your or any “family member” for whom coverage is afforded under this Part. This Provision (B.4.) applies only if the person or organization does not own or hire the auto or “trailer”.

* * * *

EXCLUSIONS

- B. We do not provide Liability Coverage for the ownership, maintenance or use of:
 - 3. Any vehicle, other than “your covered auto”, which is:
 - a. Owned by any “family member”; or

- b. Furnished or available for the regular use of any "family member".

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

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

Exhibit 1, Policy No. F5127609 issued by Defendant Selective.

As gleaned from the deposition of Danny Lyell, the owner of Lugoff Tire and the subject vehicle, the truck was not furnished or made available for the regular use by Defendant Blaze Snyder or Defendant Jeremy Snyder and appeared to be a temporary substitute vehicle.

Q: And who owned that vehicle back in November of 2010?

Lyell: That truck was owned by Lugoff Tire, Incorporated.

Q: And was that vehicle actually assigned to anyone?

Lyell: **I don't think that vehicle was permanently assigned to him [Jeremy Snyder].** That vehicle was used just to make deliveries, typically to – just – just to carry tires. It was not a service vehicle, and we did not actually use that vehicle to go out and fix trucks. It was just a pickup truck. We sometimes pulled a trailer, you know, hauling some tires around, and we just used it mainly for deliveries. **That's not a truck that Jeremy normally drove.** I don't really remember why he was driving it that day. It could have been that he needed it to make a delivery. I'm not sure. I just don't remember.

Exhibit 2, Deposition of Danny Lyell, May 30, 2012, pp. 12-13, Lines 14-25, 1-6 (emphasis supplied).

Q: Well, you have just testified that thought that that was not a vehicle that was assigned to him. What did you base that on?

Lyell: I don't – I don't think so. He typically would drive a truck that – that carried an air compressor, because he – he still actually went out and worked on trucks, did truck repair. He was kind of a backup guy. If he couldn't get one of his men to go out and fix a truck, he would typically

go out and do it, and – you know, in an emergency situation. So he typically would drive a truck with an air compressor and tools. That truck was just a stripped down truck with no tools on it, no compressor. And I don't really recall – **if he was driving it, it would have – it would have been a temporary – on – on a temporary basis. That's – that's not a truck – the type truck that he would, you know, drive full time in my – you know.**

Q: Well, again, what do you base that on? Let me ask you that. Just what do you base that on?

Lyell: I just base that on what he's done, you know, the whole time he's been here. He's always driven a – a truck. Just kinda – **there was no specific truck assigned to him.** He started out driving his own truck to work, and then he – then he – we put him on the road, and he ran some service calls. And I don't really recall what happened to it. I really don't remember.

Exhibit 2, pp. 12-14, Lines 24-25, 1-25, 1 (emphasis supplied).

Lyell: And I don't recall exactly what happened to – to his – to his vehicle that he was using for service. **I don't know if it broke down or what.**

Exhibit 2, p. 14, Lines 17-20 (emphasis supplied).

Q: Just so I'm clear. You have no records that would reflect to whom that 2000 Chevrolet pickup was assigned in November 2010; is that correct?

Lyell: That is correct. **I don't believe it was assigned to anybody.** It was a vehicle that several people used, and it was used for tire deliveries only. And I use that truck a lot myself. It's a heavy truck. I use it for pulling trailers. I actually make a lot of – made a lot of deliveries in that truck myself back in those days. So it – I mean, it – **I don't see how it could be permanently assigned to him when other people have driven it.**

Exhibit 2, pp. 17-18, Lines 18-25, 1-5 (emphasis supplied).

Q: Did you specifically use that vehicle in the latter half of 2010?

Lyell: Yes.

Q: And how do you know that?

Lyell: I used it all the time. I use it – it was just a spare vehicle that we used. It was a heavy vehicle, and I used it a lot.

Exhibit 2, Pg. 18, Lines 14-20.

Lyell: We have – we have about two or three different heavy trailers that we pull, and the reason I know I used that vehicle is it is the only vehicle heavy enough to pull those trailers. They're 10,000 pound trailers. My – my vehicle is like a 1500 Chevrolet that I personally use, and it just would not pull my trailers. And I used – I used that vehicle all the time.

Exhibit 2 pp. 18-19, Lines 24-25, 1-6.

Q: Where was that truck in 2010 principally garaged?

Lyell: It was principally garaged in Lugoff, at the shop in Lugoff.

Exhibit 2, p. 28, Lines 16-19.

Q: And I think you mentioned this was a stripped down truck that did not have any equipment such as an air compressor on it; is that correct?

Lyell: Correct, yes.

Q: And did Mr. Snyder usually drive a vehicle that came equipped with an air compressor or other pieces of equipment.

Lyell: Normally he would, yes.

Q: Would it be fair to say that this truck – I think you refer to it as a route truck.

Lyell: That – they nicknamed it the route truck, because we use it on a little delivery route to deliver tires and parts.

Q: Would it be fair to say that this route truck, as it's been coined by your employees, was used totally on an occasional basis by Mr. Snyder?

Lyell: When you say, "occasional," I'm not sure what you mean.

Q: Was he [Jeremy Snyder] driving it every day?

Lyell: He didn't normally drive it every day.

Exhibit 2, pp. 31-32, Lines 3-25, 2-3 (emphasis supplied).

Q: Would the route truck have been assigned to any one employee in particular to take home and –

Lyell: Typically it was not, but I – you know, **that's typically not a vehicle that we would assign to – to someone permanently**, because it's normally used during the day for deliveries.

Q: So it's your testimony Mr. Snyder would not have been using that vehicle on a regular basis to go back and forth from his home to work?

Lyell: **If he were using it, it would have been on a temporary basis** I do believe.

Exhibit 2, pp. 34-35, Lines 17-25, 1-5 (emphasis supplied).

Q: Is there any other independent recollection you have of a particular vehicle that Jeremy was driving, other than the route truck, at the time of the accident?

Lyell: I believe that he was using a – a regular service truck with a compressor, and I – I'm – I believe either one of two things happened to that truck. **Number one, it may have broken down.** Number two, we may have needed it. Sometimes one of our trucks will break down in the field, and we'll have to get a truck to the primary service guy. So we may have taken his truck and given it to another service guy, leaving him without a vehicle temporarily.

Q: And so would he have been using the route truck as a temporary substitute for his regular vehicle?

Lyell: He could have been. He could have been, or he could have had a second vehicle sitting in his yard and been using the route truck, you know, to make deliveries or something, the previous week. It's hard to say. I really don't know exactly why he was driving that particular truck.

Exhibit 2, pp. 37-38, lines 17-25, 1-14.

Q: If you had to approximate how many times a month he'd be using that particular truck –

Lyell: **You know, it wasn't very often**, I didn't think, but – for deliveries. Typically, on a typical basis, you know, maybe once or twice a week, maybe once a week. I don't really know how often he used it.

Exhibit 2, pp. 46-47, lines 22-23, 25, 1-4 (emphasis supplied).

Q: In the regular and ordinary course of business it's your experience that drivers would use that route truck maybe once a week or so for deliveries; is that correct?

Lyell: **That truck sat a lot. It sat still a lot. It didn't – it normally did not get used every day. It sat in our parking lot a lot. And I would use that truck as a spare, because number one, it was a heavy duty vehicle that would – like I talked about, would – I could pull a 10,000 pound trailer, but it was also available a lot, if I needed a spare vehicle. It was – it was at our shop, and that was – it was – nobody was using it, so I was – so I used it because of availability too.**

Exhibit 2, pg. 47, lines 6-9, 11-20 (emphasis supplied).

Danny Lyell, the president of Lugoff Tire and owner of the Vehicle testified that he believed Defendant Jeremy Snyder was using the Vehicle because the service truck used by Defendant Jeremy Snyder may have broken down or been used by another employee. Therefore, the Vehicle was a covered auto as a temporary substitute vehicle under the Selective Policy because it appears the service truck regularly used by Defendant Jeremy Snyder may not have been available or was broken down.

Defendant Blaze Snyder was a family member of Defendant Jeremy Snyder and covered as an "insured" under Defendant Selective's Policy. Defendant Blaze Snyder had only used the Vehicle five or six times prior to the accident. The Vehicle was not furnished or available for the regular use of Defendant Blaze Snyder and as such he is insured under the Policy issued by Defendant Selective for damages caused in the accident that occurred on November 13, 2010. Plaintiff's Motion for Summary Judgment should be granted because the Vehicle was not furnished or available for the regular use of Defendant Blaze Snyder or Defendant Jeremy Snyder and there is no genuine issue of material fact on that issue.

II. Defendant Blaze Snyder was a permissive user of the Vehicle such that there is coverage under the Policy issued by Defendant Auto Owners.

Defendant Blaze Snyder was using the Vehicle with the express permission of his father, an employee of the named insured, at the time of the accident prompting coverage under the

Policy issued by Defendant Auto Owners covering the Vehicle. Under South Carolina law, an "insured" is defined as "the named insured and ... any person who uses with the consent, expressed or implied, of the named insured the motor vehicle to which the policy applies...." S.C. Code Ann. § 38-77-30(7) (2011).

A third party can be a permissive user through implied consent. Keeler v. Allstate Ins. Co., 261 S.C. 151, 155, 198 S.E.2d 793, 795 (S.C. 1973).

Implied consent, as the term suggests, rests upon proof of circumstances from which an inference of actual permission or consent reasonably arises. The implication is one of fact based upon circumstantial evidence. Implied consent involves an inference arising from a course of conduct or relationship between the parties, in which there is mutual acquiescence or lack of objection under circumstances signifying assent.

Id. (citing Government Employment Ins. Co. v. White, 260 S.C. 163, 194 S.E.2d 884 (S.C. 1973)). "[W]hether the permission be expressly granted or impliedly conferred, it must originate in the language or the conduct of the named insured or of someone having authority to bind him in that respect." Id.

"The burden is on the party seeking coverage to establish that permission was given by the named insured." Liberty Mut. Ins. Co. v. Edwards, 294 S.C. 368, 370, 364 S.E.2d 750, 751 (S.C. 1988) (citing Allstate Insurance Co. v. Federated Mutual Implement and Hardware Insurance Co., 251 S.C. 203, 161 S.E.2d 240 (1968)). ~~"If the named insured has expressly prohibited a permittee from allowing a third party to operate the vehicle, a third party driver is not a permissive user and therefore not an insured."~~ Id. (citing Keeler v. Allstate Insurance Co., 261 S.C. 151, 198 S.E.2d 793 (1973); Southern Farm Bureau Casualty Insurance Co. v. Hartford Accident and Indemnity Co., 255 S.C. 427, 179 S.E.2d 454 (1971); Dearybury v. New Hampshire Insurance Co., 255 S.C. 398, 179 S.E.2d 206 (1971); State Farm Mutual Automobile Insurance Co. v. Allstate Insurance Co., 255 S.C. 392, 179 S.E.2d 203 (1971)).

The Policy issued by Defendant Auto Owners insured Lugoff Tire Inc. and contained the following provision which serves to afford coverage for the accident caused by Defendant Blaze Snyder:

3. With respect to mobile equipment registered in your name under any motor vehicle registration law, any person is an insured while driving such equipment along a public highway with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the equipment, and only if no other insurance of any kind is available to that person or organization for this liability.

Exhibit 3, Policy No. 46-988-133-01, pg. 25, issued by Defendant Auto Owners. Page 24 of Defendant Auto Owners Policy provides that Defendant Jeremy Snyder is an insured under the Policy as he is an employee of the named insured, Lugoff Tire.

S.C. Code Ann. § 38-77-30(7) requires liability coverage to be extended not only to the named insured when he operates the insured vehicle but also to “any person who uses with the consent, express or implied, of the named insured the motor vehicle to which the policy applies and a guest in the motor vehicle ... or the personal representative of any of the above.” The permission which puts the omnibus or extended coverage clause of the policy of insurance into operation may be either express or implied, but whether the permission be expressly or impliedly conferred, it must originate in the language or the conduct of the named insured or someone having authority to bind him in that respect. The Law of Automobile Insurance in South Carolina, Sixth Edition, pg. 99 (2009), citing Rakestraw v. Allstate Ins. Co., 238 S.C. 217, 223, 119 S.E.2d 746, 748 (1961). See, Gov’t Employees Ins. Co. v. White, 260 S.C. 163, 194 S.E.2d 884 (1973); Keller v. Allstate Ins. Co., 261 S.C. 151, 198 S.E.2d 793 (1973).

The law applicable to the omnibus coverage clause is clear that it creates liability insurance not only for the benefit of the named assured, but also for the benefit of those who come within the clause and meet its

requirements. The one essential requirement upon which the decision must turn in this case is that a person other than the named assured, in order to enjoy the protection provided by the policy, must show that his use of the automobile is with the permission of the named assured.

Rakestraw, 238 S.C. at 223, 119 S.E.2d at 746.

Defendant Jeremy Snyder, an employee of the insured with the authority to bind his employer, gave express permission for Defendant Blaze Snyder to operate the vehicle. See, Catawba Ins. Co. v. Smith, 336 S.C. 33, 39, 518 S.E.2d 291 (Ct. App. 1999) ("Permission must be expressly or impliedly given for the particular use being made of the insured vehicle at the time of the accident."). Defendant Blaze Snyder was not expressly forbidden from operating the vehicle at the time of the accident. In fact, Defendant Jeremy Snyder, an employee of the owner of the Vehicle, requested that Defendant Blaze Snyder drive the Vehicle and never informed his son that he could not operate the vehicle.

On the day of the accident, Defendant Jeremy Snyder requested that Defendant Blaze Snyder drive the truck to his office in Columbia. Defendant Jeremy Snyder testified:

Q: And so why is that you let him drive that day?

Jeremy Snyder: Trying to kill two birds with one stone. He needed driving time experience, and I was – I – I work 18 hours a day, seven days a week. I just don't have time to be a parent, and I'm trying to mix business and – fatherhood at the same time.

Q: So you were just giving him time behind the wheel?

Jeremy Snyder: Yes, sir.

Q: And you needed to go to the office, so he went with you?

Jeremy Snyder: Yes, sir.

Q: And what vehicle were you in?

Jeremy Snyder: A 2000 Chevrolet. I think it was a 2000 Chevrolet.

Q: And who owns that vehicle?

Jeremy Snyder: Lugoff Tire Company.

Exhibit 4, Deposition of Jeremy Snyder, May 30, 2012, pp. 16-17, Lines 13-25, 1-8.

Q: Had he [Blaze Snyder] ever driven this vehicle, this 2000 Chevy truck, before the day of the accident?

Jeremy Snyder: Yes, sir.

Q: On how many occasions?

Jeremy Snyder: Half a dozen, I suppose, just running to the Lugoff store or there in town.

Exhibit 4, p. 25, Lines 1-7.

Q: And you mentioned that he'd used the vehicle five or six times. Was that for personal use, or was that to run an errand for the company at all?

Jeremy Snyder: It would be for me running an errand for the company.

Q: Would you be with him at the time?

Jeremy Snyder: Yes, sir. Yeah. There's no way I'd let anybody that wasn't an employee take the vehicle without me in it.

Exhibit 4, pp. 26-27, Lines 23-25, 1-6.

Q: Did your son, Blaze Snyder, know that there were company policies in place that he was not authorized to use the vehicle?

Jeremy Snyder: No, sir.

Q: He did not know that?

Jeremy Snyder: No, sir.

Exhibit 4, pg. 26, Lines 11-16.

Q: And you'd authorized him to use the vehicle on the day of the accident?

Jeremy Snyder: Yes, sir.

Q: And you'd let him use the vehicle also on five or six occasions prior to the day of the accident?

Jeremy Snyder: Yes, sir.

Exhibit 4, pp. 26- 27, Lines 25, 1-6.

Q: Did you ever tell Blaze that he was not allowed to use the truck?

Jeremy Snyder: After the accident.

Q: Before the accident, had anybody, including Mr. Drinkall –

Jeremy Snyder: No, sir.

Exhibit 4, pg. 28, Lines 1-6.

Q: And I think you testified earlier that Mr. Drinkall has never actually instructed him [Blaze Snyder] that he could not operate that 2000 Chevy truck.

Jeremy Snyder: Yes, sir.

Q: How about Mr. Lyell, has he ever actually had a conversation with Blaze where he instructed him that he could not operate the truck?

Jeremy Snyder: Not that I'm aware of.

Q: You mentioned that there was an 8 by 8 paper which in essence gave instructions to employees that their family members could not use company vehicles; is that correct?

Jeremy Snyder: Well, it's just a regular 8' by 11 that says –

Q: Did –

Jeremy Snyder: –it's got rules and says vehicles are for company use only, company use only, no unauthorized drivers. I don't even remember what's on it anymore.

Q: Was your son, Blaze, ever given a copy of that piece of paper?

Jeremy Snyder: No, sir.

Exhibit 4, pp. 30-31, Lines 23-25, 1-19.

Q: So at the time of the accident, did Blaze believe he was entitled to use the vehicle?

Jeremy Snyder: Under my saying "yes," he could get in there and drive, I was -- yeah, I guess he would.

Exhibit 4, pg. 33, Lines 7-10.

Q: Did you ever tell him [Blaze Snyder] that he was not allowed to use the truck pursuant to company policy?

Jeremy Snyder: No.

Exhibit 4, pg. 35, Lines 13-15.

Q: Had you ever explicitly placed any restriction on Blaze in terms of using the 2000 Chevy truck? Had you told him, "No, you cant use it to do this or to go anywhere in particular."

Jeremy Snyder: No, he never asked to use it.

Q: The only time he used it is when he was with you?

Jeremy Snyder: Yes, sir.

Q: Was that usually prompted at your request for him to drive the truck?

Jeremy Snyder: Yes, sir.

Exhibit 4, pp. 36-37, Lines 20-25, 1-5.

Q: Other than just the general parameters of driving a vehicle, did you ever give any specific instructions to Blaze about the use of this 2000 Chevrolet?

Jeremy Snyder: No, sir.

Exhibit 4, pg. 39, Lines 19-23.

Q: You answered a question by Ms. Holmes that you didn't believe you had the authority to grant permission to Blaze to operate the vehicle. Did he ever question your authority when you asked him to drive the Chevy truck?

Jeremy Snyder: No, sir.

Q: So did he believe he was entitled and had permission to use the vehicle at the time of the accident?

Jeremy Snyder: Yes, sir.

Exhibit 4, pp. 45-46, Lines 22-25, 1-6.

Danny Lyell, the President of Lugoff Tire, testified that the only written rules in place governing the use of the vehicles related to the use of the driver fuel card and that company vehicles were to be used for company business only. Exhibit 2, pp. 22-23, Lines 15-25, 1-8. At the time of the accident, the Vehicle was being used for company business as Defendant Jeremy Snyder was traveling to his office in Columbia, South Carolina. Danny Lyell provided the following testimony regarding the use of vehicles by family members and written policies about company vehicles:

Q: Did you personally lead any seminars, lectures or meetings in which family members were present and the topic of discussion was use of company vehicles?

Lyell: Family members?

Q: Yes, sir.

Lyell: No.

Exhibit 2, pg. 29, Lines 8-14.

Q: Did you ever had a conversation prior to the date of this accident with Blaze Snyder in which you told him that he could not use company vehicles?

Lyell: No. I had no reason to.

Q: We're looking at -- I believe this is Exhibit 2. Your last page is a document containing rules regarding fuel or the use of the fuel car.

Lyell: Uh-huh.

Q: I think you testified that there are no other written instructions regarding the use of company vehicles; is that correct?

Lyell: I don't think so. No, not written down.

Q: If there were, would you have brought them with you here today?

Lyell: Yes, uh-huh.

Exhibit 2, Pg. 30, Lines 4-18.

Q: Are you aware of anyone else at Lugoff Tire, including yourself or your management – I think Derek – is it Driscoll?

Lyell: Derek Drinkall.

Q: -- Derek Drinkall that told Blaze Snyder that he could not use that vehicle?

Lyell: You know, I'm sure that – I'm sure nobody that I'm aware of ever spoke to him about the use of that vehicle. I mean, why would you? The kid comes in. You know, when you see a kid – if a kid walks into your office, are you going to say, "Whatever you do, don't you go down there and drive my vehicle." You know what I'm saying? It's just not a subject that comes up. I mean, I never spoke to – I never went to Blaze. Jeremy's got four kids. You know, there's four – four kids, and they come into my office on a regular basis, and I don't go tell each one of them, "Don't you drive this truck." "Don't you drive this truck." Why should I, you know? I mean, kids come in all the time. It's not – I just – you don't' – no, I haven't – I've never spoke to Blaze the word – driving a company vehicle has never come up to any of his kids.

Exhibit 2, pp. 48-49, line 13-25; 1-11.

Lugoff Tire granted Defendant Jeremy Snyder broad dominion over the subject vehicle enabling him as a permittee to authorize his son to operate the vehicle. See, General Accident Ins. Co. v. Safeco Ins. Cos., 314 S.C. 63, 443 S.E.2d 813 (Ct. App. 1994). In General Accident Ins. Co., the court held, in part:

[I]t is almost universally held in the modern cases that where the named insured grants his permittee broad and unfettered dominion over his insured automobile, he also impliedly authorizes his permittee to allow a third person to use it, and thus render him an additional insured. The first permittee, by being granted complete dominion over the insured

automobile, is put in the shoes of the named insured, and therefore his permittee is held to be the named insured's permittee.

Id., 314 S.C. at 69.

Defendant Jeremy Snyder was an insured under the Auto Owners Policy and had the authority to give his consent to Defendant Blaze Snyder to operate the vehicle. When Defendant Jeremy Snyder surrendered the automobile to Defendant Blaze Snyder for the purpose of driving both of them to Lugoff Tire's shop in Columbia, the custody and control of the vehicle passed from Defendant Jeremy Snyder to Defendant Blaze Snyder. The control of the automobile began at that time and continued throughout the trip, and likewise was continuing at the time of the injury to Plaintiff Otterbacher. There can be no doubt that Defendant Jeremy Snyder had the authority to grant permission to Defendant Blaze Snyder to use the automobile and to do whatever was necessary and incidental to transport them to the shop of the named insured, Lugoff Tire.

In permitting his son to drive him to the Lugoff Tire shop in Columbia, Defendant Jeremy Snyder was acting within the scope of his employment. Defendant Jeremy Snyder, the first permittee, allowed Defendant Blaze Snyder, the second permittee, to operate or use the Vehicle and such was for the benefit of Defendant Jeremy Snyder, the first permittee, as well as Lugoff Tire, the named insured. It follows that Defendant Blaze Snyder had the express permission of Defendant Jeremy Snyder and the implied permission of Lugoff Tire to operate or use the automobile in connection with the trip to the Lugoff Tire facility in Columbia, South Carolina and such was within the scope of the original permission granted by Lugoff Tire to Defendant Jeremy Snyder.

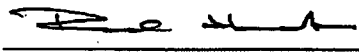
Plaintiff's Motion for Summary Judgment should be granted because Defendant Blaze Snyder had permission to use the vehicle and there is no genuine issue of material fact on that issue.

CONCLUSION

Based upon the pleadings, the deposition testimony given in this case, the attached Exhibits, and the foregoing arguments, Plaintiff requests that the Court grant her Motion for Summary Judgment.

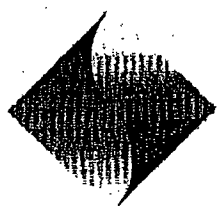
Respectfully Submitted,

MIKE KELLY LAW GROUP, LLC

BY: 

Brad D. Hewett
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Columbia, SC 29210
803.726.0123
803.252.7145
bhewett@mklawgroup.com

December 3, 2012
Columbia, South Carolina



SELECTIVE
Insurance

POLICY DOCUMENT

F 5127609

INSURED'S COPY

Selective Insurance
40 Wantage Avenue Branchville
New Jersey 07890
(973) 948-3000

IMPORTANT NOTICE REGARDING AGENT COMPENSATION

We sell our insurance products and services through appointed independent insurance agencies and agents ("Agent" or "Agents"). Because Agents also generally represent several of our competitors, our primary marketing strategy is to:

- Develop close relationships with each Agent by (i) soliciting their feedback on products and services, (ii) advising them concerning company developments, and (iii) investing significant time with them professionally and socially; and
- Develop with each Agent, and then carefully monitor, annual goals regarding (i) types and mix of risks placed with us, (ii) amounts of premium or numbers of policies placed with us, (iii) customer service levels, and (iv) profitability of business placed with us.

We pay Agents commissions and other consideration for business placed with us (and we do not authorize our Agents to receive other monies for our insurance). We seek to compensate our Agents fairly and in a way consistent with market practices.

Our Agent compensation programs may include one or more of the following depending on the Agent's overall business relationship with us:

- **Commission Payments.** We pay commission based on a percentage of the premium the policyholder pays. The amount of commission varies depending on policy type, state location of risk, and other factors.
- **Additional Commission Payments.** We may pay additional and varying percentages of premium for attainment of certain goals we set with the Agent, including:
 - **Profitability**, which we determine by comparing losses and expenses to premium;
 - **Volume**, which is the amount of premium written with us;
 - **Growth and Retention**, which we measure by comparing premium volume or number of policies for overall or specific types of policies; or
 - **Annual Plan Performance**, which we measure according to performance standards determined by us and the Agent.

In certain cases, an Agent may put additional commissions at risk and become obligated to pay us amounts if certain goals are not met.

- **Expense Reimbursement.** We may reimburse certain marketing and other expenses incurred for placing business with us.
- **Entertainment and Other Things of Value.** We may entertain or provide other things of value, including travel and gratuities, to Agents who we believe provide exceptional value to our policyholders and shareholders.
- **Business Production Incentive Programs.** We may provide Agents or their employees opportunities to receive additional compensation (cash or contest prizes) for certain activities or tasks, such as placing specific types of policies with us or inputting data through one of our technology systems.

- **Loss Control Agreements.** We may pay Agents a flat fee or a percentage of commission for safety and loss control surveys, inspections, accident or claim investigations.
- **Agent Stock Purchase Plan.** Certain of our Agents participate in a stock purchase plan that allows those Agents to purchase common stock in Selective Insurance Group, Inc. at a 10% discount to market and requires those agents to hold the stock for at least one year before they can transfer it.

As supporters of the independent insurance agency distribution system, we may provide Agents from time-to-time with tools and programs designed to preserve and strengthen the independent agency distribution system, including assistance with producer recruitment and/or training, loans, or loan guarantees. These tools and programs, which may be experimental, are provided to assist our Agents in the perpetuation of robust independent insurance agencies and are not conditioned on the imposition of extraordinary current or future production conditions.

We also distribute our insurance products to a limited extent through select insurance brokers which we compensate with some of the same compensation tools we use for Agents. If you have engaged a broker to place insurance with us, please ask the broker if any of the above described compensation arrangements are in effect with us.

Please direct questions regarding specific compensation to your Agent.

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.

After twenty days, the insurer is relieved of the obligation imposed by this subsection to attach or imprint the foregoing statement to any subsequently delivered renewal policy, extension certificate, other written statement of coverage continuance, or to any subsequently mailed premium notice.

Insurance Score Notice

Thank you for choosing Selective to provide your insurance coverage.

In addition to factors such as driving record, type of vehicle, use of vehicle and your limits of coverage, Selective uses an insurance score in its eligibility and pricing decisions. Your insurance score is based in part on a credit report obtained from a consumer reporting agency. Based in part upon your insurance score, you are not currently eligible for our most favorable plan or rates. However, you are receiving our lowest rate based on your risk characteristics. Your insurance score is based wholly or partly on a consumer report obtained from the following consumer reporting agency:

ChoicePoint Consumer Service Center
PO Box 105108
Atlanta, GA 30348-5108
1-800-456-6004
Reference No.: 10481090334209

You may obtain a free copy of the consumer report by contacting the above consumer reporting agency within sixty (60) days of receipt of this notice.

Please be advised that the consumer reporting agency did not make the decisions concerning your eligibility and/or pricing and will be unable to provide you with specific reasons for Selective's decision. If, however, you believe the information in the consumer report is incorrect, you have the right to dispute the accuracy and/or completeness of the information in your consumer report directly with the consumer reporting agency shown above.

The following factors from your credit report had the most significant influence on your insurance score:

- # OF INQUIRIES FOR TRANSACTIONS INITIATED BY CONSUMER IN LAST 6 MONTHS
- # OF OPEN AUTO FINANCING ACCOUNTS
- # OF OPEN ACCOUNTS WITH HIGH % OF BALANCE TO CREDIT LIMIT
- # OF INQUIRIES W/FINANCE COMPANIES INITIATED BY CONSUMER IN LAST 24 MOS

Insurance scores can change over time. The score is developed from a mathematical model that weighs and measures credit information such as payment history, the number of collections, bankruptcies, outstanding debt, length of credit history, types of credit in use and the number of new applications for credit. These factors identify credit management patterns that have proven to correlate with the probability of having a future insurance loss. Paying bills on time, keeping balances low and applying for credit only as needed are all steps that will eventually lead to better insurance scores with the possibility for lower insurance premiums.

We appreciate the opportunity to serve your insurance needs. Thank you.

Dear Valued Customer:

Thank you for choosing Selective Insurance.

Your independence agent knows that prompt friendly service is your top priority, and we at Selective Insurance are dedicated to providing you with that service.

If you have any questions about this policy, please contact your independent agent listed on your policy declarations as they can assist you with all your insurance needs.

Again, thank you for choosing Selective Insurance. We look forward to continuing to provide your insurance protection.

Sincerely,

Selective Insurance

CONTINUOUS PERSONAL AUTO POLICY DECLARATIONS

SELECTIVE INSURANCE COMPANY OF AMERICA 40 WANTAGE AVE BRANCHVILLE, N.J. 07890 PHONE: (973) 948-3000		Number F 5127609 Type - 01A SC Agent No. 00-08183-00000 Period 04/18/2010 to 04/18/2011 12:01 A.M. Standard Time
Named Insured and Mailing Address JEREMY SNYDER TAMARA SNYDER 609 CHESNUT ST CAMDEN, SC 29020-2828 Occupation:		
AGENT: HUCKABY & ASSOCIATES PO BOX 21154 COLUMBIA, SC 29221-1154		BILL ACCT. NO.: 708053627 803-772-3773

INSURANCE IS AFFORDED ONLY FOR COVERAGES AS ARE INDICATED BY SPECIFIC PREMIUM CHARGE OR CHARGES. THE LIMIT OF THE COMPANY'S LIABILITY FOR EACH COVERAGE SHALL BE AS STATED BELOW, SUBJECT TO ALL RELEVANT TERMS OF THIS POLICY.

AUTOMOBILE COVERAGE INFORMATION

DESCRIPTION OF OWNED AUTOS

NO	YEAR	MAKE	MODEL	SERIAL	NUMBER(VIN)	SYMBOL
01	1995	CHEV	PICKUP1500	1GCEK19K4SE246632		11
02	1998	ISUZU	TROOPER	JACDJ58X5W7912344		15
03	2004	GMC	SIERRA 1500 BASE	1GTEC19X04Z291166		12

NO	ALL OTHER TERRITORY	OTHER THAN COLL TERRITORY	CLASS	USE	COST	TYPE*
01	007	006	816614	1		01
02	007	006	887112	1		01
03	007	006	887312	3		01

*TYPE 01=PRIVATE PASSENGER AUTO

THE VEHICLES DESCRIBED IN THIS POLICY ARE PRINCIPALLY GARAGED AT THE ABOVE ADDRESS UNLESS OTHERWISE STATED.

OPERATOR SECTION

NO.	NAME	BIRTH DATE	SEX	MARITAL STATUS	LICENSE NUMBER
01	JEREMY SNYDER	06/21/1971	M	MARRIED	101793037
02	TAMARA SNYDER	04/28/1971	F	MARRIED	101988069
03	BRITTANY SNYDER	10/02/1992	F	SINGLE	101893550

COVERED AUTO NO.	AUTOMOBILE COVERAGES AND LIMITS OF LIABILITY	FULL TERM PREMIUM
BODILY INJURY LIABILITY		
01	\$100,000 EACH PERSON	378.00
02	\$100,000 EACH PERSON	202.00
03	\$100,000 EACH PERSON	188.00
PROPERTY DAMAGE		
01	\$100,000 EACH ACCIDENT	330.00
02	\$100,000 EACH ACCIDENT	141.00
03	\$100,000 EACH ACCIDENT	160.00

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CONTINUOUS PERSONAL AUTO POLICY DECLARATIONS

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Named Insured and Mailing Address JEREMY SNYDER TAMARA SNYDER 609 CHESNUT ST CAMDEN, SC 29020-2828 Occupation :		

PAGE 2

UNINSURED MOTORISTS			
BODILY INJURY			
01	\$100,000 EACH PERSON	\$300,000 EACH ACCIDENT	34.00
02	\$100,000 EACH PERSON	\$300,000 EACH ACCIDENT	34.00
03	\$100,000 EACH PERSON	\$300,000 EACH ACCIDENT	34.00
PROPERTY DAMAGE			
01	\$100,000 EACH ACCIDENT		INCLUDED
02	\$100,000 EACH ACCIDENT		INCLUDED
03	\$100,000 EACH ACCIDENT		INCLUDED
UNDERINSURED MOTORISTS			
BODILY INJURY			
01	\$100,000 EACH PERSON	\$300,000 EACH ACCIDENT	70.00
02	\$100,000 EACH PERSON	\$300,000 EACH ACCIDENT	70.00
03	\$100,000 EACH PERSON	\$300,000 EACH ACCIDENT	70.00
PROPERTY DAMAGE			
01	\$100,000 EACH ACCIDENT		INCLUDED
02	\$100,000 EACH ACCIDENT		INCLUDED
03	\$100,000 EACH ACCIDENT		INCLUDED
MEDICAL PAYMENT COVERAGE			
01	\$5,000 EACH PERSON		38.00
02	\$5,000 EACH PERSON		35.00
03	\$5,000 EACH PERSON		31.00
DAMAGE TO YOUR AUTO			
OTHER THAN COLLISION			
02	ACTUAL CASH VALUE	MINUS \$500 DEDUCTIBLE	107.00
03	ACTUAL CASH VALUE	MINUS \$1000 DEDUCTIBLE	122.00
COLLISION			
03	ACTUAL CASH VALUE	MINUS \$1000 DEDUCTIBLE	177.00
02	TOWING AND LABOR COSTS \$25.00 EACH DISABLEMENT		INCLUDED
03	TOWING AND LABOR COSTS \$50.00 EACH DISABLEMENT		2.00
02	OPTIONAL LIMITS TRANSPORTATION EXPENSES COVERAGE		
	\$40 A DAY/\$1200 MAXIMUM PAYMENT		INCLUDED
03	OPTIONAL LIMITS TRANSPORTATION EXPENSES COVERAGE		
	\$40 A DAY/\$1200 MAXIMUM PAYMENT		INCLUDED

AUTO NO. ADDITIONAL INTERESTS

03 LOSS PAYEE:
 WACHOVIA DEALER SERVICES
 PO BOX 25341
 SANTA ANA, CA 92799-5341

THE FOLLOWING ITEMS WERE CONSIDERED DURING THE RATING OF YOUR POLICY.

AUTO NO.
 02 PASSIVE DISABLING DEVICE
 03 DAYTIME LIGHTS SYSTEM
 PASSIVE DISABLING DEVICE

THE FOLLOWING FORMS AND ENDORSEMENTS APPLY TO YOUR POLICY.

PP0001	0698	SI0178	0709	MISC-798	0601	IN0197	0807
AUD-1003	0399	PP0302	0698	PP0303	0486	SI0305	0101
PP0341	1196	PP0355	0698	PP0435	0698	PP0465	0399
PP0472	0698	PP0488	0698	PP1301	1299	MISC1792	0707

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CONTINUOUS PERSONAL AUTO POLICY DECLARATIONS

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Occupation :	

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VEHICLE 01 PREMIUM WAS CALCULATED WITH TIER 14 RATES
 VEHICLE 02 PREMIUM WAS CALCULATED WITH TIER 12 RATES
 VEHICLE 03 PREMIUM WAS CALCULATED WITH TIER 12 RATES
 GOOD PAYER DISCOUNT

AUTO 01 SUBTOTAL	\$ 850.00
AUTO 02 SUBTOTAL	\$ 589.00
AUTO 03 SUBTOTAL	\$ 784.00
FULL TERM POLICY PREMIUM	\$ 2,223.00

WE MAY REVIEW YOUR CREDIT REPORT TO OBTAIN OR USE AN INSURANCE SCORE BASED ON THE INFORMATION CONTAINED IN THE CREDIT REPORT. WE MAY USE A THIRD PARTY IN CONNECTION WITH THE DEVELOPMENT OF YOUR INSURANCE SCORE. INSURANCE SCORES ARE CONFIDENTIAL RANKINGS BASED ON CREDIT HISTORY INFORMATION. THIS INCLUDES WHETHER YOU'VE MADE TIMELY PAYMENTS, THE NUMBER OF OPEN CREDIT CARD ACCOUNTS, AND WHETHER YOU'VE FILED FOR BANKRUPTCY. SPECIFIC INFORMATION CONTAINED IN YOUR CREDIT REPORT REMAINS PRIVATE INFORMATION, AND INSURANCE SCORES DO NOT INCLUDE INFORMATION ABOUT INCOME OR RACE. YOUR PREMIUM MAY HAVE BEEN CHANGED BECAUSE OF YOUR INSURANCE SCORE. IF YOU HAVE BEEN CHARGED AN ADDITIONAL PREMIUM YOU WILL RECEIVE A SEPARATE LETTER IN ACCORDANCE WITH THE REQUIREMENTS OF THE FAIR CREDIT REPORTING ACT.

THE INSURER CAN CANCEL THIS POLICY FOR WHICH YOU ARE APPLYING WITHOUT CAUSE DURING THE FIRST 90 DAYS. THAT IS THE INSURER'S CHOICE. AFTER THE FIRST 90 DAYS, THE INSURER CAN ONLY CANCEL THIS POLICY FOR REASONS STATED IN THE POLICY.

DLSCN 02/25

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DECLARATIONS PAGE

Your Name and Address
Your Auto or Trailer
Policy Period
Coverages and Amounts of Insurance

	<u>Beginning On Page</u>		<u>Beginning On Page</u>
	1	AGREEMENT	8
	1	DEFINITIONS	
	2	Insuring Agreement	
		Supplementary Payments	
PART A —		Exclusions	
LIABILITY		Limit of Liability	
COVERAGE		Out of State Coverage	
		Financial Responsibility	
		Other Insurance	
PART B —	5	Insuring Agreement	
MEDICAL		Exclusions	
PAYMENTS		Limit of Liability	
COVERAGE		Other Insurance	
PART C —	6	Insuring Agreement	
UNINSURED		Exclusions	
MOTORISTS		Limit of Liability	
COVERAGE		Other Insurance	
		Arbitration	
		PART D —	
		COVERAGE	
		FOR	
		DAMAGE	
		TO YOUR	
		AUTO	
		Insuring Agreement	
		Transportation Expenses	
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		PART E —	12
		DUTIES	
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		GENERAL	
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		Changes	
		Legal Action Against Us	
		Our Right to Recover Payment	
		Policy Period and Territory	
		Termination	
		Transfer of Your Interest	
		in this Policy	
		Two or More Auto Policies	

AGREEMENT

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

DEFINITIONS

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

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

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

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

B. "We", "us" and "our" refer to the Company providing this insurance.

C. For purposes of this policy, a private passenger type auto, pickup or van shall be deemed to be owned by a person if leased:

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

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

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

2. Pickup or van.

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

J. "Your covered auto" means:

1. Any vehicle shown in the Declarations.
2. A "newly acquired auto".
3. Any "trailer" you own.

4. ~~Any auto or trailer you do not own while used as a temporary substitute for any other vehicle described in the Declaration which is out of normal use because of its breakdown, repair, rebuilding, servicing, loss of or destruction.~~
 This provision does not apply to Coverage for Damage to Your Auto.

K. "Newly acquired auto":

1. "Newly acquired auto" means any of the following types of vehicles you become the owner of during the policy period:
 - a. A private passenger auto; or
 - b. A pickup or van, for which no other insurance policy provides coverage, that:
 - (1) Has a Gross Vehicle Weight of less than 10,000 lbs.; and
 - (2) Is not used for the delivery or transportation of goods and materials unless such use is:
 - (a) Incidental to your "business" of installing, maintaining or repairing furnishings or equipment; or
 - (b) For farming or ranching.
2. Coverage for a "newly acquired auto" is provided as described below. If you ask us to insure a "newly acquired auto" after a specified time period described below has elapsed, any coverage we provide for a

"newly acquired auto" will begin at the time you request the coverage.

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

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

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

- (1) 14 days after you become the owner if the Declarations indicate that Collision Coverage applies to at least one auto. In this case, the "newly acquired auto" will have the broadest coverage we now provide for any auto shown in the Declarations.

- (2) Four days after you become the owner if the Declarations do not indicate that Collision Coverage applies to at least one auto. If you comply with the 4 day requirement and a loss occurred before you asked us to insure the "newly acquired auto", a Collision deductible of \$500 will apply.

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

- (1) 14 days after you become the owner if the Declarations indicate that Other Than Collision Coverage applies to at least one auto. In this case, the "newly acquired auto" will have the broadest coverage we now provide for any auto shown in the Declarations.

- (2) Four days after you become the owner if the Declarations do not indicate that Other Than Collision Coverage applies to at least one auto. If you comply with the 4 day requirement and a loss occurred before you asked us to insure the "newly acquired auto", an Other Than Collision deductible of \$500 will apply.

PART A — LIABILITY COVERAGE

INSURING AGREEMENT

- A. We will pay damages for "bodily injury" or "property damage" for which any "insured" becomes legally responsible because of an auto accident. Damages include prejudgment interest awarded against the "insured." We will settle or defend, as we consider appropriate, any claim or suit asking for these damages. In addition to our limit of liability, we will pay all defense costs we incur. Our duty to settle or defend ends when our limit of liability for this coverage has been exhausted by payment of judgments or settlements. We have no duty to defend any suit or settle any claim for "bodily injury" or "property damage" not covered under this policy.

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

1. You or any "family member" for the ownership, maintenance or use of any auto or "trailer".

2. Any person using "your covered auto".
3. For "your covered auto", any person or organization but only with respect to legal responsibility for acts or omissions of a person for whom coverage is afforded under this Part.
4. For any auto or "trailer", other than "your covered auto", any other person or organization but only with respect to legal responsibility for acts or omissions of you or any "family member" for whom coverage is afforded under this Part. This Provision (B.4.) applies only if the person or organization does not own or hire the auto or "trailer".

SUPPLEMENTARY PAYMENTS

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

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

EXCLUSIONS

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

1. Who intentionally causes "bodily injury" or "property damage".
2. For "property damage" to property owned or being transported by that "insured".
3. For "property damage" to property:
 - a. Rented to;
 - b. Used by; or
 - c. In the care of;
 that "insured".

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

4. For "bodily injury" to an employee of that "insured" during the course of employment. This Exclusion (A.4.) does not apply to "bodily injury" to a domestic employee unless workers' compensation benefits are required or available for that domestic employee.
5. For that "insured's" liability arising out of the ownership or operation of a vehicle while it is being used as a public or livery conveyance. This Exclusion (A.5.) does not apply to a share-the-expense car pool.
6. While employed or otherwise engaged in the "business" of:
 - a. Selling;

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

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

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

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

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

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

8. Using a vehicle without a reasonable belief that that "insured" is entitled to do so. This Exclusion (A.8.) does not apply to a "family member" using "your covered auto" which is owned by you.
9. For "bodily injury" or "property damage" for which that "insured":
 - a. Is an insured under a nuclear energy liability policy; or
 - b. Would be an insured under a nuclear energy liability policy but for its termination upon exhaustion of its limit of liability.

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

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

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

1. Any vehicle which:

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

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

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

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

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

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

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

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

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

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

- a. Competing in; or
- b. Practicing or preparing for;

any prearranged or organized racing or speed contest.

LIMIT OF LIABILITY

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

"bodily injury" resulting from any one auto accident.

The limit of liability shown in the Declarations for each accident for Property Damage Liability is our maximum limit of liability for all "property damage" resulting from any one auto accident. This is the most we will pay regardless of the number of:

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

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

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

OUT OF STATE COVERAGE

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

A. If the state or province has:

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

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

FINANCIAL RESPONSIBILITY

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

OTHER INSURANCE

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

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PART B — MEDICAL PAYMENTS COVERAGE

INSURING AGREEMENT

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

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

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

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

1. You or any "family member":
 - a. While "occupying"; or
 - b. As a pedestrian when struck by;

a motor vehicle designed for use mainly on public roads or a trailer of any type.
2. Any other person while "occupying" "your covered auto".

EXCLUSIONS

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

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

b. Furnished or available for the regular use of any "family member".

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

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

any prearranged or organized racing or speed contest.

LIMIT OF LIABILITY

A. The limit of liability shown in the Declarations for this coverage is our maximum limit of liability for each person injured in any one accident. This is the most we will pay regardless of the number of:

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

B. No one will be entitled to receive duplicate

payments for the same elements of loss under this coverage and:

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

OTHER INSURANCE

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

PART C — UNINSURED MOTORISTS COVERAGE**INSURING AGREEMENT**

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

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

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

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

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

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

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

1. To which no bodily injury liability bond or policy applies at the time of the accident.

2. To which a bodily injury liability bond or policy applies at the time of the accident. In this case its limit for bodily injury liability must be less than the minimum limit for bodily injury liability specified by the financial responsibility law of the state in which "your covered auto" is principally garaged.

3. Which is a hit-and-run vehicle whose operator or owner cannot be identified and which hits:

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

4. To which a bodily injury liability bond or policy applies at the time of the accident but the bonding or insuring company:

- a. Denies coverage; or
- b. Is or becomes insolvent.

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

1. Owned by or furnished or available for the regular use of you or any "family member".
2. Owned or operated by a self-insurer under any applicable motor vehicle law, except a self-insurer which is or becomes insolvent.
3. Owned by any governmental unit or agency.

4. Operated on rails or crawler treads.
5. Designed mainly for use off public roads while not on public roads.
6. While located for use as a residence or premises.

EXCLUSIONS

A. We do not provide Uninsured Motorists Coverage for "bodily injury" sustained:

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

B. We do not provide Uninsured Motorists Coverage for "bodily injury" sustained by any "insured":

1. If that "insured" or the legal representative settles the "bodily injury" claim without our consent.
2. While "occupying" "your covered auto" when it is being used as a public or livery conveyance. This Exclusion (B.2.) does not apply to a share-the-expense car pool.
3. Using a vehicle without a reasonable belief that that "insured" is entitled to do so. This Exclusion (B.3.) does not apply to a "family member" using "your covered auto" which is owned by you.

C. This coverage shall not apply directly or indirectly to benefit any insurer or self-insurer under any of the following or similar law:

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

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

LIMIT OF LIABILITY

A. The limit of liability shown in the Declarations for each person for Uninsured Motorists Coverage is our maximum limit of liability for all damages, including damages for care, loss of services or death, arising out of "bodily injury" sustained by

any one person in any one accident. Subject to this limit for each person, the limit of liability shown in the Declarations for each accident for Uninsured Motorists Coverage is our maximum limit of liability for all damages for "bodily injury" resulting from any one accident.

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

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

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

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

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

D. We will not pay for any element of loss if a person is entitled to receive payment for the same element of loss under any of the following or similar law:

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

OTHER INSURANCE

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

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

3. If the coverage under this policy is provided:

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

ARBITRATION

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

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

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

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

B. Each party will:

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

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

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

PART D — COVERAGE FOR DAMAGE TO YOUR AUTO

INSURING AGREEMENT

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

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

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

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

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

1. Missiles or falling objects;
2. Fire;
3. Theft or larceny;
4. Explosion or earthquake;
5. Windstorm;
6. Hail, water or flood;

7. Malicious mischief or vandalism;
8. Riot or civil commotion;
9. Contact with bird or animal; or
10. Breakage of glass.

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

C. "Non-owned auto" means:

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

TRANSPORTATION EXPENSES

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

1. Temporary Transportation expenses not exceeding \$20 per day incurred by you in the event of a loss to "your covered auto". We will pay for such expenses if the loss is caused by:
 - a. Other than "collision" only if the Declarations indicate that Other Than Collision Coverage is provided for that auto.
 - b. "Collision" only if the Declarations indicate that Collision Coverage is provided for that auto.
2. Expenses for which you become legally responsible in the event of loss to a "non-owned auto". We will pay for such expenses if the loss is caused by:
 - a. Other than "collision" only if the Declarations indicate that Other Than Collision Coverage is provided for "your covered auto".

- b. "Collision" only if the Declarations indicate that Collision Coverage is provided for "your covered auto".

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

B. If the loss is caused by:

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

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

EXCLUSIONS

We will not pay for:

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

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

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

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

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

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

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

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

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

This Exclusion (5.) does not apply to:

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

- b. A permanently installed telephone designed to be operated by use of the power from the auto's electrical system and any accessories used with the telephone.

6. Loss to tapes, records, discs, or other media used with equipment described in Exclusions 4. and 5.

7. A total loss to "your covered auto" or any "non-owned auto" due to destruction or confiscation by governmental or civil authorities.

This Exclusion (7.) does not apply to the interests of Loss Payees in "your covered auto".

8. Loss to:

- a. A "trailer", camper body, or motor home, which is not shown in the Declarations; or
- b. Facilities or equipment used with such "trailer", camper body or motor home. Facilities or equipment include but are not limited to:
 - (1) Cooking, dining, plumbing or refrigeration facilities;
 - (2) Awnings or cabanas; or
 - (3) Any other facilities or equipment used with a "trailer", camper body, or motor home.

This Exclusion (8.) does not apply to a:

- a. "Trailer", and its facilities or equipment, which you do not own; or
- b. "Trailer", camper body, or the facilities or equipment in or attached to the "trailer" or camper body, which you:
 - (1) Acquire during the policy period; and
 - (2) Ask us to insure within 14 days after you become the owner.

9. Loss to any "non-owned auto" when used by you or any "family member" without a reasonable belief that you or that "family member" are entitled to do so.

10. Loss to equipment designed or used for the detection or location of radar or laser.

11. Loss to any custom furnishings or equipment in or upon any pickup or van. Custom furnishings or equipment include but are not limited to:

- a. Special carpeting or insulation;
- b. Furniture or bars;
- c. Height-extending roofs; or
- d. Custom murals, paintings or other decals or graphics.

This Exclusion (11.) does not apply to a cap, cover or bedliner in or upon any "your covered auto" which is a pickup.

12. Loss to any "non-owned auto" being maintained or used by any person while employed or otherwise engaged in the "business" of:

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

vehicles designed for use on public highways. This includes road testing and delivery.

13. Loss to "your covered auto" or any "non-owned auto", located inside a facility designed for racing, for the purpose of:

- a. Competing in; or
- b. Practicing or preparing for;

any prearranged or organized racing or speed contest.

14. Loss to, or loss of use of, a "non-owned auto" rented by:

- a. You; or
- b. Any "family member";

if a rental vehicle company is precluded from recovering such loss or loss of use, from you or that "family member", pursuant to the provisions of any applicable rental agreement or state law.

LIMIT OF LIABILITY

- A. Our limit of liability for loss will be the lesser of the:

- 1. Actual cash value of the stolen or damaged property; or
- 2. Amount necessary to repair or replace the property with other property of like kind and quality.

However, the most we will pay for loss to:

- 1. Any "non-owned auto" which is a trailer is \$500.
- 2. Equipment designed solely for the reproduction of sound, including any accessories used with such equipment, which is installed in locations not used by the auto manufacturer for installation of such equipment or accessories, is \$1,000.

- B. An adjustment for depreciation and physical condition will be made in determining actual cash value in the event of a total loss.

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

PAYMENT OF LOSS

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

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

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

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

NO BENEFIT TO BAILEE

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

OTHER SOURCES OF RECOVERY

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

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

APPRAISAL

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

differences to the umpire. A decision agreed to by any two will be binding. Each party will:

1. Pay its chosen appraiser; and
 2. Bear the expenses of the appraisal and umpire equally.
- B. We do not waive any of our rights under this policy by agreeing to an appraisal.

PART E — DUTIES AFTER AN ACCIDENT OR LOSS

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

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

B. A person seeking any coverage must:

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

b. Other pertinent records.

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

C. A person seeking Uninsured Motorists Coverage must also:

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

D. A person seeking Coverage for Damage to Your Auto must also:

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

PART F — GENERAL PROVISIONS**BANKRUPTCY**

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

CHANGES

- A. This policy contains all the agreements between you and us. Its terms may not be changed or waived except by endorsement issued by us.
- B. If there is a change to the information used to develop the policy premium, we may adjust your

premium. Changes during the policy term that may result in a premium increase or decrease include, but are not limited to, changes in:

1. The number, type or use classification of insured vehicles;
2. Operators using insured vehicles;
3. The place of principal garaging of insured vehicles;
4. Coverage, deductible or limits.

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

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

1. A subsequent edition of your policy; or
2. An Amendatory Endorsement.

FRAUD

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

LEGAL ACTION AGAINST US

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

OUR RIGHT TO RECOVER PAYMENT

- A. If we make a payment under this policy and the person to or for whom payment was made has a right to recover damages from another we shall be subrogated to that right. That person shall do:
 1. Whatever is necessary to enable us to exercise our rights; and
 2. Nothing after loss to prejudice them.

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

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

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

POLICY PERIOD AND TERRITORY

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

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

B. The policy territory is:

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

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

TERMINATION

A. Cancellation

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

1. The named insured shown in the Declarations may cancel by:
 - a. Returning this policy to us; or
 - b. Giving us advance written notice of the date cancellation is to take effect.
2. We may cancel by mailing to the named insured shown in the Declarations at the address shown in this policy:
 - a. At least 10 days notice:
 - (1) If cancellation is for nonpayment of premium; or
 - (2) If notice is mailed during the first 60 days this policy is in effect and this is not a renewal or continuation policy; or
 - b. At least 20 days notice in all other cases.
3. After this policy is in effect for 60 days, or if this is a renewal or continuation policy, we will cancel only:
 - a. For nonpayment of premium; or
 - b. If your driver's license or that of:

- (1) Any driver who lives with you; or
- (2) Any driver who customarily uses "your covered auto";

has been suspended or revoked. This must have occurred:

- (1) During the policy period; or
- (2) Since the last anniversary of the original effective date if the policy period is other than 1 year; or

- c. If the policy was obtained through material misrepresentation.

B. Nonrenewal

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

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

C. Automatic Termination

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

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

D. Other Termination Provisions

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

TRANSFER OF YOUR INTEREST IN THIS POLICY

- A. Your rights and duties under this policy may not be assigned without our written consent. However, if a named insured shown in the Declarations dies, coverage will be provided for:
 - 1. The surviving spouse if resident in the same household at the time of death. Coverage applies to the spouse as if a named insured shown in the Declarations; and
 - 2. The legal representative of the deceased person as if a named insured shown in the Declarations. This applies only with respect to the representative's legal responsibility to maintain or use "your covered auto".

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

TWO OR MORE AUTO POLICIES

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

AMENDMENT OF POLICY PROVISIONS — SOUTH CAROLINA

SI 01 78 07 09

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

I. Definitions

The following is added to the Definitions Section:

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:

- A. \$25,000 for each person, subject to \$50,000 for each accident, with respect to "bodily injury"; and
- B. \$25,000 for each accident with respect to "property damage".

Definition K.1. is replaced by the following:

K. "Newly Acquired Auto":

- 1. "Newly acquired auto" means any of the following types of vehicles you become the owner of during the policy period:
 - a. A private passenger auto; or
 - b. A pickup or van, for which no other insurance policy provides coverage, that:
 - (1) Has a Gross Vehicle Weight of less than 12,500 lbs.; and
 - (2) Is not used for the delivery or transportation of goods and materials unless such use is:
 - (a) Incidental to your "business" of installing, maintaining or repairing furnishings or equipment; or
 - (b) For farming or ranching.

II. Part A — Liability Coverage

Exclusion A.1. is replaced by the following:

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

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

III. Part D — Coverage For Damage To Your Auto

The following is added to the Insuring Agreement of Part D:

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

IV. Part F — General Provisions

Part F is amended as follows:

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

FRAUD

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

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

OUR RIGHT TO RECOVER PAYMENT

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

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

TERMINATION

Cancellation

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

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

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

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

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- b. If your driver's license or that of:
- (1) Any driver who lives with you; or
 - (2) Any driver who customarily uses "your covered auto";
- has been suspended or revoked. This must have occurred:
- (1) During the policy period; or
 - (2) If this is a renewal or continuation policy, during the policy period or the 90 days immediately preceding the last anniversary of the original effective date.

Nonrenewal

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

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

Automatic Termination

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

Other Termination Provisions

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

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

NOTICE OF INFORMATION PRACTICES (LONG FORM)

MISC-798 06 01

Your application or information you provide in connection with a claim is our major source of information. However, in order to evaluate your application for insurance, to service your policy or to process a claim, we may ask for additional information about you and any person who will be insured under this policy or who is the subject of the claim. This is sometimes necessary to make certain that the statements on your application are accurate or to process the claim. We may also need more details than you have already given us.

INFORMATION WE COLLECT

In connection with an application, the information that we may collect will enable us to make possible judgments about your character, habits, hobbies, finances, occupation, general reputation, health or other personal characteristics. In connection with a claim, the information we may collect will enable us to process the claim.

We may obtain this information from several sources. For example, we may contact any physician, clinic or hospital where any persons to be insured or making a claim have been treated. We may need information from your employer. But, before we ask for information from any of these sources, we will ask you to sign an authorization, which gives us permission to proceed, unless authorization is not required by law.

We may get information by talking or writing to other insurance companies to which you applied for a policy or with which you have made a claim, members of your family, neighbors, friends, your insurance agent and others who know you. We may also obtain information from motor vehicle reports, court records, or photographs of the property you want insured or with regard to which you have made a claim.

CONSUMER REPORTS

It is common for an insurance company to order a report from an independent organization — a consumer reporting agency or an insurance-support organization — to verify and add to the information that you have given us. These reports are used to help us decide if you qualify for the insurance for which you have applied or to evaluate the claim you have made.

They may:

- ☐ pertain to your mode of living, character, general reputation and personal characteristics such as health, job and finances.
- ☐ contain information on your marital status, driving records, etc.
- ☐ include information on the loss history of your property.
- ☐ include information gathered by talking or writing to you or members of your family, neighbors, friends, your insurance agent and others who know you.
- ☐ include information from motor vehicle reports, court records or photographs of your property and/or the property involved in the claim.

Upon your request, the consumer reporting agency or insurance-support organization will attempt to interview you in connection with any report it prepares. The information may be kept by the reporting organization and may later be given to others who use its services. It will be given only to the extent permitted by the Federal Fair Credit Reporting Act and your local state law, if any. Upon request and identification, the consumer reporting agency or insurance-support organization will provide you with a copy of the report.

DISCLOSURE OF INFORMATION

Information we collect about you will not be given to anyone without your consent, except when necessary to conduct our business. There are some disclosures which may be made without your prior authorization. These include:

- _____ Persons or organizations who need the information to perform a professional, business or insurance function for us, such as businesses that assist us with data processing or marketing.
- _____ Other insurance companies, agents, or consumer reporting agencies as it may be needed in connection with any application, policy or claim involving you.
- _____ Adjusters, appraisers, investigators and attorneys who need the information to investigate or settle a claim involving you.
- _____ An insurance-support organization which is established to collect information for the purpose of detecting and preventing insurance crimes or fraudulent claims.
- _____ A medical professional or institution to verify your insurance coverage or inform you of a medical condition of which you may not be aware.
- _____ Persons or organizations that conduct scientific research, including actuarial or underwriting studies.
- _____ Persons or organizations that will use the information for sales purposes, unless you indicate in writing to us that you do not want the information disclosed for this purpose.
- _____ Our affiliated companies for auditing our operations and for marketing an insurance product or service.

In addition, we may provide information to state insurance departments in connection with their regulatory authority and to other governmental or law enforcement authorities to protect our legal interests or in cases of suspected fraud or illegal activities.

YOUR INSURANCE POLICY FILES

Information we collect about you will be kept in our policy files. We may refer to this information if you file a claim for benefits under any policy you have with us or if you apply to us for a new policy. You have the right to know what kind of information we keep in our files about you, to have access to the information, and to receive a copy. There are some types of information; however, to which we are not required to give you access. This type of information is generally collected when we evaluate a claim or when the possibility of a lawsuit exists.

If you want information from your files, please contact us. There may be a nominal charge for copies of records. If you think your file contains incorrect information, notify us indicating what you believe is incorrect and your reasons. We will reinvestigate the matter and either correct our records or place a statement from you in our files explaining why you believe the information is incorrect. We will also notify persons or organizations to whom we previously disclosed the information of the change or your statement.

CONFIDENTIALITY AND SECURITY OF PERSONAL INFORMATION

We restrict access to personal information to those individuals who need to know that information to provide products or services to you. We maintain physical, electronic, and procedural safeguards that comply with legal standards and ensure the confidentiality of personal information in accordance with our policy.

TREATMENT OF PERSONAL INFORMATION OF FORMER CUSTOMERS AND APPLICANTS

We adhere to this personal information privacy policy even when a customer relationship no longer exists. Disclosures about former applicants and customers may be made without prior authorization as permitted by law.

If you have any questions about our information practices, please contact us.

**OPTIONAL LIMITS TRANSPORTATION
EXPENSES COVERAGE**

PP 03 02 06 98

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

SCHEDULE

Description of Your Covered Auto(s)	Limit Per Day For Temporary Transportation Or Loss Of Use Expenses	Maximum Limit of Liability	Premium
	\$ Per Day	\$	\$
	\$ Per Day	\$	\$
	\$ Per Day	\$	\$

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

**OPTIONAL LIMITS TRANSPORTATION EXPENSES
COVERAGE**

When there is a loss to a "your covered auto" described in the Schedule or in the Declarations for which a specific premium charge indicates that

Optional Limits Transportation Expenses Coverage is afforded, or to a "non-owned auto":

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

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

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TOWING AND LABOR COSTS COVERAGE

PP 03 03 04 86

SCHEDULE

Description of Your Covered Auto	Limit of Towing and Labor Cost Coverage	Premium
	\$	\$
	\$	\$
	\$	\$

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

broadest towing and labor costs coverage applicable to any "your covered auto" shown in the Schedule or in the Declarations. We will only pay for labor performed at the place of disablement.

LOSS PAYABLE CLAUSE

SI 03 05 01 01

Loss Payee: _____

Loss or damage under this policy shall be paid, as interest may appear, to you and the loss payee shown in the Declarations or in this endorsement. This insurance with respect to the interest of the loss payee shall become invalid only because of your conversion, secretion or embezzlement of {your covered auto.} However, we reserve the right to cancel the policy as permitted by policy terms and the cancellation shall terminate this agreement as to the loss payee's interest. We will give the same advance notice of cancellation to the loss payee as we give to the named insured shown in the Declarations.

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

FULL SAFETY GLASS COVERAGE - SOUTH CAROLINA

PP 03 41 11 96

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

COVERAGE FOR DAMAGE TO YOUR AUTO

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

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

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

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

DISCN 02/25/

SINGLE LIABILITY LIMIT — SOUTH CAROLINA

PP 03 55 06 98

SCHEDULE

Liability Coverage

\$ _____ each accident

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

Paragraphs A. and B. of the Limit Of Liability Provision in Part A are replaced by the following:

LIMIT OF LIABILITY

A. The limit of liability shown in the Schedule or in the Declarations for Liability Coverage is our maximum limit of liability for all damages resulting from any one auto accident. This is the most we will pay regardless of the number of:

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

B. We will apply the limit of liability shown in the Schedule or in the Declarations to first provide the separate limits required by the statutes of South Carolina for:

1. "Bodily injury" or death of one person in any one auto accident;
2. "Bodily injury" or death of two or more people in any one auto accident; and
3. Injury to or destruction of property of an "insured" in any one auto accident.

This provision will not change our total limit of liability.

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

SINGLE UNINSURED MOTORISTS LIMITS — SOUTH CAROLINA

PP 04 35 06 98

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

SCHEDULE

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

	Limit of Liability	Auto 1	Premium Auto 2	Auto 3
Uninsured Motorists Coverage	\$ _____ each accident	\$	\$	\$

Paragraphs A., B. C. and D. of the Limit of Liability provision in the Uninsured Motorists Coverage Endorsement are replaced by A., B., C. and D. as follows:

A. If "bodily injury" or "property damage" is sustained in an accident by you or any "family member" while "occupying" "your covered auto", our maximum limit of liability for all damages resulting from that accident is the sum of the limits of liability for Uninsured Motorists Coverage shown in the Schedule or in the Declarations applicable to each vehicle.

Subject to the maximum limit of liability for all damages:

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

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

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

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

B. If "bodily injury" or "property damage" is sustained in an accident by you or any "family member" while not "occupying" any auto, our maximum limit of liability for all damages resulting from that accident is the sum of the limits of liability for Uninsured Motorists Coverage shown in the Schedule or in the Declarations applicable to each vehicle.

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

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

C. If "bodily injury" or "property damage" is sustained in an accident by you or any "family member" while "occupying" a vehicle not owned by you or any "family member", our maximum limit of liability for all damages resulting from that accident will be the highest limit of liability shown in the Schedule or in the Declarations for this coverage applicable to any one of "your covered autos". This is the most we will pay regardless of the number of:

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

D. If "bodily injury" or "property damage" is sustained by an "insured" other than you or any "family member" in an accident in which neither you nor any "family member" sustained "bodily injury" or "property damage", our maximum limit of liability for all damages resulting from that accident will be the limit of liability shown in

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the Schedule or in the Declarations for this coverage applicable to the vehicle that "insured" was "occupying" at the time of that 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 Schedule or in the Declarations; or
4. Vehicles involved in the accident.

E. We will apply the limit of liability shown in the Declarations to first provide the separate limits required by the Statutes of South Carolina for:

1. "Bodily injury" or death of one person in any one accident; and
2. "Bodily injury" or death of two or more people in any one accident; and
3. Injury to or destruction of property of an "insured" in any one accident.

This provision will not change our total limit of liability.

**UNINSURED MOTORISTS COVERAGE —
SOUTH CAROLINA**

PP 04 65 03 99

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

SCHEDULE

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

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

I. Part C — Uninsured Motorists Coverage

Part C is replaced by the following:

INSURING AGREEMENT

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

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

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

"Insured" as used in this endorsement means:

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

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

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

1. To which neither:
 - a. A liability bond or policy; nor

- b. Cash or securities deposited with the State Treasurer;

applies at the time of the accident.

2. To which a liability bond or policy applies at the time of the accident. In this case its limit for liability must be less than the minimum limits specified by the South Carolina Financial Responsibility Act.
3. Which is a hit-and-run vehicle whose operator or owner cannot be identified and which hits or which causes an accident resulting in "bodily injury" or "property damage" without hitting:
 - a. You or any "family member";
 - b. A vehicle which you or any "family member" are "occupying";
 - c. "Your covered auto"; or
 - d. Any of your property.

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

4. To which a liability bond or policy applies at the time of the accident but the bonding or insuring company:
 - a. Successfully denies coverage;
 - b. Is or becomes insolvent;

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- 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 or operated by a self-insurer under any applicable motor vehicle law, except a self-insurer which is or becomes insolvent.
- 2. 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.
- 3. Operated on rails or crawler treads.
- 4. Designed mainly for use off public roads while not upon public roads.

EXCLUSIONS

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

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

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

LIMIT OF LIABILITY

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

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

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

2. You or any "family member" who sustains "bodily injury" or "property damage" in that accident will also be entitled to a pro rata share of the each person or each accident limit described in Paragraph 1. above.

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

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

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

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

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

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

1. "Insureds";
2. Claims made;

3. Vehicles or premiums shown in the Schedule or in the Declarations; or

4. Vehicles involved in the accident.

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

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

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

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

- D. If "bodily injury" or "property damage" is sustained by an "insured" other than you or any "family member" in an accident in which neither you nor any "family member" sustained "bodily injury" or "property damage":

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

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

1. "Insured's";
 2. Claims made;
 3. Vehicles or premiums shown in the Schedule or in the Declarations; or
 4. Vehicles involved in the accident.
- E. No one will be entitled to receive duplicate payments for the same elements of loss under this coverage and:
1. Part A or Part B of this policy.
 2. Any Underinsured Motorists Coverage provided by this policy; or
 3. Part D of this policy or any similar coverage under any other policy.

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

OTHER INSURANCE

- A. If an "insured" sustains "bodily injury" while "occupying" a vehicle not owned by that person or while not "occupying" any vehicle, the following priorities or 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 exceed our share of the maximum recovery. Our share is the proportion that our limit of liability bears to the total of 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.

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II. Part F — General Provisions

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

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

OUR RIGHT TO RECOVER PAYMENT

1. If we make payment under this policy and the person to or for whom payment was made has a right to recover damages from another, we shall be subrogated to that right to the extent of such payment that does not exceed the minimum limits specified by the South Carolina Motor Vehicle Financial Responsibility Act. That person shall do:
 - a. Whatever is necessary to enable us to exercise our rights; and
 - b. Nothing after loss to prejudice them.
2. If an "insured" has prosecuted to judgment any suit against any person responsible, we will be entitled to an assignment of the judgment to the extent of payment under this insurance that does not exceed the minimum limits specified by the South Carolina Motor Vehicle Financial Responsibility Act.
3. We will pay our proportionate part of any reasonable costs and expenses incurred for any recovery, including reasonable attorneys' fees. However, we reserve the right to retain an attorney of our choice to pursue a claim instead of reasonable attorneys' fees.

4. If an "insured" making a claim for "property damage" under this insurance is also entitled to insurance or other compensation for the "property damage", we will not be obligated to pay a claim until the "insured" has assigned us the rights to the compensation, to the extent of payment under this insurance that does not exceed the minimum limits specified by the South Carolina Motor Vehicle Financial Responsibility Act.

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

TWO OR MORE AUTO POLICIES

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

- C. The following provision is added:

CONFORMITY TO STATUTE

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

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

**SINGLE UNDERINSURED MOTORISTS LIMITS —
SOUTH CAROLINA**

PP 04 72 06 98

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

SCHEDULE

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

Underinsured Motorists Coverage	Limit of Liability	Premium		
		Auto 1	Auto 2	Auto 3
	\$ _____ each accident	\$	\$	\$

Paragraphs A., B. and C. of the Limit Of Liability Provision in the Underinsured Motorists Coverage Endorsement are replaced by A., B. and C. as follows:

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, our maximum limit of liability for all damages resulting from that accident is the sum of limits of liability for Underinsured Motorists Coverage shown in the Schedule or in the Declarations applicable to each vehicle.

Subject to the maximum limit of liability for all damages:

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

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

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

1. "Insureds";
2. Claims made;

3. Vehicles or premiums shown in the Schedule or in the Declarations; or

4. Vehicles involved in the accident.

B. If "bodily injury" is sustained in an accident by you or any "family member" while not "occupying" any auto, our maximum limit of liability for all damages resulting from that accident is the sum of the limits of liability for Underinsured Motorists Coverage shown in the Schedule or in the Declarations applicable to each vehicle.

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

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

C. If "bodily injury" is sustained in an accident by you or any "family member" while "occupying" a vehicle not owned by you or any "family member", our maximum limit of liability for all damages resulting from that accident will be the highest limit of liability shown in the Schedule or in the Declarations for this coverage applicable to any one of "your covered autos". This is the most we will pay regardless of the number of:

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

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

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**UNDERINSURED MOTORISTS COVERAGE —
SOUTH CAROLINA**

PP 04 88 06 98

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

SCHEDULE

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

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

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

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

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

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

"Insured" as used in this endorsement means:

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

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

"Underinsured motor vehicle" means a land motor vehicle or trailer of any type to which a liability bond or policy applies at the time of the accident in limits equal to or greater than the minimum limit for liability specified by the South Carolina Financial Responsibility Act, but the limits of _____ that _____ bond _____ or _____

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

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

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

EXCLUSIONS

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

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

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

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

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LIMIT OF LIABILITY

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

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

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

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

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

1. "Insureds";
 2. Claims made;
 3. Vehicles or premiums shown in the Schedule or in the Declarations; or
 4. Vehicles involved in the accident.
- B. If "bodily injury" is sustained in an accident by you or any "family member" while not "occupying" any auto;
1. Our maximum limit of liability for all damages, including damages for care, loss of services or death, arising out of "bodily injury" sustained by any one person in that accident is the sum of the limits of liability shown in the Schedule or in the Declarations for each person for Bodily Injury Liability Underinsured Motorists Coverage.
 2. Subject to this limit for each person, our maximum limit of liability for all damages arising out of "bodily injury" sustained in that accident is the sum of the limits of liability shown in the Schedule or in the Declarations for each accident for Bodily Injury Liability Underinsured Motorists Coverage.
- The maximum limit of liability is the most we will pay regardless of the number of:
1. "Insureds";
 2. Claims made;
 3. Vehicles or premiums shown in the Schedule or in the Declarations; or
 4. Vehicles involved in the accident.
- C. If "bodily injury" is sustained in an accident by you or any "family member" while "occupying" a vehicle not owned by you or any "family member":
1. Our maximum limit of liability for all damages, including damages for care, loss of services or death, arising out of "bodily injury" sustained by any one person in that accident is the highest each person limit of liability shown in the Schedule or in the Declarations for Bodily Injury Liability Underinsured Motorists coverage applicable to any one of "your covered autos".
 2. Subject to this limit for each person, our maximum limit of liability for all damages arising out of "bodily injury" sustained in that accident is the highest each accident

limit of liability shown in the Schedule or in the Declarations for Bodily Injury Liability Underinsured Motorists Coverage applicable to any one of "your covered autos"; and

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

1. "Insureds"
 2. Claims made;
 3. Vehicles or premiums shown in the Schedule or in the Declarations; or
 4. Vehicles involved in the accident.
- D. No one will be entitled to receive duplicate payments for the same elements of loss under this coverage and Part A, Part B, Part C or Part D of this policy.
- E. We will not make a duplicate payment under this coverage for any element of loss for which payment has been made by or on behalf of persons or organizations who may be legally responsible.
- F. We will not pay for any element of loss if a person is entitled to receive payment for the same element of loss under any of the following or similar law:
1. Workers' compensation law; or
 2. Disability benefits law.

OTHER INSURANCE

- A. If an "insured" sustains "bodily injury" while "occupying" a vehicle not owned by that person or while not "occupying" any vehicle, the following priorities or recovery apply:

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

1. If there is no applicable insurance available under the first priority, the maximum recovery under all policies in the second priority shall not exceed the highest applicable limit for any one vehicle under any one policy.

2. If there is applicable insurance available under the first priority:

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

3. We will pay only our share of the loss, not to exceed our share of the maximum recovery. Our share is the proportion that our limit of liability bears to the total of applicable limits in the same level of priority.

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

ADDITIONAL DUTY

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

GENERAL PROVISIONS

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

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

TWO OR MORE AUTO POLICIES

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

CONFORMITY TO STATUTE

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

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

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PP 04 88 06 98
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DLSCN 02/25/1

**COVERAGE FOR DAMAGE TO YOUR AUTO EXCLUSION
ENDORSEMENT**

PP 13 01 12 99

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

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

I. Definitions

The following definition is added:

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

II. Part D — Coverage For Damage To Your Auto

The following exclusion is added:

We will not pay for:

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

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

We will provide the insurance described in this policy in return for the premium
and compliance with all applicable provisions of this policy

Michelle Theresa Salomaker

Secretary

Gregory E. Murphy

Chairman

Misc-1597 (07/94)

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DLSCN 02/25/11

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
COUNTY OF RICHLAND) C/A NO.: 2010-CP-40-1022

ROBIN E. OTTERBACHER,

Plaintiff,

vs.

JEREMY AND TAMARA SNYDER, INDIVIDUALLY
AND AS GUARDIANS AND PARENTS OF BLAZE
KENDALL SNYDER, BLAZE KENDALL SNYDER
INDIVIDUALLY, SELECTIVE INSURANCE COMPANY
OF AMERICA AND AUTO-OWNERS INSURANCE
COMPANY,

Defendants.

DEPOSITION OF
JEREMY SNYDER

DATE: May 30, 2012
TIME: 10:09 a.m. to 10:56 a.m.
LOCATION: Davidson & Lindemann, P.A.
1611 Devonshire Drive
Second Floor
Columbia, South Carolina 29204
REPORTED BY: Lorraine A. Wharton



1 Q Are these foster children, or are you've
2 just informally taken them in?

3 A No. We just informally have taken them
4 in.

5 Q What is it --

6 A Friends of our children, so they didn't
7 get left in a cardboard box on the street. Both of
8 them -- well, one graduated. The other one is going
9 to graduate in a few days.

10 Q What is your wife's name?

11 A Tamara Faye Snyder.

12 Q And your childrens' names?

13 A Brittany LeAnn.

14 Q And how old is she?

15 A Nineteen. I had to think about it. Blake
16 Austin.

17 Q How old is he?

18 A Eighteen.

19 Q Okay.

20 A Blaze Kendall.

21 Q And how old is he?

22 A Seventeen.

23 Q And the fourth one?

24 A Breeze Summer.

25 Q And how is she?



1 A Fifteen for two more days.

2 Q By whom are you employed?

3 A Columbia Commercial Tire.

4 Q And what do you do for them?

5 A Night shift road service supervisor.

6 Q How long have you been employed by
7 Columbia Commercial Tire?

8 A Five and a half years.

9 Q Has your job changed during that five and
10 half years?

11 A As far as?

12 Q Your job title --

13 A Title.

14 Q -- or your job duties.

15 A Yes, just a couple of times.

16 Q Tell me what your initial position was
17 with the company.

18 A Mechanic.

19 Q How long did you hold that job?

20 A About six months.

21 Q And then you received a promotion?

22 A Yes, sir.

23 Q And promoted to what?

24 A Counter assistant manager.

25 Q And how long did you hold that position?



1 A Three and a half years.

2 Q And then you changed to your current
3 position?

4 A Yes, sir.

5 Q And you said that was a night shift road
6 supervisor?

7 A Yes, sir.

8 Q Was that a promotion?

9 A It's basically the same as what I was
10 doing behind the counter. I just manage a different
11 group of people.

12 Q So basically a lateral move?

13 A Yes, sir.

14 Q And how long have you held the current
15 position?

16 A A couple of years.

17 Q Who is your supervisor?

18 A Derek Drinkall, D-E-R-E--K.

19 Q Give that to me again.

20 A Drinkall, D-R-I-K-A-L-L.

21 Q What's his position with the company?

22 A General manager.

23 Q Who is Danny Lyell?

24 A Lyell? Owner.

25 Q Does he have any involvement in the



1 running of the company?

2 A He owns it. I mean, he -- he makes all
3 final decisions.

4 Q So he actually works in the company and --

5 A Yes, sir.

6 Q Mr. Drinkall reports to him?

7 A Yes, sir.

8 Q Does Columbia Commercial Tire go by
9 another name?

10 A It goes by a lot of different names.

11 Q And tell me --

12 A Commercial Truck Service, Lugoff
13 Commercial Tire, Columbia Commercial Truck Center.
14 We use Knoxville Commercial Truck. Knoxville
15 Commercial Truck Service, Charlotte Commercial Truck
16 Service, Atlantic Commercial Truck Service,
17 Greensboro Commercial Truck Service. There's
18 just -- there's a lot of small entities that are all
19 combined into a whole.

20 Q And so Lugoff Tire Company, is that part
21 of --

22 A They're the --

23 Q -- the same entity?

24 A They're the home office. They are the
25 primary.



1 Q And all these businesses are all owned by
2 Mr. Lyell?

3 A Yes.

4 Q Who is your actual employer?

5 A Columbia Commercial Tire.

6 Q And where is that located?

7 A 111 Plumbers Road, Columbia.

8 Q Is there more than one location in the
9 Columbia area?

10 A No, sir.

11 Q And are there locations in other areas?
12 You mentioned Knoxville and Charlotte.

13 A Mobile service only.

14 Q So the headquarters and the only actual
15 location --

16 A Physical location.

17 Q -- physical location --

18 A Is Lugoff Tire and Columbia Commercial
19 Tire.

20 Q And that's on Plumbers Drive?

21 A Columbia Commercial is on Plumbers Road.
22 Lugoff Tire's in Lugoff.

23 Q Where in Lugoff?

24 A 39 Boulware Road.

25 Q And what location do you work out of?



1 A Columbia Commercial, the Columbia's
2 location.

3 Q Has that been true for the entire five and
4 a half years?

5 A Yes, sir.

6 Q Let me get a little bit more background
7 information. How much education do you have?

8 A High school and a couple of -- a couple of
9 short courses in -- for college.

10 Q When did you graduate from high school?

11 A '90.

12 Q What high school?

13 A Lincolnview.

14 Q Where is that located?

15 A Middle Point, Ohio.

16 Q And you said you have some college
17 courses?

18 A Northwestern University, Lima, Ohio.

19 Q How many credits or how many years?

20 A About three semesters and a short stint in
21 the Marine Corps after that.

22 Q When were you in the Marines?

23 A December 8th, 1990 to June of '91.

24 Q What kind of discharge?

25 A Medical.



1 Q What was the basis of that?

2 A Broken left third metatarsal that'll never
3 heal.

4 Q When did you come to South Carolina?

5 A Five and a half -- five or -- five and a
6 half years ago, September, Labor Day weekend.

7 Q And what was the reason for moving to
8 South Carolina?

9 A It's cold in Ohio, man.

10 Q I can believe it. So you moved South for
11 the weather?

12 A At 15 years doing road service in Ohio,
13 laying in snow drifts on the side of the road
14 underneath trucks, body and mind wouldn't take it
15 anymore. It was time to find someplace warmer.

16 Q I understand. So the entire time you've
17 been in South Carolina you've been employed by
18 Columbia Commercial Tire?

19 A Yes, sir.

20 Q As I mentioned earlier, this lawsuit
21 involves an automobile accident that occurred
22 back -- at least I have the date as November 13th,
23 2010; is that right?

24 A Yes, sir.

25 Q And that was an accident -- well, tell me



1 about the accident real quickly. Why don't you
2 briefly explain to me how the accident happened.

3 A Coming westbound on I-20, approaching
4 Clemson Road, I had -- was on my way into the shop
5 to do some work and trying to do two things at one
6 time. Let my son do some driving on his permit and
7 get my job done at the same time, which was a
8 mistake on my part, and I see that now. We'd come
9 upon the accident that was on the other side of the
10 road and everybody stopped, and he didn't see them.
11 I glanced over to make sure -- we were coming
12 through where 20 goes from 70 to 60, where it
13 reduces speed, and I had looked over to make sure he
14 had slowed down, and when I looked back, it was too
15 late.

16 Q And so what exactly happened?

17 A He hit the brakes and rear ended two or
18 three cars.

19 Q And you said you were westbound on I-20?

20 A Yes, sir.

21 Q But there was an existing accident on the
22 eastbound side?

23 A Yes, sir. It was the accident where that
24 woman ran over the firefighter.

25 Q And so what was impeding traffic on the



1 westbound lanes, just people rubbernecking?

2 A In layman's -- in layman's terms, gawkers'
3 block.

4 Q Had traffic actually come to a dead stop
5 on the westbound lanes?

6 A I don't know. I literally looked at the
7 speedometer, and when I looked back it was -- there
8 was -- they were either going very, very slow or
9 completely stopped. There wasn't time for me to
10 tell one way or the other.

11 Q Well, you were in the passenger seat?

12 A Yes, sir.

13 Q And your son was driving?

14 A Yes, sir.

15 Q And which son was that?

16 A Blaze Kendall.

17 Q And how old was he at the time?

18 A Uh, he's 17 now. He turned 17 in March,
19 16. He'd had to have been 16.

20 Q I believe --

21 A The math doesn't add right.

22 Q I believe I had him at 15.

23 A He might have been 15, and then turned 16
24 that March, and now he's 17. He would have been 15
25 at the time.



1 Q And he had a learner's permit?

2 A He had a learner's permit, yes, sir.

3 Q And you said you were doing paperwork at
4 the same time; is that what I understood?

5 A No. I was on my way to the office to do
6 paperwork. What -- I had glanced down to make sure
7 he had slowed down, that he had noticed the speed
8 change from 60 to -- or 70 to 60.

9 Q Were you doing anything else while riding
10 with him?

11 A Just watching him, trying to make sure he
12 was all right.

13 Q And so why is that you let him drive that
14 day?

15 A Trying to kill two birds with one stone.
16 He needed driving time experience, and I was -- I --
17 I work 18 hours a day, seven days a week. I just
18 don't have time to be a parent, and I'm trying to
19 mix business and -- and fatherhood at the same time.

20 Q So you were just giving him time behind
21 the wheel?

22 A Yes, sir.

23 Q And you needed to go to the office, so he
24 went with you?

25 A Yes, sir.



1 Q And what vehicle were you in?

2 A A 2000 Chevrolet. I think it was a 2000
3 Chevrolet.

4 Q What kind of Chevrolet?

5 A A 3500 pickup truck, regular cab, long
6 bed.

7 Q And who owns that vehicle?

8 A Lugoff Tire Company.

9 Q What day of the week was this?

10 A Sunday, I believe. It had to be a
11 Saturday afternoon or a Sunday. It's the only day I
12 would have had time to be with him.

13 Q About what time of day?

14 A After lunch, two, three o'clock.

15 Q If I'm reading this right, it looks like
16 it's 3:00; does that sound about right?

17 A Right in that ballpark, yes, sir.

18 Q Was this particular Chevrolet pickup --
19 was that assigned to you by the company?

20 A Yes, sir.

21 Q How long had you been driving that
22 vehicle?

23 A I'm not sure. I've driven so many of the
24 different vehicles for the company I've lost track
25 of how long each one I had. I suppose I had it



1 five, six months.

2 Q Do you still have that vehicle?

3 A No, sir.

4 Q Was it repaired after the accident?

5 A No, sir.

6 Q Now, as far as company assigned vehicles,
7 were you able to take that home?

8 A Yes, sir.

9 Q What were the rules regarding your use of
10 the vehicle at that particular time?

11 A No -- not for personal use, for work
12 company use only.

13 Q But you could take the vehicle home?

14 A Yes, sir.

15 Q Is that what you did?

16 A Yes, sir. We provide 24 hour road
17 service, so rather than have somebody have to go to
18 the shop to open it up, we leave straight from the
19 house.

20 Q So you'd take calls directly from home?

21 A Yes, sir.

22 Q Is that fairly common?

23 A For what we do, yes, sir.

24 Q So are you on 24/7 call?

25 A Yes, sir.



1 Q And were you at that time?

2 A Yes, sir.

3 Q And when you would take a call, would you
4 use the 2000 Chevrolet pickup to make the calls?

5 A Yes, sir.

6 Q And why were you using the vehicle that
7 day, was it because you were going to the office?

8 A I was on my way to the office.

9 Q So that was a proper use?

10 A Yes, sir.

11 Q Did the company have any rules or
12 regulations regarding you allowing family members to
13 drive the truck?

14 A Yes, sir.

15 Q And what were those rules?

16 A No one but company employees to drive the
17 vehicles.

18 Q So then your son, Blaze, was not
19 authorized to drive the vehicle at the time of the
20 accident?

21 A No, sir.

22 Q Is that correct?

23 A Yes, sir.

24 Q Are the rules regarding company
25 vehicles -- are they written somewhere?



1 A Derek is my boss, but Danny Lyell is --
2 is -- I caught it from Danny and Derek.

3 Q So you got chewed out by both of them?

4 A Yes, sir. In fact, the only reason I
5 still have my job is -- is my being an asset to the
6 company. Had it been anyone else, they'd probably
7 have been terminated.

8 Q So am I correct then, Mr. Snyder, that
9 that 2000 Chevrolet vehicle was furnished to you by
10 the company for your regular use?

11 A Yes, sir.

12 Q That's a correct statement?

13 A Yes, sir, for company use.

14 Q For company use?

15 A Right.

16 Q But whenever you --

17 A Not to go to the grocery store, not to go
18 to the mall, not to go to the movies, for business
19 use.

20 Q But you used it on a regular basis for
21 your business purposes?

22 A Yes, sir.

23 Q And that included going home at night from
24 the office?

25 A Yes, sir.



1 Q And going to work?

2 A Yes, sir.

3 Q And making calls?

4 A Making calls, delivering product. I do a
5 lot of -- of -- my job's not just to sit behind a
6 desk. I deliver tires and parts to all the
7 satellite units. I deliver -- get out of bed at
8 three in the morning and drive to the store, get a
9 tire out for one of the guys here, one of the units
10 here in Columbia, there or at Lugoff, that doesn't
11 have a tire on their truck that they need. I gather
12 parts, deliver. I mean, I do a lot of different
13 things, and I still run road calls.

14 Q Did you also have a personal vehicle?

15 A At the time, yes, sir.

16 Q How many personal vehicles did your family
17 have at that time?

18 A A Ford GMC, '77 Isuzu. The GMC, the
19 Isuzu, the Chevrolet, the Z '71, and I don't think
20 we had the Blazer at that time. I know we didn't.

21 Q And the Chevrolet you just referred to is
22 not the --

23 A It's a --

24 Q -- company truck?

25 A No. I have a 1977 Chevrolet, a '77, '78



1 Chevrolet pickup.

2 Q And how many drivers did you have in the
3 household at that point?

4 A Tamara, myself, Blake, Brittany, and Blaze
5 was on his learner's permit.

6 Q So that would be a total of four licensed
7 drivers and Blaze on his learner's permit?

8 A Yes, sir.

9 Q Now you understand Selective Insurance
10 Company has denied coverage?

11 A Yes, sir.

12 Q Do you disagree with that decision in any
13 respect?

14 MR. HEWITT: Object to the form.

15 A Selective is my insurance. That's who
16 covers my vehicles, correct?

17 BY MR. LINDEMANN:

18 Q That's correct.

19 A Yeah. I understand why they didn't. They
20 weren't involved. It wasn't their vehicle. The
21 vehicle and myself wasn't covered under the policy.

22 Q And you understand that?

23 A Yes, sir.

24 Q And you agree with that?

25 A Yes, sir.



1 this particular vehicle. Had he ever driven this
2 vehicle, this 2000 Chevy truck, before the day of
3 the accident?

4 A Yes, sir.

5 Q On how many occasions?

6 A Half a dozen, I suppose, just running to
7 the Lugoff store or there in town.

8 Q And I think you mentioned you'd had the
9 truck for five or six months before the day of the
10 accident?

11 A Some -- something like that. I'm not
12 exactly sure how long. Like I said, I've switched a
13 lot of vehicles in the last five and a half years,
14 but roughly five, six months I had that vehicle.

15 Q Did Blaze work for Lugoff Tire in any
16 capacity?

17 A No, sir.

18 Q Was he ever around the shop or the
19 facility at all?

20 A He'd come to see me at work once in a
21 while, but other than that, not really.

22 Q And you mentioned that he'd used the
23 vehicle five or six times. Was that for personal
24 use, or was that to run an errand for the company at
25 all?



1 driving, correct, regardless of the vehicle?

2 A Not --

3 MR. LINDEMANN: Object to the form.

4 A -- not Selective, but the company vehicle.

5 BY MR. HEWETT:

6 Q And you mentioned that you spoke with an
7 agent for Selective?

8 A Now to drive my vehicles, he was -- I was
9 told he was covered to drive my vehicles, my insured
10 vehicles.

11 Q And I believe you testified that this
12 vehicle was furnished to you for the regular use --
13 this 2000 Chevy truck was made available to you for
14 your regular use, correct?

15 A For -- for company use, yes, sir.

16 Q But not for personal use?

17 A No, sir.

18 Q And at the time of the accident Blaze was
19 with you in the car occupying the vehicle; is that
20 correct?

21 A Yes, sir.

22 Q You answered a question by Ms. Holmes that
23 you didn't believe you had the authority to grant
24 permission to Blaze to operate the vehicle. Did he
25 ever question your authority when you asked him to



STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
COUNTY OF RICHLAND) C/A NO.: 2010-CP-40-1022

ROBIN E. OTTERBACHER,

Plaintiff,

vs.

JEREMY AND TAMARA SNYDER, INDIVIDUALLY
AND AS GUARDIANS AND PARENTS OF BLAZE
KENDALL SNYDER, BLAZE KENDALL SYNDER
INDIVIDUALLY, SELECTIVE INSURANCE COMPANY
OF AMERICA AND AUTO-OWNERS INSURANCE
COMPANY,

Defendants.

DEPOSITION OF
DANNY LYELL

DATE: May 30, 2012
TIME: 11:58 a.m. to 12:53 p.m.
LOCATION: Davidson & Lindemann, P.A.
1611 Devonshire Drive
Second Floor
Columbia, South Carolina 29204

REPORTED BY: Lorraine A. Wharton



1 the Manager of the road service?

2 A Yes, he was.

3 Q As part of his employment, was he provided
4 with a company vehicle?

5 A Yes, he was.

6 Q And what kind of vehicle?

7 A We typically use kinda heavy duty pick-up
8 trucks, like F350s or F550s.

9 Q There is a vehicle that's identified in
10 the Notice, a 2000 Chevrolet truck, and it gives the
11 VIN number for that truck. Are you familiar with
12 that vehicle?

13 A I am, yes.

14 Q And who owned that vehicle back in
15 November of 2010?

16 A That truck was owned by Lugoff Tire,
17 Incorporated.

18 Q And was that vehicle actually assigned to
19 anyone?

20 A I don't think that vehicle was permanently
21 assigned to him. That vehicle was used just to make
22 deliveries, typically to -- just -- just to carry
23 tires. It was not a service vehicle, and we did not
24 actually use that vehicle to go out and fix trucks.
25 It was just a pickup truck. We sometimes pulled a



1 trailer, you know, hauling some tires around, and we
2 just used it mainly for deliveries. That's not a
3 truck that Jeremy normally drove. I don't really
4 remember why he was driving it that day. It could
5 have been that he needed it to make a delivery. I'm
6 not sure. I just don't remember.

7 Q Was he actually assigned a vehicle by the
8 company?

9 A Yes, he was/

10 Q Do you have a record of what vehicle he
11 was assigned at that time?

12 A No, I do not.

13 Q He has testified that that vehicle was
14 assigned to him, and he had been driving it on a
15 regular basis for about six months prior to the
16 accident.

17 A That may be true.

18 Q Do you have any way of disputing his
19 testimony?

20 A No, I really don't. I do know that
21 he's -- he's shifted out of different vehicles in
22 the past, and I don't really recall exactly if we
23 assigned that vehicle to him permanently or not.

24 Q Well, you have just testified that thought
25 that that was not a vehicle that was assigned to



1 him. What did you base that on?

2 A I don't -- I don't think so. He typically
3 would drive a truck that -- that carried an air
4 compressor, because he -- he still actually went out
5 and worked on trucks, did truck repair. He was kind
6 of a backup guy. If he couldn't get one of his men
7 to go out and fix a truck, he would typically go out
8 and do it, and -- you know, in an emergency
9 situation. So he typically would drive a truck with
10 an air compressor and tools. That truck was just a
11 stripped down truck with no tools on it, no
12 compressor. And I don't really recall -- if he was
13 driving it, it would have -- it would have been a
14 temporary -- on -- on a temporary basis. That's --
15 that's not a truck -- the type truck that he would,
16 you know, drive full time in my -- you know.

17 Q Well, again, what do you base that on?
18 Let me ask you that. Just what do you base that on?

19 A I just base that on what he's done, you
20 know, the whole time he's been here. He's always
21 driven a -- a truck. Just kinda -- there was no
22 specific truck assigned to him. He started out
23 driving his own truck to work, and then he -- then
24 he -- we put him on the road, and he ran some
25 service calls. And I don't really recall what



1 happened to it. I really don't remember.

2 Q Does your company keep track of what
3 trucks are assigned to what employees?

4 A We do, yeah.

5 Q And what kind of records do you keep in
6 that respect?

7 A I have a -- a list, a vehicle master list,
8 and I'd usually -- I usually -- it's just on --
9 written on an Excel file, and I usually have the VIN
10 number and then the driver. And if the driver
11 changes, you know, I'll update that, but it --
12 it's -- you know, it usually lags a little bit
13 behind. We're -- we seem to always be shifting
14 trucks around. Somebody will have a problem with a
15 truck, it won't run right, and we'll trade a vehicle
16 with them. We try to keep a couple of spares
17 around. And I don't really recall exactly what
18 happened to -- to his -- to his vehicle that he was
19 using for service. I don't know if it broke down or
20 what.

21 Q Do you have a record of what vehicle he
22 was assigned back in November 2010?

23 A No, I really don't.

24 Q This Excel program or spreadsheet that
25 you're talking about, would you print it out from



1 that.

2 Q And if Mr. Snyder testified that the truck
3 that was involved in the accident had been
4 permanently assigned to him, and the had been
5 driving it for approximately six months, on what
6 basis do you -- or do you contend that he is
7 incorrect?

8 A Well, you know -- sir?

9 MR. HEWETT: I'm objecting to his
10 question. You can go ahead and answer, if you like.

11 A What was the question again?

12 BY MR. LINDEMANN:

13 Q The question is: Mr. Snyder has testified
14 that the truck involved in the accident was actually
15 assigned to him as his work vehicle, and he had been
16 driving it for approximately six months. On what
17 basis, if any, do you contend that that was in
18 error?

19 A He is the Manager of after hours road
20 service, okay. It's his job to assign the vehicles.
21 If he assigned that vehicle to anyone and to
22 himself, then he would have been the one to have
23 assigned that vehicle to himself. I don't do it.

24 Q So would you agree with me he would be the
25 best person to know that?



1 A I think -- I just don't recall him driving
2 that vehicle for six months, but maybe he did.
3 Would I agree with you he is the best person to
4 assign that vehicle?

5 Q To know who that vehicle was assigned to.

6 A I would say, "yes." Can I ask you a
7 question?

8 Q Sure.

9 A Who do you represent?

10 MR. HEWETT: I represent the Plaintiff
11 Robin Otterbacher in this case.

12 A Okay. And you represent Selective
13 Insurance?

14 BY MR. LINDEMANN:

15 Q Right. And Ms. Holmes represents
16 Auto-Owners.

17 A I got you, okay. I'm sorry.

18 Q No, that's fine. So just so I'm clear.
19 You have no records that would reflect to whom that
20 2000 Chevrolet pickup was assigned in November 2010;
21 is that correct?

22 A That is correct. I don't believe it was
23 assigned to anybody. It was a vehicle that several
24 people used, and it was used for tire deliveries
25 only. And I use that truck a lot myself. It's a



1 heavy truck. I use it for pulling trailers. I
2 actually make a lot of -- made a lot of deliveries
3 in that truck myself back in those days. So it -- I
4 mean, it -- I don't see how it could be permanently
5 assigned to him when other people have driven it.

6 Q Are there any records that your company
7 keeps that would show the use of that vehicle for
8 specific deliveries, say in the latter six months of
9 2010?

10 A No, no.

11 Q Were any records kept as to what vehicle
12 was used to make deliveries?

13 A No.

14 Q Did you specifically use that vehicle in
15 the latter half of 2010?

16 A Yes.

17 Q And how do you know that?

18 A I used it all the time. I use it -- it
19 was just a spare vehicle that we used. It was a
20 heavy vehicle, and I used it a lot.

21 Q Now, in --

22 A Any time -- I'm sorry --

23 Q Go ahead.

24 A We have -- we have about two or three
25 different heavy trailers that we pull, and the



1 reason I know I used that vehicle is it is the only
2 vehicle heavy enough to pull those trailers.
3 They're 10,000 pound trailers. My -- my vehicle is
4 like a 1500 Chevrolet that I personally use, and it
5 just would not pull my trailers. And I used -- I
6 used that vehicle all the time.

7 Q In 2010, would Mr. Snyder have been
8 assigned a vehicle?

9 A I believe he -- he was, yes.

10 Q And can you tell me what vehicle he was
11 assigned in 2010?

12 A I can't. May I say, we have 18 vehicles,
13 and I couldn't tell you today who's assigned to what
14 vehicle? I just couldn't do it. I do -- I could
15 tell you which vehicle Jeremy is assigned to today,
16 because he -- I passed him on the road coming --
17 coming out of here, but I could not tell you today
18 who -- who is assigned to what vehicle. I would
19 have to call Jeremy and say, "Jeremy" -- and I need
20 to update my file. I haven't done so, so --

21 Q How many vehicles did Columbia Commercial
22 Tire have in the latter part of 2010?

23 A I would say 12 to 14 vehicles. We've
24 added some recently.

25 Q And how many employees did the company



1 Q About how much time had passed between the
2 time you left him in Lugoff and the accident
3 occurred?

4 A I would say 20 minutes tops. Twenty
5 minutes. From the time I left him until the time I
6 got the phone call was about 20 minutes, maybe -- no
7 more than 30. No more than 30 minutes.

8 Q And when you left him at the shop you said
9 he got into a vehicle and left.

10 A He --

11 Q Was it the 2000 Chevrolet truck you --

12 A He drove off in the 2000 Chevrolet truck.

13 Q Is that the vehicle he arrived at the
14 Lugoff shop in?

15 A It is, yeah. Uh-huh.

16 Q Where was that truck in 2010 principally
17 garaged?

18 A It was principally garaged in Lugoff, at
19 the shop in Lugoff.

20 Q I think that's all the questions I have
21 for you. Thank you.

22 A Okay.

23 E-X-A-M-I-N-A-T-I-O-N

24 BY MR. HEWETT:

25 Q Mr. Lyell, my name is Brad Hewett, and as



1 Q Mr. Lindemann was asking you some
2 questions about the assignment of this particular
3 vehicle. And I think you mentioned this was a
4 stripped down truck that did not have any equipment,
5 such as an air compressor on it; is that correct?

6 A Correct, yes.

7 Q And did Mr. Snyder usually drive a vehicle
8 that came equipped with an air compressor or other
9 pieces of equipment?

10 A Normally he would, yes.

11 Q Would he regularly have a vehicle for his
12 use from your company that had that type of
13 equipment on it?

14 A Normally he would have one, yes.

15 Q Would it be fair to say that this truck --
16 I think you refer to it as a route truck.

17 A That -- they nicknamed it the route truck,
18 because we use it on a little delivery route to
19 deliver tires and parts.

20 Q Would it be fair to say that this route
21 truck, as it's been coined by your employees, was
22 used totally on an occasional basis by Mr. Snyder?

23 MR. LINDEMANN: Object to the form.

24 A When you say, "occasional," I'm not sure
25 what you mean.



1 BY MR. HEWETT:

2 Q Was he driving it every day?

3 A He didn't normally drive it every day.

4 Q Do you know about how often he was
5 actually driving this particular truck?

6 A I can't tell you at that particular time.

7 Q Was it used by all of the employees?

8 A It was used by not all of the employees,
9 but there were maybe three or four employees that
10 actually made these deliveries on a regular basis.
11 And so it was used on a regular basis by three or
12 four employees.

13 Q And I think you mentioned you also used
14 the truck as well?

15 A I did. I did, yes. Uh-huh. I made some
16 of these deliveries myself, and I used it for other
17 things too.

18 Q The truck was --

19 A Around the shop.

20 Q -- principally kept at your shop, your
21 Lugoff location?

22 A Normally it was based out of Lugoff, yes.
23 Uh-huh.

24 Q You testified at the time of the accident
25 on that afternoon Mr. Snyder was driving to the



1 front of me.

2 Q And I think you've testified that you
3 don't have that information anymore or it's been
4 saved over?

5 A I have a vehicle list with a column for --
6 for the driver of that vehicle, and these vehicles
7 have been shifted around somewhat. So I'm not sure
8 that the driver information is -- will match the
9 vehicle, but I do have a complete vehicle list of
10 all of our vehicles. And I have a driver out beside
11 the vehicle that I believe is assigned to it, but --

12 Q Would that reflect who was assigned to it
13 back in 2010?

14 A No, it wouldn't, because I -- I just
15 update this file, and then I save over the file. I
16 didn't --

17 Q Would the route truck have been assigned
18 to any one employee in particular to take home
19 and --

20 A Typically it was not, but I -- you know,
21 that's typically not a vehicle that we would assign
22 to -- to someone permanently, because it's normally
23 used during the day for deliveries.

24 Q So it's your testimony Mr. Snyder would
25 not have been using that vehicle on a regular basis



1 to go back and forth from his home to work?

2 MR. LINDEMANN: Object to the form. Go
3 ahead.

4 A If he were using it, it would have been on
5 a temporary basis I do believe.

6 BY MR. HEWETT:

7 Q And the meeting that you had with Mr.
8 Snyder on that Saturday afternoon that began at
9 1:00, do you remember about how long that meeting
10 lasted?

11 A Not more than ten minutes. It was not an
12 official meeting. It was just sort of a -- he
13 walked in, and we spoke pretty much.

14 Q And would you have any reason to dispute
15 at the time of the accident that Mr. Snyder was
16 using the vehicle for company business?

17 A Well, you know, it's 1:00. The shop is
18 closed at 12. There's nobody there, so I don't know
19 what -- I don't know what his business would have
20 been there. I -- I'm not sure.

21 Q But if he's testified that he was going to
22 Columbia to the shop to conduct some business, you'd
23 have no reason to dispute that?

24 A I -- I would -- I would assume, and I
25 would assume that he would be telling the truth,



1 old kid, and I -- you know, I've had several
2 conversations with his father, pretty stern
3 conversations too, but I just don't believe it's
4 right for me to chastise a 15 year old kid, you
5 know. One thing his Dad said is -- he said, "You
6 know, I work long hours," and he said, "I know
7 I've -- and I -- he told me this while we were on --
8 on the cell phone. He said, "I just haven't had
9 time to teach him how to drive, and I just" -- he
10 said, "I've preached to my guys." And I think
11 Jeremy even had his own business at one time, so he
12 knows -- he knows the importance of -- of not
13 allowing anybody to drive a company vehicle, much
14 less a 15 year old kid, and he -- he's said that to
15 me, you know, on occasion, but --

16 Q I understand that the records may not
17 exist anymore. Is there any other independent
18 recollection you have of a particular vehicle that
19 Jeremy was driving, other than the route truck, at
20 the time of the accident?

21 A I believe that he was using a -- a regular
22 service truck with a compressor, and I -- I'm -- I
23 believe either one of two things happened to that
24 truck. Number one, it may have broken down. Number
25 two, we may have needed it. Sometimes one of our



1 trucks will break down in the field, and we'll have
2 to get a truck to the primary service guy. So we
3 may have taken his truck and given it to another
4 service guy, leaving him without a vehicle
5 temporarily.

6 Q And so would he have been using the route
7 truck as a temporary substitute for his regular
8 vehicle?

9 A He could have been. He could have been,
10 or he could have had a second vehicle sitting in his
11 yard and been using the route truck, you know, to
12 make deliveries or something, you know, the previous
13 week. It's hard to say. I really don't know
14 exactly why he was driving that particular truck.
15 But you said he testified he'd been driving it for,
16 what, six months?

17 Q I believe that's his testimony.

18 A Isn't that what you said? That may be.
19 I'm not going to sit here and dispute that. I can't
20 remember last week, much less 18 months ago. Sorry.

21 Q That's okay. Have you had any
22 conversations with any attorneys about this
23 accident?

24 A I probably have spoken to an Auto-Owners
25 adjuster, probably --



1 at our companies that aren't allowed to get in a --
 2 in a company vehicle. So not only do you have to --
 3 you know, you have to have a driving record. You
 4 have to be approved by us before you can climb into
 5 one of our vehicles.

6 Q And that would be something Jeremy Snyder
 7 would know?

8 A Yes, it would.

9 MR. HEWETT: Object to the form.

10 MS. HOLMES: That's all I have.

11 R-E-E-X-A-M-I-N-A-T-I-O-N

12 BY MR. LINDEMANN:

13 Q Just a couple of follow-ups, Mr. Lyell.
 14 Are you aware of any pictures of the 2000 Chevrolet
 15 pickup truck that we've been talking about?

16 A I don't think I've seen any pictures of
 17 it.

18 Q You didn't keep pictures of your vehicles?
 19 Is that not something you regularly kept?

20 A No, sir.

21 Q And you haven't seen any photographs of
 22 the truck after the accident?

23 A I have not, no.

24 Q As I understand your testimony, Mr. Snyder
 25 clearly would have been assigned a company vehicle



1 during his employment with your company; is that
2 right?

3 A Yes.

4 Q And if it wasn't the 2000 Chevrolet truck,
5 he was assigned some vehicle?

6 A Yes, uh-huh.

7 Q And that vehicle was assigned to him for
8 his regular use for company purposes; is that right?

9 A It was -- it's assigned for, you know,
10 company business, mostly service truck -- service
11 calls or deliveries.

12 Q And as far as the route truck, as you were
13 referring to it, that would have been available as
14 well to Jeremy Snyder in order to use to make
15 deliveries, correct?

16 A Correct, yes.

17 Q And is it your testimony that he would
18 regularly use that vehicle to make deliveries?

19 A Not daily, but usually on a regular basis.

20 Q And that was part of his employment?

21 A It was not his primary job, no, but he
22 would occasionally make -- make deliveries. He --
23 he mainly made -- he -- he -- you know, he lives in
24 Camden, and our shop is in Lugoff. And our other
25 shop is in Columbia, so he comes right by our shop



1 in Lugoff, which is a large building with a lot of
2 warehouse space. We warehoused a lot of tires
3 there, and he would mainly deliver -- bring tires
4 from that warehouse to Columbia, because he was --
5 he was already coming through there. And on an
6 occasion he would leave his service truck at the
7 Lugoff shop and switch over to the route -- route
8 truck -- I'm using their terminology -- and make
9 that delivery -- and make that delivery.

10 Q And so then that route truck -- again,
11 using that terminology -- would be a vehicle that
12 was available for him to use when he needed it?

13 A Yes, it -- it was, uh-huh.

14 Q So it wasn't unusual for him to be seen
15 driving that vehicle?

16 A No, it was not.

17 Q Who would have keys to that 2000 Chevrolet
18 truck? Would more than one person?

19 A We probably only had one set. If we had a
20 spare set, we kept them in the office in a drawer
21 with spare keys.

22 Q Who would have had the permanent set?

23 A Who would have had the -- the key to the
24 truck?

25 Q That's right.



1 A Well, typically the -- our vehicles are
2 parked inside at night, and we'll typically leave
3 the keys in them at night when we bring them in the
4 building, so --

5 Q Would Mr. Snyder have had a set of keys to
6 that 2000 Chevrolet truck if it had not been
7 permanently assigned to him?

8 A No.

9 Q But if it had been assigned to him, even
10 on a temporary basis, then he would have had a set
11 of keys for that truck?

12 A He probably had the only set to it.

13 Q And you talked earlier that that vehicle
14 may have been temporarily assigned to him, and you
15 just are not sure, right?

16 A I'm not. No, I'm not sure.

17 Q And as you sit here today, you can't say
18 how that that vehicle had been assigned --

19 A I'm surprised that he said he'd been
20 driving it for six months, but he may be correct on
21 that. I'm not sure. And I don't know why. If
22 that's true, then I don't know why he would have
23 driven that truck for six months, because it's
24 not -- it's not a truck that you typically -- you
25 know, with tool boxes down the side that you



1 typically use for service.

2 Q But you indicated you don't have a basis
3 to dispute what he had said?

4 A No. No, I really don't.

5 MR. LINDEMANN: I have no further
6 questions. Thank you.

7 E-X-A-M-I-N-A-T-I-O-N

8 BY MR. HEWETT:

9 Q How often would Mr. Snyder make
10 deliveries? You said on an occasional basis. Is
11 that once or twice a month?

12 A Maybe -- maybe more than that. He might
13 come by on his way to work and just pick up a couple
14 of tires.

15 Q And I'm sorry. This is using specifically
16 this 2000 Chevy truck, the route truck?

17 A Right.

18 Q You said on occasion he would use it. How
19 often are we talking about?

20 A I don't know, to tell you -- I really
21 don't know.

22 Q If you had to approximate how many times a
23 month he'd be using that particular truck --

24 MR. LINDEMANN: Object to the form.

25 A You know, it wasn't very often, I didn't



1 think, but -- for deliveries. Typically, on a
2 typical basis, you know, maybe once or twice a week,
3 maybe once a week. I don't really know how often he
4 used it.

5 BY MR. HEWETT:

6 Q In the regular and ordinary course of
7 business it's your experience that drivers would use
8 that route truck maybe once a week or so for
9 deliveries; is that correct?

10 MR. LINDEMANN: Object to the form.

11 A That truck sat a lot. It sat still a lot.
12 It didn't -- it normally did not get used every day.
13 It sat in our parking lot a lot. And I would use
14 that truck as a spare, because number one, it was a
15 heavy duty vehicle that would -- like I talked
16 about, would -- I could pull a 10,000 pound trailer,
17 but it was also available a lot, if I needed a spare
18 vehicle. It was -- it was at our shop, and that
19 was -- it was -- nobody was using it, so I was -- so
20 I used it because of availability too.

21 BY MR. HEWETT:

22 Q Do you know of anyone, including yourself,
23 at Lugoff Tire or at Columbia Commercial Tire Center
24 that explicitly instructed Blaze Snyder that he
25 could not use that vehicle.

