

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHEROKEE COUNTY
R. Keith Kelly, Circuit Court Judge

Case No. 2016-CP-11-00809
Appellate Case No. 2018-001559

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SC Court of Appeals

Nicky Ted Phillips and Gloria E. Phillips, ...Appellants,

v.

American National Property and Casualty Company,
Clyde McNeill Agency, and Clyde Edwin McNeill,
individually and in his capacity as agent of American
National Property and Casualty, ...Respondent.

RECORD ON APPEAL

M. Brooks Derrick (S.C. Bar No. 76330)
LAW OFFICE OF M.B. DERRICK, LLC
224 NE Main Street
Simpsonville, SC 29681
(864) 757-0757
brooks@derricklawoffice.com

Thomas B. Pritchard (S.C. Bar No. 65006)
PARKER NELSON & ASSOCIATES
211 King Street, Suite 107
Charleston, SC 29401
(843) 727-2500
tpritchard@pnalaw.net
Attorneys for Appellants

George V. Hanna, IV
Jeffrey I. Silverberg
Howser, Newman & Besley, LLC
Post Office Box 12009
Columbia, SC 29211
(803) 758-6000
ghanna@hnblaw.com
jsilverberg@hnblaw.com
Attorneys for Respondents Clyde Edwin
McNeill Agency and Clyde Edwin McNeill

Ross B. Plyler
Roe Cassidy Coates & Price, PA
1052 North Church St.
Greenville SC 29601
(864) 349-2600
rplyler@roecassidy.com
Attorneys for Respondent American
National Property and Casualty Company

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STATE OF SOUTH CAROLINA
COUNTY OF CHEROKEE

Nicky Ted Phillips and Gloria E. Phillips,
Plaintiffs,

v.

American National Property and Casualty
Company, Clyde McNeill Agency, and
Clyde Edwin McNeill, individually and in
his capacity as agent of American National
Property and Casualty Company,

Defendants.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2016-CP-11-00809

**ORDER GRANTING SUMMARY
JUDGMENT TO DEFENDANTS**

This matter came before the Court on May 9, 2018, for a hearing on two Motions for Summary Judgment submitted on behalf of Defendants American National Property and Casualty Company ("American National"), Clyde McNeill Agency (the "McNeill Agency") and Clyde Edwin McNeill ("McNeill"). Based upon the record before the Court and the arguments made by counsel for each of the parties, the defendants' Motions for Summary Judgment are hereby GRANTED as to Plaintiffs' claims concerning their personal automobile insurance policy. This Order does not end Plaintiffs' claim for reformation of their commercial insurance policy.

Statement of Facts

This action arises from injuries the Plaintiffs sustained in an automobile accident that occurred on August 9, 2014, when the Plaintiffs' vehicle was struck from behind by another motorist. The at-fault motorist did not have sufficient insurance to cover the Plaintiffs' damages so Plaintiffs sought coverage under their own automobile insurance policies. At the time of the accident, Plaintiffs had an automobile insurance policy (the "Auto Policy") and a commercial auto

insurance policy (the "Commercial Policy")¹ issued by American National. Plaintiffs obtained the policies through their insurance agent, McNeill, who owns the McNeill Agency. The Auto Policy insured two vehicles and provided underinsured motorist (UIM) coverage with limits of \$25,000 per person and \$50,000 per accident. The Commercial Policy, which insured a farm truck, did not provide any UIM coverage.

Plaintiffs brought the present action against American National, the McNeill Agency and McNeill, alleging a number of causes of action concerning Defendants' alleged failure to provide more UIM coverage in the policies. Plaintiffs maintain that both policies should be reformed to include UIM coverage equal to the amount of liability coverage under the policies. Defendants argue that they are entitled to the conclusive presumption provided by S.C. Code Ann. § 38-77-350 that a meaningful offer of UIM coverage was made to the Plaintiffs, and therefore, that all of Plaintiffs' causes of action seeking reformation of the Auto Policy are barred.

The Auto Policy was first issued to Plaintiffs on or about September 30, 2010, and both Plaintiff Nicky Ted Phillips and Plaintiff Gloria Phillips were listed as named insureds on the policy. The Auto Policy, as originally issued, provided personal injury liability limits of \$50,000/100,000, uninsured motorist (UM) coverage limits of \$25,000/\$50,000 and UIM coverage limits of \$25,000/\$50,000.

On October 28, 2013, Nicky Phillips went to McNeill's office wanting to discuss raising his insurance limits. Although the parties dispute aspects of the discussion that took place between

¹At the hearing on the Defendants' Motions for Summary Judgment, the parties focused their arguments exclusively on the Auto Policy. Therefore, this Order only grants Summary Judgment to the Defendants as to Plaintiffs' claims to the extent they relate to the UIM coverage in the Auto Policy. As will be discussed below, the Court holds that the Defendants are immune from liability for any claims concerning the Plaintiffs' failure to select a higher amount of UIM coverage in the Auto Policy because Defendant's are entitled to the conclusive presumption provided by § 38-77-350 that a meaningful offer of UIM coverage was made.

McNeill and Nicky Phillips on this date, the parties agree that Nicky Phillips expressed concern that he could be sued and lose everything he and his wife had.² As a result of this meeting, Plaintiff ended up obtaining an umbrella insurance policy (the "Umbrella Policy"). In order to obtain the Umbrella Policy, Plaintiff had to increase the liability limits on his Auto Policy to at least \$250,000/\$500,000/\$100,000. Plaintiff raised the liability limits on his Auto Policy to \$250,000/\$500,000/\$100,000 and executed an "Offer of Optional Additional Uninsured Motorist Coverage and Optional Underinsured Motorist Coverage" for the Auto Policy ("Auto Offer Form") on October 28, 2013.

The Auto Offer Form executed by Plaintiff Nicky Phillips on October 28, 2013, indicates that Mr. Phillips selected UIM limits in the amount of \$25,000 per person and \$50,000 per accident. Mr. Phillips testified that he signed the Auto Offer Form on October 28, 2013, but did not read the form prior to signing. He claims that McNeill did not go through the Auto Offer Form with him, but rather, just instructed him to sign it in various places. Mr. Phillips also maintains that the amount of UIM coverage selected in the Auto Offer Form was not handwritten on the form when he signed the Auto Offer Form.

On the last page of the Auto Form is a section titled "Applicant's Acknowledgment". Mr. Phillips signed underneath the following language within this section of the Auto Offer Form:

By my signature, I acknowledge that I have read – or I have had read to me – the above explanations and offers of additional uninsured motorist coverage and optional underinsured motorist coverage....

² Nicky and Gloria Phillips each testified that two events prompted Mr. Phillip's desire to raise his insurance limits: (1) an accident involving Plaintiffs' daughter; and (2) an accident involving the uncle of Plaintiffs' son-in-law. Plaintiffs' daughter's accident had occurred years before the Auto Policy was first obtained in September 2010. Meanwhile, the accident involving Plaintiffs' son-in-law's uncle's accident had occurred in 2013, much closer in time to the October 28, 2013 meeting. With respect to the uncle's accident, Nicky Phillips testified that the people who the uncle had hit "were going to sue him and take what he had. And the only thing I knew is I need to raise my insurance." It was the uncle's experience that led to Mr. Phillips meeting with McNeill to increase his insurance.

My signature below further acknowledges that I understand the coverages as they have been explained to me, and the type and amounts of coverage marked on the preceding pages have been selected by me. This is the type and amount of insurance coverage I wish to purchase.

(Emphasis added).

Mr. Phillips claims he told McNeill at the October 28, 2013 meeting that he wanted to "[r]aise my insurance, all of it," and that this request included raising the Auto Policy's UIM limits. However, Mr. Phillips testified that he and McNeill did not discuss the type of coverage already on the Auto Policy at the meeting and that he was unaware of how much UIM he had on the Auto Policy at the time. In addition, Mr. Phillips testified that, to this day, he does not know what UIM coverage is for. Mr. Phillips has further failed to offer any testimony as to the specific amount of UIM coverage he requested McNeill add to the Auto Policy on October 28, 2013.

Plaintiffs filed the present action against Defendants, alleging causes of action for negligence, breach of fiduciary duty, negligent misrepresentation, fraud and violation of South Carolina's Unfair Trade Practices Act.³ Plaintiffs also seek a declaratory judgment that Plaintiffs failed to make a meaningful offer of UIM coverage to Plaintiffs, and thus, that the Auto Policy should be reformed to equal the amount of liability insurance on the policy. Defendants argue that they are entitled to the conclusive presumption provided by § 38-77-350 that a meaningful offer of UIM coverage was made to the Plaintiffs, and that they are therefore immune from any liability. As discussed below, the Court agrees that Defendants are entitled to the conclusive presumption and immunity provided by § 38-77-350 as to Plaintiffs claims relating to the UIM coverage under the Auto Policy.

³ All of these causes of action concern the Defendants' alleged failure to provide an increased amount of UIM coverage as Plaintiff Nicky Phillips alleges he requested on October 28, 2013.

Discussion

Summary judgment is appropriate when "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." SCRCP 56(c). When a party makes a motion for summary judgment that is supported by evidence, the adverse party may not rest on the allegations of the Complaint to overcome the motion but must demonstrate, by affidavit or other evidence, that a genuine issue of fact exists. *Klippel v. Mid-Carolina Oil, Inc.*, 303 S.C. 127, 399 S.E.2d 163 (Ct. App. 1990); *Dyer v. Moss*, 284 S.C. 208, 325 S.E.2d 69 (Ct. App. 1985). The nonmoving party must make an affirmative effort to set forth specific facts showing that there is a genuine issue for trial in order to overcome a summary judgment motion. *Baughman v. American Tel. & Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537 (1991). Moreover, while a court must view the facts in a light most favorable to the non-moving party, "a court cannot ignore facts unfavorable to that party and it must determine whether a verdict for the party opposing the motion would be reasonably possible under the facts." *Bloom v. Ravoir*, 339 S.C. 417, 423 (2000) (internal citations and quotation marks omitted).

An automobile insurer is required to make a meaningful offer of UIM coverage to its insured. *Wiegand v. U.S. Auto. Ass'n*, 391 S.C. 159, 705 S.E.2d 432 (2011); S.C. Code Ann. 38-77-160. "If the insurer fails to comply with its statutory duty to make a meaningful offer to the insured, the policy will be reformed, by operation of law, to include UIM coverage up to the limits of liability insurance carried by the insured." *Floyd v. Nationwide Mut. Ins. Co.*, 367 S.C. 253, 261, 626 S.E.2d 6, 11 (2005). The insurer has the burden of proving that it made a meaningful offer. *Cohen v. Progressive N. Ins. Co.*, 402 S.C. 66, 72, 737 S.E.2d 869, 872 (Ct. App. 2013). An insurer is entitled to a conclusive presumption that it made a meaningful offer of UIM coverage

where an insured executes a UIM offer form that complies with S.C. Code Ann. §§ 38-77-350(A) and (B). *Floyd*, at 262, 626 S.E.2d at 11; *see also* S.C. Code Ann. §§ 38-77-350(A)-(B).

According to § 38-77-350(A), the director of the South Carolina Department of Insurance or his designee "shall approve a form that automobile insurers shall use in offering optional coverages required to be offered pursuant to law to applicants for automobile insurance policies."

The form must contain, at a minimum, the following:

- (1) a brief and concise explanation of the coverage;
- (2) a list of available limits and the range of premiums for the limits;
- (3) a space to mark whether the insured chooses to accept or reject the coverage and a space to state the limits of coverage the insured desires;
- (4) a space for the insured to sign the form that acknowledges that the insured has been offered the optional coverages;
- (5) the mailing address and telephone number of the insurance department that the applicant may contact if the applicant has questions that the insurance agent is unable to answer.

§ 38-77-350 (A). Whether an offer form complies with section 38-77-350(A)'s requirements is a question of law for the court. *Weigand*, at 163. Moreover,

[i]f this form is signed by the named insured, after it has been completed by an insurance producer or a representative of the insurer, it is conclusively presumed that there was an informed, knowing selection of coverage and neither the insurance company nor an insurance agent is liable to the named insured or another insured under the policy for the insured's failure to purchase optional coverage or higher limits.

§ 38-77-350(B) (Emphasis added). Subsection (D) further provides that

[c]ompliance with this section satisfies the insurer and agent's duty to explain and offer optional coverages and higher limits and no person, including, but not limited to, an insurer and insurance agent is liable in an action for damages on account of the selection or rejection made by the named insured.

§ 38-77-350 (D). The insurer has the burden of establishing that the requirements have been met in order to take advantage of this presumption. *Weigand*, at 165.⁴

Here, it is uncontested that the Auto Offer Form complies with Subsection 38-77-350 (A) and that Mr. Phillips signed the Auto Offer Form. Plaintiffs' sole contention is that a question of fact exists as to whether the manner in which the Auto Offer Form was executed complied with Subsection § 38-77-350(B) because the parties dispute whether the handwritten amount of UIM coverage on the form was written before or after Mr. Phillips signed the form. The Court finds that no such question of fact exists since Mr. Phillips signed the acknowledgment statement on the Auto Offer Form indicating that "[m]y signature below further acknowledges that . . . the type and amounts of coverage marked on the preceding pages have been selected by me. This is the type and amount of insurance coverage I wish to purchase." Mr. Phillips's signature thus establishes that he made a knowing and voluntary selection of UIM coverage. *See Weigand*, at 165 (holding no issue of fact precluding insurer's entitlement to the conclusive presumption where plaintiff argued there was no direct evidence that the named insured was the one who checked "no" on the boxes on the UIM select/reject form he signed, noting that "[i]t is enough that [the named insured]

⁴ Even when an offer form does not comply with § 38-77-350, an insurance carrier's offer of UIM coverage will still be deemed meaningful if it satisfies the four-part *Wannamaker* test. *Id.*, at 164; *Cohen*, at 76. In *State Farm Mut. Auto. Ins. Co. v. Wannamaker*, 291 S.C. 518, 354 S.E.2d 555 (1987), the South Carolina Supreme Court adopted the following test for determining whether an offer of UIM was meaningful:

- (1) the insurer's notification process must be commercially reasonable, whether oral or in writing;
- (2) the insurer must specify the limits of optional coverage and not merely offer additional coverage in general terms;
- (3) the insurer must intelligibly advise the insured of the nature of the optional coverage; and
- (4) the insured must be told that optional coverages are available for an additional premium.

Wannamaker, at 521, 354 S.E.2d at 556. "The question of whether an insurer met its burden of proving it made a meaningful offer of UIM coverage [under the *Wannamaker* test] is a question of fact." *Cohen*, at 72.

signed the acknowledgment . . ."). Moreover, Plaintiffs' attempt to create an issue of fact by claiming the handwritten amount of UIM coverage selected was not on the Auto Offer Form when Mr. Phillips signed it lacks merit in light of Mr. Phillips's admission that he didn't even read the Auto Offer Form prior to signing.⁵ Therefore, the Auto Offer Form complies with § 38-77-350 and none of the defendants can be held liable for Plaintiffs' failure to select a higher amount of UIM coverage. *See* § 38-77-350(B) and (D).

Furthermore, although Gloria Phillips did not sign the Auto Offer Form, defendants are still entitled to the conclusive presumption that a meaningful offer of UIM coverage was made to Plaintiffs and that the form is binding as to her. Our courts have held that the rejection of UIM coverage by one spouse can be binding against the other where the spouse was impliedly or expressly authorized to act on the other's behalf as his agent. *E.g., Nationwide Mut. Ins. Co. v. Prioleau*, 359 S.C. 238, 241, 597 S.E.2d 165, 167 (Ct. App. 2004) (finding an implied agency relationship existed between the husband and wife as a matter of law). Here, both Plaintiffs testified that Nicky Phillips was authorized to change the Auto Policy on behalf of Gloria Phillips. Thus, the amount of UIM coverage selected by Nicky Phillips is enforceable against Gloria Phillips as he was acting as his wife's agent when he signed the Auto Offer Form.

NOW, THEREFORE, based upon the foregoing,

IT IS HEREBY ORDERED that summary judgment be entered in favor of the defendants in the above-captioned action as to Plaintiffs' causes of action concerning the Auto Policy. This Order does not end Plaintiffs' claim for reformation of their commercial insurance policy.

⁵ The fact that Nicky Phillips claims he did not actually read the Auto Offer Form before signing it does not preclude this Court from finding that his signature under the acknowledgment statement establishes Defendants complied with § 38-77-350(B). *See Regions Bank v. Schmauch*, 354 S.C. 648, 663, 582 S.E.2d 432, 440 (Ct. App. 2003) ("A person who signs a contract or other written document cannot avoid the effect of the document by claiming he did not read it").

AND IT IS SO ORDERED.

The Honorable R. Keith Kelly
Circuit Court Judge
Seventh Judicial Circuit

June __, 2018
Spartanburg, South Carolina

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Cherokee Common Pleas

Case Caption: Nicky Ted Phillips , plaintiff, et al VS American National Property
And Casualty Company , defendant, et al
Case Number: 2016CP1100809
Type: Order/Summary Judgment

It is so Ordered.

s/ R. Keith Kelly - 2165

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2016CP1100809

Nicky Ted Phillips et al
PLAINTIFF(S)

American National Property And Casualty Company et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

After careful consideration, the Plaintiff's SCRPC 59(e) Motion to Reconsider is denied.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on: 07/17/2018.

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Fileers or who are appearing pro se. See Rule 77(d), SCRCP.

Policies on various vehicles; Family Automobile Policies on various vehicles, Special Farm Coverages, Home Owner's Coverage, Life Policies, and Umbrella Policies.

8. Each time the Phillips procured new or additional coverages, they sought out and relied on Defendant McNeill's advice on the coverage they needed; and they expected him to exercise good faith, reasonable skill, care, and diligence, in addition to follow their instructions.

Procurement of Additional Insurance Coverage on October 28, 2013

9. The Phillips' adult daughter was seriously injured in an automobile collision.

10. In that collision, she suffered a broken back, among other injuries, and the at-fault driver only carried minimum limits.

11. However, the Phillips' daughter and her husband, Bruce Whelchel, carried substantial Underinsured Motorist Coverage ("UIM") on their vehicles.

12. Through his daughter's experience and the explanation of his son-in-law, Mr. Phillips learned the importance of that extra layer of coverage.

13. Following the advice of his son-in-law, on or about October 28, 2013, Mr. Phillips sought to procure additional coverage that would protect his family in the event they were injured in a collision and the at-fault driver did not carry sufficient insurance coverage.

14. When he arrived at Defendant McNeill's office, Mr. Phillips, using his daughter's experience as an example, described to him the type of additional insurance coverage he sought to acquire.

15. At that time, the Phillips insured three vehicles through Defendant McNeill's office: (1) 2004 GMC Envoy, (2) 2005 Toyota Tacoma, and (3) 1984 International Harvester S Series.

16. The 2004 GMC Envoy and 2005 Toyota Tacoma were insured under policy number 39-A-448-05L-0, and the 1984 International Harvester S Series was insured under policy number 3901C2368-01.

17. Although Mr. Phillips did not know the terminology—uninsured motorist (UM) and underinsured motorist (UIM) coverage—or the complicated nature of stacking, Mr. Phillips understood his daughter's experience, explained that to Defendant McNeill, and sought the guidance of what he thought to be a competent and trustworthy person.

18. To protect his family, Mr. Phillips requested that Defendant McNeill raise all the limits, including UM and UIM coverage, on their vehicles to \$250,000.00 per person and \$500,000.00 per occurrence.

19. Next, Defendant McNeill prepared the insurance documents, instructed Mr. Phillips where to sign, and told him that he would take care of the rest.

20. Mr. Phillips only signed the documents where Defendant McNeill instructed him, and at no point did Mr. Phillips write or draw anything else on the documents.

21. Defendant McNeill later completed the documents in the absence of Mr. Phillips.

22. When Mr. Phillips left the office that day, he believed—although he didn't know the exact terminology—that he had just raised the Bodily Injury Liability Limit, Uninsured Motorist Limit, and Underinsured Motorist Limit to \$250,000.00 per person and \$500,000.00 per occurrence on all three vehicles.

Tragic Collision on August 9, 2014

23. On or about August 9, 2014, the Phillips and their granddaughter were traveling home carrying a load of lumber in their 2005 Toyota Tahoma.

24. During their trip home, another vehicle struck the Phillips' vehicle in the rear.

25. The Phillips vehicle was struck with such force that it caused the lumber to pierce the cabin of the truck.

26. When the lumber pierced the cabin, it struck the Phillips and their granddaughter.

27. As a result of the collision, Mr. Phillips was seriously and permanently injured, and Mrs. Phillips was deprived of the comfort, services, society, solace, and companionship of her husband.

28. The damages sustained by the Phillips exceeded the liability limits carried by the at-fault driver, and they made a claim for the UIM coverage on their vehicles.

29. However, they were dismayed and alarmed when they discovered that Defendant McNeill did not raise all the limits on the (1) 2004 GMC Envoy, (2) 2005 Toyota Tacoma, and (3) 1984 International Harvester S Series.

30. Defendant McNeill only raised the Bodily Injury Liability Limits of \$250,000.00 per person and \$500,000.00 per occurrence on the 2004 GMC Envoy and the 2005 Toyota Tacoma.

31. And, Defendant McNeill failed to do the following:

- a. Raise the Bodily Injury Liability Limit of \$250,000.00 per person and \$500,000.00 per occurrence on the 1984 International Harvester S Series;
- b. Raise the UM and UIM Coverage to \$250,000.00 per person and \$500,000.00 per occurrence on the 2004 GMC Envoy;
- c. Raise the UM and UIM Coverage to \$250,000.00 per person and \$500,000.00 per occurrence on the 2005 Toyota Tacoma; and
- d. Raise the UM and UIM Coverage to \$250,000.00 per person and \$500,000.00 per occurrence on the 1984 International Harvester S Series.

32. As a direct result of Defendant McNeill's acts and omissions, the UIM Coverage available was inadequate to make the Phillips whole.

First Cause of Action

Negligence - Breach of Express Duty

33. The Phillips incorporate the allegations of paragraphs 1 through 31 above.

34. Defendant McNeill, acting as an agent and servant of Defendant ANPAC, owed a duty to provide the type of insurance coverage the Phillips requested.

35. This duty arose expressly through the Phillips clear request for the type of coverage they wanted and Defendant McNeill's assurances to the Phillips that he would take care of the rest.

36. Defendant McNeill, acting as an agent and servant of Defendant ANPAC, breached this duty recklessly, willfully, wantonly, and with the conscious disregard for the rights of the Phillips when he ignored their descriptions of the type of insurance coverage they wanted, completed the documents without Mr. Phillips present, procured inadequate insurance coverage, and failed to advise them otherwise.

37. The Phillips suffered damages as a direct and proximate result of the breach.

38. Therefore, the Phillips are entitled to actual, consequential, and punitive damages.

Second Cause of Action
Negligence - Breach of Implied Duty

39. The Phillips incorporate the allegations of paragraphs 1 through 37 above.

40. Defendant McNeill, acting as an agent and servant of Defendant ANPAC, owed a duty to research, advise, and provide the correct type of insurance coverage the Phillips needed.

41. This duty arose because there was a course of dealing over an extended period of time which would put an objectively reasonable insurance agent on notice that his advice was being sought and relied on.

42. Defendant McNeill, acting as an agent and servant of Defendant ANPAC, breached this duty recklessly, willfully, wantonly, and with the conscious disregard for the rights of the Phillips when he procured inadequate insurance coverage and not type the Phillips described, needed, and requested.

43. The Phillips suffered damages as a direct and proximate result of the breach.

44. Therefore, the Phillips are entitled to actual, consequential, and punitive damages.

Third Cause of Action
Breach of Fiduciary Duty

45. The Phillips incorporate the allegations of paragraphs 1 through 43 above.

46. A fiduciary relationship existed between Defendant McNeill and the Phillips in that the Phillips continually and repeatedly sought the guidance and advice of Defendant McNeill.

47. Because of this relationship, Defendant McNeill was bound, in equity and good conscience, to act in good faith and with due regard to the interests of the Phillips.

48. Defendant McNeill, acting as an agent and servant of Defendant ANPAC, breached this duty recklessly, willfully, wantonly, and with the conscious disregard for the rights of the Phillips when he failed to explain the types of insurance available to the Phillips and failed to procure the type of insurance the Phillips described, needed, and requested.

49. The Phillips suffered damages as a direct and proximate result of the breach.

50. Therefore, the Phillips are entitled to actual, consequential, and punitive damages.

Fourth Cause of Action
Negligent Misrepresentation

51. The Phillips incorporate the allegations of paragraphs 1 through 50 above.
52. Defendant McNeill made a false representation to the Phillips that he would take care of their request for additional insurance coverage.
53. Defendant McNeill had a pecuniary interest in making the representation.
54. Due to their ongoing relationship and the guidance the Phillips sought from Defendant McNeill, he owed a duty of care to see that he communicated truthful information to them.
55. Defendant McNeill breached that duty by failing to exercise due care and procure the correct type of insurance (and the insurance they requested).
56. The Phillips justifiably relied on the representation.
57. The Phillips suffered a pecuniary loss as the proximate result of his reliance on the representation.
58. Therefore, the Phillips are entitled to actual, consequential, and punitive damages.

Fifth Cause of Action
Fraud

59. The Phillips incorporate the allegations of paragraphs 1 through 58 above.
60. Defendant McNeill made a representation to the Phillips that he would take care of insurance application process for them and procure the type of insurance they requested and needed.

61. This representation was false in that he did not intend on procuring the type of insurance they requested.

62. This representation was material because it was the sole reason Mr. Phillips visited Defendant McNeill's office and requested additional insurance coverage.

63. Defendant McNeill knew that his statements were false because he had no intention to procure the insurance the Phillips requested.

64. Defendant McNeill intended that the representation be acted upon to secure the sale of insurance and keep them as a client.

65. Mr. Phillips did not know that Defendant McNeill's statement was false.

66. Mr. Phillips relied on Defendant McNeill's statement, paid the premium, and left his office expecting that his request would be fulfilled.

67. Mr. Phillips had the right to rely on Defendant McNeill's statement because their relationship was such that Mr. Phillips always requested and relied on Defendant McNeill's advice and counsel regarding insurance coverage.

68. The Phillips suffered a pecuniary loss proximately caused by Defendant McNeill's fraud.

69. Therefore, the Phillips are entitled to actual, consequential, and punitive damages.

Sixth Cause of Action
Unfair Trade Practices Act

70. The Phillips incorporate the allegations of paragraphs 1 through 69 above.

71. Defendant McNeil engaged in an unfair or deceptive acts in the conduct of trade or commerce in that he procured inadequate insurance coverage for individuals while purporting to (1) provide them with the coverage they needed and (2) save them money.

72. The unfair or deceptive act affected public interest because the acts or practices have the potential for repetition.

73. The Phillips suffered a pecuniary loss as a result of Defendant McNeill's unfair or deceptive acts.

74. Therefore, the Phillips are entitled to actual damages, treble damages, and attorneys' fees and costs.

Fourth Cause of Action
Declaratory Judgement

75. The Phillips incorporate the allegations of paragraphs 1 through 74 above.

76. Pursuant to § 15-53-20 of the Code of Laws of South Carolina and Rule 57 of the South Carolina Rule of Civil Procedure, this court has the power to declare rights, status, and other legal relations.

77. The Phillips contend that a meaningful offer of underinsured motorist coverage was never made pursuant to § 38-77-350 of the Code of Laws of South Carolina and South Carolina case law.

78. The Phillips seek to have this Court declare that the policies of insurance issued by ANPAC to the Phillips includes underinsured motorist coverage in an amount equal to the amount of liability insurance purchased by the Phillips.

Jury Trial Demand

Pursuant to Rule 38 of the South Carolina Rules of Civil Procedure, Plaintiffs respectfully requests a trial by jury on all legal claims.

Prayer for Relief

1. Plaintiffs respectfully request that this Court enter judgment against Defendants and that Plaintiffs be awarded:

- a. Actual damages;
- b. Consequential damages;
- c. Punitive damages in an amount this Court deems proper;
- d. Treble damages;
- e. Pre-judgement Interest;
- f. Post-judgment Interest;
- g. Reasonable attorneys' fees and costs; and

2. Plaintiffs respectfully request that this Court declare the following:

- a. No meaningful offer of underinsured motorist coverage was made to the Phillips;
- b. All the ANPAC policies include underinsured motorist coverage in an amount equal to \$250,000.00 per person and \$500,000.00 per occurrence; and

- c. If it is determined that Plaintiffs' damages exceed the liability coverage provided by the at-fault driver, ANPAC is required to pay the underinsurance motorist benefits to Plaintiffs in accordance with its policies of insurance.

3. Lastly, Plaintiffs respectfully request that this Court award them such other and further relief as this Court deems just and appropriate.

Law Office of M. Brooks Derrick, LLC
s/ M. Brooks Derrick

M. Brooks Derrick (SC Bar No. 76330)
224 NE Main Street
PO Box 967
Simpsonville, SC 29681
(864) 757-0757
brooks@derricklawoffice.com

Attorney and Counselor for Plaintiff

December 7, 2016

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHEROKEE)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT
C/A NUMBER: 165-CP-11-809

Nicky Ted Phillips and Gloria E. Phillips,

Plaintiffs,

vs.

American National Property and Casualty
Company, Clyde McNeill Agency, and
Clyde Edwin McNeill, individually and in
his capacity as an agent of American
National Property and Casualty Company,

Defendants.

**ANSWER ON BEHALF OF
DEFENDANTS CLYDE McNEILL
AGENCY AND CLYDE EDWIN
McNEILL**

Defendants, Clyde McNeill Agency and Clyde Edwin McNeill by and through
their undersigned attorney, answers the Complaint of the Plaintiffs as follows:

FOR A FIRST DEFENSE:

1. That they deny each and every allegation of the Complaint not hereinafter specifically admitted.
2. The Defendants admit the allegations contained in Paragraphs One (1), Two (2), Three (3).
3. Paragraphs Four (4) and Five (5) of the Complaint purport to set forth legal conclusions and as such, no response is required. However, to the extent Paragraphs Four (4) and Five (5) of the Complaint can be construed as alleging wrongdoing against any of the Defendants, said allegations are denied.
4. As to the allegations contained in Paragraph Six (6) of the Complaint, Defendants admit that the Plaintiffs have purchased insurance products from Defendant.

McNeill for many years. However, Defendant is without information sufficient to admit or deny the remaining allegations contained in Paragraph Six (6) of the Complaint.

5. Defendants admit the allegations contained in Paragraph Seven (7) of the Complaint.

6. As to the allegations contained in Paragraph Eight (8) of the Complaint, Defendants admit that Defendant McNeill discussed the Plaintiffs insurance needs with one or both of the Plaintiffs each time they purchased new or additional coverage. However, Defendant is without information sufficient to admit or deny the remaining allegations contained in Paragraph Eight (8) of the Complaint.

7. Defendants are without information sufficient to form a belief as to the truth of the allegations contained in Paragraphs Nine (9), Ten (10), Eleven (11) and Twelve (12) of the Complaint; therefore, said allegations are denied.

8. As to the allegations contained in Paragraph Thirteen (13), Defendants admit that on or about October 28, 2013, that Mr. Phillips purchased additional liability coverage. However, Defendants deny that Mr. Phillips wanted additional UM or UIM coverage.

9. As to the allegations contained in Paragraph Fourteen (14) of the Complaint, Defendants admit that Mr. Phillips referenced an accident that his daughter had been in during his discussion with Defendant McNeill; however, Defendants assert that Mr. Phillips concern during this discussion was with being sued. All remaining allegations contained in Paragraph Fourteen (14) not consistent herewith are denied.

10. Defendants admit the allegations contained in Paragraphs Fifteen (15) and Sixteen (16) of the Complaint.

2005 Toyota Tacoma and rejected UIM coverage altogether on 1984 International Harvester despite Defendant McNeill offering additional UIM coverage.

19. Defendants deny the allegations contained in Paragraph Thirty-Two (32) of the Complaint.

20. That with respect to Paragraph Thirty Three (33) of the Complaint, the Defendants incorporate the allegations contained in Paragraphs One (1) through Nineteen (19) of this Answer as if the same were set forth herein in the entirety.

21. Paragraphs Thirty Four (34) and Thirty Five (35) of the Complaint purport to set forth legal conclusions and as such, no response is required. However, to the extent Paragraphs Thirty Four (34) and Thirty Five (35) of the Complaint can be construed as alleging wrongdoing against any of the Defendants, said allegations are denied. In addition, Defendants would defer to the common and statutory law of South Carolina with regards to any duties allegedly owed the Plaintiffs.

22. The Defendants deny the allegations contained in Paragraphs Thirty Six (36), Thirty Seven (37) and Thirty Eight (38) of the Complaint.

23. That with respect to Paragraph Thirty Nine (39) of the Complaint, the Defendants incorporate the allegations contained in Paragraphs One (1) through Twenty Two (22) of this Answer as if the same were set forth herein in the entirety.

24. Paragraphs Forty (40) and Forty One (41) of the Complaint purport to set forth legal conclusions and as such, no response is required. However, to the extent Paragraphs Forty (40) and Forty One (41) of the Complaint can be construed as alleging wrongdoing against any of the Defendants, said allegations are denied. In addition,

Defendants would defer to the common and statutory law of South Carolina with regards to any duties allegedly owed the Plaintiffs.

25. The Defendants deny the allegations contained in Paragraphs Forty Two (42), Forty Three (43) and Forty Four (44) of the Complaint.

26. That with respect to Paragraph Forty Five (45) of the Complaint, the Defendants incorporate the allegations contained in Paragraphs One (1) through Twenty Five (25) of this Answer as if the same were set forth herein in the entirety.

27. Paragraphs Forty Seven (47) and Forty Eight (48) of the Complaint purport to set forth legal conclusions and as such, no response is required. However, to the extent Paragraphs Forty Seven (47) and Forty Eight (48) of the Complaint can be construed as alleging wrongdoing against any of the Defendants, said allegations are denied. In addition, Defendants would defer to the common and statutory law of South Carolina with regards to any duties allegedly owed the Plaintiffs.

28. The Defendants deny the allegations contained in Paragraphs Forty Eight (48), Forty Nine (49) and Fifty (50) of the Complaint.

29. That with respect to Paragraph Fifty One (51) of the Complaint, the Defendants incorporate the allegations contained in Paragraphs One (1) through Twenty Eight (28) of this Answer as if the same were set forth herein in the entirety.

30. The Defendants deny the allegations contained in Paragraphs Fifty Two (52) and Fifty Three (53) of the Complaint.

31. Paragraph Fifty Four (54) of the Complaint purports to set forth legal conclusion and as such, no response is required. However, to the extent Paragraph Fifty Four (54) of the Complaint can be construed as alleging wrongdoing against any of the

Defendants, said allegations are denied. In addition, Defendants would defer to the common and statutory law of South Carolina with regards to any duties allegedly owed the Plaintiffs.

32. The Defendants deny the allegations contained in Paragraphs Fifty Five (55), Fifty Six (56), Fifty Seven (57) and Fifty Eight (58) of the Complaint.

33. That with respect to Paragraph Fifty Nine (59) of the Complaint, the Defendants incorporate the allegations contained in Paragraphs One (1) through Thirty Two (32) of this Answer as if the same were set forth herein in the entirety.

34. The Defendants deny the allegations contained in Paragraphs Sixty (60), Sixty One (61), Sixty Two (62), Sixty Three (63), Sixty Four (64), Sixty Five (65), Sixty Six (66), Sixty Seven (67), Sixty Eight (68) and Sixty Nine (69) of the Complaint.

35. That with respect to Paragraph Seventy (70) of the Complaint, the Defendants incorporate the allegations contained in Paragraphs One (1) through Thirty Four (34) of this Answer as if the same were set forth herein in the entirety.

36. The Defendants deny the allegations contained in Paragraphs Seventy One (71), Seventy Two (72), Seventy Three (73) and Seventy Four (74) of the Complaint.

37. That with respect to Paragraph Seventy Five (75) of the Complaint, the Defendants incorporate the allegations contained in Paragraphs One (1) through Thirty Six (36) of this Answer as if the same were set forth herein in the entirety.

38. Paragraphs Seventy Six (76) of the Complaint purports to set forth a legal conclusion and as such, no response is required. However, to the extent Paragraph Seventy Six (76) of the Complaint can be construed as alleging wrongdoing against any of the Defendants, said allegations are denied.

39. The Defendants deny the allegations contained in Paragraphs Seventy Seven (77) and Seventy Eight (78) of the Complaint.

40. As to the unnumbered Paragraph relating to Plaintiffs jury trial demand, Defendants deny that Plaintiffs are entitled to a jury trial related to matters of law.

41. That with respect to the final unnumbered Paragraph consisting of the Plaintiff's prayer for judgment, including subparts 1 (a) through (g), 2 (a) through (c) and 3, Defendant denies that the Plaintiffs are entitled to any judgment or relief whatsoever.

FOR A SECOND DEFENSE:

42. Any injuries and damages sustained by the Plaintiffs as set forth in the Complaint, upon information and belief, were due to and caused by the sole negligence, recklessness, willfulness and wantonness of the Plaintiff, and by reason thereof, the Plaintiff is not entitled to recover from the Defendants.

FOR A THIRD DEFENSE:

43. Any injuries and damages as were allegedly sustained by the Plaintiffs at the time and place alleged in the Complaint, if any, upon information and belief, were due to and proximately caused by the negligence, recklessness, willfulness and wantonness of the Plaintiffs, which contributed more than fifty (50%) percent to cause the Plaintiffs' resulting injuries and damages, if any, and therefore the Defendants have no liability to the Plaintiffs.

FOR A FOURTH DEFENSE:

44. Even assuming the Defendants were careless, negligent, grossly negligent, willful, wanton or reckless in any respect, which is expressly denied, and even if any such conduct on their part operated as a greater than fifty (50%) cause of the accident and the

Plaintiffs' resulting injuries and damages, if any, which is also expressly denied, the Defendants are entitled to a determination as to the percentage which the Plaintiffs' negligent, grossly negligent, reckless and willful conduct contributed to this accident and to a reduction of any amount awarded to him by an amount equal to the percentage of his own negligent, grossly negligent, reckless, willful and wanton conduct.

FOR A FIFTH DEFENSE:

45. Any injuries and damages sustained by the Plaintiffs arising out of the incident referred to in the Complaint, resulted solely, upon information and belief, from the sole acts and omissions of a third party, which sole acts or omissions or intervening acts or omissions were the proximate cause of any injuries or damages sustained by the Plaintiff, and therefore the Defendants have no liability to the Plaintiffs, and the Complaint should be dismissed with prejudice.

FOR A SIXTH DEFENSE:

46. Defendants plead the Plaintiffs' failure to mitigate damages as a bar to a portion of the Plaintiffs' claim or alternatively to their entire claim.

FOR A SEVENTH DEFENSE

47. Pursuant to the provisions of South Carolina Code Section 38-77-350(D), the Plaintiffs have failed to state facts sufficient to constitute a cause of action against the Defendants,

FOR AN EIGHTH DEFENSE

48. Any allegations based on alleged oral promises or agreements between the Defendants and the Plaintiffs that were not reduced to writing are barred by the Statute of Frauds and/or the Parole Evidence Rule.

FOR A NINTH DEFENSE

49. The Defendants are informed and believe that any alleged fraudulent or negligent statements or misrepresentations conveyed to the Plaintiffs, which are expressly denied, were conveyed by some person or entity, other than the Defendants, who is not an agent or representative of the Defendants.

FOR A TENTH DEFENSE

50. The Plaintiffs' claims and causes of action are precluded by the terms, provisions, conditions and limitations of the policy in question.

FOR AN ELEVENTH DEFENSE

51. The Defendant affirmatively pleads that Plaintiffs failure to read the policy at issue upon delivery makes them contributorily and/or comparatively negligent for any damages they may have sustained as a matter of the acts alleged in his Complaint.

FOR A TWELTH DEFENSE

52. That the conduct of the Defendants was not the proximate cause of the Plaintiff's injuries, if any, under any theory advanced by the Plaintiff for any relief sought in the Complaint.

FOR AN THIRTEENTH DEFENSE

53. The Plaintiffs' Unfair Trade Practices cause of action fails as a matter of law, because the Unfair Trade Practices Act does not apply to the insurance industry.

FOR A FOURTEENTH DEFENSE

54. Any claim on behalf of the Plaintiffs for punitive damages is barred by the provisions of the United States and the South Carolina Constitutions.

55. That Plaintiffs' claim for punitive damages violates both the Fourteenth Amendment of the United States Constitution and Article 1, Section 3, of the South Carolina Constitution in that the jury's unfettered power to award punitive damages in any amount it chooses is wholly devoid of a meaningful standard and is inconsistent with due process guarantees.

56. That Plaintiffs' claim for punitive damages violates the Fifth, Sixth and Fourteenth Amendments of the United States Constitution and Article 1, Section 3 of the South Carolina Constitution, for even if it could be argued that a standard governing the imposition of punitive damages exists, this standard is void for vagueness.

57. That the Plaintiffs' claim for punitive damages violates the equal protection clause of the Fourteenth Amendment of the United States Constitution and Article 1, Section 3 of the South Carolina Constitution, in that the amount of punitive damages is based upon the wealth of the Defendants.

58. That the Plaintiffs' claim for punitive damages violates the Federal doctrine of separation of powers and Article 1, Section 8 of the South Carolina Constitution for the reason that punitive damages are a creation of the judicial branch of government which invades the province of the legislative branch of government.

WHEREFORE, having fully answered the Complaint herein, the Defendants demand that the same be dismissed and that they have such other and further relief as may be just and proper.

HOWSER, NEWMAN & BESLEY, L.L.C.

BY: s/George V. Hanna, IV

State Bar # 15935

1508 Washington Street

Post Office Box 12009

Columbia, South Carolina 29211

(803) 758-6000

Attorney for Defendants Clyde McNeill Agency
and Clyde Edwin McNeill

January 12, 2017

STATE OF SOUTH CAROLINA)
COUNTY OF CHEROKEE)
Nicky Ted Phillips and Gloria E. Phillips,)
Plaintiffs,)
vs.)
American National Property and Casualty)
Company, Clyde McNeill Agency, and)
Clyde Edwin McNeill, individually and)
in his capacity as agent of American)
National Property and Casualty)
Company,)
Defendants.)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Civil Action No.: 2016-CP-11-00809

**DEFENDANT AMERICAN NATIONAL
PROPERTY AND CASUALTY COMPANY'S
ANSWER TO PLAINTIFFS' COMPLAINT**

COMES NOW, Defendant American National Property and Casualty Company ("ANPAC"), by and through its undersigned counsel, reserving the right to file a motion under Rule 12 of the *South Carolina Rules of Civil Procedure* or any other dispositive motion, and hereby answers Plaintiffs' Complaint by denying each and every allegation not specifically admitted and by demanding strict proof thereof.

**FOR A FIRST DEFENSE
AND BY WAY OF ANSWER
(Parties, Jurisdiction, Venue)**

1. ANPAC admits the allegations contained in Paragraph 1 of Plaintiffs' Complaint, upon information and belief.
2. ANPAC admits the allegations contained in Paragraph 2 of Plaintiffs' Complaint.
3. ANPAC admits the allegations contained in Paragraph 3 of Plaintiffs' Complaint, upon information and belief.
4. Regarding the allegations contained in Paragraph 4 of Plaintiffs' Complaint, ANPAC admits that Defendant McNeill is an insurance agent for ANPAC. Regarding the

remaining allegations contained in Paragraph 4 of Plaintiff's Complaint, ANPAC is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained therein, and therefore, ANPAC denies the same.

5. ANPAC admits the allegations contained in Paragraph 5 of Plaintiffs' Complaint.

FACTS
(Background)

6. The allegations contained in Paragraph 6 of Plaintiffs' Complaint pertain to a party other than ANPAC, and therefore, no response is required. To the extent a response is required, ANPAC is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 6 of Plaintiffs' Complaint, and therefore, ANPAC denies the same.

7. The allegations contained in Paragraph 7 of Plaintiffs' Complaint pertain to a party other than ANPAC, and therefore, no response is required. To the extent a response is required, ANPAC admits only that Plaintiffs have purchased insurance products from Defendant McNeill, but as to the remaining allegations contained in Paragraph 7 of Plaintiffs' Complaint, ANPAC is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained therein, and therefore, ANPAC denies the same.

8. The allegations contained in Paragraph 8 of Plaintiffs' Complaint pertain to a party other than ANPAC, and therefore, no response is required. To the extent a response is required, ANPAC is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 8 of Plaintiffs' Complaint, and therefore, ANPAC denies the same.

Procurement of Additional Insurance Coverage on October 28, 2013

9. ANPAC is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 9 of Plaintiffs' Complaint, and therefore, ANPAC denies the same.

10. ANPAC is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 10 of Plaintiffs' Complaint, and therefore, ANPAC denies the same.

11. ANPAC is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 11 of Plaintiffs' Complaint, and therefore, ANPAC denies the same.

12. ANPAC is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 12 of Plaintiffs' Complaint, and therefore, ANPAC denies the same.

13. Regarding the allegations contained in Paragraph 13 of Plaintiffs' Complaint, ANPAC admits that Plaintiffs purchased a Farm Umbrella Policy on or about October 28, 2013. Regarding the remaining allegations contained in Paragraph 13 of Plaintiffs' Complaint, ANPAC is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained therein and therefore, ANPAC denies the same. ANPAC denies that Plaintiffs selected additional UIM coverage on October 28, 2013.

14. ANPAC is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 14 of Plaintiffs' Complaint, and therefore, ANPAC denies the same.

15. ANPAC admits the allegations contained in Paragraph 15 of Plaintiffs' Complaint.

16. ANPAC admits the allegations contained in Paragraph 16 of Plaintiffs' Complaint.

17. ANPAC is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 17 of Plaintiffs' Complaint, and therefore, ANPAC denies the same.

18. Regarding the allegations contained in Paragraph 18 of Plaintiffs' Complaint, ANPAC admits only that the bodily injury liability limits on the 2004 GMC Envoy and 2005 Toyota Tacoma were increased to \$250,000.00 per person and \$500,000.00 per occurrence and single-limit liability on the 1984 Intl S. Series 2 Trkt ("1984 International Harvester") was increased to \$500,000.00. ANPAC denies all remaining allegations contained in Paragraph 18 of Plaintiffs' Complaint.

19. The allegations contained in Paragraph 19 of Plaintiffs' Complaint pertain to a party other than ANPAC, and therefore, no response is required. To the extent a response is required, ANPAC is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 19 of Plaintiffs' Complaint, and therefore, ANPAC denies the same.

20. The allegations contained in Paragraph 20 of Plaintiffs' Complaint pertain to a party other than ANPAC, and therefore, no response is required. To the extent a response is required, ANPAC is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 20 of Plaintiffs' Complaint, and therefore,

ANPAC denies the same.

21. The allegations contained in Paragraph 21 of Plaintiffs' Complaint pertain to a party other than ANPAC, and therefore, no response is required. To the extent a response is required, ANPAC is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 21 of Plaintiffs' Complaint, and therefore, ANPAC denies the same.

22. Regarding the allegations contained in Paragraph 22 of Plaintiffs' Complaint, ANPAC admits only that the bodily injury liability limits on the 2004 GMC Envoy and 2005 Toyota Tacoma were increased to \$250,000.00 per person and \$500,000.00 per occurrence and single limit liability on the 1984 International Harvester was increased to \$500,000.00. ANPAC is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations contained in Paragraph 22 of Plaintiffs' Complaint, and therefore, ANPAC denies the same. ANPAC denies that Plaintiffs selected UIM limits on the 2004 GMC Envoy and 2005 Toyota Tacoma in any amount over \$25,000.00 per person and \$50,000.00 per occurrence and ANPAC avers that Plaintiffs expressly rejected UIM on the 1984 International Harvester, all despite being offered additional UIM coverage.

Tragic Collision on August 9, 2014

23. Regarding the allegations contained in Paragraph 23 of Plaintiffs' Complaint, ANPAC admits only that Plaintiffs were involved in an automobile accident on August 9, 2014, upon information and belief. ANPAC is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations contained in Paragraph 23 of Plaintiffs' Complaint, and therefore, ANPAC denies the same.

24. Regarding the allegations contained in Paragraph 24 of Plaintiffs' Complaint, ANPAC admits only that Plaintiffs were involved in an automobile accident on August 9, 2014, upon information and belief. ANPAC is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations contained in Paragraph 24 of Plaintiffs' Complaint, and therefore, ANPAC denies the same.

25. Regarding the allegations contained in Paragraph 25 of Plaintiffs' Complaint, ANPAC admits only that Plaintiffs were involved in an automobile accident on August 9, 2014, upon information and belief. ANPAC is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations contained in Paragraph 25 of Plaintiffs' Complaint, and therefore, ANPAC denies the same.

26. Regarding the allegations contained in Paragraph 26 of Plaintiffs' Complaint, ANPAC admits only that Plaintiffs were involved in an automobile accident on August 9, 2014, upon information and belief. ANPAC is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations contained in Paragraph 26 of Plaintiffs' Complaint, and therefore, ANPAC denies the same.

27. Regarding the allegations contained in Paragraph 27 of Plaintiffs' Complaint, ANPAC admits only that Plaintiffs were involved in an automobile accident on August 9, 2014, upon information and belief. ANPAC is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations contained in Paragraph 27 of Plaintiffs' Complaint, and therefore, ANPAC denies the same.

28. Regarding the allegations contained in Paragraph 28 of Plaintiffs' Complaint, ANPAC admits only that Plaintiffs were involved in an automobile accident on August 9, 2014,

upon information and belief. ANPAC is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations contained in Paragraph 28 of Plaintiffs' Complaint, and therefore, ANPAC denies the same.

29. Regarding the allegations contained in Paragraph 29 of Plaintiffs' Complaint, ANPAC is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations contained in Paragraph 29 of Plaintiffs' Complaint, and therefore, ANPAC denies the same.

30. The allegations contained in Paragraph 30 of Plaintiffs' Complaint pertain to a party other than ANPAC, and therefore, no response is required. To the extent a response is required, ANPAC admits only that the bodily injury liability limits on the 2004 GMC Envoy and the 2005 Toyota Tacoma were increased to \$250,000.00 per person and \$500,000.00 per occurrence. ANPAC is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations contained in Paragraph 30 of Plaintiffs' Complaint, and therefore, ANPAC denies the same.

31. The allegations contained in Paragraph 31 of Plaintiffs' Complaint, including all subparts therein, pertain to a party other than ANPAC, and therefore, no response is required. To the extent a response is required, ANPAC is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 31 of Plaintiffs' Complaint, and therefore, ANPAC denies the same. ANPAC denies that Plaintiffs selected UIM limits on the 2004 GMC Envoy and 2005 Toyota Tacoma in any amount over \$25,000.00 per person and \$50,000.00 per occurrence and ANPAC avers that Plaintiffs expressly rejected UIM on the 1984 International Harvester, all despite being offered additional UIM coverage.

32. The allegations contained in Paragraph 32 of Plaintiffs' Complaint pertain to a party other than ANPAC, and therefore, no response is required. To the extent a response is required, ANPAC is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 32 of Plaintiffs' Complaint, and therefore, ANPAC denies the same.

AS TO THE FIRST CAUSE OF ACTION
(Negligence - Breach of Express Duty)

33. The allegations contained in Paragraph 33 of Plaintiffs' Complaint do not require a response. To the extent a response is required, ANPAC incorporates Paragraphs 1 through 32 of its Answer and denies any allegations inconsistent therewith.

34. The allegations contained in Paragraph 34 of Plaintiffs' Complaint pertain to a party other than ANPAC and contain a legal conclusion, and therefore, no response is required. To the extent a response is required, ANPAC is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 34 of Plaintiffs' Complaint, and therefore, ANPAC denies the same. ANPAC denies that it breached any duty owed to Plaintiffs.

35. The allegations contained in Paragraph 35 of Plaintiffs' Complaint pertain to a party other than ANPAC and contain a legal conclusion, and therefore, no response is required. To the extent a response is required, ANPAC is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 35 of Plaintiffs' Complaint, and therefore, ANPAC denies the same. ANPAC denies that it breached any duty owed to Plaintiffs.

36. The allegations contained in Paragraph 36 of Plaintiffs' Complaint pertain to a party other than ANPAC, and therefore, no response is required. To the extent a response is required, ANPAC is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 36 of Plaintiffs' Complaint, and therefore, ANPAC denies the same. ANPAC denies that it breached any duty owed to Plaintiffs.

37. ANPAC denies the allegations contained in Paragraph 37 of Plaintiffs' Complaint.

38. ANPAC denies that Plaintiffs are entitled to the relief sought in Paragraph 38 of Plaintiffs' Complaint.

AS TO THE SECOND CAUSE OF ACTION
(Negligence – Breach of Implied Duty)

39. The allegations contained in Paragraph 39 of Plaintiffs' Complaint do not require a response. To the extent a response is required, ANPAC incorporates Paragraphs 1 through 38 of its Answer and denies any allegations inconsistent therewith.

40. The allegations contained in Paragraph 40 of Plaintiffs' Complaint pertain to a party other than ANPAC and contain a legal conclusion, and therefore, no response is required. To the extent a response is required, ANPAC is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 40 of Plaintiffs' Complaint, and therefore, ANPAC denies the same. ANPAC denies that it breached any duty owed to Plaintiffs.

41. The allegations contained in Paragraph 41 of Plaintiffs' Complaint pertain to a party other than ANPAC and contain a legal conclusion, and therefore, no response is required. To the extent a response is required, ANPAC is without knowledge or information sufficient to

form a belief as to the truth or falsity of the allegations contained in Paragraph 41 of Plaintiffs' Complaint, and therefore, ANPAC denies the same. ANPAC denies that it breached any duty owed to Plaintiffs.

42. The allegations contained in Paragraph 42 of Plaintiffs' Complaint pertain to a party other than ANPAC, and therefore, no response is required. To the extent a response is required, ANPAC is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 42 of Plaintiffs' Complaint, and therefore, ANPAC denies the same. ANPAC denies that it breached any duty owed to Plaintiffs.

43. ANPAC denies the allegations contained in Paragraph 43 of Plaintiffs' Complaint.

44. ANPAC denies that Plaintiffs are entitled to the relief sought in Paragraph 44 of Plaintiffs' Complaint.

AS TO THE THIRD CAUSE OF ACTION
(Breach of Fiduciary Duty)

45. The allegations contained in Paragraph 45 of Plaintiffs' Complaint do not require a response. To the extent a response is required, ANPAC incorporates Paragraphs 1 through 44 of its Answer and denies any allegations inconsistent therewith.

46. The allegations contained in Paragraph 46 of Plaintiffs' Complaint pertain to a party other than ANPAC and contain a legal conclusion, and therefore, no response is required. To the extent a response is required, ANPAC is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 46 of Plaintiffs' Complaint, and therefore, ANPAC denies the same.

47. The allegations contained in Paragraph 47 of Plaintiffs' Complaint pertain to a party other than ANPAC and contain a legal conclusion, and therefore, no response is required. To the extent a response is required, ANPAC is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 47 of Plaintiffs' Complaint, and therefore, ANPAC denies the same.

48. The allegations contained in Paragraph 48 of Plaintiffs' Complaint pertain to a party other than ANPAC, and therefore, no response is required. To the extent a response is required, ANPAC is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 48 of Plaintiffs' Complaint, and therefore, ANPAC denies the same. ANPAC denies that it breached any duty owed to Plaintiffs.

49. ANPAC denies the allegations contained in Paragraph 49 of Plaintiffs' Complaint.

50. ANPAC denies that Plaintiffs are entitled to the relief sought in Paragraph 50 of Plaintiffs' Complaint.

AS TO THE FOURTH CAUSE OF ACTION
(Negligent Misrepresentation)

51. The allegations contained in Paragraph 51 of Plaintiffs' Complaint do not require a response. To the extent a response is required, ANPAC incorporates Paragraphs 1 through 50 of its Answer and denies any allegations inconsistent therewith.

52. The allegations contained in Paragraph 52 of Plaintiffs' Complaint pertain to a party other than ANPAC, and therefore, no response is required. To the extent a response is required, ANPAC is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 52 of Plaintiffs' Complaint, and therefore,

ANPAC denies the same.

53. The allegations contained in Paragraph 53 of Plaintiffs' Complaint pertain to a party other than ANPAC, and therefore, no response is required. To the extent a response is required, ANPAC is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 53 of Plaintiffs' Complaint, and therefore, ANPAC denies the same.

54. The allegations contained in Paragraph 54 of Plaintiffs' Complaint pertain to a party other than ANPAC and contain a legal conclusion, and therefore, no response is required. To the extent a response is required, ANPAC is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 54 of Plaintiffs' Complaint, and therefore, ANPAC denies the same.

55. The allegations contained in Paragraph 55 of Plaintiffs' Complaint pertain to a party other than ANPAC, and therefore, no response is required. To the extent a response is required, ANPAC is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 55 of Plaintiffs' Complaint, and therefore, ANPAC denies the same.

56. ANPAC is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 56 of Plaintiffs' Complaint, and therefore, ANPAC denies the same.

57. ANPAC denies the allegations contained in Paragraph 57 of Plaintiffs' Complaint.

58. ANPAC denies that Plaintiffs are entitled to the relief sought in Paragraph 58 of

Plaintiffs' Complaint.

AS TO THE FIFTH CAUSE OF ACTION
(Fraud)

59. The allegations contained in Paragraph 59 of Plaintiffs' Complaint do not require a response. To the extent a response is required, ANPAC incorporates Paragraphs 1 through 58 of its Answer and denies any allegations inconsistent therewith.

60. The allegations contained in Paragraph 60 of Plaintiffs' Complaint pertain to a party other than ANPAC, and therefore, no response is required. To the extent a response is required, ANPAC is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 60 of Plaintiffs' Complaint, and therefore, ANPAC denies the same.

61. The allegations contained in Paragraph 61 of Plaintiffs' Complaint pertain to a party other than ANPAC, and therefore, no response is required. To the extent a response is required, ANPAC is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 61 of Plaintiffs' Complaint, and therefore, ANPAC denies the same.

62. The allegations contained in Paragraph 62 of Plaintiffs' Complaint pertain to a party other than ANPAC, and therefore, no response is required. To the extent a response is required, ANPAC is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 62 of Plaintiffs' Complaint, and therefore, ANPAC denies the same.

63. The allegations contained in Paragraph 63 of Plaintiffs' Complaint pertain to a party other than ANPAC, and therefore, no response is required. To the extent a response is

required, ANPAC is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 63 of Plaintiffs' Complaint, and therefore, ANPAC denies the same.

64. The allegations contained in Paragraph 64 of Plaintiffs' Complaint pertain to a party other than ANPAC, and therefore, no response is required. To the extent a response is required, ANPAC is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 64 of Plaintiffs' Complaint, and therefore, ANPAC denies the same.

65. The allegations contained in Paragraph 65 of Plaintiffs' Complaint pertain to a party other than ANPAC, and therefore, no response is required. To the extent a response is required, ANPAC is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 65 of Plaintiffs' Complaint, and therefore, ANPAC denies the same.

66. The allegations contained in Paragraph 66 of Plaintiffs' Complaint pertain to a party other than ANPAC, and therefore, no response is required. To the extent a response is required, ANPAC is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 66 of Plaintiffs' Complaint, and therefore, ANPAC denies the same.

67. The allegations contained in Paragraph 67 of Plaintiffs' Complaint pertain to a party other than ANPAC, and therefore, no response is required. To the extent a response is required, ANPAC is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 67 of Plaintiffs' Complaint, and therefore,

ANPAC denies the same.

68. ANPAC denies the allegations contained in Paragraph 68 of Plaintiffs' Complaint.

69. ANPAC denies that Plaintiffs are entitled to the relief sought in Paragraph 69 of Plaintiffs' Complaint.

AS TO THE SIXTH CAUSE OF ACTION
(Unfair Trade Practices Act)

70. The allegations contained in Paragraph 70 of Plaintiffs' Complaint do not require a response. To the extent a response is required, ANPAC incorporates Paragraphs 1 through 69 of its Answer and denies any allegations inconsistent therewith.

71. The allegations contained in Paragraph 71 of Plaintiffs' Complaint pertain to a party other than ANPAC, and therefore, no response is required. To the extent a response is required, ANPAC is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 71 of Plaintiffs' Complaint, and therefore, ANPAC denies the same.

72. ANPAC is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 72 of Plaintiffs' Complaint, and therefore, ANPAC denies the same.

73. ANPAC denies the allegations contained in Paragraph 73 of Plaintiffs' Complaint.

74. ANPAC denies that Plaintiffs are entitled to the relief sought in Paragraph 74 of Plaintiffs' Complaint.

AS TO THE FOURTH (sic) CAUSE OF ACTION
(Declaratory Judgment)

75. The allegations contained in Paragraph 75 of Plaintiffs' Complaint do not require a response. To the extent a response is required, ANPAC incorporates Paragraphs 1 through 74 of its Answer and denies any allegations inconsistent therewith.

76. The allegations contained in Paragraph 76 of Plaintiffs' Complaint state a legal conclusion to which no response is required. To the extent a response is required, ANPAC is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 76 of Plaintiffs' Complaint, and therefore, ANPAC denies the same.

77. ANPAC denies the allegations contained in Paragraph 77 of Plaintiffs' Complaint.

78. ANPAC denies that Plaintiffs are entitled to the relief sought in Paragraph 78 of Plaintiffs' Complaint.

Jury Trial Demanded

79. The allegations contained in the jury trial demand paragraph of Plaintiffs' Complaint do not require a response. To the extent a response is required, ANPAC denies the allegations contained therein.

Prayer for Relief

80. ANPAC denies that Plaintiffs are entitled to the relief sought in Paragraphs 1, 2 and 3 of the Prayer for Relief in Plaintiffs' Complaint, including all subparts therein.

FOR AN EIGHTH DEFENSE
(Unconstitutionality of Punitive Damages and Bar of Punitive Damages)

93. ANPAC realleges and incorporates each and every allegation in its prior defenses, except as is inconsistent herein.

94. Punitive damages, as currently awarded in South Carolina, are violative of the United States Constitution and South Carolina Constitution, as well as the holding of *State Farm Mutual Automobile Insurance Company v. Campbell*, 538 U.S. 408, 123 S.Ct. 1513, 155 L.Ed.2d 585 (2003), and the cases upon which it is based.

95. Pursuant to *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 522 U.S. 424, 121 S.Ct. 1678 (2001), if punitive damages are recoverable, which is denied, the amount of punitive damages "[are] not really a fact tried by the jury" therefore Plaintiffs' request for punitive damages "to be determined by the jury" violates the United States Constitution.

96. Notwithstanding ANPAC's prior defenses incorporating *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 522 U.S. 424 (2001) and *State Farm Mutual Automobile Insurance Company v. Campbell*, 538 U.S. 408 (2003), and the cases upon which they are based, in the event the trial court permits the jury to return a punitive damages award in the instant case, such damages are to be limited to an amount that is no greater than the jury's award of actual damages, as explicated within *Exxon Shipping Company v. Baker*, 128 S. Ct. 2605 (2008).

97. ANPAC pleads any and all applicable protections afforded it under the South Carolina Fairness in Civil Justice Act of 2011, codified at S.C. Code Ann. §§15-32-510 to 15-32-540, as a defense to Plaintiffs' claims or request for an award of punitive damages.

FOR A NINTH DEFENSE
(S.C. Code Ann. §38-77-350(D))

98. ANPAC realleges and incorporates each and every allegation in its prior defenses, except as is inconsistent herein.

99. Plaintiffs have failed to state a cause of action against ANPAC pursuant to S.C. Code Ann. §38-77-350(D).

FOR A TENTH DEFENSE

100. ANPAC realleges and incorporates each and every allegation in its prior defenses, except as is inconsistent herein.

101. Plaintiffs' claims and causes of action are barred by the terms and conditions of any policies issued to Plaintiffs by ANPAC.

FOR AN ELEVENTH DEFENSE

102. ANPAC realleges and incorporates each and every allegation in its prior defenses, except as is inconsistent herein.

103. Plaintiffs' Unfair Trade Practices Act claim is barred because the UTPA does not apply to the insurance industry.

WHEREFORE, having fully answered Plaintiffs' Complaint, ANPAC prays that this Court:

1. Dismiss Plaintiffs' Complaint with prejudice;
2. Award ANPAC the costs of defending this matter; and
3. Award ANPAC such other further relief as this Court deems just and proper.

Respectfully submitted,
ROE CASSIDY COATES & PRICE PA

By: s/Ross B. Plyler
Ross B. Plyler, SC Bar No. 71688
rplyler@roecassidy.com
1052 North Church Street (29601)
Post Office Box 10529
Greenville, SC 29603
Tel: 864.349.2600
Fax: 864.349.0303

ATTORNEYS FOR DEFENDANT
AMERICAN NATIONAL PROPERTY
AND CASUALTY COMPANY

Greenville, South Carolina
March 17, 2017

STATE OF SOUTH CAROLINA
COUNTY OF CHEROKEE

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2016-CP-11-00809

Nicky Ted Phillips and Gloria E. Phillips,
Plaintiffs,

**NOTICE OF MOTION AND MOTION FOR
SUMMARY JUDGMENT ON BEHALF OF
DEFENDANTS CLYDE MCNEILL
AGENCY AND CLYDE EDWIN MCNEILL**

American National Property and Casualty
Company, Clyde McNeill Agency, and
Clyde Edwin McNeill, individually and in
his capacity as agent of American National
Property and Casualty Company,

Defendants.

**TO: M. BROOKS DERRICK, ESQUIRE, ATTORNEY FOR THE PLAINTIFFS AND
THE PLAINTIFFS:**

YOU WILL PLEASE TAKE NOTICE that the Defendants, Clyde McNeill Agency and Clyde Edwin McNeill, by and through their undersigned counsel, will move before the presiding judge in the Court of Common Pleas for Cherokee County, on the tenth day after service hereof or at such time and place as may be set by the Court, for an Order pursuant to Rule 56, SCRCP, granting summary judgment to these Defendants as to the within action on the ground that there are no genuine issues of material fact to dispute that Defendants made Plaintiffs a meaningful offer of underinsured motorist coverage. Therefore, these Defendants are entitled to judgment in its favor as a matter of law.

In the alternative, these Defendants will also move for partial summary judgment as to the following issues/causes of action:

1. The underinsured motorist coverage select/reject form executed by Plaintiff Nicky Ted Phillips on October 28, 2013, complies with S.C. Code Ann. § 38-77-350 (A);
2. Plaintiff Nicky Ted Phillips had the express and/or implied authority to execute the above-referenced select/reject form on behalf of Plaintiff Gloria Phillips;

3. Defendants are entitled to summary judgment as to Plaintiffs' cause of action for breach of fiduciary duty because no fiduciary relationship existed between Plaintiffs and these defendants;
4. Defendants are entitled to summary judgment as to Plaintiffs' causes of action for negligent misrepresentation and fraud because Plaintiffs cannot establish all the elements of these causes of action, including but not limited to, the element of reliance, as a matter of law; and
5. Defendants are entitled to summary judgment as to Plaintiffs' cause of action for an alleged violation of the South Carolina Unfair Trade Practices Act, S.C. Code Ann. §§ 39-5-10 *et seq.* because claims involving alleged unfair trade practices in the business of insurance are exempt from the SCUTPA.

This Motion will be supported by the pleadings, depositions and discovery in this action, the South Carolina Rules of Civil Procedure, applicable statutes and case law, any affidavits or memorandum as may be submitted, and such other matters as may be acceptable to the Court.

HOWSER, NEWMAN & BESLEY, LLC

BY: s/Jeffrey I. Silverberg

George V. Hanna, IV (SC Bar No.: 15935)

Jeffrey I. Silverberg (SC Bar No.: 100749)

1508 Washington Street (29201)

Post Office Box 12009

Columbia, South Carolina 29211

Tel: (803) 758:6000

ghanna@hnblaw.com

jsilverberg@hnblaw.com

*Attorneys for Defendants Clyde McNeill Agency and
Clyde Edwin McNeill*

February 14, 2018

Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHEROKEE

Nicky Ted Phillips and Gloria E. Phillips,

Plaintiffs,

vs.

American National Property and Casualty Company, Clyde McNeill Agency, and Clyde Edwin McNeill, individually and in his capacity as agent of American National Property and Casualty Company,

Defendants.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Civil Action No.: 2016-CP-11-00809

**DEFENDANT AMERICAN NATIONAL
PROPERTY AND CASUALTY
COMPANY'S MOTION FOR
SUMMARY JUDGMENT**

COMES NOW, Defendant, America National Property and Casualty Company ("ANPAC"), by and through its undersigned counsel, and submits this 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 to dispute that ANPAC made Plaintiffs a meaningful offer of underinsured motorist coverage. ANPAC is entitled to judgment as a matter of law.

In the alternative, ANPAC also moves for partial summary judgment on the following grounds:

1. The underinsured motorist coverage select/reject form executed by Plaintiff Nicky Ted Phillips and dated October 28, 2013, complies with S.C. Code Ann § 38-77-350(A).
2. Plaintiff Nicky Ted Phillips had the express and/or implied permission to execute the October 28, 2013 select/reject form on behalf of his spouse, Plaintiff Gloria E. Phillips.

3. ANPAC is entitled to summary judgment as to the cause of action for breach of fiduciary duty in Plaintiffs' Complaint, because no fiduciary relationship existed between Plaintiffs and Clyde McNeill or ANPAC.

4. ANPAC is entitled to summary judgment to the degree Plaintiffs' Complaint asserts causes of action for negligent misrepresentation and fraud against ANPAC, because Plaintiffs cannot establish all elements of these causes of action, including but not limited to, the element of reliance as a matter of law.

5. ANPAC is entitled to summary judgment to the degree Plaintiffs' Complaint asserts cause of action for alleged violation of the South Carolina Unfair Trade Practices Action (the "Act"), S.C. Code Ann. §§ 39-5-10 *et seq.* against ANPAC, because claims involving alleged unfair trade practices in the insurance business are exempt from this Act.

This motion will be based on the pleadings, memoranda, affidavits, applicable law, and such other documentation as may be submitted prior to the hearing on the motion.

Respectfully submitted,
ROE CASSIDY COATES & PRICE PA

By: s/Ross B. Plyler
Ross B. Plyler, SC Bar No. 71688
rplyler@roecassidy.com
1052 North Church Street (29601)
Post Office Box 10529
Greenville, SC 29603
Tel: 864.349.2600
Fax: 864.349.0303

ATTORNEYS FOR DEFENDANT
AMERICAN NATIONAL PROPERTY AND
CASUALTY COMPANY

Greenville, South Carolina
February 21, 2018

State of South Carolina

Court of Common Pleas

County of Cherokee

7th Judicial Circuit

Nicky Ted Phillips and Gloria E.
Phillips,

Case No.
2016-CP-11-00809

Plaintiffs,

v.

American National Property and
Casualty Company, Clyde McNeill
Agency, and Clyde Edwin McNeill,
individually and in his capacity as agent
of American National Property and
Casualty Company,

Memorandum in Opposition to
Defendants' Motion for Summary
Judgment

Defendants.

Plaintiffs submit this Memorandum in Opposition to Defendants' Motions for
Summary Judgment.

Brief Background

For over 10 years, the Phillips sought and relied on insurance guidance from
Clyde McNeill (insurance agency of ANPAC) when purchasing insurance
products, and over the years, the Phillips purchased Business Automobile Policies
on various vehicles, Family Automobile Policies on various vehicles, Special Farm
Coverages, Home Owner's Coverage, Life Policies, and Umbrella Policies.

APPEARANCES

For the Plaintiff: M. Brooks Derrick, Esq.
Law Office of M. Brooks Derrick, LLC
Simpsonville, South Carolina

For the Defendants Clyde McNeill Agency and Clyde Edwin
McNeill: George "Geov" V. Hanna, IV, Esq.
Howser, Newman & Besley, LLC
Columbia South Carolina

For the Defendant American National Property and
Casualty Company: Ross B. Plyler, Esq.
Roe Cassidy Coates & Price, PA
Greenville, South Carolina

Also Present: Gloria E. Phillips

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EXHIBITS

Defendants' Exhibit Number 1, American National Property
and Casualty Co. family automobile policy, dated
09/20/10. 21

Defendants' Exhibit Number 2, American National Property
and Casualty Co. family automobile renewal policy, dated
02/28/11. 22

Defendants' Exhibit Number 3, American National Property
and Casualty Co. family automobile amended policy, dated
03/24/11. 23

Defendants' Exhibit Number 4, American National Property

1 Q That's what I meant.

2 A I ain't trying to be funny. I just --

3 MR. PLYLER: (To the deponent) It just --

4 just comes naturally.

5 Q No. I -- I think that is how that's spelled. I

6 was just making sure. Okay.

7 A Yes, sir.

8 Q Do they have any children that are of voting age?

9 A No, sir.

10 Q Okay. I don't need to know about them.

11 You -- you have any other relatives that live
12 in Cherokee County?

13 A No, sir.

14 Q Okay. On your wife's side, anybody who lives in
15 Cherokee County?

16 A No, sir.

17 Q Okay. All right. I'll get a chance to ask her
18 again, if you messed up.

19 A I'm sorry?

20 Q I said I get a chance to ask her that if you messed
21 up any of her -- missed any of her relatives you've
22 conveniently forgotten about.

23 All right. Let's talk a little bit about --

24 how did you first come to do business with Clyde

25 McNeill or the McNeill Agency?

1 A I purchased a motorcycle. At the time, I was with
2 Farm Bureau, and they did not insure motorcycles.
3 Q Okay.
4 A And someone told me about American National.
5 Q To the -- and was the first agent you went to or
6 agency Mr. McNeill and his agency?
7 A Yes, sir.
8 Q Okay. At the -- and when you took out -- do you
9 still have the motorcycle?
10 A No, sir.
11 Q What year approximately was it when you took the
12 motorcycle policy out? Just do the best you can.
13 I know it's --
14 A I can't remember. 2005 or something like that.
15 It's been a long time.
16 Q More than ten years?
17 A More than ten years..
18 Q Okay. Gotcha. And when you first took out the
19 motorcycle policy, did you move any other type of
20 coverage to American National at that time?
21 A Yes, sir.
22 Q Okay. What other coverages did you move?
23 A I moved my home and my autos, my life insurance,
24 and my savings account. Or I don't know what you
25 call it. It's where -- not a 401 but what is it?

1 MR. PLYLER: (To the deponent) Roth?

2 Q Retirement-type thing?

3 A Retirement-type --

4 Q Okay. Okay. We're on the same page. All right.

5 And when you -- when you -- all right. When you

6 first moved over there, you had -- you had more

7 than one motorcycle or just the one?

8 A I didn't keep it but about two months.

9 Q Okay. Wise. Those things only got two wheels,
10 you know, right?

11 All right. And what autos did you have back
12 then?

13 A I'm sorry, sir.

14 Q What autos did you have at that time? Do you
15 recall?

16 A No, sir. I can't remember.

17 Q Okay. All right. Have you since -- again, I'm not
18 going to hold you to the date, but since --

19 let's -- we're just going to use what you said as

20 the -- as an approximation -- 2005, have you

21 maintained all of your -- either your home or

22 whatever autos you had through American National?

23 A I'm trying to figure out the best way to say it,

24 but, yes, until -- until the accident. After

25 that --

1 2, 3, and 4?

2 A Yes, sir.

3 Q Okay. Do you recall signing this document? This

4 would've been --

5 A Yes, sir.

6 Q You do recall signing this, then?

7 A No, sir. I just -- I recognize my handwriting.

8 Q Okay. Okay. And is any of the other handwriting

9 on there, besides the -- is the date -- let --

10 sorry. I'll hand it over here. Is the date at the

11 bottom of Page 4, is that your handwriting?

12 A No, sir.

13 Q No?

14 A No, sir.

15 Q So the only thing that's yours is the signature

16 page, correct?

17 A Yes, sir.

18 Q I mean the -- the actual signatures.

19 A That's my signature, but the rest of it's not mine.

20 No, sir.

21 Q Understood. Okay.

22 A And it wasn't on there when I signed it.

23 Q So you're -- you're -- let me go back and make sure

24 I understand that. Are you -- are you saying that

25 it was blank when you signed it?

1 A Yes, sir.

2 Q Okay. Did you read any of the -- of the document

3 when you signed it?

4 A No, sir.

5 Q Were you -- did he give you an opportunity to read

6 it if you wished?

7 A I don't think so. No, sir.

8 Q Did he deny you --

9 A He said, "Sign" --

10 Q Okay.

11 A -- "here, here, and here."

12 Q Did you ask him --

13 A It's all --

14 Q Oh, sorry.

15 A -- Greek to me anyhow.

16 Q Okay. Did you ask him if you could read it?

17 A No, sir.

18 Q Okay. So he didn't, like, say, "You can't read

19 this, but sign this"?

20 A No, sir.

21 Q Okay. And you -- you didn't read it?

22 A No, sir.

23 Q Okay. Okay. Now, at the -- at the time that you

24 left his office on the 28th, the day you signed

25 this Exhibit Number 12, what was your understanding

1 of what -- what was supposed to have happened to
2 your coverage?
3 A I trusted him to take care of what I asked him to
4 do.
5 Q Which was what?
6 A Raise my insurance, all of it.
7 Q Okay. And did -- had -- had someone asked you to
8 go -- any of you family members asked you to go do
9 this?
10 A My daughter had mentioned it to me, that I need to
11 do it.
12 Q Okay. Did she seem to understand what it was?
13 A Yes, sir. I -- I can't say that. She knowed --
14 she knowed I needed insurance -- a lot of
15 insurance.
16 Q Okay. After you went in and were then sent Exhibit
17 9, did you ever check against Exhibit 9 to see
18 that, in fact, what you had asked had, in fact,
19 happened?
20 A No, sir.
21 Q Did you ask anyone else to look at it for you --
22 A No, sir.
23 Q -- to make sure that it had happened?
24 A I trusted him.
25 Q Okay. Let's look at Exhibit Number --

1 vehicle" and is a separate kind of policy. In
2 other words, you can't put a dump truck on your
3 personal auto policy like you would a -- for what
4 that's worth. You -- that's why it's a separate
5 policy, so maybe there -- maybe there's . . .

6 What about as regard to the coverage that you
7 -- that you felt like that -- you know, based on
8 your discussion that you had back in -- you know,
9 asking him to raise the coverage, did he say
10 anything to you that you felt that was not true,
11 that was a lie?

12 A No, sir.

13 Q Okay. Do you believe that he intentionally didn't
14 get the coverage that you specifically asked for?

15 A Sir, I don't understand "intentionally."

16 Q Well, you -- you know, you -- but you've been --

17 A I asked him to --

18 Q I'm sorry.

19 A -- to take care of the coverage.

20 Q Right.

21 A He said, "Sign here and here and here," wherever I
22 signed. Nothing was on the forms that I signed,
23 and he -- and I walked out the door, trusting him
24 to do the right thing.

25 Q Right. And that's what I'm getting at is --

1 A And that's --

2 Q -- do you think that he didn't do the right thing

3 on purpose?

4 A That's -- that's not for me to say, sir.

5 Q Okay.

6 A I mean, I guess. I don't -- I don't know.

7 Q I'm -- I'm -- do you assign any motive to doing it

8 on purpose, or you think it was an accident?

9 A It -- I would say it's a accident, probably. He

10 may have got busy and forgot to do what he's

11 supposed to do. That's all.

12 Q Okay.

13 A I don't know. My lawyer might hit me in the head

14 when I go out the door for saying something like

15 that.

16 Q As far as the -- the auto accident case you had

17 with the -- the -- was it a woman that ran into the

18 back of you?

19 A Yes, sir.

20 Q Okay. What is the status of that suit as far as

21 you know?

22 A It's still pending, some of it, sir, I think.

23 Q Okay. Have you personally received any monies or

24 thing of value as a result of that suit?

25 A No, sir.

1 Q Okay. You -- you've yet to receive anything from
2 that suit?

3 A No, sir.

4 Q Okay.

5 MR. HANNA: (To all counsel) I'm going to
6 take a brief break and discuss some things.

7 (Off the record from 2:19 p.m. until
8 2:37 p.m.)

9 THE EXAMINATION BY MR. HANNA CONTINUES.

10 Q Okay. I've got a few more questions for you, and
11 then I'll be done. I want to go back to Exhibit
12 12, and this is the one that we had talked about
13 earlier that you said when you signed it, it was
14 blank, and I just want to clarify what you meant by
15 that.

16 In other words -- you don't mind if -- can I
17 come around there so we're looking at the same
18 thing? Do you mind?

19 A Unh-unh. That one right there is --

20 Q Okay. Well, let -- let me just -- let's start with
21 Page 2, okay? For instance, was the -- there's
22 stuff that's typed in, you know, that would -- that
23 would -- are you saying that none of this was even
24 in there? Or can you --

25 A Sir, I don't remember.

1 Q Okay.

2 A I'm sorry.

3 Q That's fine.

4 A Okay.

5 Q That's fine. That's fine. I just -- that's why

6 I'm trying to clarify it.

7 A Yes, sir.

8 Q And the same thing --

9 A I -- I don't remember. I -- I know there wasn't no

10 writing at the bottom.

11 Q Okay. The -- nothing? What about where the X's or

12 the check-marks are?

13 A No, sir.

14 Q Okay. But you're not as sure, one way or the

15 other, about the -- the stuff inside these --

16 A No, sir.

17 Q -- it looks like a spreadsheet, for lack of a

18 better word; is that correct?

19 A Yes, sir.

20 Q Okay. All right. So the -- the -- just to --

21 we're on the same page, the handwritten numbers

22 you, for sure, don't remember being there; is

23 that --

24 A Yes, sir.

25 Q Okay. Gotcha. Understood. All right.

1 A -- know for sure.

2 Q And you said that his experience is -- is what
3 prompted you to talk with Clyde McNeill about
4 raising your -- raising your insurance?

5 A Yes, sir.

6 MR. PLYLER: Give me just a minute, Mr. -- Mr.
7 Phillips. Let me check my notes.

8 (Off the record from 2:48 p.m. until
9 2:49 p.m.)

10 THE EXAMINATION BY MR. PLYLER CONTINUES.

11 Q Mr. Phillips, do you know if around the time
12 when -- and I think it's Exhibit Number 12 -- when
13 you signed, and I believe you said that is your
14 signature on that form, Exhibit --

15 A Yes.

16 Q -- Exhibit Number 12. Around the time where you
17 signed that document, do you -- did you go into
18 McNeill -- Clyde McNeill's office one time or two
19 times or three times? Or do you remember how many
20 times --

21 A No, sir.

22 Q -- you went there?

23 A One time I remember going in there.

24 Q Okay. One time -- one visit?

25 A One time.

1 A Here and here?

2 Q Yeah. The -- the -- the premium amount and the
3 amount of coverage should've changed. Obviously,
4 if you got more coverage, it would cost slightly
5 more.

6 A Yes, sir.

7 Q But -- okay. We're on the same page, okay. I
8 meant to do that earlier and got sidetracked.

9 MR. HANNA: (To the deponent) That is all the
10 questions I have for you. Please answer any
11 that your own lawyer may have for you.

12 EXAMINATION

13 BY MR. DERRICK:

14 Q Let's see here. Just to make sure we got -- it's
15 clear here, what -- what prompted you or -- or what
16 events prompted you to go see Mr. McNeill?

17 A My daughter, she's a school teacher in Spartanburg,
18 so she's educated, and she told me, "Daddy" -- I'm
19 not educated. I feel right stupid today. She told
20 me, "Daddy, you need to raise your insurance
21 because of this happened to me and this happened to
22 Jerry Ellis. You need to make sure you raise your
23 insurance. We don't want to see you lose
24 everything you got because of -- of an accident,"
25 and that's basically why I went.

1 MR. DERRICK: That's it.

2 MR. HANNA: Nothing further?

3 MR. DERRICK: No.

4 MR. HANNA: Okay.

5 FURTHER DEPONENT SAITH NOT.

6 (Whereupon, there being no further
7 questions, the deposition was
8 concluded at 2:53 p.m.)

9 (*This transcript may contain quoted material.
10 Such material is reproduced as read or quoted
11 by the speaker.)

12 (**Certificate accompanies sealed original
13 only.)

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State of South Carolina

Court of Common Pleas

County of Cherokee

7th Judicial Circuit

**Nicky Ted Phillips and Gloria E.
Phillips,**

Case No.
2016-CP-11-00809

Plaintiffs,

v.

**American National Property and
Casualty Company, Clyde McNeill
Agency, and Clyde Edwin McNeill,
individually and in his capacity as agent
of American National Property and
Casualty Company,**

**Exhibit 2
Deposition Transcript of
Clyde Edwin McNeill**

Defendants.

STATE OF SOUTH CAROLINA

COUNTY OF CHEROKEE

COURT OF COMMON PLEAS

NICKY TED PHILLIPS and GLORIA E. PHILLIPS,

Plaintiffs,

vs.

CASE NO. 2016-CP-11-0809

AMERICAN NATIONAL PROPERTY AND CASUALTY COMPANY,
CLYDE MCNEILL AGENCY, and CLYDE EDWIN MCNEILL,
Individually and in his capacity as Agent of
American National Property and Casualty Company,

Defendants.

DEPOSITION OF: CLYDE EDWIN MCNEILL

DATE: December 14, 2017

TIME: 2:10 PM

LOCATION: American National Insurance
1252 Overlook Drive, Suite 9
Gaffney, SC

TAKEN BY: Counsel for the Plaintiffs

REPORTED BY: AMY R. COPE,
Court Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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APPEARANCES OF COUNSEL:

ATTORNEYS FOR THE PLAINTIFFS
NICKY TED PHILLIPS and GLORIA E.
PHILLIPS:

M. BROOKS DERRICK LAW OFFICE
BY: M. BROOKS DERRICK
224 NE Main Street
Simpsonville, SC 29681
(864) 757-0757
brooks@derricklawoffice.com

ATTORNEYS FOR THE DEFENDANT
AMERICAN NATIONAL PROPERTY AND CASUALTY
COMPANY:

ROE CASSIDY & PRICE, P.A.
BY: ROSS B. PLYLER
1052 N. Church Street
Greenville, SC 29601
(864) 404-3132
rplyler@roecassidy.com

ATTORNEYS FOR THE DEFENDANTS
CLYDE MCNEILL AGENCY, and CLYDE EDWIN
MCNEILL, Individually and in his
capacity as Agent of American National
Property and Casualty Company:

HOWSER, NEWMAN & BESLEY
BY: GEORGE V. HANNA, IV
1508 Washington Street
Columbia, SC 29201
(803) 758-6000
ghanna@hnblaw.com

(INDEX AT REAR OF TRANSCRIPT)

1 sticky client. I know that -- I'm a solo
2 practitioner in my small town, you always -- the
3 people that you get that are a referral or a
4 referral from a family or a referral from a friend,
5 they're always the ones that are more likely than
6 anybody else to stick around, so I like that.

7 A. Sure, absolutely.

8 Q. Would you say that your clients trust
9 you?

10 A. I would say so.

11 Q. Do you get any business from online,
12 I'm just thinking --

13 A. No, sir, I don't. Now, ANPAC does have
14 a referral system, someone calls in -- let's say
15 you called in from a town that -- say I was the
16 closest agent in your town and maybe you saw
17 something or heard something about American
18 National, and you call in to the 1-800 number,
19 ANPAC will say, hey, you need to contact
20 Mr. Derrick, he's inquiring about insurance, he'd
21 like a quote.

22 But having said that, and those just
23 come out -- I guess you could call that an Internet
24 referral, but not a -- I wouldn't get a direct
25 Internet referral from you, because I don't have a

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1 Website.

2 Q. Okay.

3 A. I don't have a Website, no, sir. And
4 I'm not on Facebook.

5 Q. Facebook, man.

6 A. I don't know how I've survived.

7 Q. I don't either. Some people would ask
8 you how you go about the whole day, you know, how
9 you get through the day. Do you employ checklists
10 as a process of -- I just read this or I'm in
11 process of reading The Checklist Manifesto, and
12 it's all about checklists for pilots and stuff like
13 that. I was wondering if you do that here for when
14 you're signing someone up?

15 A. Interesting you should ask that,
16 because we do -- ANPAC does have a checklist system
17 in place, to where you make sure that you've sent
18 all this stuff, checked off on when you submit an
19 application. You know, sometimes paperwork, if it
20 didn't get sent up all at the same time, something
21 is missing, they'll say, hey, where's this? Oh,
22 we've got it right here.

23 Q. The book addresses how the possibility
24 of the airliners and the stuff crashing had
25 drastically went down when the pilots started

1 care of because once we've written it, it's been
2 bound. 33

3 Q. Before they come in and sign?

4 A. No, nothing is bound until they come in
5 and sign, as far as the new coverage.

6 Q. Okay. Sorry, I'm pausing a little bit,
7 I'm trying to --

8 A. That's okay.

9 Q. Let's move to a little more specific,
10 now let's talk about the Phillips.

11 A. Okay. Before we get into this, I need
12 to take a break.

13 MR. DERRICK: I would love to.

14 (A recess transpired.)

15 BY MR. DERRICK:

16 Q. All right. So let's get to be more
17 specific about -- we've been talking all these
18 generalities. Tell me your relationship with the
19 Phillips; how did that begin, let's start there?

20 A. How that actually began, Ted, I think
21 one day was out -- you understand we're going back
22 about ten years. He might have been getting his
23 hair cut, in this mall, we got a hairdresser down
24 the -- a few doors down. And according to, you
25 know, the secretaries, he poked his head in here

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1 money, it's making sure that the client is properly
2 taken care of. Anyway, I did make the offer to
3 him, you know, explained it to him, I don't think I
4 need it right now. He just kind of brushed it off.

5 Q. Over the years since that initial
6 meeting, how has your relationship with the family,
7 has it grown?

8 A. Oh, yeah, Ted's --

9 Q. I'm just talking general right now.

10 A. -- I considered Ted to be a good friend
11 of mine; I really do. He's done some flooring in
12 my house. He's repaired cabinets in my house. I
13 bought a van from him to give to my son, my son
14 runs a construction business. I've always
15 considered Ted Phillips to be a friend of mine; I
16 really have.

17 Q. I'm sorry, the initial haircut or
18 whatever, that's the start of a good friendship or
19 whatever?

20 A. No, it didn't start with a good
21 friendship. Our friendship grew after our business
22 relationship. A friendship grew out of a business
23 relationship. He had insurance with Farm Bureau
24 prior to that, he had insurance during the time
25 that I worked with Farm Bureau, but I don't think

1 he knew me too well from Farm Bureau. 37

2 Q. Okay. Y'all cross paths socially or
3 anything like that?

4 A. Not really, other than just seeing him
5 at the Wal-Mart.

6 Q. That's right. That's a good place.
7 Tell me about how the Phillips usually bought or
8 changed their products --

9 A. Anytime they wanted to buy something,
10 they came to the office --

11 Q. They came here?

12 A. Yeah, after that initial meeting, you
13 know, they'd always come to the office. And
14 usually not they, just him.

15 Q. Okay. Would he just show up or would
16 he call up and say, hey, Clyde, I'm coming over --

17 A. Yeah, usually he'd call and make sure I
18 was here when he called.

19 Q. When he would call up here, would he
20 say what his general purpose was, say, get a quote
21 together for X or?

22 A. Right, he would say I want -- exactly,
23 precisely.

24 Q. So whenever he got here, I guess the
25 song and dance would kind of be over and it would

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1 Q. All right. Now, I'm going to get more
2 specific to the Phillips and talk about the -- so
3 in this -- in this lawsuit we have, there's three
4 primary policies that we're -- actually, two
5 primary policies that are the issue.

6 A. Okay.

7 Q. There is the family auto policy or just
8 the auto policy, and then there's the, I'll call
9 it, the business auto policy, that would be the one
10 on the '84 -- I'm sorry, the truck, the dump truck.

11 A. The '84 International truck.

12 Q. Thank you, that one. I'm sitting here
13 trying to read the dec page in my mind. And so
14 I'll refer to the first one as the auto policy,
15 just generally speaking, and the --

16 A. It should be referred, if you don't
17 mind --

18 Q. Yep.

19 A. -- it should be referred to as the
20 personal auto policy.

21 Q. Yep, I'll do that. The personal auto
22 policy and then the business auto policy.

23 A. Business/commercial, yes, sir.

24 Q. Do you remember or do you recall when
25 Mr. Phillips or the Phillips in -- wanted to change

1 the limits on that policy, on the personal auto
2 policy, because I think he -- they had a policy
3 with you for a long period of time. There was some
4 point in time in September or October of 2013 that
5 they initiated this change; do you remember any of
6 those?

7 A. Yes, sir, I certainly do.

8 Q. Okay. Could you tell me about the --
9 like the chain of events or?

10 A. Yes, sir, I can. If you don't mind,
11 just give me a second.

12 Q. It's okay. No worries at all, I take
13 my time too, it's good. You don't need to be
14 rushed.

15 A. No. Now, we're talking about the time
16 that he wanted to increase his limits; is that
17 correct?

18 Q. Yes, that is correct. I think they
19 had -- the personal auto policy covered two cars
20 and I think the coverages were like 50 and 25 -- or
21 25/50 -- or, no, they have 50 limits, and then they
22 had 25 of UIM for a long period of time.

23 A. Uh-huh.

24 Q. And at some point in time, this starts
25 to change. I'm just wondering like when that -- if

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1 you remember the events that surrounded that
2 change.

3 A. Ted came to me on, I think it's the
4 October the 28th, somewhere in that -- I think in
5 that time.. There's two dates that come to my mind,
6 and bear in mind, I don't have access to my files,
7 I can go get them in 30 seconds, I don't have them
8 here in front of me. And we are talking about this
9 is quite a few years ago.

10 Q. Right.

11 A. So there are two dates that come to
12 mind, October 13th or 15th and October 28th, but I
13 believe -- I believe what happened, how it worked,
14 we wrote the -- we wrote the '84 International, I
15 think, the farm truck, if you will, on the
16 commercial, we call it -- ANPAC refers to all
17 vehicles written, all auto vehicles written through
18 the commercial lines as commercial, whether it's
19 actually used in, you know, a plumbing industry;
20 the XYZ Plumbing Incorporated, or if it's Clyde's
21 barn truck, okay, they refer to it as commercial,
22 because a lot of times I have to explain to people,
23 I understand it's not commercial; commercial use,
24 but that's how ANPAC writes the policy, on those
25 farm use vehicles.

1 So anyway, I'm thinking it's
2 October 13th or 15th, seemed like it was maybe just
3 a few days or a week and a half after this that we
4 wrote the -- we put the farm truck on. Then like
5 on, I think it was a week to ten days, I'm thinking
6 it's October 28th, okay?

7 Q. Did you say 28th or 20th?

8 A. 28th, 2-8, yes, sir. He came in the
9 office and wanted to see Clyde and I heard him,
10 because I recognize the voice. And I said, come on
11 in, Ted. I was sitting just like I am right now.
12 And as he's walking in the door, you know, he said,
13 Clyde, I wanted to come by and see you, Wendy, my
14 daughter, was talking about I needed to check with
15 you because she said that they had an accident and
16 something about they didn't have enough insurance.
17 I mean, I'm telling you that's all he said about
18 that.

19 I said, well, come in, Ted, let's talk
20 about what we can do for you, okay. And he said,
21 yeah, as he's sitting down, Ted's -- like I said,
22 Ted and I are pretty good -- and I still consider
23 us to be good close friends. Said, yeah, I just
24 want to make sure if I have an accident, that I'm
25 covered and I don't lose everything I've got. I

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1 want to make sure that if somebody sues me, I'm in
2 good shape. I said, well, Ted -- I got in to
3 telling him, you know, well, we probably need to
4 raise your limits because right now you are kind of
5 vulnerable, you know, we -- and I tried to remind,
6 I said, you know, remember the first time we wrote
7 this I made some offers to you, you just -- I know
8 you've got the money, I don't think -- I just think
9 that maybe you didn't think you needed it or
10 something. I said, but anyway, getting back to
11 that, and what I just told you I know for a fact is
12 not word-for-word, but in general that's what I
13 said, okay.

14 Q. Yeah.

15 A. And I'm trying my best to remember
16 exactly everything, okay.

17 Q. Okay.

18 A. And I said, you know, I believe -- you
19 know, I believe, you know, if you want to make sure
20 now -- and I also explained to him, I gave him my
21 same old pitch that I give to everybody, no amount
22 of insurance is ever going to fully protect you
23 from a lawsuit. But, you know, it's kind of like
24 building a wall, you know, the more insurance you
25 have, the bigger that wall is from somebody to get

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1 over and get through. I said, but I would
2 recommend that not only we raise your limits, but
3 you purchase an umbrella. And, you know, I had to
4 educate him about an umbrella. I explained that to
5 him, I said, you know, for the coverages that it
6 provides, it's really an inexpensive policy,
7 because you got -- that's why we make you raise
8 your limits is that those limits have got to be
9 exhausted first before the umbrella kicks in.

10 Okay. So I went through -- you know,
11 we went through the ANPAC policy, the personal
12 lines, the personal policy. And I raised his
13 limits to the 250/500/100, because those are split
14 limits. And I said, now, Ted, it's \$250,000, if
15 you have an accident with one person, as an
16 example, the first 250 will cover one person's
17 injuries, the 500 would cover all persons' injuries
18 that you're at fault for, and then up to \$100,000
19 for property damage.

20 And I said and now, you know, your
21 uninsured and underinsured, you know, I said, this
22 is to protect you in case that person doesn't have
23 limit -- any liability. Uninsured is mandatory in
24 South Carolina and the limit is 25/50/25. And then
25 you've got underinsured of 25/50/25 as well.

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1 Well, he said -- Brooks, he said, I am
2 not so concerned about, you know, my injuries; me
3 getting hurt, I'm just concerned about if I have an
4 accident and it's my fault and somebody taking
5 everything I've got, okay.

6 Q. Okay.

7 A. So I said, you're sure you don't want
8 any additional uninsured or underinsured? No, I'm
9 not concerned about that. And I know if I didn't
10 say it three times, I said it at least times; I
11 asked him about it twice. So after explaining to
12 him what his limits meant, I X-ed here by the
13 signature line, and I X-ed here by -- now, on the
14 uninsured, it asks specifically: Do you wish to
15 purchase additional uninsured? And if you do not,
16 there's another line you have to sign, you have to
17 sign -- first of all, you have to X by the yes or
18 no. So I X-ed at the no. And then I X-ed where he
19 needs to sign it, okay. And said, you know, this
20 is where you sign if you don't want it.

21 And then this is where you sign if you
22 want, you know, the additional underinsured. He
23 necessarily didn't want it -- well, you know, he
24 didn't want to raise it or he didn't want it, and I
25 said, Ted, I think you need to at least have some,

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1 okay. All right, all right, okay, so he signed
2 that to purchase just the additional -- to have
3 additional underinsured coverage, okay. So I had
4 all that on there, okay, for that because we were
5 doing a new coverage policy, implemented the
6 change, you know, set the paperwork up for -- and
7 we wrote the umbrella, okay.

8 Sent that paperwork up to get
9 everything -- you know, it was bound when I signed
10 -- and then, of course, I have to sign it as well,
11 it was bound when I did it then, but of course, we
12 have to send it up through the checklist.

13 Q. Okay. And do -- that was all -- was
14 that all completed at one meeting?

15 A. Yes, sir. Just like right now, he took
16 care of that right there. He came into my office
17 and we made that change and I wrote his umbrella
18 for him all on the same day.

19 Q. Okay. Do you recall when you or
20 when -- when the limit, when the UM and the UIM
21 limits were ultimately raised a month or so
22 following the collision?

23 A. I do.

24 Q. How did that -- how did that transpire?

25 A. I went to go see Ted, Nicky Ted; I call

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1 him Ted, but I went to go see Ted -- as a matter of
2 fact, when I learned of the accident,
3 Mrs. Phillips, Gloria, called me and let me know
4 that Ted had just had an accident and he's at the
5 hospital and she said, I got to go. Well,
6 obviously I went to, you know -- I had called Ted a
7 few times when he got back home, you know, I wanted
8 to go see him because, like I said, Ted Phillips is
9 a friend of mine.

10 His two daughters were there. And I
11 think that they were under the opinion that we had
12 increased Ted's uninsured and underinsured, I think
13 they were of that opinion. And I let them know
14 that, you know, that did not happen. And then
15 them -- they said to the effect, well, we need to
16 raise his limits to -- raise all of his limits, you
17 know...

18 Now understand, this was after he got
19 back home from the hospital, from the accident,
20 okay. So -- and I said, well, I'll go back to the
21 office and I'll increase them. They were upset
22 with me because they had not been raised.

23 Q. Right. And we --

24 A. I'm not finished. I'm sorry, excuse
25 me, I'm not finished.

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1 Q. No worries. 48

2 A. I told them, Ted said he didn't need
3 it. He said -- and I forgot something, I'm sorry
4 that we're going to have to go back to -- let me
5 finish this thought, and then we'll go back because
6 if I don't finish it, I'll forget it.

7 Q. No worries.

8 A. I told them that Ted said he did not
9 need it. And, of course, they weren't there, it
10 was just me and Ted, Ted and I. And so I started
11 to realize that I was in a possible hostile
12 situation, okay. So what I did was I just said my
13 goodbyes to Ted and them. And then I said, Ted, if
14 I can ever do anything for you, as always, I'm as
15 close as your phone; something to that effect, you
16 know, I said, if I could ever do anything for you,
17 I'm as close as your phone, you know, because I
18 genuinely went -- even though I get paid to do this
19 as a job, because he is my friend, I did go by -- I
20 wanted to go by and see how he was doing because
21 he's my friend, okay.

22 So anyway, that was that, as far as
23 that goes. I went back to the office, you know,
24 and I told them that, you know, we needed to raise
25 limits on his underinsured and uninsured as he had

1 requested. 49

2 Q. If you go back to that first meeting
3 when he walked in and talked about his daughter
4 having the wreck, did -- and that was the only --
5 did you inquire more about what he was referring
6 to?

7 A. I did. I did. Thank you for asking me
8 that because I did want to come back to that point.
9 I asked, you know, what are you talking about? I
10 mean, you know, something that effect, I said, you
11 know, what are you talking about, you know,
12 something to that effect, she said she was in an
13 accident and she didn't have enough insurance,
14 okay.

15 He didn't say that -- he didn't
16 elaborate or he didn't say anything about them like
17 she didn't have enough insurance to where it was
18 her fault or not her fault, he basically just left
19 it, it was just -- you know, she didn't have enough
20 insurance, okay. So, you know, we had further
21 discussion, you know, about uninsured and
22 underinsured.

23 Like I said, he adamantly kept saying
24 he was not interested. But the reason why I wanted
25 to go back to that point was, I asked Ted, you

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1 know, we were talking about the underinsurance and
2 he was like, we're all right. And finally I said,
3 well, you need at least some. And I asked him,
4 have you got health insurance, yes, I've got health
5 insurance. Which, you know, that made me feel a
6 little bit better, at least I knew he had -- if
7 nothing else, the minimum would have helped cover
8 deductibles and things of that nature.

9 Q. Right. Okay. Where does -- never
10 mind. I'm just going to go through a couple of --
11 hopefully not much longer, a couple of documents
12 here.

13 (Off-the-record conference.)

14 BY MR. DERRICK:

15 Q. We'll mark this as Plaintiff's 1.

16 (PLF. EXH. 1, Policy changes screen
17 shot, Bates stamped ANPAC 000303 through 306, was
18 marked for identification.)

19 BY MR. DERRICK:

20 Q. I'm just calling this like some kind of
21 internal communication. I'm just trying to figure
22 out what this is.

23 A. Okay. This is a -- this is a change of
24 information showing that change in the deleting the
25 Blazer, adding a Toyota vehicle. It's just what

1 A. And it's due on 11/16. 56

2 (PLF. EXH. 7, American National
3 Property and Casualty Company, offer of optional
4 additional uninsured motorist coverage and optional
5 underinsured motorist coverage, was marked for
6 identification.)

7 BY MR. DERRICK:

8 Q. Okay. I believe this is the selection
9 rejection form.

10 A. Uh-huh.

11 Q. If you look on the last page, it says
12 today's date, did you say what that is?

13 A. It says 10/28.

14 Q. Just out of curiosity, why would that
15 document have the 28th on it and the other ones
16 have the 10/14? Whose handwriting is that 10/28;
17 do you know?

18 A. That's mine.

19 Q. That is yours?

20 A. Uh-huh, it's mine, yes, sir.

21 Q. If you look on this document what do
22 you recognize -- initially whose handwriting is at
23 the top right-hand corner?

24 A. That probably is the secretary.

25 Q. Okay.

1 A. I guess I'm not as clear on my points 57
2 as I thought I was, perhaps this -- because it's
3 clear this was done on 10/14 and this is signed on
4 10/28. Nothing points out an error like paperwork.
5 It's clear that I wrote him, that we had a
6 conversation, but -- let me check...

7 Sir, that don't make any sense; I'm
8 going to be honest with you, that don't make any
9 sense. Why would that be 10/28 and why would this
10 be 10/14? I know you've got more paperwork to
11 show --

12 Q. I was about to say, we can --

13 A. I was going to ask you, if I can ask
14 you this?

15 Q. Uh-huh.

16 A. I was going to ask you and see the date
17 that we wrote the commercial policy and the
18 umbrella policy, I'm sure you've got that paperwork
19 because --

20 Q. Well, let's just go through this other
21 stuff and see if that might --

22 A. -- because what's going through my head
23 right now -- I mean, it's obvious we made an offer
24 of coverage, but -- okay, yeah, go ahead. Okay.
25 Because I can go -- I guess I can go back and try

1 and clarify everything, because that just -- 58

2 Q. This is going to be 8.

3 A. -- that baffles me, it really does.

4 (PLF. EXH. 8, American National
5 Property and Casualty Company business automobile
6 insurance application for Nicky Ted Phillips, Bates
7 stamped McNeill_0787 through 797, was marked for
8 identification.)

9 BY MR. DERRICK:

10 Q. This is the business -- I think this is
11 the policy application for the commercial truck.

12 A. Uh-huh.

13 Q. And if you'll look on that second page
14 for me, do you see that line at the bottom where it
15 says like HTTP, blaa, blaa, blaa, and it has a date
16 there?

17 A. Uh-huh, 10/14.

18 Q. Is that the date that that document was
19 submitted, is that what that would be indicative
20 of?

21 A. Sir, that's the date that I believe
22 that the -- that the document was printed off from
23 my printer, 10/14, and I made it effective on 10/15
24 because you can see the effective date as 10/15.
25 And he signed it on 10/15 as well.

1 Q. All right.

2 A. Exactly. That would be -- that should
3 be the date that it printed off of my computer.

4 Q. So when you do the business -- if
5 you're doing this information -- when you submit
6 the information up to the Never-never land, up to
7 ANPAC, and they give you a confirmation of some
8 sort back?

9 A. Yeah, just like in here,
10 congratulations, policy as been issued. But I
11 don't have that in here, it's in the file. It just
12 shows -- confirms the policy is issued.

13 Q. I think that might be the next thing
14 that I'm marking.

15 (PLF. EXH. 9, Policy acceptance
16 paperwork, Bates stamped McNeill_0782 through 0785,
17 was marked for identification.)

18 BY MR. DERRICK:

19 Q. There you go.

20 A. Okay. Thank you. All right.

21 Q. Tell me if you recognize that document.

22 A. Uh-huh, yes, sir. This says:
23 Congratulations, application has been transmitted
24 successfully; that's confirmation that the policy
25 is issued. And you'll see on the third page, it

1 gives the policy number and everything at the top
2 left-hand corner. 60

3 Q. And that 10/15 at the bottom, is this
4 similar to what we were talking about printed off
5 your system?

6 A. Right. Yes, sir.

7 Q. Will you give me -- pass me back
8 Exhibit 8.

9 A. Yeah, uh-huh.

10 Q. All right. The last two pages, can you
11 tell me whose handwriting that is on that page?

12 A. That's mine.

13 Q. Who put the dates there?

14 A. My secretary.

15 Q. And would that be your secretary's
16 handwriting that wrote your name there too?

17 A. Yes, sir. See, if --

18 (PLF. EXH. 10, American National
19 Property and Casualty Company business automobile
20 declaration for Nicky Ted Phillips, Bates stamped
21 ANPAC 000040, was marked for identification.)

22 BY MR. DERRICK:

23 Q. Okay. Do you recognize that document?

24 A. Yes, that's the dec page.

25 Q. What is that for?

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1 A. Just showing what your coverages are.
2 That's what we send to the client and we get a copy
3 of that as well.

4 Q. And what dec page -- what does that
5 apply to?

6 A. This applies to uninsured and
7 underinsured.

8 Q. I mean, what vehicle?

9 A. Oh, this would be to the International.

10 Q. And this one I think it says, effective
11 date is 10/15, so that goes along with those other
12 documents that we've been talking about?

13 A. Uh-huh.

14 (Court reporter seeks clarification).

15 A. Yes, excuse me, I apologize.

16 (PLF. EXH. 11, ANPAC
17 underinsured/uninsured motorist insurance coverage
18 options, Bates stamped ANPAC 000531 through 534,
19 was marked for identification.)

20 BY MR. DERRICK:

21 Q. Do you recognize that document?

22 A. Yes, sir.

23 Q. Can you tell me what that document is?

24 A. That's the commercial auto offer of
25 commercial coverage form.

1 Q. For the '84 -- 62

2 A. The International.

3 Q. The truck?

4 A. Yes, sir, the '84 International,
5 uh-huh.

6 Q. And on the third page, whose
7 handwriting is that on there?

8 A. Mine, sir, and Ted Phillip's.

9 Q. And what about on the last page?

10 A. Ted's signature. My secretary filled
11 in the printed information.

12 Q. Okay. Do you know which secretary's
13 handwriting that is?

14 A. She's no longer with me. In fact, I
15 think she's moved out of the state to New Mexico;
16 that's her home. It was a lady by the name of
17 Linda Angermeier.

18 Q. How do you spell her last name?

19 A. A-N-G-E-R-M-E-I-E-R.

20 Q. Why did she go to New Mexico?

21 A. I think her parents are in bad health
22 now. She has a lake house in Anderson, but I think
23 she's actually just back and forth from what I
24 understand.

25 Q. How long did she work for you?

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1 A. About four -- maybe four years, I'd
2 say, yes, sir.

3 Q. Okay.

4 THE WITNESS: I need to break again,
5 guys.

6 (A recess transpired.)

7 (PLF. EXH. 12, ANPAC business
8 automobile declaration, Bates stamped ANPAC 000041,
9 was marked for identification.)

10 BY MR. DERRICK:

11 Q. Let's look back at 11.

12 A. This is 11 right here, uh-huh.

13 Q. And go to the last page.

14 A. Yes, sir.

15 Q. Can you explain why you would have, I
16 guess, your handwriting on the document, your
17 secretary's handwriting, and then Nicky's
18 handwriting or Ted's handwriting?

19 A. Oh, sure, that's no problem. From time
20 to time, I don't think -- I don't have the greatest
21 handwriting in the world, obviously, I mean, I
22 think you can attest to that, but a lot of times
23 I'll go over this paperwork, go over the forms with
24 the client. And I'll have him sign it where he
25 needs to sign it, obviously, he doesn't need to

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1 print out his name or where he lives or anything
2 like that. We obviously did this on the 15th,
3 because that's when I put the policy in effect was
4 the 15th. And what I was going to say earlier was
5 that these little things on the printout, although
6 they're not on this because this is a -- this is
7 what we call a handwritten file -- form, you know,
8 the -- it doesn't print out automatically the
9 coverage on the commercial policies, the UM and UI,
10 doesn't print out like the UM and UI does on the --
11 I mean, doesn't print out the vehicles in all this
12 like it does on the personal lines.

13 So the -- so yeah, after going over the
14 coverage with him, getting him to sign. I just
15 submitted this to the secretary to fill in the
16 blanks, as far as his name and address and things
17 of that nature. Does that make sense?

18 Q. Yeah. Yeah. Yeah, that makes sense.
19 Why not just get him to do it?

20 A. I don't know that it's really
21 necessary, I mean, you know...

22 Q. Let's go to Exhibit 12. Do you
23 recognize that document?

24 A. Yes, sir.

25 Q. Tell me what that document is.

1 BY MR. DERRICK:

2 Q. Tell me what that is, it's more just
3 for me wanting to know.

4 A. Sir?

5 Q. Can you tell me what that document is;
6 do you recognize that document?

7 A. This is just acknowledgment from the --
8 from the Farm Family that documents have been
9 received; that's all that is. It's a document
10 submission information, any time we upload
11 something -- the ADS stands for agent document
12 submission, so any time anything like that is sent
13 up, we get this notice from the company.

14 Q. Okay. Just kind of a confirmation,
15 like, hey, you did this, thank you?

16 A. Precisely.

17 (PLF. EXH. 17, ANPAC offer of optional
18 additional uninsured motorist coverage and
19 underinsured motorist coverage, Bates stamped
20 McNeill_0826 through 0829, was marked for
21 identification.)

22 BY MR. DERRICK:

23 Q. All right. Do you recognize this
24 document?

25 A. I do.



1 Q. Tell me what that one is. 76

2 A. That's where at their request, they
3 wanted to raise their limits to 50/100 on
4 everything.

5 Q. UM and UIM included, right?

6 A. Yes, sir, I'm sorry.

7 Q. And why --

8 A. Why did he not sign it?

9 Q. Yeah.

10 A. He requested it. Just as I discussed,
11 made a comment earlier that when you're adding
12 coverage, you don't -- you know, it's not necessary
13 to get the client's signature, only when you're
14 taking away.

15 Q. Okay.

16 A. And if I may go a little further. If
17 you'll notice, when you see where it says, in this
18 question, and actually on this form, as all the UM
19 and UI forms say, if they're saying they want the
20 coverage, there's no signature required in these
21 little blocks. The only time they need to sign on
22 these various levels is if they're saying they
23 don't want coverage. And it says: If your answer
24 is no, then you must sign here. Like if we were
25 just now doing a policy.

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1 Q. Right, I understand.

2 A. Yes, sir.

3 Q. Let's go with --

4 (PLF. EXH. 18, Screen shot, Bates
5 stamped ANPAC 00352, was marked for
6 identification.)

7 BY MR. DERRICK:

8 Q. Is this anything that you see or --

9 A. No.

10 Q. You wouldn't know what --

11 A. This would be an internal document from
12 the home office.

13 Q. Okay.

14 A. If you could see it down here on the
15 right-hand side, bottom right-hand side, it says
16 ANPAC.

17 Q. All right.

18 MR. DERRICK: Let me take a break.

19 (Off-the-record conference.)

20 (PLF. EXH. 19, Contractor's Advantage
21 insurance application for Nicky Phillips and
22 corresponding information, Bates stamped
23 McNeill 1006 through 1014, was marked for
24 identification.)

25 BY MR. DERRICK:

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1 Q. This is an old document.

2 A. Yeah, it is.

3 Q. And earlier we were talking -- that
4 line at the bottom, the first page, the HTTPS,
5 the --

6 A. I don't mean to be rude, I'm sorry, let
7 me get this thing out of the way.

8 Q. That's all right.

9 A. Yeah, this was when he had his
10 contractors policy.

11 Q. Now, go to the first page.

12 A. Uh-huh.

13 Q. The HTTPS, that FB whatever, Farm
14 Family --

15 A. Uh-huh.

16 Q. -- we said earlier that maybe that was
17 the date that you printed that off?

18 A. Uh-huh, 9/18/2006.

19 Q. And if you look up here at the
20 submission confirmation number, it says -- it looks
21 like that date corresponds with the date at the
22 bottom?

23 A. Where are you looking at?

24 Q. If you look right in the middle of the
25 page, right here. (Indicating).

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1 A. Oh, okay, uh-huh.

2 Q. And then if we scroll through the
3 document, the dates in there say 9/17/06.

4 A. Uh-huh. Yes, I see that. Okay.

5 Q. And then even the information from the
6 last page, page 8, would have been your -- the
7 information from your person binding the coverage,
8 right, so everything kind of fits in those dates?

9 A. Right. Yes, sir.

10 Q. Now, if you will look at number --
11 Plaintiff's 8.

12 A. Uh-huh.

13 Q. No, I'm sorry, the Exhibit 8, not
14 page 8, sorry about that.

15 A. Okay.

16 Q. And the number at the bottom is the
17 10/14/2013.

18 A. Okay.

19 Q. And so --

20 A. That's the -- that would be the time
21 that I printed off the application from my machine,
22 that's what that --

23 Q. So those two lines in the two
24 documents, those are different?

25 A. It looks like it, yes, sir. I'm

1 assuming that's what it is. 80

2 Q. All right.

3 A. Okay, so I apologize.

4 Q. It's okay. Do you think that those --
5 let's see here, so the number eight, the line at
6 the bottom, would indicate date of submission?

7 A. Would indicate the date that I printed
8 the application off. You and I talk -- if you call
9 me up, Clyde, I want to get you a quote on XYZ, you
10 give me the information and things of that nature.

11 Q. Uh-huh.

12 A. I could print a quote, just like in
13 this instance, this quote was printed off way in
14 advance of the effective date because the effective
15 date on this old policy was 9/30, it looks like we
16 processed it on 9/18, but with an effective date of
17 9/30. So, you know, you could call me and I could
18 print up the application in advance, but an
19 application and a bound policy are completely two
20 different things and I'm sure you know that.

21 Q. Right.

22 A. So, yeah, this is obviously one of
23 those times when I printed off the application
24 after I talked -- I think in this situation, the
25 only thing I can think of the reason why he would

1 want this effective the 30th, maybe that's when he
2 just wanted to put it into effect. I would have no
3 other reason for putting it off in advance.

4 Q. Now, if you say you printed it off on
5 the -- you printed it off on the 18th?

6 A. Yes, sir, that's what it looks like.

7 MR. HANNA: Are we talking about
8 Exhibit 19 now?

9 MR. DERRICK: Yeah, Exhibit 19.

10 BY MR. DERRICK:

11 Q. You printed it off on the 18th, but
12 there's signatures and dates in there that say the
13 17th?

14 A. Correct, that's what it looks like.
15 The only possible explanation I can give with that,
16 I'm just off on my days.

17 Q. Okay. Lastly, would you agree that
18 Mr. Phillips relies on you for his insurance
19 advice?

20 MR. HANNA: I'm going to object to the
21 form.

22 MR. PLYLER: Object to the form.

23 BY MR. DERRICK:

24 Q. You still answer.

25 A. Do I still need to answer?

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1 MR. HANNA: Yes, you do need to answer,
2 I'm sorry.

3 BY MR. DERRICK:

4 Q. I should have said that very early in
5 the process and I did not.

6 A. That's okay. Well, being that I was
7 his only insurance agent, I would say that he
8 relies on me to, you know, properly advise him of
9 his insurance needs.

10 Q. And y'all have a relationship as such
11 that he -- or at least did, where he would have
12 relied on you for that kind of stuff?

13 MR. HANNA: Object to the form.

14 MR. PLYLER: Object to the form.

15 BY MR. DERRICK:

16 Q. You still answer.

17 A. I would have to say that I think he
18 agreed -- or he relied on me, you know, for -- to
19 give him proper advice on his insurance needs.

20 MR. DERRICK: That's it, I'm done.

21 MR. PLYLER: I may have a few, let's go
22 off the record.

23 (Off-the-record conference.)

24 EXAMINATION

25 BY MR. PLYLER:

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1 Q. Mr. McNeill, my name is Ross Plyler. I
2 represent ANPAC in this case. I just have a few
3 questions for you. Will you look at Exhibit
4 Number, I think it's 7, in your stack there. And
5 this is the document that on the bottom right-hand
6 corner starts with McNeill 834.

7 A. It's 837.

8 Q. Well, 834 --

9 A. Oh, yes, the front page. Got you.

10 Q. -- 834 through 837, correct?

11 A. Yes.

12 Q. I've just got a couple of questions
13 about this particular document. If you'll look
14 with me on page 2 of this exhibit, you've got the
15 two vehicles that are typed in there, '04 GMC Envoy
16 and the '05, I guess that's a Toyota Tacoma
17 truck --

18 A. Yes, sir.

19 Q. -- did you tell us earlier that that
20 information is automatically populated in the form
21 when you print it?

22 A. Yes, it's populated in what we call our
23 software called Paris.

24 Q. Okay. And that information is taken
25 from the policy or do you input that information or

1 is it automatic? 84

2 A. Well, if I type in the -- if I type in
3 the information on the application, you know, if
4 it's like a new application. But this was a change
5 and so the information was already in the system.

6 Q. Okay. And at the bottom of this page,
7 page 2, there is some writing. There's a box
8 checked -- and the question is: Do you wish to
9 purchase additional uninsured motorist bodily
10 injury coverage?

11 A. Correct.

12 Q. The box is checked no?

13 A. Right.

14 Q. Do you know who checked that box?

15 A. I probably checked it because I asked
16 Mr. Phillips if he wanted to purchase it and he
17 said no. And so I also X-ed the box for his
18 signature.

19 Q. And is that signature in that box on
20 page 2?

21 A. Yes, sir.

22 Q. And are you going through this form
23 with him one-by-one or all the same time --

24 A. Yes, sir.

25 Q. -- and then we go back and sign or are

1 we going through section two first and then section
2 three --

3 A. Yes, sir, you're talking about on the
4 offer of coverage form?

5 Q. I'm talking about this exhibit that
6 we're looking at, Exhibit Number 7.

7 A. Yes, sir. Well, you're talking about
8 number two and number three, are you talking about
9 the uninsured questionnaire and then the
10 underinsured offer of coverage?

11 Q. Yes, sir, I'm sorry, I misunderstood
12 you --

13 A. That's okay.

14 Q. -- I'm asking if you go through it
15 section-by-section and have him sign each time?

16 A. Yes, sir. Uh-huh.

17 Q. Well, let's turn then to page 3 and
18 there's a section at the top for uninsured motorist
19 property damage coverage. And are those values,
20 the premium numbers, are those automatically filled
21 in when the document is printed?

22 A. Yes, sir.

23 Q. In the box where there's some writing,
24 the question reads: Do you wish to purchase
25 additional uninsured motorist property damage

1 coverage and there's an X under the no --

2 A. Uh-huh.

3 Q. -- spot. Do you know if you -- did you
4 write that X or did he write the X?

5 A. I wrote the X, yes, sir.

6 Q. And this is still in section two, I
7 guess, of the form, right?

8 A. Uh-huh.

9 Q. Top of page 3, and then there's a
10 signature there, Nicky Ted Phillips; is that his
11 signature?

12 A. Yes, sir.

13 Q. Did he sign that in your presence?

14 A. Yes, sir.

15 Q. And then you said you may have put the
16 X there on the signature line showing where to
17 sign?

18 A. I did.

19 Q. Now to section three, which is the
20 offer of underinsured motorist coverage.

21 A. Uh-huh.

22 Q. There are some values here in the
23 premiums, is that information prepopulated in the
24 form when you print it?

25 A. Yes, sir.

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1 Q. And then there's some writing here at
2 the bottom of this page 3. It says: Do you wish
3 to purchase underinsured motorist bodily injury
4 coverage? And that's a yes, that box is checked
5 yes?

6 A. Yes, sir.

7 Q. Did you check that one?

8 A. Yes, sir.

9 Q. And then there's numbers written in, it
10 says: If your answer is yes, specify the limits
11 which you desire, these limits cannot exceed your
12 automobile insurance liability limits, must be the
13 same for all vehicles on the policy.

14 Are you with me?

15 A. Correct. Yes.

16 Q. And there's numbers written there, it
17 says: I select 25/50 limits?

18 A. Yes, sir.

19 Q. Did you write those numbers or did he
20 write those numbers?

21 A. I wrote them.

22 Q. Okay. Is that the selection that he
23 made?

24 A. Yes, sir.

25 Q. And you've discussed that with him?

1 A. Yes, let's see -- yes, sir.

2 Q. Okay. And then let's turn to page 4,
3 which is the last page of this Exhibit Number 7.
4 And this is -- at the very top, there's
5 underinsured motorist property damage coverage.

6 Again, are those premium numbers
7 prepopulated in the form when you print it?

8 A. Yes, sir.

9 Q. And there's some writing in the box
10 here at the top of page 4, the question is: Do you
11 wish to purchase underinsured motorist property
12 damage coverage? And the box is checked yes.

13 A. Yes, sir.

14 Q. Did you check that box?

15 A. Yes, sir.

16 Q. And is that because that's what
17 Mr. Phillips wanted to do?

18 A. Yes, sir.

19 Q. And then at the bottom of that
20 particular box, there's some other numbers written
21 in, the selection of \$25,000 limit for vehicle
22 number one and \$25,000 limit for vehicle two, did
23 you write those numbers in there?

24 A. Yes, sir.

25 Q. And did you write those numbers in

1 there before Mr. Phillips signed the very bottom of
2 page 4?

3 A. No, sir, and I'll tell you why -- hang
4 on, I didn't listen to your complete question.
5 Yes, I did write the numbers in there before he
6 signed page 4... I thought you were asking a
7 different question. If you'll go back to a
8 previous statement that we had when we were
9 discussing -- this is the date that we did the
10 umbrella policy, the 28th, I believe, when we were
11 discussing the coverages to write the umbrella
12 policy, Ted --

13 MR. HANNA: That's 14. Look for
14 Exhibit 14. That's the umbrella application; is
15 that what you're looking for? It's Exhibit 14.

16 THE WITNESS: Yes, it is. This was --
17 he had -- you know, as I had said, he had indicated
18 that he didn't want any underinsured. He was just
19 concerned about having the coverage in case he got
20 sued. And I made the statement, Ted, I feel like
21 you need to have at least some. And he said, yeah,
22 okay, I will. So he agreed to it, I don't know if
23 he necessarily wanted it, but he agreed to it.

24 BY MR. PLYLER:

25 Q. Maybe wanted it, but --

1 A. He didn't ask for it.

2 Q. -- but he agreed to it after that
3 discussion?

4 A. Yes, sir.

5 Q. And then at the bottom of this page 4,
6 still looking back on Exhibit Number 7, the name
7 Nicky Ted Phillips and his address 4622 Wilkinson
8 Highway, Gaffney, is that information prepopulated
9 in the form before it's printed?

10 A. Yeah, on the ANPAC forms it is, on the
11 ANPAC personal line forms, it is.

12 Q. Well, I'm just talking about this
13 particular form on Exhibit Number 7 --

14 A. Yes, it is.

15 Q. -- this select/reject form for the
16 personal auto policy?

17 A. Correct.

18 Q. And is that Nicky Ted Phillips'
19 signature on the bottom of page 4?

20 A. Yes, sir.

21 Q. Did he sign that in your presence?

22 A. Yes, sir.

23 Q. And it's dated October 28th, 2013?

24 A. Yes, sir.

25 Q. And again, I just want to be clear

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1 about your answer, but when he signed this section
2 number four on page number 4, had the values on the
3 bottom of page 3 and the top of page 4, already
4 been entered in there; already been written in?

5 A. When he signed, yes, they had already
6 been entered when he signed, yes, sir.

7 MR. PLYLER: I think that's all the
8 questions that I've got then, Mr. McNeill.

9 MR. HANNA: I have no questions.

10 (The witness, after having been advised
11 of his right to read and sign this transcript,
12 waives that right.)

13 (The deposition was concluded at 4:56 PM.)
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STATE OF SOUTH CAROLINA
COUNTY OF CHEROKEE

Nicky Ted Phillips and Gloria E. Phillips,
Plaintiffs,

v.

American National Property and Casualty
Company, Clyde McNeill Agency, and
Clyde Edwin McNeill, individually and in
his capacity as agent of American National
Property and Casualty Company,

Defendants.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2016-CP-11-00809

**DEFENDANTS CLYDE MCNEILL
AGENCY'S AND CLYDE EDWIN
MCNEILL'S MEMORANDUM IN SUPPORT
OF SUMMARY JUDGMENT**

This matter comes before the Court on Defendant Clyde McNeill Agency's (the "McNeill Agency" and Defendant Clyde McNeill's ("McNeill") Motion for Summary Judgment in the above-captioned action. For the reasons set forth below, these Defendants respectfully request that the Court grant their Motion.

STATEMENT OF FACTS

This action arises from injuries Plaintiffs sustained in an automobile accident that occurred on August 9, 2014, when Plaintiffs' vehicle was struck from behind by another motorist. The at-fault motorist did not have sufficient insurance to cover the Plaintiffs' damages. At the time of the accident, Plaintiffs had an automobile insurance policy (the "Auto Policy") and a commercial auto insurance policy (the "Commercial Policy") issued by Defendant American National Property and Casualty Company ("American National"). Plaintiffs obtained the policies through their insurance agent, McNeill, who owns the McNeill Agency. The Auto Policy insured two vehicles and provided underinsured motorist (UIM) coverage with limits of \$25,000 per person and \$50,000 per accident. The Commercial Policy, which insured a farm truck, did not provide any UIM coverage. Plaintiffs

brought the present action against American National, McNeill Agency and McNeill, alleging a number of causes of action concerning Defendants' alleged failure to provide more UIM coverage in the policies. Plaintiffs maintain that both policies should be reformed to include UIM coverage equal to the amount of liability coverage under the policies.

History of the Policies

The Auto Policy was first issued to Plaintiffs on or about September 30, 2010, and both Plaintiff Nicky Ted Phillips and Plaintiff Gloria Phillips were listed as named insureds on the Policy. (See Initial Declarations Page, attached hereto as **Exhibit 1**). The Auto Policy, as originally issued, provided personal injury liability limits of \$50,000/100,000, uninsured motorist (UM) coverage limits of \$25,000/\$50,000 and UIM coverage limits of \$25,000/\$50,000. *Id.*

In or around October 2013, Plaintiff Nicky Phillips contacted McNeill about insuring his farm truck. (Nicky Phillips Dep. 39-40). Nicky Phillips came to McNeill's office and filled out an application for the Commercial Policy, which was originally issued on October 15, 2013. (See Business Automobile Declaration, attached as **Exhibit 2**). The Commercial Policy provided \$75,000 in liability coverage. *Id.* Plaintiff Nicky executed a form titled "Offer of Optional Additional Uninsured Motorist Coverage and Optional Underinsured Motorist Coverage" ("Commercial Offer Form") in connection with the Commercial Policy. (See Nicky Ted Phillips Dep., Ex. 11, attached hereto as **Exhibit 3**). Nicky Phillips selected \$75,000 in UM coverage on this form, but rejected UIM coverage. *Id.* Nicky Phillips claims that he does not remember signing the Commercial Offer Form for the Commercial Policy, but testified that his signature is on this document. (Nicky Phillips Dep. 41¹).

On October 28, 2013, Nicky Phillips came to McNeill's office wanting to discuss raising his insurance limits. Although the parties dispute aspects of the discussion that took place between

¹ All excerpts from Plaintiff Nicky Phillips's deposition are attached hereto as **Exhibit 4**.

McNeill and Nicky Phillips on this date, the parties agree that Nicky Phillips expressed concern that he could be sued and lose everything he and his wife had.² (Exhibit 4, at 33; Clyde McNeill Dep. 42-45, attached hereto as Exhibit 5). As a result of this meeting, Plaintiff ended up obtaining an Umbrella insurance policy ("Umbrella Policy"). (See McNeill Dep. 46; Nicky Phillips Dep., Ex. 12). In order to obtain the Umbrella Policy, Plaintiff had to increase the liability limits on his Auto Policy to at least \$250,000/\$500,000/\$100,000. (See McNeill Dep. 44, 74, attached hereto as Exhibit 5³; Ex. 14 to McNeill Dep., at p.3, attached hereto as Exhibit 6). Plaintiff raised the liability limits on his Auto Policy, executed the application for the Umbrella Policy and executed another⁴ "Offer of Optional Additional Uninsured Motorist Coverage and Optional Underinsured Motorist Coverage" for the Auto Policy ("Auto Offer Form") on October 28, 2013. (Auto Offer Form; Nicky Phillips Dep., Ex. 12, attached hereto as Exhibit 7; Exhibit 6).

McNeill testified that he thoroughly explained the differences between liability, UM and UIM coverage at the October 28, 2013 meeting. According to McNeill, he went through the Auto Offer Form step-by-step. (Exhibit 5, at 85). Mr. Phillips testified that he signed the UIM Select/Reject Form on October 28, 2013, but did not read the form prior to signing. (Exhibit 4, at 44).⁵ Both Nicky Phillips and Gloria Phillips testified that when Nicky Phillips went to increase

² Nicky and Gloria Phillips each testified that two events prompted Mr. Phillip's desire to raise his insurance limits: (1) an accident involving Plaintiffs' daughter; and (2) an accident involving the uncle of Plaintiffs' son-in-law. Plaintiffs' daughter's accident had occurred years before the Auto Policy was first obtained in September 2010. (See Exhibit 4, at 63-4). Meanwhile, the accident involving Plaintiffs' son-in-law's uncle's accident had occurred in 2013, much closer in time to the October 28, 2013 meeting. (*Id.* at 64). With respect to the uncle's accident, Nicky Phillips testified that the people who the uncle had hit "were going to sue him and take what he had. And the only thing I knew is I need to raise my insurance." (*Id.* at 35). It was the uncle's experience that led to Mr. Phillips meeting with McNeill to increase his insurance. (*Id.* at 65).

³ All excerpts from McNeill's deposition are attached hereto as Exhibit 5.

⁴ An "Offer of Optional Additional Uninsured Motorist Coverage and Optional Underinsured Motorist Coverage" had also been executed when Plaintiffs originally obtained the Auto Policy.

⁵ Mr. Phillips testified that he just remembers McNeill telling him to "[s]ign here, here and here." (Exhibit 4, at 33).

their insurance coverage on October 28, 2013 that Nicky Phillips had the authority to act on behalf of Gloria Phillips. (Exhibit 4, at 48; Gloria Phillips Dep. 11-12, attached hereto as Exhibit 8).

Mr. Phillips testified he told McNeill at the October 28, 2013 meeting that he wanted to "[r]aise my insurance, all of it," (Exhibit 4, at 45), but also testified that he and McNeill did not discuss the liability coverage on the Auto Policy that day. (*Id.* at 34). Mr. Phillips further testified that he did not know what kind of coverage he had on the Auto Policy at the time and did not discuss with McNeill what coverage he already had on the Auto Policy at this October meeting to increase his insurance. (Exhibit 4, at 33). Mr. Phillips also admits that, to this day, he does not know what UIM coverage is for. (*Id.* at 49).

Auto Offer Form

The Auto Offer Form contains four sections. Section I, entitled "Explanation of Coverages", contains a description of both Uninsured (UM) and UIM coverage. (Exhibit __, at 1). With respect to UIM coverage, this Section I provides in relevant part:

Underinsured motorist coverage compensates you, or other persons insured under your automobile insurance policy, for amounts which you legally may be entitled to collect as damages from an owner or operator of an at-fault underinsured motor vehicle. An underinsured motor vehicle is a motor vehicle which is covered by some form of liability insurance, but which is insufficient to fully compensate you for your damages.

Your automobile insurance policy does not automatically provide any underinsured motorist coverage. However, you have the right to buy, and your insurance company is required to offer, optional underinsured motorist coverage in various limits up to the limits of liability coverage you have purchased. The limits of optional underinsured motorist coverage which your insurer is authorized to write and for which you are eligible are shown on this form, together with the additional premiums for those limits. . . .

If you reject optional underinsured or additional uninsured motorist coverages shown on this form and if you are involved in an automobile accident that is not your fault, this form may be used by your insurance company as evidence against you if you make a claim for additional uninsured motorist coverage or optional underinsured motorist coverage.

(*Id.* at 1).⁶ The Auto Offer Form also provides the address and contact information for the South Carolina Department of Insurance should the applicant have any questions about the types of coverage an insurer must offer in South Carolina. (*Id.* at 2)

Section III of the Offer Form concerns UIM coverage and provides in relevant part:

III. OFFER OF UNDERINSURED MOTORIST COVERAGE

Minimum underinsured motorist coverage limits are \$25,000/\$50,000/\$25,000. If you select additional underinsured motorist coverage, the premium charge will be increased. The schedule below indicates the premium charges for minimum and increased limits:

UNDERINSURED MOTORIST BODILY INJURY COVERAGE

Limits of Coverage	Premium			
	Vehicle 1	Vehicle 2	Vehicle 3	Vehicle 4
\$25,000 / \$50,000	\$44	\$37	\$0	\$0
\$50,000 / \$100,000	61	53	0	0
\$100,000 / \$300,000	73	63	0	0
\$250,000 / \$500,000	106	91	0	0
\$300,000 / \$500,000	116	100	0	0
\$500,000 / \$500,000	120	104	0	0
\$500,000 / \$1 Million	138	120	0	0
\$1 Million / \$1 Million	160	138	0	0

...Do you wish to purchase Underinsured Motorist Bodily Injury Coverage?

Yes ☐ No ☐

If your answer is "no", then you must sign here: _____

If your answer is "yes", then specify the limits which you desire. These limits cannot exceed your automobile liability limits and must be the same for all vehicles on the policy.

I select _____ / _____ limits.

(*Id.* at 3).

The Auto Offer Form contains an "X" after "Yes", indicating that Nicky Phillips selected to purchase UIM coverage. (*Id.*) The numbers "25/50" are also handwritten on the line where it indicates how much UIM is being selected. (*Id.*) The Auto Offer Form also indicates that Nicky

⁶ The Commercial Offer Form contained substantially the same language. (See Exhibit 3, at p. 2).

Phillips selected \$25,000 in UIM property damage coverage. (*Id.* at 4). At his deposition, Nicky Phillips testified that he does not remember the handwritten numbers on the Auto Offer Form being there when he signed the form. (Nicky Phillips Dep. 57).

Section IV of the Auto Offer Form is titled "Applicant's Acknowledgment". Nicky Phillips signed underneath the following language within this section of the Auto Offer Form:

By my signature, I acknowledge that I have read – or I have had read to me – the above explanations and offers of additional uninsured motorist coverage and optional underinsured motorist coverage.

My signature below further acknowledges that I understand the coverages as they have been explained to me, and the type and amounts of coverage marked on the preceding pages have been selected by me. This is the type and amount of insurance coverage I wish to purchase.

(*Id.* at 4)(Emphasis added).

Subsequent to Mr. Phillips executing the Auto Offer Form, the Auto Policy was renewed and he received a renewal declaration page, showing the increased liability coverage limits and the UM and UIM coverage he had selected. (Family Automobile Renewal Declaration, attached hereto as Exhibit 9).

Plaintiffs' Claims

Plaintiffs have brought the present action against Defendants alleging that the Auto and Commercial Policies should be reformed to provide UIM coverage in the amount of \$250,000/\$500,000. Plaintiffs also assert that McNeill was negligent and breached his fiduciary duty by failing to ensure that the Auto and Commercial Policies contained the UIM coverage requested by Nicky Phillips. Plaintiffs further assert causes of action for negligent misrepresentation, fraud and violation of the Unfair Trade Practices Act. Plaintiffs allege McNeill made a false representation that he would procure UIM coverage as they requested, and that his deceptive conduct violated the Unfair Trade Practices Act.

McNeill and the McNeill Agency filed the present Motion for Summary Judgment based on the ground that they are immune from liability because they are entitled to the conclusive presumption that a meaningful offer of UIM coverage was made to Plaintiffs pursuant to S.C. Code Ann. § 38-77-350. McNeill and the McNeill Agency alternatively move for partial summary judgment on the following issues:

1. The underinsured motorist coverage select/reject forms executed by Plaintiff Nicky Ted Phillips on October 28, 2013, complies with S.C. Code Ann. § 38-77-350 (A);
2. Plaintiff Nicky Ted Phillips had the express and/or implied authority to execute the above-referenced select/reject form on behalf of Plaintiff Gloria Phillips;
3. Defendants are entitled to summary judgment as to Plaintiffs' cause of action for breach of fiduciary duty;
4. Defendants are entitled to summary judgment as to Plaintiffs' causes of action for negligent misrepresentation and fraud;
5. Defendants are entitled to summary judgment as to Plaintiffs' cause of action for an alleged violation of the South Carolina Unfair Trade Practices Act.

STANDARD OF LAW

Summary judgment is appropriate when "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." SCRCP 56(c). When a party makes a motion for summary judgment that is supported by evidence, the adverse party may not rest on the allegations of the Complaint to overcome the motion but must demonstrate, by affidavit or other evidence, that a genuine issue of fact exists. *Klippel v. Mid-Carolina Oil, Inc.*, 303 S.C. 127, 399 S.E.2d 163 (Ct. App. 1990); *Dyer v. Moss*, 284 S.C. 208, 325 S.E.2d 69 (Ct. App. 1985). The nonmoving party must make an affirmative effort to set forth specific facts showing that there is a genuine issue for trial in order to overcome a summary judgment motion. *Baughman v. American Tel. & Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537 (1991). Moreover, while a court must view the facts in a light most favorable to the non-moving party, "a

court cannot ignore facts unfavorable to that party and it must determine whether a verdict for the party opposing the motion would be reasonably possible under the facts." *Bloom v. Ravoir*, 339 S.C. 417, 423 (2000) (internal citations and quotation marks omitted).

DISCUSSION

I. Defendants are entitled to the conclusive presumption that a meaningful offer of UIM coverage was made to the Plaintiffs.

Nicky Phillips's execution of the Auto Offer Form entitles McNeill and the McNeill Agency to the conclusive presumption that it made Plaintiffs a meaningful offer of UIM coverage.

An automobile insurer is required to make a meaningful offer of UIM coverage to its insured. *Wiegand v. U.S. Auto. Ass'n*, 391 S.C. 159, 705 S.E.2d 432 (2011); S.C. Code Ann. 38-77-160. "If the insurer fails to comply with its statutory duty to make a meaningful offer to the insured, the policy will be reformed, by operation of law, to include UIM coverage up to the limits of liability insurance carried by the insured." *Floyd v. Nationwide Mut. Ins. Co.*, 367 S.C. 253, 261, 626 S.E.2d 6, 11 (2005). The insurer has the burden of proving that it made a meaningful offer. *Cohen v. Progressive N. Ins. Co.*, 402 S.C. 66, 72, 737 S.E.2d 869, 872 (Ct. App. 2013). An insurer is entitled to a conclusive presumption that it made a meaningful offer of UIM coverage where its offer form and the manner in which the form is completed comply with S.C. Code Ann. §§ 38-77-350(A) and (B). *Floyd*, at 262, 626 S.E.2d at 11; see also S.C. Code Ann. §§ 38-77-350(A)-(B).

According to § 38-77-350(A), the director of the South Carolina Department of Insurance or his designee "shall approve a form that automobile insurers shall use in offering optional coverages required to be offered pursuant to law to applicants for automobile insurance policies." The form must contain, at a minimum, the following:

- (1) a brief and concise explanation of the coverage;
- (2) a list of available limits and the range of premiums for the limits;

- (3) a space to mark whether the insured chooses to accept or reject the coverage and a space to state the limits of coverage the insured desires;
- (4) a space for the insured to sign the form that acknowledges that the insured has been offered the optional coverages;
- (5) the mailing address and telephone number of the insurance department that the applicant may contact if the applicant has questions that the insurance agent is unable to answer.

§ 38-77-350 (A). Whether an offer form complies with section 38-77-350(A)'s requirements is a question of law for the court. *Weigand*, at 163. Moreover,

[i]f this form is signed by the named insured, after it has been completed by an insurance producer or a representative of the insurer, it is conclusively presumed that there was an informed, knowing selection of coverage and neither the insurance company nor an insurance agent is liable to the named insured or another insured under the policy for the insured's failure to purchase optional coverage or higher limits.

§ 38-77-350(B)(Emphasis added). Subsection (D) further provides that

[c]ompliance with this section satisfies the insurer and agent's duty to explain and offer optional coverages and higher limits and no person, including, but not limited to, an insurer and insurance agent is liable in an action for damages on account of the selection or rejection made by the named insured.

§ 38-77-350 (D). The insurer has the burden of establishing that the requirements have been met in order to take advantage of this presumption. *Weigand*, at 165.⁷

⁷ Even when an offer form does not comply with § 38-77-350, an insurance carrier's offer of UIM coverage will still be deemed meaningful if it satisfies the four-part *Wannamaker* test. *Id.*, at 164; *Cohen*, at 76. In *State Farm Mut. Auto. Ins. Co. v. Wannamaker*, 291 S.C. 518, 354 S.E.2d 555 (1987), the South Carolina Supreme Court adopted the following test for determining whether an offer of UIM was meaningful:

- (1) the insurer's notification process must be commercially reasonable, whether oral or in writing;
- (2) the insurer must specify the limits of optional coverage and not merely offer additional coverage in general terms;
- (3) the insurer must intelligibly advise the insured of the nature of the optional coverage; and
- (4) the insured must be told that optional coverages are available for an additional premium.

Wannamaker, at 521, 354 S.E.2d at 556. "The question of whether an insurer met its burden of proving it made a meaningful offer of UIM coverage [under the *Wannamaker* test] is a question of fact." *Cohen*, at 72.

A. The Auto Offer Form⁸ Complies with § 38-77-350

The Auto Offer Form complies with section 38-77-350, and thus, McNeill and the McNeill Agency are entitled to the conclusive presumption that a meaningful offer of UIM coverage was made to the Plaintiffs. In *Wiegand v. U.S. Auto. Ass'n*, 391 S.C. 159, 705 S.E.2d 432 (2011), the South Carolina Supreme Court addressed whether an insurer was entitled to the conclusive presumption that it made a meaningful offer to its insured. The insured was killed in a motor vehicle accident, and the insured's wife sought to reform the insurance policy to include UIM coverage. At issue was whether the form the insured had signed rejecting UIM coverage met the requirements of § 38-77-350(A). The Court applied the following analysis of the form utilized by the insurer:

USAA's form contains a brief and concise explanation of UIM coverage on the first page, detailing in one paragraph what UIM coverage pays for, who gets compensated, and what "underinsured motor vehicle" means. The form contains every UIM limit which USAA was approved to sell by the Department of Insurance, along with specific language on how to decrease or increase UIM coverage. There was a space for Wiegand to mark whether he chose to accept or reject coverage, select the limits of coverage he desired, and sign the form acknowledging he had been offered optional coverage. Finally, the form contained the mailing address and telephone number of the Department of Insurance.

Additionally, USAA's form was approved by the appropriate entity in January 1990. While approval alone is not dispositive of whether a form meets section 38-77-350(A)'s requirements, *see Progressive Casualty Insurance Co. v. Leachman*, 362 S.C. 344, 608 S.E.2d 569 (2005), we believe it lends support to the view that USAA satisfied the requirements. Therefore, we conclude that USAA met section 38-77-350(A)'s requirements.

Id. at 164. In light of the above, the *Wiegand* Court held that the insurer's form complied with section 38-77-350(A) and, ultimately, that the insurer was entitled to the conclusive presumption in section 38-77-350(B).

⁸ Although Defendants refer to the Auto Offer Form in this section, Defendants rely upon the same arguments to support the validity of the Commercial Offer Form. Specifically, the Commercial Offer Form met all the requirements of Section 38-77-350, and thus, Plaintiff Nicky Phillips' rejection of UIM on the Commercial Offer Form is enforceable.

Here, the Auto Offer Form complies with S.C. Code Ann. §§ 38-77-350(A) and (B). Like the form in *Weigand*, the Auto Offer Form contains a brief and concise explanation of UIM coverage. Specifically, Section I of the form, entitled "Explanation of Coverages," contains a one-paragraph description of what UIM coverage is, what it pays for and what "underinsured motor vehicle" means. In fact, the language in the "Explanation of Coverages" section is very similar to the language on the form in *Weigand*. (See *Weigand*, at 162; **Exhibit 7**, at p. 1).

Additionally, like the form in *Weigand*, the Auto Offer Form contains all the limits of underinsured coverage that American National is authorized to sell by the SC Department of Insurance, and similarly provides instructions for how to decrease and increase UIM coverage. (**Exhibit 7**). The Auto Offer Form also contains a space where Mr. Phillips could mark whether he chose to accept or reject UIM coverage, to select the limits of coverage he desired, and to sign the Auto Offer Form acknowledging he had been offered the optional coverage. Finally, like the form in *Weigand*, the Auto Offer Form was approved by the SC Department of Insurance and contains the Department's address.

Additionally, the manner in which the Offer Form was completed complies with Section 38-77-350(B) as Nicky Phillips signed the form.⁹ In light of Nicky Phillip's signature, McNeill and the McNeill Agency are entitled to a conclusive presumption that "there was an informed, knowing selection of coverage." 38-77-350(B). To the extent Plaintiffs attempt to create an issue of fact by alleging that the handwritten amount of UIM coverage Mr. Phillips selected was not written on the Auto Offer Form when he signed it, such argument lacks merit since Mr. Phillips signed the

⁹ Although Nicky Phillips claims he did not actually read the Auto Offer Form before signing it, such claim, even if true, does not negate the fact that he did sign the Auto Offer Form, which is all Defendants must prove to establish they are entitled to the conclusive presumption that a meaningful offer of UIM coverage was made. See § 38-77-350(B); *Regions Bank v. Schmauch*, 354 S.C. 648, 663, 582 S.E.2d 432, 440 (Ct. App. 2003) ("A person who signs a contract or other written document cannot avoid the effect of the document by claiming he did not read it.").

Acknowledgment statement on the Auto Offer Form indicating that "[m]y signature below further acknowledges that . . . the type and amounts of coverage marked on the preceding pages have been selected by me. This is the type and amount of insurance coverage I wish to purchase." (Auto Offer Form 4) (Emphasis added); see *Weigand*, at 165 (holding no issue of fact precluding insurer's entitlement to the conclusive presumption where plaintiff argued there was no direct evidence that the deceased named insured was the one who checked "no" on the boxes on the UIM select/reject form he signed given that the named insured signed the form's acknowledgment). Moreover, Plaintiff's attempt to create an issue of fact by claiming the handwritten amount of UIM coverage selected was not on the Auto Offer Form when he signed it is absurd and self-contradictory given Plaintiff's testimony that he didn't even read the Auto Offer Form prior to signing.¹⁰

Therefore, the Auto Offer Form complies with § 38-77-350 and neither McNeill nor the McNeill Agency can be held liable for Plaintiffs' failure to select a higher amount of UIM coverage. See § 38-77-350(B) and (D).¹¹

B. Nicky Phillips's signature on the Auto Offer Form is binding on Plaintiff Gloria Phillips.

Although Gloria Phillips did not sign the Auto Offer Form, McNeill and the McNeill Agency are still entitled to the conclusive presumption that a meaningful offer of UIM coverage was made to Plaintiffs and that the form is binding as to her. Our courts have held that the rejection of UIM coverage by one spouse can be binding against the other where the spouse was impliedly or

¹⁰ It is also noteworthy that, to this day, Plaintiff Nicky Phillips cannot identify what amount of UIM he allegedly requested McNeill add to the Auto Policy. Plaintiff testified he did not know how much UIM he had on the Auto Policy at the time of the October 28, 2013 meeting and that this amount was not discussed. (Exhibit 4, at 33, 35-6). Thus, even if you believe Plaintiff's testimony that the handwritten UIM amounts were not on the Auto Form prior to Plaintiff signing, which is denied, Plaintiffs have failed to create an issue of fact that he requested any amount other than \$25,000/50,000.

¹¹ Should the Court determine that Plaintiff Nicky Phillips's testimony concerning the handwriting on the Auto Offer Form creates an issue of fact precluding summary judgment as to Defendants' entitlement to the conclusive presumption, Defendants specifically request the Court issue an Order making clear that the only factual issue in dispute regarding the validity of the Auto Offer Form—and thus, whether McNeill and the McNeill Agency are entitled to the conclusive presumption—is whether the handwritten amount of UIM coverage selected on the form was on the form at the time Mr. Phillips signed said form.

expressly authorized to act on the other's behalf as his agent. *E.g., Nationwide Mut. Ins. Co. v. Prioleau*, 359 S.C. 238, 241, 597 S.E.2d 165, 167 (Ct. App. 2004) (finding an implied agency relationship existed between the husband and wife as a matter of law). Here, both Plaintiffs testified that Nicky Phillips was authorized to change the Auto Policy on behalf of Gloria Phillips. Thus, the amount of UIM coverage selected by Nicky Phillips is enforceable against Gloria Phillips as he was acting as his wife's agent when he signed the Auto Offer Form.

II. Defendants are entitled to summary judgment as to Plaintiffs' cause of action for breach of fiduciary duty.

Even if McNeill and the McNeill Agency are not entitled to the conclusive presumption that a meaningful offer of UIM coverage was made, they are entitled to partial summary judgment as to Plaintiffs' claim for breach of fiduciary duty. To recover on a claim for breach of fiduciary duty, Plaintiffs must establish "(1) the existence of a fiduciary duty, (2) a breach of that duty, and (3) damages proximately resulting from the wrongful conduct of the defendant." *Turpin v. Lowther*, 404 S.C. 581, 589, 745 S.E.2d 397, 401 (Ct. App. 2013). Here, Plaintiffs cannot establish that McNeill or the McNeill Agency owed them a fiduciary duty, or that any alleged breach of such duty occurred.

A. There was no fiduciary relationship between Plaintiffs and McNeill.

To recover on a claim for breach of fiduciary duty, Plaintiffs must establish "(1) the existence of a fiduciary duty, (2) a breach of that duty, and (3) damages proximately resulting from the wrongful conduct of the defendant." *Turpin v. Lowther*, 404 S.C. 581, 589, 745 S.E.2d 397, 401 (Ct. App. 2013). Here, Plaintiffs cannot establish that McNeill or the McNeill Agency owed them a fiduciary duty.

Whether a fiduciary duty exists is a question of law for the court. *Turpin*, at 589. A fiduciary relationship exists when "...one reposes special confidence in another so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interests of one

reposing the confidence.” *SSI Med. Servs., Inc. v. Company*, 301 S.C. 493, 500, 392 S.E.2d 789, 794 (1990). “A relationship must be more than casual to equal a fiduciary relationship.” *Pitts v. Jackson Nat’l Life Ins. Co.*, 352 S.C. 319, 330, 574 S.E.2d 502, 507 (Ct. App. 2002). In South Carolina, an insurance relationship by itself is not sufficient to establish a fiduciary relationship. *Id.*

Here, although Plaintiff Nicky Phillips testified he trusted McNeill, trust alone is insufficient to create a fiduciary relationship between him and McNeill. *See Burwell v. S.C. Nat’l Bank*, 288 S.C. 34, 41, 340 S.E.2d 786, 790 (1986) (“As a general rule, mere respect for another’s judgment or trust in his character is usually not sufficient to establish [a fiduciary] relationship”). Plaintiff argues in his memorandum in opposition to Defendants’ Motion for Summary Judgment that an issue of fact exists as to whether there was a fiduciary relationship between McNeill and Plaintiff based upon their friendship. However, McNeill’s testimony, taken as a whole, makes clear that any friendship between the two was primarily a business friendship. McNeill testified that over the years he had had Plaintiff do some flooring¹² and repair cabinets in his house and that he had bought a van from Plaintiff. (Exhibit 5, at 36). McNeill denied having a social relationship with Plaintiff. (*Id.* at 37). Moreover, Plaintiff has failed to present any evidence that Plaintiff even considered McNeill a friend.

In light of the above, Plaintiff has failed to create a genuine issue of material fact that a fiduciary relationship existed between Plaintiff and McNeill.

B. Plaintiffs have failed to present any evidence of an alleged breach of any fiduciary duty.

Even if Plaintiffs could establish a question of fact as to whether a fiduciary relationship existed with McNeill or the McNeill Agency, which is denied, Plaintiffs have failed to present any evidence of a breach of such a duty. The *sine qua non* of a breach of fiduciary claim is that the person who allegedly owed a fiduciary duty acted in the best interest of himself or someone else.

¹² Plaintiff owned a flooring company (Exhibit 4, at 10-11).

instead of in the interest of the party to whom he allegedly owed the duty. Here, Plaintiffs cannot show that McNeill engaged in his own self-interest. To the extent Plaintiffs allege McNeill breached his fiduciary duty by not increasing Plaintiffs' UIM coverage, such alleged failure did not benefit McNeill, as McNeill would have earned more compensation had Plaintiffs selected higher UIM limits.

III. Defendants are entitled to summary judgment as to Plaintiffs' causes of action for negligent misrepresentation and fraud.

Even if McNeill and the McNeill Agency are not entitled to the conclusive presumption that a meaningful offer of UIM coverage was made, they are entitled to partial summary judgment as to Plaintiffs' claims for negligent misrepresentation and fraud.

A. Plaintiffs cannot establish the elements of negligent misrepresentation.

In order to recover on their claim of negligent misrepresentation, Plaintiffs must show:

- (1) the defendant made a false representation to the plaintiff, (2) the defendant had a pecuniary interest in making the statement, (3) the defendant owed a duty of care to see that he communicated truthful information to the plaintiff, (4) the defendant breached that duty by failing to exercise due care, (5) the plaintiff justifiably relied on the representation, and (6) the plaintiff suffered a pecuniary loss as the proximate result of his reliance on the representation.

Hurst v. Sandy, 329 S.C. 471, 481, 494 S.E.2d 847, 852 (Ct. App. 1997) (emphasis added).

Here, Plaintiffs cannot establish that a false representation was made. Plaintiffs' Complaint alleges that "McNeill made a false representation to the Phillips that he would take care of their request for additional insurance coverage." (Compl. ¶ 52) However, Plaintiffs cannot establish that they specifically requested more than the \$25,000/\$50,000 in UIM coverage they obtained. Plaintiff Nicky Phillips testified that he told McNeill at their October 28, 2013 meeting that he wanted to raise his insurance. However, Mr. Phillips further testified that he did not discuss how much UIM coverage he already had on the Auto Policy, and that he did not understand what UIM coverage was. His testimony indicates that he did not even discuss UIM coverage with McNeill at this meeting.

Q: Okay. Did you—did—at any point, did—did [McNeill] discuss what kind of coverage you had on the vehicle at the time?

A: No, sir.

Q: Did you know what kind of coverage you had on the vehicle at the time?

A: No, sir.

Q: I'm just—just checking to make sure. Did—did you discuss what would happen if—if—if you were hit by someone who had no insurance?

A: No, sir. We didn't discuss nothing like that.

Q: Okay. Did you discuss what would happen if somebody were to run into you who was—who had insufficient insurance?

A: No, sir.

(Nicky Phillips Dep. 33, 35-6)

If Mr. Phillips's testimony is to be believed, it is nonsensical that Mr. Phillips would have requested more UIM coverage than what he received. It makes no sense that Mr. Phillips would specifically request to increase coverage that he did not understand or even know he had. Therefore, since Plaintiff cannot prove that he specifically requested more than \$25,000/\$50,000 in UIM coverage, he cannot establish that McNeill made a false representation that he would "take care of their request for additional [UIM] insurance coverage." (See Compl. ¶ 52).

Even if Plaintiffs could prove McNeill made a false representation that he would obtain more UIM coverage than was ultimately provided in the Auto Policy, Plaintiffs cannot prove that McNeill had a pecuniary interest in making this alleged false representation. As an insurance agent, McNeill would have made more money had he obtained higher UIM limits for the Plaintiffs. Thus, if McNeill really did falsely represent that he was going to ensure the Auto Policy had higher UIM limits, such a false representation was financially detrimental to McNeill.

Finally, even if Plaintiffs could establish McNeill engaged in a false representation and had a pecuniary interest in said representation, Plaintiffs still cannot present any evidence that they justifiably relied on this representation. Plaintiffs testified that they received declarations pages that showed the amount of insurance coverage, including UIM coverage, in the Auto Policy. In fact, the Auto Policy was renewed for an additional six (6) months.¹³ Thus, Plaintiffs were clearly on notice of the amount of coverage their Auto Policy contained prior to the date of their accident. Plaintiffs had an obligation to read the Auto Policy for which they contracted. *See Provident Life & Acci. Ins. Co. v. Anderson*, 166 F.2d 492, 495 (4th Cir. 1948) ("It is settled law in South Carolina that the insured has the duty of reading the insurance policy and of acquainting himself with its contents and that failure to do so will estop him from avoiding the written contract on the grounds that he did not know its terms."); *Walpole v. Great Am. Ins. Cos.*, 914 F. Supp. 1283, 1291 (D.S.C. 1994) ("Plaintiffs cannot rely on the representations of others as to the policy's contents. An insured has a duty to read the policy he purchases . . ."). Had the coverage in the Auto Policy been anything other than what Mr. Phillips had requested, they had the opportunity to remedy the error and any alleged false representation on the part of McNeill. Therefore, Plaintiffs cannot establish their reliance on any alleged representation of McNeill was justified in order to survive summary judgment as to their cause of action for negligent misrepresentation. *See Doub v. Weathersby-Breeland Ins. Agency*, 268 S.C. 319, 233 S.E.2d 111 (1977) (holding plaintiff had no right to rely on oral misrepresentations as to coverage where plaintiff had the written terms in his possession and available to him, but made no effort to read his policy or inform himself of said terms)

¹³ A Family Automobile Renewal Declaration for policy term 3-30-14 to 9-30-14 was sent to Plaintiffs on or about February 28, 2014. (See Exhibit 9).

B. Plaintiffs cannot establish the elements of a claim for fraud.

To prove McNeill or the McNeill Agency engaged in fraud, Plaintiffs must show the following by clear, cogent and convincing evidence:

(1) a representation; (2) its falsity; (3) its materiality; (4) either knowledge of its falsity or a reckless disregard of its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; (9) the hearer's consequent and proximate injury.

M. B. Kahn Constr. Co. v. S.C. Nat'l Bank, 275 S.C. 381, 384, 271 S.E.2d 414, 415 (1980).

"Failure to prove any one of the foregoing elements is fatal to recovery." *Id.*

Like with Plaintiffs' claim for negligent misrepresentation, Plaintiffs cannot establish a false representation or that they had a right to rely on any alleged false representation. The fact that Plaintiffs had a copy of the Auto Policy and received the renewal declarations page for the Auto Policy is fatal to their claim for fraud. *See Doub*, at v. 326 ("It is well settled in this State that one cannot complain of fraud in the misrepresentation of the contents of a written instrument in his possession when the truth could have been ascertained by his reading the instrument. One entering into a contract should read it and avail himself of every reasonable opportunity to understand its contents and meaning?").

Additionally, even if a false representation was made, which is denied, Plaintiffs cannot establish that McNeill had knowledge of the falsity or a reckless disregard for its truth. *See Brown v. Stewart*, 348 S.C. 33, 42, 557 S.E.2d 676, 681 (Ct. App. 2001) ("[A] key difference between fraud and negligent misrepresentation is that fraud requires the conveyance of a known falsity, while negligent misrepresentation is predicated upon transmission of a negligently made false statement."). Plaintiff Nicky Phillips admitted that he has no explanation for why McNeill would not have given Plaintiffs the UIM coverage Mr. Phillips' allegedly requested. (**Exhibit 4**, at 47) According to Plaintiff, he thinks it was just an accident, and that "[McNeill] may have got busy and forgot to do what he's supposed to do. That's all." (*Id.* at 55). Given this testimony and the lack of any other evidence that McNeill

intentionally obtained less UIM coverage than Mr. Phillips allegedly requested, Plaintiffs have failed to produce a scintilla of evidence that McNeill had knowledge of the falsity of any alleged representation.

IV. Defendants are entitled to summary judgment as to Plaintiffs' cause of action for an alleged violation of the South Carolina Unfair Trade Practices Act, S.C. Code Ann. §§ 39-5-10 *et seq.* because claims involving alleged unfair trade practices in the business of insurance are exempt from the SCUTPA.

Plaintiff's cause of action for an alleged violation of the South Carolina Unfair Trade Practices Act ("SCUTPA") is without merit, as SCUTPA "exempts from coverage all unfair trade practices in the business of insurance . . . because the Insurance Trade Practices Act is intended to regulate all unfair trade practices in the business of insurance." *Tapp v. Minn. Life Ins. Co.*, No. 3:15-4799-MBS, 2017 U.S. Dist. LEXIS 102517, at *10 (D.S.C. June 29, 2017) (citing *Trustees of Grace Reformed Episcopal Church v. Charleston Ins. Co.*, 868 F. Supp. 128, 131 (D.S.C. 1994) (interpreting section 39-5-40(c)).

CONCLUSION

In light of the foregoing, Defendants McNeill and the McNeill Agency request that the Court hold that they are entitled to the conclusive presumption pursuant to S.C. Code Ann. § 38-77-350 that a meaningful offer of UIM coverage was made to Plaintiffs, and thus, that these Defendants are entitled to Summary Judgment as to all of Plaintiffs' causes of action. In the alternative, to the extent the Court believes Plaintiffs have established a question of fact as to whether Defendants have met their burden regarding their entitlement to the conclusive presumption, Defendants request the Court issue an Order for partial summary judgment, holding that:

- 1) The Auto Offer Form and Commercial Policy Form both comply with S.C. Code Ann. § 38-77-350 (A);
- 2) Plaintiff Nicky Ted Phillips had the express and/or implied authority to execute the above-referenced select/reject form on behalf of Plaintiff Gloria Phillips;

- 3) Defendants are entitled to summary judgment as to Plaintiffs' cause of action for breach of fiduciary duty;
- 4) Defendants are entitled to summary judgment as to Plaintiffs' causes of action for negligent misrepresentation and fraud; and
- 5) Defendants are entitled to summary judgment as to Plaintiffs' cause of action for an alleged violation of the South Carolina Unfair Trade Practices Act, S.C. Code Ann. §§ 39-5-10 *et seq.*

HOWSER, NEWMAN & BESLEY, LLC

BY: s/Jeffrey I. Silverberg
George V. Hanna, IV (SC Bar No.: 15935)
Jeffrey I. Silverberg (SC Bar No.: 100749)
1508 Washington Street (29201)
Post Office Box 12009
Columbia, South Carolina 29211
Tel: (803) 758.6000
ghanna@hnblaw.com
jsilverberg@hnblaw.com
*Attorneys for Defendants Clyde McNeill Agency and
Clyde Edwin McNeill*

May 8, 2018
Columbia, South Carolina

EXHIBIT 1

ELECTRONICALLY FILED - 2018 May 08 4:09 PM - CHEROKEE - COMMON PLEAS - CASE#2016CP1100809



1949 E. SUNSHINE
SPRINGFIELD, MISSOURI 65899-0001
(417) 687-0220
www.anpac.com

AMERICAN NATIONAL PROPERTY AND CASUALTY CO

POLICY NUMBER
39-A-448-05L-0
POLICY TERM

09-30-10 TO 03-30-11
AND SUBSEQUENT RENEWALS.

THIS FAMILY AUTOMOBILE DECLARATION

REPLACES ALL PRIOR DECLARATIONS, IF ANY, AND WITH POLICY PROVISIONS AND
ANY ENDORSEMENTS ISSUED TO FORM A PART THEREOF COMPLETES THIS POLICY.

METHOD OF PAYMENT: INSURED BILL

NAMED INSURED AND ADDRESS

PHILLIPS, NICKY T & GLORIA E

GARAGING LOCATION:

AGENT: 04232-P 1-HEC
ERIN MCNEILL

FOR CUSTOMER SERVICE:
864-488-0044

GAFFNEY SC 29341-1057

DESCRIPTION OF INSURED PROPERTY

RATED	VEH DR	DESCRIPTION	ID NUMBER	TYPE
1 2		2004 GMC ENVY SLE 4D	1GKDS13S742194281	AUTO
2 1		2001 CHE BLAZER LS 4WD	1GNDT13W51K228765	AUTO

RATING INFORMATION, COVERAGES, PREMIUMS, AND LIMITS OF LIABILITY

INSURANCE IS PROVIDED ONLY WITH RESPECT TO THOSE OF THE FOLLOWING COVERAGES WHICH ARE INDICATED BY A SPECIFIC LIMIT OF LIABILITY AND/OR PREMIUMS APPLICABLE THERETO.

RATING TERRITORY FOR ALL VEHICLES: 16

VEHICLE	CLASS CODE	04 GMC ENVY SLE 68G02NO	01 CHE BLAZER LS 68G00NO
BODILY INJURY LIABILITY			
LIMIT PER PERSON/OCCURRENCE		\$50.00	\$41.00
PROPERTY DAMAGE LIABILITY		50,000/100,000	50,000/100,000
LIMIT PER OCCURRENCE		\$25.00	\$22.00
MEDICAL PAYMENTS		50,000	50,000
LIMIT PER PERSON		\$3.00	\$3.00
UNINSURED MOTORIST		1,000	1,000
LIMIT PER PERSON/ACCIDENT		\$20.00	\$20.00
PROPERTY DAMAGE (\$200 DED.)		25,000/50,000	25,000/50,000
UNDERINSURED MOTORIST		25,000	25,000
LIMIT PER PERSON/ACCIDENT		\$44.00	\$44.00
PROPERTY DAMAGE		25,000/50,000	25,000/50,000
COMPREHENSIVE		25,000	25,000
DEDUCTIBLE		\$35.00	NO COVERAGE
ADDED COVERAGE ENDORSEMENT		500	
COLLISION		NO	NO
DEDUCTIBLE		\$38.00	NO COVERAGE
ADDED COVERAGE ENDORSEMENT		500	
TOWING & LABOR/WINDSHIELD REPAIR		NO	NO
LIMIT		\$9.00	
REIMBURSEMENT OF RENTAL EXPENSE		100	
LIMIT PER DAY/AGGREGATE		INCLUDED	
		25/750	
TOTAL		\$224.00	\$130.00



	VEHICLES	ENDORSEMENTS	TAX/FEE U.M. FUND	TOTAL PREMIUM	AUTHORIZED REPRESENTATIVE
TOTAL PREMIUMS	\$354.00		\$2.00	\$356.00	
DATE PRINTED	09/20/10				
	90-20-00				

SEE DECLARATION SECTION II FOR ADDITIONAL INFORMATION
SEE REVERSE SIDE FOR IMPORTANT INFORMATION

SM-484 (1-06)

EXHIBIT 2

ELECTRONICALLY FILED - 2018 May 08 4:09 PM - CHEROKEE - COMMON PLEAS - CASE#2016CP1100809

300121200 23121018 70121018 7724 DEC-NEW POLICY
CDD003

AMERICAN NATIONAL PROPERTY AND CASUALTY COMPANY
Corporate Centre • 1949 E. Sunshine, Springfield, Missouri 65899-0001
BUSINESS AUTOMOBILE DECLARATION

ANFAC®

THIS DECLARATION PAGE VOIDS AND REPLACES ANY PREVIOUSLY
ISSUED DECLARATIONS BEARING THE SAME POLICY NUMBER.

AGENT'S
NAME
AND
ADDRESS

CLYDE EDWIN MCNEILL

AGENTS NO. 7724

AGENT'S TELEPHONE 864-488-0044

ITEM ONE
NAMED
INSURED
AND
MAILING
ADDRESS

NICKY TED PHILLIPS

POLICY NO. 3901C2388-01

AMENDMENT
EFFECTIVE DATE 10/15/13

POLICY PERIOD

10/15/13	10/15/14
----------	----------

12:01 A.M.
STANDARD

TYPE OF
DECLARATIONS

NEW POLICY

Form of Named Insured Business: **INDIVIDUAL**

Name of Insured Business / FRUIT FARMER

ITEM TWO: SCHEDULE OF COVERAGES AND COVERED AUTOS - (See Supplementary State Endorsements Where Applicable). This policy provides only those coverages where a charge is shown in the premium column below. Each of these coverages will apply only to those "autos" shown as covered "autos". "Autos" are shown as covered "autos" for a particular coverage by the entry of one or more of the symbols from SECTION I of the Business Auto Coverage Form next to the name of the coverage.

COVERAGES AND LIMITS

THE MOST WE WILL PAY FOR ANY ONE ACCIDENT OR LOSS:

Symbol
for
covered
cables

**ANNUAL PREMIUMS
COVERED AUTO NUMBER**

LIABILITY

7

SINGLE LIMIT

\$75,000 EACH ACCIDENT
UNINSURED MOTORIST INSURANCE
SINGLE LIMIT
\$75,000 EACH ACCIDENT

7

52.00

17.00

TOTAL VEHICLE PREMIUM

79.00

*Entry of one or more of the symbols from SECTION I of the Business Auto Coverage Form (CA0001) shows which autos are covered autos.

DESCRIPTION OF AUTO(S)	AUTO YEAR		MAKE MODEL - BODY TYPE	IDENTIFICATION NUMBER	COST NEW	RATE CLASS	ALTERNATE GARAGE ADDRESS
	1	84	INTL S SERIES 2 TRKT	1HTDA2376EHA15848	053	34181	
CLASSIFICATION							

CLASSIFICATION										CA	ENDORSEMENTS ATTACHED TO THIS POLICY
OF	TYPE	CH	ACT	YR	NO	NO	NO	NO	NO		
38	001	14	C	L	B	S	S			ACCOUNT CREDIT	CA00010310 IL00030908 IL00171198 IL00210908 CA01500308 CA02301008 CA21190308 CA23051293 CC99151007 CC99171107

LOSS PAYEE SEE REVERSE SIDE

DRIVERS	DRIVERS NAME	DATE OF BIRTH	DISCOUNTS			TRANSACTION CHARGE	\$79.00
	1 NICKY T PHILLIPS 2 GLORIA PHILLIPS	052949 11.1548				COUNTERSIGNED BY	
01/02L						AUTHORIZED REPRESENTATIVE PROCESS DATE: 10/15/13	

RECEIVED 2003-10-08
DEFENDANT'S
EXHIBIT 10
N. Phillips
07/20/19 SW

AUTHORIZED REPRESENTATIVE
PROCESS DATE: 10/15/13

EXHIBIT 3

ELECTRONICALLY FILED - 2018 May 08 4:09 PM - CHEROKEE - COMMON PLEAS - CASE#2016CP1100809



American National Property And Casualty Company
South Carolina Uninsured/Underinsured Motorists Insurance
Coverage Options

OFFER OF OPTIONAL ADDITIONAL UNINSURED MOTORIST COVERAGE AND OPTIONAL
UNDERINSURED MOTORIST COVERAGE

I. EXPLANATION OF COVERAGES

The State of South Carolina's automobile insurance laws now allow any insurance company to refuse to underwrite your automobile liability insurance coverage. That refusal may be based upon a number of reasons. Automobile liability insurance coverage pays other motor vehicle drivers and their passengers whom you damage for the damages which you cause and for which you are legally responsible. There are two types of automobile liability insurance coverage: bodily injury and property damage. Bodily injury coverage is a coverage which pays people upon whom your motor vehicle inflicts bodily injury. Property damage coverage is a coverage which pays people for damages which your automobile causes to their motor vehicles or property.

Once any insurance company makes the business decision to underwrite your automobile liability insurance coverage, then it must provide to you at least \$75,000.00 of coverage for bodily injury for each person whom you may injure in any single accident and for property damage for each accident which you may cause. These limits are commonly known as minimum limits. If you purchase automobile liability insurance, then, in order to drive your automobile upon the roads of this State, you must have at least minimum limits.

There is no requirement under the laws of this State that an insurance company which underwrites your minimum limits must also agree to underwrite higher than those minimum limits of automobile liability insurance coverage for you. If your insurance company does agree to offer to you more than the minimum limits, then you will be required to pay an increased automobile insurance premium for those increased limits of protection.

In addition, under this State's insurance laws, once an insurance company agrees to underwrite your automobile liability insurance coverage, you must be offered, at your option, two additional automobile insurance coverages which will protect you in the event you are damaged in an automobile accident by an at-fault automobile driver who either has no automobile insurance or whose automobile insurance liability limits are less than the damages which you suffer in that accident. These coverages are legally termed additional uninsured motorist coverage and underinsured motorist coverage. You may see them

referred to within your automobile insurance policy as UM and UIM. If you decide to purchase either of these two optional coverages, then you will be required to pay an additional automobile insurance premium for each of these additional coverages.

Uninsured motorist coverage compensates you, or other persons insured under your automobile insurance policy, for amounts which you may be legally entitled to collect as damages from an owner or operator of an at-fault uninsured motor vehicle. An uninsured motor vehicle is a motor vehicle which either has no liability insurance coverage or is operated by a hit-and-run driver. By law, your automobile insurance policy automatically must provide uninsured motorist coverage of the limits described above. All uninsured motorist coverages provide for a \$200 deductible for property damage claims.

ANX-3150 0612

Page 1 of 4



ELECTRONICALLY FILED - 2018 May 08 4:09 PM - CHEROKEE - COMMON PLEAS - CASE#2016CP1100809

You also have the right to buy additional uninsured motorist coverage, in various limits, up to the limit of the liability coverage which you will carry under your automobile insurance policy. Some of the more commonly-sold limits of additional uninsured motorist coverage, together with the additional premiums which you will be charged, have been printed by your insurance company upon this Form. If there are other limits in which you are interested, but which are not shown upon this Form, then fill-in those limits in the blanks provided. If your insurance company is allowed to market those limits within this State, then your insurance agent will fill-in the amounts of increased premium.

Underinsured motorist coverage compensates you, or other persons insured under your automobile insurance policy, for amounts which you legally may be entitled to collect as damages from an owner or operator of an at-fault underinsured motor vehicle. An underinsured motor vehicle is a motor vehicle which is covered by some form of liability insurance, but that liability insurance coverage is not sufficient to fully compensate you for your damages. Your automobile insurance policy does not automatically provide any underinsured motorist coverage. However, you have the right to buy underinsured motorist coverage in limits up to the limits of liability coverage which you will carry under your automobile insurance policy. Some of the more commonly-sold limits of underinsured motorist coverage, together with the additional premiums which you will be charged, have been printed by your insurance company upon this Form. If there are other limits in which you are interested, but which are not shown upon this Form, then fill-in those limits in the blanks provided. If your insurance company is allowed to market those limits within this State, then your insurance agent will fill-in the amounts of increased premium.

It is important that you understand that, if you reject either one of these coverages upon this Form and if you are involved in an automobile accident, then this Form may be used by your insurance company as evidence against you if it denies your claim for additional uninsured motorist coverage or underinsured motorist coverage.

If you do not complete this Form and return it to us or to your insurance agent within 30 days from your receipt of this Form, then the law requires that additional uninsured motorist coverage and underinsured motorist coverage, in the same limits as the automobile liability insurance which you purchase, must be automatically added on to your automobile insurance policy. You will be required to pay an additional premium for each of these two coverages. If you do not pay that additional premium, then your automobile insurance policy may be canceled.

In the future, if you wish to increase or to decrease your limits either of additional uninsured motorist coverage or of underinsured motorist coverage, then you must then contact either your insurance agent or us. You will not be presented with another copy of this Form by your insurance agent or by us upon the renewal of your automobile liability insurance policy. You will not be presented with another copy of this Form by your insurance agent or by your current insurance company when you extend, change, supersede, or replace your automobile liability insurance policy.

Please read this Form carefully. Your insurance agent or your insurance company must answer any questions which you may have. If you have any further questions, then you should contact the State of South Carolina Department of Insurance. Its address and telephone number are:

Office of Consumer Services
State of South Carolina Department of Insurance
Capitol Center, 1201 Main Street, Suite 1000, Columbia, SC 29201
Post Office Box 100105, Columbia, SC 29202-3105
(803) 737-6180
(800) 768-3467
E-mail Address: Info@dol.sc.gov

II. OFFER OF ADDITIONAL UNINSURED MOTORIST COVERAGE

UM Limit	Commercial Vehicles		Private Passenger Vehicles
	Individual/Married Couple Annual Premium	All Other Annual Premium	All Other Annual Premium
\$ 75,000	\$17.00	\$11.00	\$16.00
\$100,000	\$17.00	\$12.00	\$18.00
\$250,000	\$20.00	\$15.00	\$22.00
\$300,000	\$20.00	\$15.00	\$23.00
\$350,000	\$20.00	\$16.00	\$23.00
\$500,000	\$21.00	\$17.00	\$24.00
\$1,000,000	\$22.00	\$18.00	\$27.00

Your Policy's Liability Coverage Limits: \$ 75,000Do you wish to purchase additional uninsured motorist coverage? Yes ☒ No ☐

If your answer is "no," then you must then sign here: _____

If your answer is "yes," then specify the limits which you desire. This limit cannot exceed your automobile insurance liability limit.

I select: \$ 75,000

III. OFFER OF UNDERINSURED MOTORIST COVERAGE

UIMBI Limit	Commercial Vehicles		Private Passenger Vehicles
	Individual/Married Couple Annual Premium	All Other Annual Premium	All Other Annual Premium
\$ 75,000	\$54.00	\$27.00	\$36.00
\$100,000	\$60.00	\$33.00	\$42.00
\$250,000	\$79.00	\$50.00	\$67.00
\$300,000	\$82.00	\$55.00	\$72.00
\$350,000	\$84.00	\$58.00	\$77.00
\$500,000	\$90.00	\$65.00	\$86.00
\$1,000,000	\$102.00	\$79.00	\$104.00

Your Policy's Liability Coverage Limit: \$ 75,000Do you wish to purchase underinsured motorist coverage? Yes ☐ No ☒If your answer is "no," then you must then sign here: Nothing To Sign

If your answer is "yes," then specify the limit which you desire. This limit cannot exceed your automobile insurance liability limit.

I select: \$ _____

IV. APPLICANT'S ACKNOWLEDGMENT

By my signature, I acknowledge that I have read - or I have had read to me - the above explanations and offers of additional uninsured motorist coverage and underinsured motorist coverage. I have indicated whether or not I wish to purchase each coverage in the spaces provided. I understand that the above explanations of these coverages are intended only to be brief descriptions of additional uninsured motorist coverage and underinsured motorist coverage, and that payment of benefits under either of these coverages is subject both to the terms and conditions of my automobile insurance policy and to the State of South Carolina's laws.

Type or Print Your Name: Nicky T. R. Phillips

Your Signature: *Nicky T. R. Phillips*

Your Address: [REDACTED]

Gaffney, SC

29340

Today's Date: 10/15/13

EXHIBIT 4

State of South Carolina)

County of Cherokee)

Nicky Ted Phillips and)

Gloria E. Phillips,)

Plaintiffs,)

v.)

American National Property)

and Casualty Company, Clyde)

McNeill Agency, and Clyde)

Edwin McNeill, individually)

and in his capacity as an)

agent of American National)

Property and Casualty)

Company,)

Defendants.)

2016-CP-11-00809

Deposition

of

Nickey Ted Phillips

Date: July 20, 2017

Time: 1:19 p.m.

Location: Roe Cassidy Coates & Price, PA, 1052 North

Church Street, Greenville, South Carolina

Reported by
Susan A. Wyant

- 1 sustained was right after this accident?
- 2 A That's -- that's correct.
- 3 Q Okay. Have you ever been convicted of a crime by
- 4 plea or trial?
- 5 A No, sir.
- 6 Q Have you ever been arrested for anything that did
- 7 not result in a conviction?
- 8 A No, sir.
- 9 Q Okay. How far did you go in school?
- 10 A Twelfth grade, Gaffney High School.
- 11 Q Did you graduate?
- 12 A Yes, sir.
- 13 Q Do you have any schooling at all beyond that at any
- 14 point?
- 15 A No, sir.
- 16 Q Okay. Not even like tech school or --
- 17 A No, sir.
- 18 Q Okay. Thank you. Are you employed now?
- 19 A No, sir.
- 20 Q When was the last time you were employed?
- 21 A I retired when I was 62 from Phillips Floor
- 22 Covering.
- 23 Q What did you do for them?
- 24 A I was Phillips Floor Covering.
- 25 Q That was -- you owned that business?

- 1 A Yes, sir.
- 2 Q Okay. Understood. So you were the -- was it
- 3 incorporated?
- 4 A No, sir.
- 5 Q Okay. You were sole proprietor? Just --
- 6 A (Nods head up and down.)
- 7 Q Okay. Did -- how many employees did you have?
- 8 A None.
- 9 Q So you did it all? You were just -- okay.
- 10 A Yes, sir. I'm sorry.
- 11 Q What type of flooring did you put in?
- 12 A Carpet, hardwood flooring, laminate flooring.
- 13 Q Did you do it for -- were you a sub to anybody in
- 14 particular?
- 15 A Just individuals. Residential. I'm sorry.
- 16 Q Did you do new construction or would -- or --
- 17 A No, sir.
- 18 Q So like people who had a house that wanted to redo
- 19 their floors, that's --
- 20 A Yes, sir.
- 21 Q Okay. That -- gotcha. And did you also deal in
- 22 the -- in the materials, or did you go get them
- 23 somewhere else when --
- 24 A Went and got them somewhere else.
- 25 Q Okay. Then you would --

1 we basically discussed that right there.

2 Q Okay.

3 A And he said, "Sign here, here, and here." And I
4 left.

5 Q Okay. Did you -- did -- at any point, did -- did
6 he discuss what kind of coverage you had on the
7 vehicle at the time?

8 A No, sir.

9 Q Did you know what kind of coverage you had on the
10 vehicle at the time?

11 A No, sir.

12 Q How did you know you needed more?

13 A I -- I knew -- I worked with the pipeline, and
14 we're paranoid about being sued by people.

15 Q Right.

16 A And, so, I didn't want nobody to sue and take away
17 everything I'd built for her over the years.

18 Q Okay.

19 A And, so, I just wanted to raise my insurance, and I
20 could afford it, and, so, I went and do it.

21 Q Okay. And that -- that did happen, correct? In
22 other words, the -- the bodily injury liability,
23 which is when you get sued, was raised, correct?

24 A Yes, sir. I didn't understand none -- I didn't
25 understand none of this till my daughter explained

1 it to me after I was in the accident.

2 Q Understood. Did -- do you recall specifically
3 discussing -- at -- did -- at the -- at this time,
4 did you also take out an umbrella policy? Do you
5 know what that is?

6 A No, sir.

7 Q Okay. Not a problem. Did you discuss the --
8 because there's various types of coverage that you
9 can purchase when you're -- for an automobile.
10 You've got your liability coverage, which is --
11 that covers you if someone else sues you and you're
12 concerned about, for instance, you know, if you're
13 underinsured and they would get a -- you know,
14 could make you sell your house or lose your
15 retirement money or something. That's the
16 liability coverage, okay? And you definitely
17 talked about that, correct?

18 A Well, me and him didn't talk about it, no, sir.

19 Q He -- he did not discuss that with you --

20 A No, sir.

21 Q -- in any way, shape, or form?

22 A No, sir.

23 Q Okay. But you expressed to him that you were
24 concerned about that, correct?

25 A I told him I wanted my insurance raised --

1 Q Right.

2 A -- because my daughter was in a wreck and her -- so
3 she told me her underinsured had to cover, which is
4 an -- had a broke back.

5 Q Right.

6 A And, not -- not long after that, her uncle-in-law
7 was in a wreck, and they were going to sue him and
8 take what he had. And the only thing I knew is I
9 need to raise my insurance.

10 Q Okay. All right. So you're -- you're -- you're --
11 just so I'm clear, other than you saying that you
12 -- you -- there's nothing else that you recall
13 saying about this meeting?

14 A Just that he said, "Sign, sign, sign, and I'll talk
15 to you later."

16 Q Did you discuss what it would cost you?

17 A No, sir.

18 Q So cost was not an issue?

19 A No, sir. It's never --

20 Q Okay.

21 A -- been an issue.

22 Q I'm just -- just checking to make sure. Did -- did
23 you discuss what would happen if -- if -- if you
24 were hit by someone who had no insurance?

25 A No, sir. We didn't discuss nothing like that.

1 Q Okay. Did you discuss what would happen if
2 somebody were to run into you who was -- who had
3 insufficient insurance?

4 A No, sir.

5 Q Okay.

6 A My --

7 Q At any time during this discussion, did y'all talk
8 about whether or not -- you know, what kind of
9 health insurance you had?

10 A No, sir.

11 Q What kind of health insurance did you have at that
12 time?

13 A I had -- my wife worked at Newark Electronics, and
14 we had BlueCross BlueShield.

15 Q Okay. Are -- are you on Medicare now?

16 A I am now. Yes, sir.

17 Q When did you go on Medicare?

18 A Six years ago.

19 Q Okay. So that would've been before this meeting in
20 2013, correct?

21 A No. Wait a minute, now.

22 Q If you don't -- if you know, I'll --

23 A Oh, I'm -- I'm sorry. I'm sorry. I -- you -- I'm
24 confused.

25 Q When did you become --

1 A -- to the best of my knowledge.

2 Q So -- and did you take out a policy on that, as
3 well?

4 A Yes, sir.

5 Q Okay.

6 A Can I explain that?

7 Q Okay. Yeah. Tell me about -- did you -- where did
8 that -- when you -- when you first took that, did
9 you call him or did you go see him about that, too?

10 A I called him about that.

11 Q Okay. And did y'all ever have a face-to-face
12 meeting about that?

13 A Well, it was a farm vehicle. It had a farm tag on
14 it.

15 Q Right. I understand. And it was on a different
16 policy, correct?

17 A He put it on the same policy, I think. I ain't
18 sure.

19 Q Okay. I'm going to show you -- let's look at this.

20 MR. HANNA: (To the court reporter) Number
21 10.

22 Defendants' Exhibit Number 10, American
23 National Property and Casualty Company
24 business automobile policy, dated
25 10/15/13.

1 Q Hand you what's marked Exhibit 10. That is a
2 business auto declaration page, and the name
3 insured on that is you, correct, Nickey Ted
4 Phillips?

5 A Yes, sir.

6 Q Okay. And the policy period on that would've been
7 October 15 through -- '13, through October 15, '14?

8 A (No audible response.)

9 Q It's right up under your name.

10 A Oh. Yes. Yes, sir.

11 Q Okay. So that -- that -- if I've got my dates
12 correct, that was about two weeks before you had
13 the meeting at his office, correct?

14 A Yes, sir.

15 Q Okay. I'm going to show you --

16 MR. HANNA: (To the court reporter) This is a
17 four-page document here.

18 THE COURT REPORTER: Okay.

19 Defendants' Exhibit Number 11, "American
20 National Property and Casualty Company
21 South Carolina Uninsured/Underinsured
22 Motorist Insurance Coverage Options."

23 Q All right. And I'm going to hand you -- this is a
24 four -- I'm going to hand you what's been marked as
25 Exhibit 11. It's four pages. Does -- does your

1 signature appear anywhere on that document?

2 A Yes, sir.

3 Q And where is that?

4 A Here.

5 Q And when you're saying "here," is that on Page 3,

6 at the bottom?

7 A Yes, sir.

8 Q And does it also appear on Page 4?

9 A Yes, sir.

10 Q Okay. Other than -- is any of the other

11 handwriting on that page or any of the -- anywhere

12 on here yours, other than your signatures?

13 A No, sir.

14 Q You -- do you recall signing that document?

15 A No, sir.

16 Q Do you know where you would've signed that

17 document?

18 A I would've signed it in his office --

19 Q Okay.

20 A -- in Clyde McNeill's office.

21 Q Gotcha. So on -- and the date on here is October

22 15, 2013?

23 A Yes, sir.

24 Q Okay. So is it possible that when you took out the

25 policy on the dump truck, that you did go to his

1 of what. -- what was supposed to have happened to
2 your coverage?

3 A I trusted him to take care of what I asked him to
4 do.

5 Q Which was what?

6 A Raise my insurance, all of it.

7 Q Okay. And did -- had -- had someone asked you to
8 go -- any of you family members asked you to go do
9 this?

10 A My daughter had mentioned it to me, that I need to
11 do it.

12 Q Okay. Did she seem to understand what it was?

13 A Yes, sir. I -- I can't say that. She knowed --
14 she knowed I needed insurance -- a lot of
15 insurance.

16 Q Okay. After you went in and were then sent Exhibit
17 9, did you ever check against Exhibit 9 to see
18 that, in fact, what you had asked had, in fact,
19 happened?

20 A No, sir.

21 Q Did you ask anyone else to look at it for you --

22 A No, sir.

23 Q -- to make sure that it had happened?

24 A I trusted him.

25 Q Okay. Let's look at Exhibit Number --

1 A No, sir.

2 Q Okay. Did you read the -- this thing when it came
3 in the mail to you?

4 A I don't understand all that, sir. I'm sorry.

5 Q You didn't ask anybody to help you with it?

6 A I trusted Clyde to take care of my insurance need.

7 Q Do you understand that Clyde actually gets -- makes
8 his money by a percentage of the premiums he sells?

9 A No, sir. I didn't know.

10 Q Okay.

11 A I don't know how he makes money.

12 Q Do you know why -- if -- if -- if he understood
13 that you wanted more coverage, do you have any
14 explanation of why he wouldn't do that, considering
15 he would make more money doing that?

16 A No, sir. I don't understand why.

17 Q Okay.

18 A I've asked myself that a lot.

19 Q Okay. Is it possible he didn't understand what it
20 was you wanted?

21 A No, sir. I explained it clear to him.

22 Q Okay. All right. Let's look at -- let me see
23 here.

24 When you went to purchase the -- the -- or
25 change -- make the change in your coverage, was

1 your wife aware that you were going to go do this?

2 A I don't know, sir.

3 Q Okay. And you believe that you had the authority
4 to act on her behalf as a result -- because it's
5 her policy, too?

6 A Yes, sir.

7 Q You -- you do believe you did?

8 A Yes, sir.

9 Q Okay. So, whether she knew or not, you believe it
10 would be -- that you had the ability to do that,
11 correct?

12 A Yes, sir.

13 Q Okay. When you had -- at the -- after you -- at
14 what point did you realize that the coverage was
15 not what you thought it was?

16 A After I came home from the hospital, Mr. McNeill
17 come by the house, and my daughter was sitting
18 there, and she said, "It's a good thing Dad upped
19 his insurance a few months back." And she
20 confronted --

21 And he said, "We didn't up -- didn't up the
22 underinsured."

23 And she confronted him, "Why?" because of what
24 I had told him. He got mad and stormed out of the
25 house and left --

- 1 A And that's --
- 2 Q -- do you think that he didn't do the right thing
- 3 on purpose?
- 4 A That's -- that's not for me to say, sir.
- 5 Q Okay.
- 6 A I mean, I guess. I don't -- I don't know.
- 7 Q I'm -- I'm -- do you assign any motive to doing it
- 8 on purpose, or you think it was an accident?
- 9 A It -- I would say it's a accident, probably. He
- 10 may have got busy and forgot to do what he's
- 11 supposed to do. That's all.
- 12 Q Okay.
- 13 A I don't know. My lawyer might hit me in the head
- 14 when I go out the door for saying something like
- 15 that.
- 16 Q As far as the -- the auto accident case you had
- 17 with the -- the -- was it a woman that ran into the
- 18 back of you?
- 19 A Yes, sir.
- 20 Q Okay. What is the status of that suit as far as
- 21 you know?
- 22 A It's still pending, some of it, sir, I think.
- 23 Q Okay. Have you personally received any monies or
- 24 thing of value as a result of that suit?
- 25 A No, sir.

- 1 Q Okay.
- 2 A I'm sorry.
- 3 Q That's fine.
- 4 A Okay.
- 5 Q That's fine. That's fine. I just -- that's why
- 6 I'm trying to clarify it.
- 7 A Yes, sir.
- 8 Q And the same thing --
- 9 A I -- I don't remember. I -- I know there wasn't no
- 10 writing at the bottom.
- 11 Q Okay. The -- nothing? What about where the X's or
- 12 the check-marks are?
- 13 A No, sir.
- 14 Q Okay. But you're not as sure, one way or the
- 15 other, about the -- the stuff inside these --
- 16 A No, sir.
- 17 Q -- it looks like a spreadsheet, for lack of a
- 18 better word; is that correct?
- 19 A Yes, sir.
- 20 Q Okay. All right. So the -- the -- just to --
- 21 we're on the same page, the handwritten numbers
- 22 you, for sure, don't remember being there; is
- 23 that --
- 24 A Yes, sir.
- 25 Q Okay. Gotcha. Understood. All right.

1 A Well, my lawyer --

2 Q Don't -- I'm not --

3 A I --

4 Q -- asking that -- what you had -- what you talked
5 about.

6 A Yes, sir. I ain't.

7 Q Do you know there was a -- is any -- are -- are any
8 of the parties of that lawsuit settled or is it
9 just your part that's still pending?

10 A Nobody's settled yet.

11 Q Okay. Do you know if the -- the International
12 Harvester, the dump truck, was on a separate policy
13 or the same policy? Or do you have any idea about
14 that?

15 A No, sir. I'm sorry. I don't know.

16 Q Okay. Do you -- when did your daughter have her --
17 her automobile accident?

18 A I'm sorry, sir?

19 Q When did your daughter have her automobile
20 accident?

21 A In Spartanburg.

22 Q And -- and when did that occur? Do you -- do you
23 know, approximately?

24 A Approximately -- I want to say it had probably been
25 12 years. Just a guess.

1 Q It was 12 years ago?

2 A Just a guess.

3 Q Okay. Do you know when your -- you said your son-
4 in-law was also in an -- in an automobile accident?

5 A My son-in-law's uncle.

6 Q Your son-in-law's uncle. Excuse me.

7 A Yes, sir.

8 Q Do you know when, approximately, that was?

9 A It was -- I believe it was in '13 -- early '13 or
10 something like -- or mid-'13.

11 Q Do you mean 2013?

12 A Yes, sir.

13 Q Okay.

14 MR. DERRICK: (To the deponent) Is that
15 Bruce's uncle?

16 THE DEPONENT: Yes.

17 MR. DERRICK: Thank you.

18 THE DEPONENT: Jerry Ellis was his name.

19 Q Is Bruce -- Bruce Welchel's uncle?

20 A Yes.

21 Q And his name is "Jerry Ellis"?

22 A Jerry Ellis.

23 Q Okay. And do you know if that went to a lawsuit?

24 A No, sir. I don't --

25 Q Okay.

1 A -- know for sure.

2 Q And you said that his experience is -- is what
3 prompted you to talk with Clyde McNeill about
4 raising your -- raising your insurance?

5 A Yes, sir.

6 MR. PLYLER: Give me just a minute, Mr. -- Mr.
7 Phillips. Let me check my notes.

8 (Off the record from 2:48 p.m. until
9 2:49 p.m.)

10 THE EXAMINATION BY MR. PLYLER CONTINUES.

11 Q Mr. Phillips, do you know if around the time
12 when -- and I think it's Exhibit Number 12 -- when
13 you signed, and I believe you said that is your
14 signature on that form, Exhibit --

15 A Yes.

16 Q -- Exhibit Number 12. Around the time where you
17 signed that document, do you -- did you go into
18 McNeill -- Clyde McNeill's office one time or two
19 times or three times? Or do you remember how many
20 times --

21 A No, sir.

22 Q -- you went there?

23 A One time I remember going in there.

24 Q Okay. One time -- one visit?

25 A One time.

EXHIBIT 5

ELECTRONICALLY FILED - 2018 May 08 4:09 PM - CHEROKEE - COMMON PLEAS - CASE#2016CP1100809

1 STATE OF SOUTH CAROLINA
2 COUNTY OF CHEROKEE COURT OF COMMON PLEAS
3 NICKY TED PHILLIPS and GLORIA E. PHILLIPS,
4 Plaintiffs,
5 vs. CASE NO. 2016-CP-11-0809
6 AMERICAN NATIONAL PROPERTY AND CASUALTY COMPANY,
7 CLYDE MCNEILL AGENCY, and CLYDE EDWIN MCNEILL,
8 Individually and in his capacity as Agent of
9 American National Property and Casualty Company,
Defendants.

10 DEPOSITION OF: CLYDE EDWIN MCNEILL
11 DATE: December 14, 2017
12 TIME: 2:10 PM
13 LOCATION: American National Insurance
14 1252 Overlook Drive, Suite 9
15 Gaffney, SC
16 TAKEN BY: Counsel for the Plaintiffs
17 REPORTED BY: AMY R. COPE,
18 Court Reporter

19 A. WILLIAM ROBERTS, JR., & ASSOCIATES
20 Fast, Accurate & Friendly
21 Charleston, SC Hilton Head, SC Columbia, SC
22 (843) 722-8414 (843) 785-3263 (803) 731-5224
23 Greenville, SC Myrtle Beach, SC Charlotte, NC
24 (864) 234-7030 (843) 839-3376 (704) 573-3919
25



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1 money, it's making sure that the client is properly
2 taken care of. Anyway, I did make the offer to
3 him, you know, explained it to him, I don't think I
4 need it right now. He just kind of brushed it off.

5 Q. Over the years since that initial
6 meeting, how has your relationship with the family,
7 has it grown?

8 A. Oh, yeah, Ted's --

9 Q. I'm just talking general right now.

10 A. -- I considered Ted to be a good friend
11 of mine; I really do. He's done some flooring in
12 my house. He's repaired cabinets in my house. I
13 bought a van from him to give to my son, my son
14 runs a construction business. I've always
15 considered Ted Phillips to be a friend of mine; I
16 really have.

17 Q. I'm sorry, the initial haircut or
18 whatever, that's the start of a good friendship or
19 whatever?

20 A. No, it didn't start with a good
21 friendship. Our friendship grew after our business
22 relationship. A friendship grew out of a business
23 relationship. He had insurance with Farm Bureau
24 prior to that, he had insurance during the time
25 that I worked with Farm Bureau, but I don't think

1 he knew me too well from Farm Bureau. 37

2 Q. Okay. Y'all cross paths socially or
3 anything like that?

4 A. Not really, other than just seeing him
5 at the Wal-Mart.

6 Q. That's right. That's a good place.
7 Tell me about how the Phillips usually bought or
8 changed their products --

9 A. Anytime they wanted to buy something,
10 they came to the office --

11 Q. They came here?

12 A. Yeah, after that initial meeting, you
13 know, they'd always come to the office. And
14 usually not they, just him.

15 Q. Okay. Would he just show up or would
16 he call up and say, hey, Clyde, I'm coming over --

17 A. Yeah, usually he'd call and make sure I
18 was here when he called.

19 Q. When he would call up here, would he
20 say what his general purpose was, say, get a quote
21 together for X or?

22 A. Right, he would say I want -- exactly,
23 precisely.

24 Q. So whenever he got here, I guess the
25 song and dance would kind of be over and it would

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1 So anyway, I'm thinking it's
2 October 13th or 15th, seemed like it was maybe just
3 a few days or a week and a half after this that we
4 wrote the -- we put the farm truck on. Then like
5 on, I think it was a week to ten days, I'm thinking
6 it's October 28th, okay?

7 Q. Did you say 28th or 20th?

8 A. 28th, 2-8, yes, sir. He came in the
9 office and wanted to see Clyde and I heard him,
10 because I recognize the voice. And I said, come on
11 in, Ted. I was sitting just like I am right now.
12 And as he's walking in the door, you know, he said,
13 Clyde, I wanted to come by and see you, Wendy, my
14 daughter, was talking about I needed to check with
15 you because she said that they had an accident and
16 something about they didn't have enough insurance.
17 I mean, I'm telling you that's all he said about
18 that.

19 I said, well, come in, Ted, let's talk
20 about what we can do for you, okay. And he said,
21 yeah, as he's sitting down, Ted's -- like I said,
22 Ted and I are pretty good -- and I still consider
23 us to be good close friends. Said, yeah, I just
24 want to make sure if I have an accident, that I'm
25 covered and I don't lose everything I've got. I

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1 want to make sure that if somebody sues me, I'm in
2 good shape. I said, well, Ted -- I got in to
3 telling him, you know, well, we probably need to
4 raise your limits because right now you are kind of
5 vulnerable, you know, we -- and I tried to remind,
6 I said, you know, remember the first time we wrote
7 this I made some offers to you, you just -- I know
8 you've got the money, I don't think -- I just think
9 that maybe you didn't think you needed it or
10 something. I said, but anyway, getting back to
11 that, and what I just told you I know for a fact is
12 not word-for-word, but in general that's what I
13 said, okay.

14 Q. Yeah.

15 A. And I'm trying my best to remember
16 exactly everything, okay.

17 Q. Okay.

18 A. And I said, you know, I believe -- you
19 know, I believe, you know, if you want to make sure
20 now -- and I also explained to him, I gave him my
21 same old pitch that I give to everybody, no amount
22 of insurance is ever going to fully protect you
23 from a lawsuit. But, you know, it's kind of like
24 building a wall, you know, the more insurance you
25 have, the bigger that wall is from somebody to get

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1 over and get through. I said, but I would
2 recommend that not only we raise your limits, but
3 you purchase an umbrella. And, you know, I had to
4 educate him about an umbrella. I explained that to
5 him, I said, you know, for the coverages that it
6 provides, it's really an inexpensive policy,
7 because you got -- that's why we make you raise
8 your limits is that those limits have got to be
9 exhausted first before the umbrella kicks in.

10 Okay. So I went through -- you know,
11 we went through the ANPAC policy, the personal
12 lines, the personal policy. And I raised his
13 limits to the 250/500/100, because those are split
14 limits. And I said, now, Ted, it's \$250,000, if
15 you have an accident with one person, as an
16 example, the first 250 will cover one person's
17 injuries, the 500 would cover all persons' injuries
18 that you're at fault for, and then up to \$100,000
19 for property damage.

20 And I said and now, you know, your
21 uninsured and underinsured, you know, I said, this
22 is to protect you in case that person doesn't have
23 limit -- any liability. Uninsured is mandatory in
24 South Carolina and the limit is 25/50/25. And then
25 you've got underinsured of 25/50/25 as well.

1 Well, he said -- Brooks, he said, I am
2 not so concerned about, you know, my injuries; me
3 getting hurt, I'm just concerned about if I have an
4 accident and it's my fault and somebody taking
5 everything I've got, okay.

6 Q. Okay.

7 A. So I said, you're sure you don't want
8 any additional uninsured or underinsured? No, I'm
9 not concerned about that. And I know if I didn't
10 say it three times, I said it at least times; I
11 asked him about it twice. So after explaining to
12 him what his limits meant, I X-ed here by the
13 signature line, and I X-ed here by -- now, on the
14 uninsured, it asks specifically: Do you wish to
15 purchase additional uninsured? And if you do not,
16 there's another line you have to sign, you have to
17 sign -- first of all, you have to X by the yes or
18 no. So I X-ed at the no. And then I X-ed where he
19 needs to sign it, okay. And said, you know, this
20 is where you sign if you don't want it.

21 And then this is where you sign if you
22 want, you know, the additional underinsured. He
23 necessarily didn't want it -- well, you know, he
24 didn't want to raise it or he didn't want it, and I
25 said, Ted, I think you need to at least have some,

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1 okay. All right, all right, okay, so he signed
2 that to purchase just the additional -- to have
3 additional underinsured coverage, okay. So I had
4 all that on there, okay, for that because we were
5 doing a new coverage policy, implemented the
6 change, you know, set the paperwork up for -- and
7 we wrote the umbrella, okay.

8 Sent that paperwork up to get
9 everything -- you know, it was bound when I signed
10 -- and then, of course, I have to sign it as well,
11 it was bound when I did it then, but of course, we
12 have to send it up through the checklist.

13 Q. Okay. And do -- that was all -- was
14 that all completed at one meeting?

15 A. Yes, sir. Just like right now, he took
16 care of that right there. He came into my office
17 and we made that change and I wrote his umbrella
18 for him all on the same day.

19 Q. Okay. Do you recall when you or
20 when -- when the limit, when the UM and the UIM
21 limits were ultimately raised a month or so
22 following the collision?

23 A. I do.

24 Q. How did that -- how did that transpire?

25 A. I went to go see Ted, Nicky Ted; I call

1 an umbrella. And I said, dad gone, I know that, so 74
2 I did and sent it in.

3 Q. Why didn't -- why didn't you get
4 Mr. Phillips to sign that thing?

5 A. Yeah, instead of putting request?

6 Q. Right.

7 A. Because it was a request from the home
8 office. And obviously we, you know -- as I told
9 him, since we had an umbrella, you know, we had to
10 raise all of his limits whenever we did write the
11 umbrella.

12 Q. Okay. So wouldn't need his signature
13 on that one, I guess, right?

14 A. No, sir. Actually, technically, as far
15 as liability goes, you know, adding coverage really
16 doesn't require signatures because you're giving
17 coverage. The only time that signature is really
18 required is when you're taking coverage away. Like
19 say --

20 Q. I understand.

21 A. Okay. I was referring to an existing
22 policy, sorry.

23 (PLF. EXH. 16, E-mail from Farm Family,
24 dated October 28, 2013, Bates stamped McNeill_0781,
25 was marked for identification.)

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1 we going through section two first and then section
2 three --

3 A. Yes, sir, you're talking about on the
4 offer of coverage form?

5 Q. I'm talking about this exhibit that
6 we're looking at, Exhibit Number 7.

7 A. Yes, sir. Well, you're talking about
8 number two and number three, are you talking about
9 the uninsured questionnaire and then the
10 underinsured offer of coverage?

11 Q. Yes, sir, I'm sorry, I misunderstood
12 you --

13 A. That's okay.

14 Q. -- I'm asking if you go through it
15 section-by-section and have him sign each time?

16 A. Yes, sir. Uh-huh.

17 Q. Well, let's turn then to page 3 and
18 there's a section at the top for uninsured motorist
19 property damage coverage. And are those values,
20 the premium numbers, are those automatically filled
21 in when the document is printed?

22 A. Yes, sir.

23 Q. In the box where there's some writing,
24 the question reads: Do you wish to purchase
25 additional uninsured motorist property damage

EXHIBIT 6

ID# _____

- ☐ New Business 11
- ☐ Change Effective Date.....
- ☐ Renewal of
- ☐ Renewal 27
- ☐ Multiple Named Insureds
- ☐ Trial Application

TO PRODUCTION
NOV 15 2013

Initials		Date		☐ Renewal of ☐ Renewal 27 ☐ Multiple Named Insureds ☐ Trial Application			
Und	DP	11/18/13		☐ RENEWAL STOP			
Accol	Emt	11-19-13		Policy No.	Pay Plan	Effective Date	Expiration Date
Name		Age No.	Percentage	3901B0413	1	10-28-10	2P
Policy Agent		Age No.	Percentage	Policy Limit Per Occurrence	\$1,000,000	Self Insured Retention \$1,000	

Number of rental units: _____

998021060

PLAINTIFFS
EXHIBIT
14
MAY 15/14

ANPAC 000578
⑤ 11/60

A- Add C- Change D- Delete (These codes not required for new business.)

A	C	D	No.	Name of Insured (Policy and Invoice to be mailed to this insured)	Business Name	☐ Individual ☐ Partnership ☐ Corporation ☐ Joint Venture ☐ Trust ☐ Estate ☐ Other	
			1	Phillips		PO Box	RR No.
				Address		Rural Box No.	
				City		Zip Code Plus Four	
				Occupation or Profession		Gross Farm Income	Type of Farming
				Home Phone Number	Business Phone Number	DOB	Social Security Number
				Custom Farming Income	Self Employed other than farming?	If Yes, describe employment	Self-emp. Income
							Basic Premium
							85.2
				CARS, LIGHT AND MEDIUM TRUCKS		No. of:	HR PREMIUM
				HEAVY AND EXTRA - HEAVY TRUCKS		No. of:	2 120.00
				TRUCK/TRACTORS traveling within 60 mile radius (NOT Farm Tractors)		No. of:	X 75.00
				TRUCK/TRACTORS traveling over 60 but not more than 160 mile radius (NOT Farm Tractors)		No. of:	1 21.17 1/20
				MOTOR HOMES		No. of:	2 1.1
						No. of:	2 1.1
				COMPLETE FOR ALL INEXPERIENCED OPERATORS (HOUSEHOLD) (Licensed less than 5 years)			
				NAME & DATE OF LICENSE		NAME & DATE OF LICENSE	
				1.		3.	
				2.		4.	
				WHEN PRIMARY AUTO INSURANCE IS NOT WITH ANPAC, COMPLETE THE FOLLOWING FOR ALL OPERATORS:			
				OPERATOR'S NAME (Last/First/MI)	DATE OF LICENSE	SEX	STATE LICENSED
				OFF - PREMISE SNOWMOBILE LIABILITY			
				No. of Snowmobiles:			
				OFF - PREMISE ATV LIABILITY			
				No. of ATVs:			
				BUSINESS ACTIVITIES: Describe business activities			
				No. of Activities:			
				RETAIL FARM STAND			
				OTHER RETAIL STORES: Describe:			
				Farm Stand Gross Sales \$			
				PICK YOUR OWN: ☐ Yes with ladders ☐ Yes and/or saws ☐ No			
				Gross Sales \$			
				PRIVATE HORSE LIABILITY			
				No. of Owned Horses:	No. of Non-owned Horses:		
				Receipts for Hay/Sleigh rides \$			
				WATERCRAFT LIABILITY (Classify sailboats over 26ft. as 51-100 HP)			
				No. of Boats 51-100 HP	No. of Boats 101-150 HP	Not Applicable (N/A)	
				No. of Boats 151-200 HP			
				MOTORCYCLE - Motorcycle coverage is excluded unless requested. Must be answered. ☐ N/A			
				Is the insured maintaining the maximum state limits available under the AIP? ☐ Yes ☐ No			
				Is Motorcycle coverage desired? ☐ Yes ☐ No			
				If Yes, how many?			
				INCIDENTAL SNOWFLOWING: ☐ Yes ☐ No			
				Gross Receipts \$			
				Check if occupation or activity is to be excluded - Describe:			
				Limits			
				TOTAL \$			
				335			

American National Property And Casualty Company

PHILLI-000000579

ANPAC 000579

Remarks:
Form:

Total Premium Named Insured No. 1	
Total Premium Named Insured No. 2	
Total Premium Named Insured No. 3	
Total Premium All Others	
TOTAL POLICY PREMIUM	275⁰⁰

Schedule of Minimum Primary Limits Warranted To Be In Effect at All Times -					
POLICY TYPE	BODILY INJURY		PROPERTY DAMAGE		CSL PER OCCURRENCE
	PER PERSON	PER OCCURRENCE			
Personal Automobile	\$250,000	\$500,000	\$100,000	or	\$300,000
Commercial Automobile	\$500,000	\$1,000,000	\$100,000		\$500,000
--- Maximum available under State Automobile Insurance Plan ---					
Motorcycle					
Recreational Vehicle	\$250,000	\$500,000	\$100,000	or	\$300,000
Personal Liability	\$300,000	\$300,000	\$100,000	or	\$300,000
Farm Liability	\$300,000	\$300,000	\$100,000	or	\$300,000
Business Liability					
Farm Stands	\$300,000	\$300,000	\$100,000	or	\$300,000
CGI for Private Horse Risk	\$500,000	\$1,000,000	\$100,000	or	\$500,000
Watercraft	\$300,000	\$300,000	\$100,000	or	\$300,000
Employer's Liability		\$100,000			

Fair Credit Reporting Act Notification American National Property And Casualty Company (The Company) at 1949 E. Sunshine, Springfield, Missouri 65899, (417)887-9220, may request an investigative consumer report from the following agencies: LexisNexis Risk Solutions Inc.; Hock Associates Insurance Services Office, Inc.; Inspect A Risk; and others as we deem appropriate. Subsequent consumer reports may also be requested in connection with renewal of any issued policy. We will use the report to verify information obtained in connection with the insurance for which you applied. This report may also contain information about your character, general reputation, personal characteristics, mode of living, or the use or condition of any property you want insured. We will use the report to determine whether you are eligible for the insurance you requested. Upon written request, we will disclose whether any report was requested. If you contact any agency preparing an investigative consumer report, you may see and receive a copy of that report. I authorize the procurement or preparation of an investigative consumer report.

Nicky Ted Phillips
 APPLICANT'S SIGNATURE

10.28.13
 DATE

Anti-fraud Warning Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information or conceals for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties.

☐ **NOT BOUND** - Use Only by Special Agreement with the Applicant.
 I understand that this Application is not binding upon the Company until this Application is approved by the Company.

Date: _____
 X
 Signature of Applicant

I warrant that the information on this Application is true and complete for all proposed insureds, and that the Insurance Company will rely upon the information herein, to the end that I may obtain the requested insurance.

Date *10.28.13*

Applicant's Signature *Nicky Ted Phillips*

Date *10.28.13*

Agent's Signature *[Signature]*

American National Property And Casualty Company

ANPAC 000580

PHILLY-000000580

EXHIBIT 7

Phillips, Nicky T.

AMERICAN NATIONAL PROPERTY AND CASUALTY COMPANY
AMERICAN NATIONAL GENERAL INSURANCE COMPANY

02

OFFER OF OPTIONAL ADDITIONAL UNINSURED MOTORIST COVERAGE
AND OPTIONAL UNDERINSURED MOTORIST COVERAGE

I. EXPLANATION OF COVERAGES

Automobile liability insurance coverage pays other motor vehicle drivers and their passengers for damages caused by you and for which you are legally responsible. There are two types of automobile liability insurance coverage: bodily injury and property damage. Bodily injury coverage pays for bodily injuries to others inflicted by your motor vehicle. Property damage coverage pays for damages which your motor vehicle causes to other motor vehicles or property.

Under South Carolina law, an insurance company may refuse to write your automobile liability insurance for a number of reasons. If an insurance company decides to write your automobile liability insurance coverage, however, it must provide at least \$25,000.00 of bodily injury coverage for each person whom you may injure in any single accident and \$50,000.00 of bodily injury coverage for two or more people whom you may injure in any single accident. The insurance company must also provide at least \$25,000.00 in property damage coverage for each accident you may cause. You may have seen these limits described as \$25,000/\$50,000/\$25,000 or 25-50-25. These limits are commonly-known as minimum limits. In order to drive your automobile upon the roads of this State, you must have at least these minimum limits of insurance, unless you post a satisfactory bond or pay a \$650 fee to drive uninsured. There is no requirement that an insurance company offer higher than minimum limits of automobile liability insurance coverage. If your insurance company does offer more than the minimum limits, you will be required to pay an additional premium for those increased limits of protection.

An insurer that writes your automobile liability insurance coverage must also offer two additional coverages which will protect you in the event you are damaged in an automobile accident by an at-fault driver who either has no automobile insurance or whose automobile insurance liability limits are less than the damages in that accident. These coverages are termed additional uninsured motorist coverage and optional underinsured motorist coverage, respectively. You may also see them referred to as UM and/or UIM. If you decide to purchase either of these coverages, you will be required to pay an additional premium for each of these coverages.

Uninsured motorist coverage compensates you, or other persons insured under your automobile insurance policy, for amounts which you may be legally entitled to collect as damages from an owner or operator of an at-fault uninsured motor vehicle. An uninsured motor vehicle is a motor vehicle which either has no liability insurance coverage or is operated by a hit-and-run driver. By law, your automobile insurance policy automatically provides uninsured motorist coverage of \$25,000/\$50,000/\$25,000. There is a \$200 deductible for uninsured property damage claims.

You also have the right to buy additional uninsured motorist coverage, in various limits up to the limits of the liability coverage you have purchased. The limits of additional uninsured motorist coverage which your insurance company is authorized to write and for which you are eligible are shown on this form, together with the additional premium for those increased limits. You may not purchase uninsured motorist coverage with limits in excess of your liability limits.

Underinsured motorist coverage compensates you, or other persons insured under your automobile insurance policy, for amounts which you legally may be entitled to collect as damages from an owner or operator of an at-fault underinsured motor vehicle. An underinsured motor vehicle is a motor vehicle which is covered by some form of liability insurance, but which is insufficient to fully compensate you for your damages.

Your automobile insurance policy does not automatically provide any underinsured motorist coverage. However, you have the right to buy, and your insurance company is required to offer, optional underinsured motorist coverage in various limits up to the limits of liability coverage you have purchased. The limits of optional underinsured motorist coverage which your insurer is authorized to write and for which you are eligible are shown on this form, together with the additional premiums for those limits. You may not purchase underinsured motorist coverage with limits in excess of your liability limits.

If you reject optional underinsured or additional uninsured motorist coverages shown on this form and if you are involved in an automobile accident that is not your fault, this form may be used by your insurance company as evidence against you if you make a claim for additional uninsured motorist coverage or optional underinsured motorist coverage.

If you do not complete this form and return it to your insurance company or insurance agent within 30 days, your insurance company is required by law to add additional uninsured motorist coverage and optional underinsured motorist coverage, in the same limits as your automobile liability insurance, to your automobile insurance policy. You will be required to pay an additional premium for each of these coverages and your policy may be canceled for non-payment of that additional premium.

SA-1427 (6-07)

1



Phillips, Nicky Ted

In the future, if you wish to increase or to decrease your limits of additional uninsured motorist coverage or optional underinsured motorist coverage, you must contact either your insurance agent or your insurance company. You will not be presented with another copy of this form by your insurance agent or your insurance company upon the renewal of your automobile liability insurance policy. You will not be presented with another copy of this form by your insurance agent or current insurance company when you extend, change, supersede, or replace your automobile liability insurance policy.

Please read this form carefully. Your insurance agent or your insurance company must answer any questions which you may have. If you have any further questions, you may contact the Department of Insurance at:

Office of Consumer Services
State of South Carolina Department of Insurance
1201 Main St., Ste. 1000
Post Office Box 100105
Columbia, South Carolina 29202-3105
(803) 737-8180
(800) 788-3467
E-mail Address: ChsmMail@dol.state.sc.us

These Vehicle Descriptions Apply to All Coverages Listed Below:

Veh. 1 - Description 04 GMC ENVOY SLE 4D VIN 1GKDS13S742194281
Veh. 2 - Description 05 TOY TACOMA REG CAB 4WD VIN 5TEPX42N46Z075527
Veh. 3 - Description _____ VIN _____
Veh. 4 - Description _____ VIN _____

II. OFFER OF ADDITIONAL UNINSURED MOTORIST COVERAGE

Minimum uninsured motorist coverage limits of \$25,000/\$50,000/\$25,000 are automatically provided by your insurance policy. If you select additional uninsured motorist coverage, the premium charge will be increased. The schedule below indicates the premium charges for minimum and increased limits:

UNINSURED MOTORIST BODILY INJURY COVERAGE

Limits of Coverage			Premium			
			Vehicle 1	Vehicle 2	Vehicle 3	Vehicle 4
\$ 25,000	/	\$ 50,000	\$ 10	\$ 9	\$ 0	\$ 0
\$ 50,000	/	\$100,000	11	10	0	0
\$100,000	/	\$300,000	12	10	0	0
\$250,000	/	\$500,000	15	13	0	0
\$300,000	/	\$500,000	17	15	0	0
\$500,000	/	\$500,000	17	15	0	0
\$500,000	/	\$1 Million	19	16	0	0
\$1 Million	/	\$1 Million	22	19	0	0

This section is not to be marked by anyone other than the applicant/insured.

Do you wish to purchase additional Uninsured Motorist Bodily Injury Coverage? Yes ☒ No ☒

If your answer is "no", then you must sign here: Nicky Ted Phillips

If your answer is "yes", then specify the limits which you desire. These limits cannot exceed your automobile insurance liability limits and must be the same for all vehicles on this policy.

I select _____ / _____ limits.

UNINSURED MOTORIST PROPERTY DAMAGE COVERAGE

Limits of Coverage	Premium			
	Vehicle 1	Vehicle 2	Vehicle 3	Vehicle 4
\$25,000	\$ 4	\$ 4	\$ 0	\$ 0
\$50,000	6	6	0	0
\$100,000	8	8	0	0
\$250,000	10	10	0	0

This section is not to be marked by anyone other than the applicant/insured.

Do you wish to purchase additional Uninsured Motorist Property Damage Coverage? Yes ☒ No ☒

If your answer is "no", then you must sign here: Nicky Ted Phillips

If your answer is "yes", then specify the limits which you desire. These limits cannot exceed your automobile insurance property damage liability limits.

I select _____ limit for Veh. 1

I select _____ limit for Veh. 3

I select _____ limit for Veh. 2

I select _____ limit for Veh. 4

III. OFFER OF UNDERINSURED MOTORIST COVERAGE

Minimum underinsured motorist coverage limits are \$25,000/\$50,000/\$25,000. If you select additional underinsured motorist coverage, the premium charge will be increased. The schedule below indicates the premium charges for minimum and increased limits:

UNDERINSURED MOTORIST BODILY INJURY COVERAGE

Limits of Coverage			Premium			
			Vehicle 1	Vehicle 2	Vehicle 3	Vehicle 4
\$ 25,000	/	\$ 50,000	\$ 44	\$ 37	\$ 0	\$ 0
\$ 50,000	/	\$100,000	61	53	0	0
\$100,000	/	\$300,000	73	63	0	0
\$250,000	/	\$500,000	106	91	0	0
\$300,000	/	\$500,000	116	100	0	0
\$500,000	/	\$500,000	120	104	0	0
\$500,000	/	\$1 Million	138	120	0	0
\$1 Million	/	\$1 Million	160	138	0	0

This section is not to be marked by anyone other than the applicant/insured.

Do you wish to purchase Underinsured Motorist Bodily Injury Coverage? Yes ☒ No ☒

If your answer is "no", then you must sign here: _____

If your answer is "yes", then specify the limits which you desire. These limits cannot exceed your automobile insurance liability limits and must be the same for all vehicles on this policy.

I select 250,000 limits.

UNDERINSURED MOTORIST PROPERTY DAMAGE COVERAGE

Limits of Coverage	Premium			
	Vehicle 1	Vehicle 2	Vehicle 3	Vehicle 4
\$25,000	\$ 1	\$ 1	\$ 0	\$ 0
\$50,000	2	2	0	0
\$100,000	3	3	0	0
\$250,000	3	3	0	0

This section is not to be marked by anyone other than the applicant/insured.

Do you wish to purchase Underinsured Motorist Property Damage Coverage? Yes ☒ No ☐

If your answer is "no", then you must sign here: _____

If your answer is "yes", then specify the limits which you desire. These limits cannot exceed your automobile insurance property damage liability limits.

I select 25,000 limit for Veh. 1

I select _____ limit for Veh. 3

I select 25,000 limit for Veh. 2

I select _____ limit for Veh. 4

IV. APPLICANT'S ACKNOWLEDGMENT

By my signature, I acknowledge that I have read -- or I have had read to me -- the above explanations and offers of additional uninsured motorist coverage and optional underinsured motorist coverage. I understand that the above explanations of these coverages are intended only to be brief descriptions of additional uninsured motorist coverage and optional underinsured motorist coverage, and that payment of benefits under either of these coverages is subject both to the terms and conditions of my automobile insurance policy and to the laws of the State of South Carolina.

My signature below further acknowledges that I understand the coverages as they have been explained to me, and the type and amounts of coverage marked on the preceding pages have been selected by me. This is the type and amount of insurance coverage I wish to purchase.

Type or Print Your Name: Phillips, Nicky Ted

Your Signature: Nicky Ted Phillips

Your Address: [REDACTED]
Gaffney, SC 29340

Today's Date: 5/8/28-13

EXHIBIT 8

ELECTRONICALLY FILED - 2018 May 08 4:09 PM - CHEROKEE - COMMON PLEAS - CASE#2016CP1100809

State of South Carolina)

County of Cherokee)

Nicky Ted Phillips and
Gloria E. Phillips,

Plaintiffs,

v.

American National Property
and Casualty Company, Clyde
McNeill Agency, and Clyde
Edwin McNeill, Individually
and in his capacity as an
agent of American National
Property and Casualty
Company,

Defendants.

2016-CP-11-00809

Deposition

of

Gloria E. Phillips

Date: July 20, 2017

Time: 2:55 p.m.

Location: Roe Cassidy Coates & Price, PA, 1052 North
Church Street, Greenville, South Carolina

Reported by
Susan A. Wyant

1 Q Okay. And the last time you were employed by them,
2 how -- when did you retire?

3 A November the 15th in 2014.

4 Q Okay.

5 A Thirteen I mean, thirteen.

6 Q Gotcha. All right. All right. As far as the
7 background information I want, as far as dealing
8 with Mr. McNeill or the McNeill Agency, have you
9 ever had any personal dealings with them?

10 A The only thing I went up there and did was transfer
11 my 401K when I retired.

12 Q Okay. But that would've been sometime in 2013?

13 A Uh-huh.

14 Q Okay. Around that time? Okay.

15 Have you ever had any discussions that you can
16 recall with Mr. McNeill or anybody at his agency
17 regarding the changes to the insurance that we've
18 been talking about --

19 A No.

20 Q -- relative to this suit?

21 A No.

22 Q At the time that your husband went to go do that,
23 were you aware that he was going to do that?

24 A No.

25 Q Okay. Do you believe that he had the authority to

1 do that --

2 A Yes.

3 Q -- for you?

4 A Yes.

5 Q Okay. Gotcha. When I looked through some of our
6 files, I could only find one -- I'm going to make
7 one --

8 MR. HANNA: (To the court reporter) Let's
9 make this Exhibit 1 to her exhibit (as
10 spoken.)

11 Defendants' Exhibit Number 1, "American
12 National Property and Casualty Company
13 American National General Insurance
14 Company Offer of Optional Additional
15 Uninsured Motorist Coverage and Optional
16 Underinsured Motorist Coverage."

17 Q There we go. Okay. I'm going to hand you what's
18 been marked as Exhibit 1 to your exhibit -- excuse
19 me -- to your deposition. It's a four-page
20 document.

21 A It's when I got the Envoy. Yes.

22 Q There's one more page, just to make sure you look
23 at them all. There should be four. My question
24 is: Does -- do you recognize your signature on any
25 of those pages?

EXHIBIT 9

ELECTRONICALLY FILED - 2018 May 08 4:09 PM - CHEROKEE - COMMON PLEAS - CASE#2016CP1100809

ANPAC1949 E. SUNSHINE
SPRINGFIELD, MISSOURI 65899-0001
(417) 887-0220
www.anpac.com**AMERICAN NATIONAL PROPERTY AND CASUALTY CO**POLICY NUMBER
39-A-448-05L-0
POLICY TERM03-30-14 TO 09-30-14
AND SUBSEQUENT RENEWALS.THIS FAMILY AUTOMOBILE RENEWAL DECLARATION
REPLACES ALL PRIOR DECLARATIONS, IF ANY, AND WITH POLICY PROVISIONS AND
ANY ENDORSEMENTS ISSUED TO FORM A PART THEREOF COMPLETES THIS POLICY.

METHOD OF PAYMENT: INSURED BILL

NAMED INSURED AND ADDRESSPHILLIPS, NICKY TED & GLORIA E
4890 W. 11TH ST
SPRINGFIELD, MO 65803-3746**RATING ADDRESS:**4890 W. 11TH ST
SPRINGFIELD, MO 65803-3746AGENT: D2899-T 1-HEC
CLYDE MCNEILLFOR CUSTOMER SERVICE:
864-488-0044**DESCRIPTION OF INSURED PROPERTY**

RATED	VEH DR	DESCRIPTION	ID. NUMBER	TYPE
1	2	2004 GMC ENVOY SLE 4D	1GKDS13S742194281	AUTO
2	1	2005 TOY TACOMA REG CA	5TEPX42N46Z075527	PICKUP

RATING INFORMATION, COVERAGES, PREMIUMS, AND LIMITS OF LIABILITY

INSURANCE IS PROVIDED ONLY WITH RESPECT TO THOSE OF THE FOLLOWING COVERAGES WHICH ARE INDICATED BY A SPECIFIC LIMIT OF LIABILITY AND/OR PREMIUM APPLICABLE THERETO.

VEHICLE	04 GMC ENVOY SLE	05 TOY TACOMA REG
BODILY INJURY LIABILITY	\$48.00	\$30.00
LIMIT PER PERSON/OCCURRENCE	250,000/500,000	250,000/500,000
PROPERTY DAMAGE LIABILITY	\$19.00	\$13.00
LIMIT PER OCCURRENCE	100,000	100,000
UNINSURED MOTORIST	\$14.00	\$19.00
LIMIT PER PERSON/ACCIDENT	25,000/50,000	25,000/50,000
PROPERTY DAMAGE (\$200 DED.)	25,000	25,000
UNDERINSURED MOTORIST	\$45.00	\$39.00
LIMIT PER PERSON/ACCIDENT	25,000/50,000	25,000/50,000
PROPERTY DAMAGE	25,000	25,000
COMPREHENSIVE	NO COVERAGE	NO COVERAGE
COLLISION	NO COVERAGE	NO COVERAGE
TOTAL	\$124.00	\$95.00



IMPORTANT NOTICE: THIS POLICY REDUCES THE APPLICABLE LIMITS FOR BODILY INJURY LIABILITY, PROPERTY DAMAGE LIABILITY, UNINSURED MOTORIST AND UNDERINSURED MOTORIST COVERAGES SHOWN ON THIS DECLARATIONS PAGE TO THE LEGALLY REQUIRED MINIMUM FINANCIAL RESPONSIBILITY LIMITS IN THE STATE WHEN AN INSURED VEHICLE IS OPERATED BY ANYONE OTHER THAN YOU OR A RELATIVE.

	VEHICLES	ENDORSEMENTS	TAX/FEE	TOTAL PREMIUM	
TOTAL PREMIUMS	\$219.00	\$0.00	U.M. FUND \$2.00	\$221.00	CLYDE MCNEILL AUTHORIZED REPRESENTATIVE
DATE PRINTED	02/28/14				

SEE DECLARATION SECTION II FOR ADDITIONAL INFORMATION
SEE REVERSE SIDE FOR IMPORTANT INFORMATION

SM-484 (1-08)

THIS IS NOT A BILL

ELECTRONICALLY FILED - 2018 May 08 4:09 PM - CHEROKEE - COMMON PLEAS - CASE#2016CP1100809

STATE OF SOUTH CAROLINA)

COUNTY OF CHEROKEE)

Nicky Ted Phillips and Gloria E. Phillips,)

Plaintiffs,)

vs.)

American National Property and Casualty Company, Clyde McNeill Agency, and Clyde Edwin McNeill, individually and in his capacity as agent of American National Property and Casualty Company.)

Defendants.)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Civil Action No.: 2016-CP-11-00809

**DEFENDANT AMERICAN NATIONAL
PROPERTY AND CASUALTY
COMPANY'S MEMORANDUM
IN SUPPORT OF
SUMMARY JUDGMENT**

COMES NOW, Defendant, America National Property and Casualty Company ("ANPAC"), by and through its undersigned counsel, in support of its 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 to dispute that ANPAC made Plaintiffs a meaningful offer of underinsured motorist (UIM) coverage, and ANPAC is entitled to judgment as a matter of law on Plaintiffs' claims against ANPAC.

Factual and Procedural History

Plaintiffs Nicky Ted Phillips and Gloria Phillips were involved in an automobile accident on August 9, 2014 with Holly Marie Ivey. Plaintiff Nicky Phillips was driving his 2005 Toyota Tacoma truck, and Plaintiff Gloria Phillips (spouse) was riding as passenger. Nicky Phillips alleges that as a result of that accident, he was seriously and permanently injured. (Compl. 27.) Plaintiffs filed suit against Holly M. Ivey on May 5, 2015, alleging negligence and negligent infliction of

emotional distress. That lawsuit remains pending. (Ex. A, Nicky Phillips Dep. at 55.)¹ On December 7, 2016, Plaintiffs filed this present action against ANPAC and Clyde McNeill Agency alleging generally that Plaintiff Nicky Phillips had requested his agent raise all his insurance coverage levels (including UIM), but that after their automobile accident, they were surprised to learn that only their liability coverages had been raised and their UIM coverage remained at \$25,000 per person / \$50,000 per accident. (Compl. 18, 29-30.)

ANPAC Personal Automobile Policy

Plaintiffs had been insured with ANPAC since approximately 2005. (Ex. A, Nicky Phillips Dep. at 18-20.) At issue is the Phillips' personal automobile policy, ANPAC Policy 39-A-448-05L-0, which was in place since 2010 with liability policy limits of \$50,000.00 per person/\$100,000 per accident and underinsured motorist (UIM) coverage limits of \$25,000.00 per person/\$50,000 per accident. (Id. at 21-22, Dep. Ex. 1). On March 20, 2011, the Phillips made a change to the policy to delete one vehicle and add a 2005 Toyota Tacoma, the vehicle that was involved in the August 9, 2014 accident. (Id. at 23-24, Dep. Ex. 3). The policy continued unchanged until October 14, 2013 when the liability limits were raised to \$250,000 per person / \$500,000 per accident.² (Id. at 29-30, Dep. Ex. 9; Ex. B, Clyde McNeill Dep. at 52-54, Depo. Ex. 3, 4.) However, the UIM coverage limits remained at \$25,000 per person / \$50,000 per accident. (Ex. A, Nicky Phillips Dep. at 29-30, Dep. Ex. 9.) There is no dispute that the policy in place at

Exhibits attached to this memorandum are as follows:

- Exhibit A : Excerpts and Exhibits from Plaintiff Nicky Phillips Deposition
- Exhibit B : Excerpts and Exhibits from Defendant Clyde McNeill Deposition
- Exhibit C : October 28, 2013 UIM Select/Reject Form
- Exhibit D : Excerpts and Exhibits from Plaintiff Gloria Phillips Deposition

² Around this same date (October 15, 2013), Nicky Ted Phillips purchased a commercial auto policy to insure a 1984 International Harvester dump truck. This policy is not at issue in ANPAC's motion for summary judgment.

the time of the accident was for the policy period March 30, 2014 to September 30, 2014 and contained liability coverage of \$250,000 per person / \$500,000 per accident and UIM coverage of 25,000 per person and \$50,000 per accident. (Ex. A, Nicky Phillips Dep. at 46-47, Dep. Ex. 13.)

October 28, 2013 UIM Select/Reject Form

On October 28, 2013, Nicky Phillips went to the office of Clyde McNeill Agency to discuss these changes to his policy.³ (Ex. A, Nicky Phillips Dep. at 31; Ex. B, Clyde McNeill Dep. at 42-46.) At this meeting, Nicky Phillips signed ANPAC's Offer of Optional Additional Uninsured Motorist Coverage and Optional Underinsured Motorist Coverage form ("UIM select/reject form") in three (3) places, selecting UIM coverage levels in the amount of \$25,000 per person and \$50,000 per accident. (Ex. A, Nicky Phillips Dep. at 42-43, Dep. Ex. 12; Ex. B, Clyde McNeill Dep. at 83-91, Dep. Ex. 7; Ex. C, October 28, 2013 UIM Select/Reject Form.) Phillips acknowledged that he signed the UIM select/reject (Ex. A, Nicky Phillips Dep. at 42-43, Dep. Ex. 12; Ex. B, Clyde McNeill Dep. at 83-91, Dep. Ex. 7).

ANPAC Made a Meaningful Offer of UIM to Phillips

There is no genuine issue of material fact that Nicky Ted Phillips was given a meaningful offer of UIM, and the Court should grant ANPAC summary judgment. In the alternative, ANPAC moves for summary judgment that the UIM select/reject form executed by Plaintiff Nicky Ted Phillips and dated October 28, 2013, complies with S.C. Code Ann § 38-77-350(A).

Automobile insurance carriers are required to offer "at the option of the insured, UIM coverage up to the limits of the insured's liability coverage to provide coverage in the event that damages are sustained in excess of the liability limits carried by an at-fault insured or underinsured

³ This same date (October 28, 2013), Nicky Ted Phillips signed an application for a farm umbrella insurance policy (Policy No. 3901B0413) that is not at issue in this case. The umbrella policy went into effect on that date.

motorist." S.C. Code Ann. § 38-77-160. Further, the insurer bears the burden of establishing it made a meaningful offer to an insured. *See Butler v. Unisun Ins. Co.*, 323 S.C. 402, 405, 475 S.E.2d 758, 759 (1996). Only if the insurer fails to comply with its duty to provide a meaningful offer, the policy will be reformed to include UIM coverage up to the limits of liability insurance carried by the insured. *Id.*

The insurer enjoys a presumption that a meaningful offer has been made when a form offering UIM coverage complies with the requirements set forth in S.C. Code Ann. § 38-77-350(A) and is signed by the named insured. *Floyd v. Nationwide Mut. Ins. Co.*, 367 S.C. 253, 626 S.E.2d 6 (2005).

According to S.C. Code Ann. § 38-77-350(A), the form must provide:

- (1) A brief and concise explanation of the coverage;
- (2) A list of available limits and the range of premiums for the limits;
- (3) A space to mark whether the insured chooses to accept or reject the coverage and a space to state the limits of coverage the insured desires;
- (4) A space for the insured to sign the form that acknowledges that the insured has been offered the optional coverages;
- (5) The mailing address and telephone number of the insurance department that the applicant may contact if the applicant has questions that the insurance agent is unable to answer.

S.C. Code Ann. § 38-77-350(B) states that "If this form is signed by the named insured, after it has been completed by an insurance producer or representative of the insurer, it is conclusively presumed that there was an informed, knowing selection of coverage and neither the insurance company nor an insurance agent is liable to the named insured or another insured under

the policy for the insured's failure to purchase optional coverage or higher limits." Further, S.C. Code Ann. § 38-77-350(D) states that "Compliance with this section satisfies the insurer and agent's duty to explain and offer optional coverages and higher limits and no person, including, but not limited to an insurer and insurance agent is liable in an action for damages on account of the selection or rejection made by the named insured."

Plaintiff Nicky Phillips signed the UIM select/reject form for the Auto Policy on October 28, 2013, specifically selecting bodily injury UIM in the amounts of \$25,000 / \$50,000. (Ex. C, October 28, 2013 UIM Select/Reject Form). This form meets the five (5) statutory requirements of S.C. Code Ann. § 38-77-350(A). First, it contains brief and concise explanations of UIM coverage. The form outlines what UIM coverage pays for, who gets compensated, and what an "underinsured motor vehicle" means. Second, the form on pages 3 and 4 contains a list of available limits and the corresponding range of premiums, a space for the insured to mark whether he accepts or rejects the coverage, and a space to state the limits of the desired coverage. Last, the form contains the contact information for the Department of Insurance if the insured has questions that the agent is unable to answer. The form complies with each element required by S.C. Code Ann. § 38-77-350(A). Nicky Phillips made a valid selection of UIM at levels of \$25,000 / \$50,000, and there is no genuine issue of material fact that ANPAC is entitled to the presumption that a meaningful offer was made. By signing the form, it is presumed that Plaintiff Nicky Phillips made an informed and knowing selection.

Even if the Court finds the form did not comply with the statute, "failure to comply with section 38-77-350(A) does not automatically require judicial reformation of a policy. Rather, even where an insurer is not entitled to the presumption [of the statute] that it made a meaningful offer, it may prove the sufficiency of its offer by showing that it complied with *Wannamaker*." *Wiegand*

v. U.S. Auto. Ass'n, 391 S.C. 159, 164, 705 S.E.2d 432, 435 (2011). "Even where the insurer is not entitled to the statutory presumption that a meaningful offer was made, the insurer can still demonstrate that a meaningful offer of UIM coverage was made to the insured under the four-part test outlined in *Wannamaker*. See *Ray v. Austin*, 388 S.C. 605, 612, 698 S.E.2d 208, 212 (2010). Even if the Court finds ANPAC cannot get the statutory presumption, there is still no genuine issue of material fact that ANPAC made a meaningful offer of UIM coverage, using the *Wannamaker* test.

In *State Farm Mut. Auto. Ins. Co. v. Wannamaker*, 291 S.C. 518, 521, 354 S.E.2d 555, 556 (1987), the Court adopted a standard for "determining whether an insurer has complied with its duty to offer [UIM coverage]." The *Wannamaker* test requires the following:

- (1) The insurer's notification process must be commercially reasonable, whether oral or in writing;
- (2) The insurer must specify the limits of optional coverage and not merely offer additional coverage in general terms;
- (3) The insurer must intelligibly advise the insured of the nature of the optional coverage; and
- (4) The insured must be told that optional coverages are available for an additional premium.

It is uncontradicted that Clyde McNeill met in person with Nicky Phillips and explained the various coverages and the UIM select/reject form, section by section, as Nicky Phillips signed the form. (Ex. B, Clyde McNeill Dep. at 85-90.) This is commercially reasonable. Second, the form clearly specified the limits of optional UIM coverage on pages 3 and 4 and these amounts and the additional premium for each amount were present on the form when Phillips signed it.

Phillips has no evidence that those figures were missing, and McNeill testified that those figures were pre-populated on the form when it was printed. (Ex. A, Nicky Phillips Dep. at 56-57; Ex. B, Clyde McNeill Dep. at 84-86.) Last, it is uncontroverted that McNeill presented Nicky Phillips with the select / reject form which advised of the nature of optional UIM coverage and that it was available for an additional premium. Nicky Phillips signed the form in three (3) separate places and one of the signatures is under the "applicant's acknowledgment" that stated,

By my signature, I acknowledge that I have read – or I have had read to me – the above explanations and offers of ... optional underinsured motorist coverage. I understand that the above explanations of these coverages are intended only to be brief descriptions of ... optional underinsured motorist coverage, and that payment of benefits ... is subject both to the terms and conditions of my automobile insurance policy and to the laws of the State of South Carolina.

My signature below further acknowledges that I understand the coverages as they have been explained to me, and the type and amounts of coverage marked on the preceding pages have been selected by me. This is the type and amount of insurance coverage I wish to purchase.

(Ex. C, October 28, 2013 UIM Select/Reject Form)

Express or Implied Permission

Plaintiff Nicky Ted Phillips had the express and/or implied permission to execute the October 28, 2013 select/reject form on behalf of his spouse, Plaintiff Gloria E. Phillips. Nicky Phillips testified in his deposition that when he signed the October 28, 2013 UIM select/reject form, he believed he had the authority to act on her behalf because her name was also on the policy.

(Ex. A, Nicky Phillips Dep. at 48.) Gloria Phillips also testified that Nicky Phillips had the authority to make changes to their insurance policy. (Ex. D, Gloria Phillips Dep. at 11-12, 16.)

"[I]t may be possible for a spouse to reject UIM coverage if he or she does so as an agent authorized to act on the applicant's behalf." *Allstate Ins. Co. v. Estate of Hancock*, 345 S.C. 81, 545 S.E.2d 845 n.4 (Ct. App. 2001).

No breach of Fiduciary Duty, Negligent Misrepresentation, Fraud or UTPA Claim against ANPAC

To the degree Plaintiffs allege causes of action against ANPAC for breach of fiduciary duty, negligent misrepresentation, or violation of the South Carolina Unfair Trade Practices Action (the "Act"), ANPAC is entitled to summary judgment on those claims. First, ANPAC is entitled to summary judgment as to the cause of action for breach of fiduciary duty in Plaintiffs' Complaint, because no fiduciary relationship existed between Plaintiffs and Clyde McNeill or ANPAC. Both Nicky Phillips and Gloria Phillips testified they have never even talked to any representative from ANPAC. (Ex. A, Nicky Phillips Dep. at 60-61; Ex. D, Gloria Phillips Dep. at 19-20.) Also, "an applicant for an insurance policy does not stand in a fiduciary relationship with the insurer." *Pitts v. Jackson Nat. Life Ins. Co.*, 352 S.C. 319, 331, 574 S.E.2d 502, 508 (Ct. App. 2002)(citing *Gordaon v. Fidelity & Cas. Co. of N.Y.*, 238 S.C. 438, 120 S.E.2d 509 (1961)). With regards to Clyde McNeill, "an insurance agent has no duty to advise an insured at the point of application, absent an express or implied undertaking to do so." *Houck v. State Farm Fire & Cas. Ins. Co.*, 366 S.C. 7, 12, 620 S.E.2d 326, 329 (2005). Plaintiffs have offered no evidence of a fiduciary relationship between themselves and McNeill or ANPAC.

Second, ANPAC is entitled to summary judgment to the degree Plaintiffs' Complaint asserts causes of action for negligent misrepresentation and fraud against ANPAC, because Plaintiffs cannot establish all elements of these causes of action, including but not limited to, the element of reliance as a matter of law. Further, Plaintiffs offer no evidence of a false representation or reliance on that representation, both elements of any negligent misrepresentation or fraud cause of action. In fact, ANPAC sent Plaintiffs at least one declaration page in the mail that clearly showed the selected coverages after October 28, 2013, but prior to the August 2014 accident, but

Nicky Phillips admitted he did not read it to confirm his level of coverage. (Ex. A, Nicky Phillips Dep. at 46-47, Dep. Ex. 13.)

Last, ANPAC is entitled to summary judgment to the degree Plaintiffs' Complaint asserts cause of action for alleged violation of the South Carolina Unfair Trade Practices Action (the "Act"), S.C. Code Ann. §§ 39-5-10 *et seq.* against ANPAC, because claims involving alleged unfair trade practices in the insurance business are exempt from this Act. S.C. Code Ann. § 39-5-40(c) exempts certain unfair trade practices from coverage under the Act. Among these are trade practices in the insurance business. Because Plaintiffs' case involves conduct concerning the business of insurance, S.C. Code Ann. § 39-5-40(c) bars applications of the Act to the facts of this case, and the Court should grant summary judgment to ANPAC on any claims under the Act. See *Trustees of Grace Reformed Episcopal Church v. Charleston Ins. Co.*, 868 F. Supp. 128, 130 (D.S.C. 1994) (holding "all unfair trade practices regarding the insurance business are regulated by the Insurance Trade Practices Act, §§ 38-57-10, *et seq.*, and are exempt from the coverage of SCUTPA.").

Respectfully submitted,
ROE CASSIDY COATES & PRICE PA

By: s/Ross B. Plyler
Ross B. Plyler, SC Bar No. 71688
rplyler@roecassidy.com
1052 North Church Street (29601)
Post Office Box 10529
Greenville, SC 29603
Tel: 864.349.2600
Fax: 864.349.0303

ATTORNEYS FOR DEFENDANT
AMERICAN NATIONAL PROPERTY AND
CASUALTY COMPANY

Greenville, South Carolina
May 8, 2018

State of South Carolina)

County of Cherokee)

Nicky Ted Phillips and)
Gloria E. Phillips,)

Plaintiffs,)

v.)

American National Property)
and Casualty Company, Clyde)
McNeill Agency, and Clyde)
Edwin McNeill, individually)
and in his capacity as an)
agent of American National)
Property and Casualty)
Company,)

Defendants.)

2016-CP-11-00809

Deposition

of

Nickey Ted Phillips

Date: July 20, 2017

Time: 1:19 p.m.

Location: Roe Cassidy Coates & Price, PA, 1052 North
Church Street, Greenville, South Carolina

Reported by
Susan A. Wyant



1 A I purchased a motorcycle. At the time, I was with
2 Farm Bureau, and they did not insure motorcycles.

3 Q Okay.

4 A And someone told me about American National.

5 Q To the -- and was the first agent you went to or
6 agency Mr. McNeill and his agency?

7 A Yes, sir.

8 Q Okay. At the -- and when you took out -- do you
9 still have the motorcycle?

10 A No, sir.

11 Q What year approximately was it when you took the
12 motorcycle policy out? Just do the best you can.

13 I know it's --

14 A I can't remember. 2005 or something like that.
15 It's been a long time.

16 Q More than ten years?

17 A More than ten years.

18 Q Okay. Gotcha. And when you first took out the
19 motorcycle policy, did you move any other type of
20 coverage to American National at that time?

21 A Yes, sir.

22 Q Okay. What other coverages did you move?

23 A I moved my home and my autos, my life insurance,
24 and my savings account. Or I don't know what you
25 call it. It's where -- not a 401 but what is it?

1 MR. PLYLER: (To the deponent) Roth?

2 Q Retirement-type thing?

3 A Retirement-type --

4 Q Okay. Okay. We're on the same page. All right.
5 And when you -- when you -- all right. When you
6 first moved over there, you had -- you had more
7 than one motorcycle or just the one?

8 A I didn't keep it but about two months.

9 Q Okay. Wise. Those thing's only got two wheels,
10 you know, right?

11 All right. And what autos did you have back
12 then?

13 A I'm sorry, sir.

14 Q What autos did you have at that time? Do you
15 recall?

16 A No, sir. I can't remember.

17 Q Okay. All right. Have you since -- again, I'm not
18 going to hold you to the date, but since --
19 let's -- we're just going to use what you said as
20 the -- as an approximation -- 2005, have you
21 maintained all of your -- either your home or
22 whatever autos you had through American National?

23 A I'm trying to figure out the best way to say it,
24 but, yes, until -- until the accident. After
25 that --

- 1 Q Until recently?
- 2 A Three years ago --
- 3 Q Okay. So --
- 4 A -- two and a half years ago.
- 5 Q Understood. So who are you with now?
- 6 A USAA.
- 7 Q Okay. But through -- from the -- from what -- from
- 8 2005, again, give or take -- the records will
- 9 reflect what they do -- up till sometime after you
- 10 had your accident, you were with -- you were
- 11 continuously insured by American National --
- 12 A Yes, sir.
- 13 Q -- correct? Okay. And you did not use -- you
- 14 didn't have something else insured with State Farm
- 15 or --
- 16 A No, sir.
- 17 Q -- Geico or anything like that?
- 18 A No, sir.
- 19 Q Okay. Gotcha. At the McNeill Agency, who did you
- 20 mainly deal with?
- 21 A Clyde McNeill.
- 22 Q Did you ever deal with anyone else? Did he have
- 23 any other agents there that you know of?
- 24 A No, sir.
- 25 Q Okay. Gotcha. Okay. All right. I'm going to

1 show you --

2 MR. HANNA: (To the court reporter) Let's
3 mark this as Number 1. (To all counsel) I'm
4 a slacker. I don't have copies, but I'll pass
5 them around so you can just see what they are
6 and then we'll move on.

7 Defendants' Exhibit Number 1, American
8 National Property and Casualty Co. family
9 automobile policy, dated 09/20/10.

10 Q Do you recognize that document?

11 A Sir, I've seen a lot of them like this, but I got
12 no idea what they're talking about.

13 Q Okay. Well, I'm just -- do you -- do you -- is
14 that your name at the top where it says "Name
15 insured" and "Address"?

16 A Right here? Yes, sir.

17 Q Okay. And right above your address, there's a
18 policy term. Do you see that? What is the policy
19 term?

20 A Are you asking for a date, sir?..

21 Q Yes. Yes.

22 A 09/30/10 to 03/30/11.

23 Q Okay. And the -- the -- the document lists two
24 vehicles on it, is that correct?

25 A Hang on.

1 Q You go further down, there's a . . .

2 A Yes, sir.

3 Q Okay. And those vehicles were -- what -- what kind

4 of vehicles were they?

5 A A GMC Envoy and a Chevrolet Blazer.

6 Q Okay. All right. And did you own those cars at

7 that time?

8 A Yes, sir. I guess so.

9 Q Okay. I'll take that back.

10 MR. HANNA: (To the court reporter) Mark this

11 one as Number 2.

12 Defendants' Exhibit Number 2, American

13 National Property and Casualty Co. family

14 automobile renewal policy, dated

15 02/28/11.

16 Q This is the same thing. It's another declaration

17 page for the next six months of coverage there. Do

18 you see that on Defendants' 2? Does that also have

19 your name and address -- you and your wife's name

20 and address at the top?

21 A Yes, sir.

22 Q And a policy term of -- what's the policy term on

23 that one?

24 A 03/30/11 to 09/30/11.

25 Q Okay. And does it list the same two cars as

1 before? The '04 GMC Envoy and the '01 Chevrolet
2 Blazer?

3 A Yes, sir.

4 Q Okay.

5 Defendants' Exhibit Number 3, American
6 National Property and Casualty Co. family
7 automobile amended policy, dated
8 03/24/11.

9 Q And here's the -- this is what's been marked as
10 Exhibit 3 to your deposition. That also has your
11 name and address on it?

12 A Yes, sir.

13 Q Okay. And it has the same policy term as the last
14 one, 03/30/11 to 09/30/11. Is that accurate?

15 A Yes, sir.

16 Q Okay. And the -- I think the difference is, is
17 that you must've sold or gotten rid of the Chevy
18 Blazer and replaced it with a Tacoma.

19 A Yes, sir.

20 Q Do you remember doing that around that time?

21 A Yes, sir.

22 Q Okay. Otherwise, it's the -- the -- here's the old
23 ones if you want to see them, but otherwise it's
24 the same, other than there's a different -- it
25 appears you changed vehicles sometime during that

1 policy term.

2 A Yes, sir.

3 Q Okay.

4 Defendants' Exhibit Number 4, American
5 National Property and Casualty Co. family
6 automobile renewal policy, dated
7 08/31/11.

8 Q And then this is Exhibit 4. Does that also have
9 your name and address on it?

10 A Yes, sir.

11 Q Same two vehicles, the '04 GMC Envoy and the '05
12 Toyota Tacoma?

13 A Yes, sir.

14 Q And it has a policy period from September 30, 2011,
15 to March 30, 2012?

16 A Yes, sir.

17 Q Okay.

18 Defendants' Exhibit Number 5, American
19 National Property and Casualty Co. family
20 automobile renewal policy, dated
21 02/29/12.

22 Q And here's Number 5. It's the -- again, that's the
23 declaration page for your policy showing
24 your -- your name and wife's name and address,
25 correct?

1 MR. PLYLER: (To the court reporter) Do you
2 want the sticker from 9 or do you want --

3 THE COURT REPORTER: I got it.

4 MR. HANNA: (To Mr. Derrick) Let's just redo
5 it. Let's just trash that one.

6 MR. PLYLER: (To Mr. Hanna) Trash this?

7 MR. HANNA: Yes. That one is --

8 Defendants' Exhibit Number 9, American
9 National Property and Casualty Co. family
10 automobile amended policy, dated
11 10/17/13.

12 Q And I'll hand you -- okay. This is the one:
13 Again, declarations page with you and your wife's
14 name and address, correct?

15 A Yes, sir.

16 Q Same vehicles?

17 A Yes, sir.

18 Q I'm going to hand you 8 again. It's the same
19 policy period as 8, correct? September 30, '13?

20 A Yes, sir.

21 Q Or -- what is it? Thirteen through --

22 A -- March 30 of '14.

23 Q Okay. And the -- the main difference between these
24 two is, is that there was an -- if you look further
25 down in the part where there's like columns, do you

1 see that?

2 A Right here?

3 Q Yeah. There. This is where there was a change in
4 the amount of coverage you had. In other words,
5 it's the same exact policy period, but there was a
6 change in the -- in the amount of coverage. Do you
7 see that on the -- on the one on your left? The
8 Number 8 has 50,100 for each -- where it says
9 "Bodily Injury Liability"?

10 MR. HANNA: (To Mr. Derrick) You can help him
11 if you --

12 MR. DERRICK: (To the deponent) This one over
13 here. This one.

14 Q Okay. And I -- and you may -- I may have them --
15 my left. Sorry.

16 A Yes, sir. I see that.

17 Q Okay. And then the other one has 250/500, is that
18 correct?

19 A Yes, sir.

20 Q Oh, okay. Which brings me around to -- there was a
21 meeting. As I understand it, you -- so, if you
22 look back -- you can look back if you want to, but,
23 at least since 2010, other than changing one
24 vehicle on the two -- on that policy, your coverage
25 was -- was identical up unto the point of Exhibit

1 office and --

2 A Yes, sir.

3 Q -- instead of calling him on the phone?

4 A I possibly -- yes. I --

5 Q Okay.

6 A If I signed it, yes, sir.

7 Q Okay. All right. And, then, on the date when you

8 went back in there -- let me get the right date.

9 MR. HANNA: (To the court reporter) This is

10 going to be Number 12.

11 Defendants' Exhibit Number 12, "American

12 National Property and Casualty Company

13 American National General Insurance

14 Company Offer of Optional Additional

15 Uninsured Motorist Coverage and Optional

16 Underinsured Motorist Coverage."

17 Q See if you recognize this. I think this is another

18 four-page document. This is Exhibit Number 12.

19 Have you looked at it? Does your signature appear

20 anywhere on that four-page document?

21 A Yes, sir. On Page 2, Page 3. Yes, sir.

22 Q I think it's -- I -- I think it's four pages. I'm

23 not sure.

24 A And Page 4. Yes, sir.

25 Q Okay. So your -- you have a signature page on Page

1 2, 3, and 4?

2 A Yes, sir.

3 Q Okay. Do you recall signing this document? This

4 would've been --

5 A Yes, sir.

6 Q You do recall signing this, then?

7 A No, sir. I just -- I recognize my handwriting.

8 Q Okay. Okay. And is any of the other handwriting

9 on there, besides the -- is the date -- let --

10 sorry. I'll hand it over here. Is the date at the

11 bottom of Page 4, is that your handwriting?

12 A No, sir.

13 Q No?

14 A No, sir.

15 Q So the only thing that's yours is the signature

16 page, correct?

17 A Yes, sir.

18 Q I mean the -- the actual signatures.

19 A That's my signature, but the rest of it's not mine.

20 No, sir.

21 Q Understood. Okay.

22 A And it wasn't on there when I signed it.

23 Q So you're -- you're -- let me go back and make sure

24 I understand that. Are you -- are you saying that

25 it was blank when you signed it?

1 MR. HANNA: (To the court reporter) Which one
2 we up to? Number 13?

3 THE COURT REPORTER: Thirteen.

4 Defendants' Exhibit Number 13, American
5 National Property and Casualty Co. family
6 automobile renewal policy, dated
7 02/28/14.

8 Q Okay. I'm going to show you what's Exhibit 13 now.
9 That's an -- your auto declaration page, again.
10 The -- is the term on that March 30, 2014, to
11 September 30, 2014?

12 A Yes, sir.

13 Q So that would be the policy that was in effect --
14 your accident was in August of 2014, is that
15 correct?

16 A Yes, sir.

17 Q Okay. So that was the policy that was effective
18 during the time you were in the accident, correct?

19 A Yes, sir.

20 Q Okay. And, when you received that in the mail back
21 in March or April of 2014, did you check that
22 against what you understood your coverage was
23 supposed to be?

24 A No, sir.

25 Q Did you have anybody else look at it for you?

1 A No, sir.

2 Q Okay. Did you read the -- this thing when it came
3 in the mail to you?

4 A I don't understand all that, sir. I'm sorry.

5 Q You didn't ask anybody to help you with it?

6 A I trusted Clyde to take care of my insurance need.

7 Q Do you understand that Clyde actually gets -- makes
8 his money by a percentage of the premiums he sells?

9 A No, sir. I didn't know.

10 Q Okay.

11 A I don't know how he makes money.

12 Q Do you know why -- if -- if -- if he understood
13 that you wanted more coverage, do you have any
14 explanation of why he wouldn't do that, considering
15 he would make more money doing that?

16 A No, sir. I don't understand why.

17 Q Okay.

18 A I've asked myself that a lot.

19 Q Okay. Is it possible he didn't understand what it
20 was you wanted?

21 A No, sir. I explained it clear to him.

22 Q Okay. All right. Let's look at -- let me see
23 here.

24 When you went to purchase the -- the -- or
25 change -- make the change in your coverage, was

1 your wife aware that you were going to go do this?

2 A I don't know, sir.

3 Q Okay. And you believe that you had the authority
4 to act on her behalf as a result -- because it's
5 her policy, too?

6 A Yes, sir.

7 Q You -- you do believe you did?

8 A Yes, sir.

9 Q Okay. So, whether she knew or not, you believe it
10 would be -- that you had the ability to do that,
11 correct?

12 A Yes, sir.

13 Q Okay. When you had -- at the -- after you -- at
14 what point did you realize that the coverage was
15 not what you thought it was?

16 A After I came home from the hospital, Mr. McNeill
17 come by the house, and my daughter was sitting
18 there, and she said, "It's a good thing Dad upped
19 his insurance a few months back." And she
20 confronted --

21 And he said, "We didn't up -- didn't up the
22 underinsured."

23 And she confronted him, "Why?" because of what
24 I had told him. He got mad and stormed out of the
25 house and left --

1 A And that's --

2 Q -- do you think that he didn't do the right thing

3 on purpose?

4 A That's -- that's not for me to say, sir.

5 Q Okay.

6 A I mean, I guess. I don't -- I don't know.

7 Q I'm -- I'm -- do you assign any motive to doing it

8 on purpose, or you think it was an accident?

9 A It -- I would say it's a accident, probably. He

10 may have got busy and forgot to do what he's

11 supposed to do. That's all.

12 Q Okay.

13 A I don't know. My lawyer might hit me in the head

14 when I go out the door for saying something like

15 that.

16 Q As far as the -- the auto accident case you had

17 with the -- the -- was it a woman that ran into the

18 back of you?

19 A Yes, sir.

20 Q Okay. What is the status of that suit as far as

21 you know?

22 A It's still pending, some of it, sir, I think.

23 Q Okay. Have you personally received any monies or

24 thing of value as a result of that suit?

25 A No, sir.

1 Q Okay. You -- you've yet to receive anything from
2 that suit?

3 A No, sir.

4 Q Okay.

5 MR. HANNA: (To all counsel): I'm going to
6 take a brief break and discuss some things.

7 (Off the record from 2:19 p.m. until
8 2:37 p.m.)

9 THE EXAMINATION BY MR. HANNA CONTINUES.

10 Q Okay. I've got a few more questions for you, and
11 then I'll be done. I want to go back to Exhibit
12 12, and this is the one that we had talked about
13 earlier that you said when you signed it, it was
14 blank, and I just want to clarify what you meant by
15 that.

16 In other words -- you don't mind if -- can I
17 come around there so we're looking at the same
18 thing? Do you mind?

19 A Unh-unh. That one right there is --

20 Q Okay. Well, let -- let me just -- let's start with
21 Page 2, okay? For instance, was the -- there's
22 stuff that's typed in, you know, that would -- that
23 would -- are you saying that none of this was even
24 in there? Or can you --

25 A Sir, I don't remember.

1 Q Okay.

2 A I'm sorry.

3 Q That's fine.

4 A Okay.

5 Q That's fine. That's fine. I just -- that's why

6 I'm trying to clarify it.

7 A Yes, sir.

8 Q And the same thing --

9 A I -- I don't remember. I -- I know there wasn't no

10 writing at the bottom.

11 Q Okay. The -- nothing? What about where the X's or

12 the check-marks are?

13 A No, sir.

14 Q Okay. But you're not as sure, one way or the

15 other, about the -- the stuff inside these --

16 A No, sir.

17 Q -- it looks like a spreadsheet, for lack of a

18 better word; is that correct?

19 A Yes, sir.

20 Q Okay. All right. So the -- the -- just to --

21 we're on the same page, the handwritten numbers

22 you, for sure, don't remember being there; is

23 that --

24 A Yes, sir.

25 Q Okay. Gotcha. Understood. All right.

1 other conversations with him except that --
2 A Positive.
3 Q What about her husband, Bruce? Do you know if he
4 ever talked to Mr. McNeill or anybody --
5 A Unh-unh.
6 Q -- from his agency any other time?
7 A No, sir.
8 Q Okay.
9 A He didn't.
10 Q Was -- was -- Bruce Welchel, was he there that day
11 at -- at your house?
12 A No, sir.
13 Q Just your daughter?
14 A Just my daughter.
15 Q And I -- when you would deal with Clyde McNeill or
16 his agency, would you -- would you talk with
17 anybody else at the agency other than Clyde?
18 A No, sir.
19 Q No other agents or no other persons?
20 A No, sir.
21 Q Have you ever spoken with anybody else from ANPAC,
22 from the insurance company, directly?
23 A No, sir.
24 Q You've never -- you ever called up the line or
25 talked to anybody at the corporate office or

1 anything like that?

2 A No, sir.

3 Q Okay. And nobody has ever called you?

4 A No, sir.

5 Q Okay. The only -- is the only -- am I clear that
6 the only person you ever talked to about insurance
7 matters or what you wanted or what you didn't want
8 was Clyde McNeill himself?

9 A Yes, sir.

10 Q Okay. You were asked a -- a little while ago about
11 a umbrella policy that you'd purchased. Do you
12 know what that is?

13 A No, sir.

14 Q Okay. You don't know -- you don't know what kind
15 of -- sorry. Go ahead.

16 A At one time, Mr. McNeill said something about a
17 umbrella policy, way back before ever this
18 happened, and it was something about a million-
19 dollar coverage or something or other. And I can't
20 remember what the results from that was. I'm
21 sorry. But it's been -- it was, at least, ten or
22 twelve years.

23 Q Do you remember what you may have said to Mr.
24 McNeill that prompted him to discuss umbrella
25 coverage with you?



1549 E. SUNSHINE
SPRINGFIELD, MISSOURI 65829-0001
(417) 887-9220
www.ANPAC.com

AMERICAN NATIONAL PROPERTY AND CASUALTY CO.

POLICY NUMBER
39-A-448-051-0
POLICY TERM

09-30-10 TO 03-30-11

AND SUBSEQUENT RENEWALS

THIS FAMILY AUTOMOBILE DECLARATION

REPLACES ALL PRIOR DECLARATIONS, IF ANY, AND WITH POLICY PROVISIONS AND ANY ENDORSEMENTS ISSUED TO FORM A PART THEREOF COMPLETES THIS POLICY.

METHOD OF PAYMENT: INSURED BILL

NAMED INSURED AND ADDRESS

PHILLIPS, NICKY T & GLORIA E
Redacted

GARAGING LOCATION:

Redacted

AGENT: D4232-P 1-HEC

ERIN MCNEILL
Redacted

FOR CUSTOMER SERVICE:
864-488-0044

DESCRIPTION OF INSURED PROPERTY

RATED	VEH. OR DESCRIPTION	ID NUMBER	TYPE
1	2004 GMC ENVY SLE 4D	1GKDS13S742194281	AUTO
2	2001 CHE BLAZER LS 4WD	1GNDT13W51K228765	AUTO

RATING INFORMATION, COVERAGES, PREMIUMS, AND LIMITS OF LIABILITY

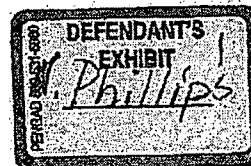
INSURANCE IS PROVIDED ONLY WITH RESPECT TO THOSE OF THE FOLLOWING COVERAGES WHICH ARE INDICATED BY A SPECIFIC LIMIT OF LIABILITY AND/OR PREMIUM APPLICABLE THERETO.

RATING TERRITORY FOR ALL VEHICLES: 18

VEHICLE	04 GMC ENVY SLE 68G02NO	01 CHE BLAZER LS 68G00NO
CLASS CODE		
BODILY INJURY LIABILITY	\$50.00	\$41.00
LIMIT PER PERSON/OCCURRENCE	50,000/100,000	50,000/100,000
PROPERTY DAMAGE LIABILITY	\$25.00	\$22.00
LIMIT PER OCCURRENCE	50,000	50,000
MEDICAL PAYMENTS	\$3.00	\$3.00
LIMIT PER PERSON	1,000	1,000
UNINSURED MOTORIST	\$20.00	\$20.00
LIMIT PER PERSON/ACCIDENT	25,000/50,000	25,000/50,000
PROPERTY DAMAGE (\$200 DED.)	25,000	25,000
UNDERINSURED MOTORIST	\$44.00	\$44.00
LIMIT PER PERSON/ACCIDENT	25,000/50,000	25,000/50,000
PROPERTY DAMAGE	25,000	25,000
COMPREHENSIVE	\$35.00	NO COVERAGE
DEDUCTIBLE	500	
ADDED COVERAGE ENDORSEMENT	NO	NO
COLLISION	\$38.00	NO COVERAGE
DEDUCTIBLE	500	
ADDED COVERAGE ENDORSEMENT	NO	NO
TOWING & LABOR/WINDSHIELD REPAIR	\$9.00	
LIMIT	100	
REIMBURSEMENT OF RENTAL EXPENSE	INCLUDED	
LIMIT PER DAY/AGGREGATE	25/750	

TOTAL

Redacted



TOTAL PREMIUMS

VEHICLES
Redacted

ENDORSEMENTS

TAX/FEE

TOTAL PREMIUM

AUTHORIZED REPRESENTATIVE

DATE PRINTED

09/20/10

SEE DECLARATION SECTION II FOR ADDITIONAL INFORMATION
SEE REVERSE SIDE FOR IMPORTANT INFORMATION

90-20-00

SM-484 (1-06)

ELECTRONICALLY FILED - 2018 May 09 2:17 PM - CHEROKEE - COMMON PLEAS - CASE#2016CP1100809



1949 E. SUHSFHE
SPRINGFIELD, MISSOURI 65339-0001
(417) 887-4220
www.anpac.com

AMERICAN NATIONAL PROPERTY AND CASUALTY CO

POLICY NUMBER

39-A-448-05L-0

POLICY TERM

03-30-11 TO 09-30-11

AND SUBSEQUENT RENEWALS

THIS FAMILY AUTOMOBILE AMENDED DECLARATION

REPLACES ALL PRIOR DECLARATIONS, IF ANY, AND WITH POLICY PROVISIONS AND ANY ENDORSEMENTS ISSUED TO FORM A PART THEREOF COMPLETES THIS POLICY.

METHOD OF PAYMENT: INSURED BILL

NAMED INSURED AND ADDRESS

PHILLIPS, NICKY TED & GLORIA E
Redacted

CHANGE EFFECTIVE: 03-20-11

ORIGIN: AGENT

CHANGES: VEH, COV, CL/USE

GARAGING LOCATION:

Redacted

AGENT: D4292-P 1-HEC

ERIN MCNEILL

Redacted

FOR CUSTOMER SERVICE:

864-488-0044

DESCRIPTION OF INSURED PROPERTY

RATED

VEH	DR	DESCRIPTION	ID NUMBER	TYPE
1	2	2004 GMC ENVOY SLE 4D	1GKDS13S742194281	AUTO
2	1	2005 TOY TACOMA REG CA	5TEPX42N45Z075527	PICKUP

RATING INFORMATION, COVERAGES, PREMIUMS, AND LIMITS OF LIABILITY

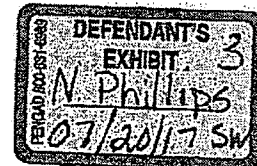
INSURANCE IS PROVIDED ONLY WITH RESPECT TO THOSE OF THE FOLLOWING COVERAGES WHICH ARE INDICATED BY A SPECIFIC LIMIT OF LIABILITY AND/OR PREMIUM APPLICABLE THERETO.

RATING TERRITORY FOR ALL VEHICLES: 16

VEHICLE	CLASS CODE	04 GMC ENVOY SLE 68G00NO	05 TOY TACOMA REG 6Y600NO
BODILY INJURY LIABILITY		\$50.00	\$58.00
LIMIT PER PERSON/OCCURRENCE		50,000/100,000	50,000/100,000
PROPERTY DAMAGE LIABILITY		\$25.00	\$36.00
LIMIT PER OCCURRENCE		50,000	50,000
MEDICAL PAYMENTS		\$3.00	\$4.00
LIMIT PER PERSON		1,000	1,000
UNINSURED MOTORIST		\$20.00	\$20.00
LIMIT PER PERSON/ACCIDENT		25,000/50,000	25,000/50,000
PROPERTY DAMAGE (\$200 DED.)		25,000	25,000
UNDERINSURED MOTORIST		\$44.00	\$44.00
LIMIT PER PERSON/ACCIDENT		25,000/50,000	25,000/50,000
PROPERTY DAMAGE		25,000	25,000
COMPREHENSIVE		NO COVERAGE	NO COVERAGE
COLLISION		NO COVERAGE	NO COVERAGE

Redacted

TOTAL



TOTAL PREMIUMS	VEHICLES	ENDORSEMENTS	TAX/FEE	TOTAL PREMIUM	AUTHORIZED REPRESENTATIVE
	<i>Redacted</i>				
DATE PRINTED	09/24/11				
	59D-24-02				

SEE DECLARATION SECTION II FOR ADDITIONAL INFORMATION
SEE REVERSE SIDE FOR IMPORTANT INFORMATION

SM-484 (1-06)

ELECTRONICALLY FILED - 2018 May 09 2:17 PM - CHEROKEE - COMMON PLEAS - CASE#2016CP1100809



1949 E. SUNSHINE
SPRINGFIELD, MISSOURI 65399-0001
(417) 887-0720
www.ANPAC.com

AMERICAN NATIONAL PROPERTY AND CASUALTY CO

POLICY NUMBER

39-A-448-05L-0

POLICY TERM

09-30-13 TO 03-30-14

AND SUBSEQUENT RENEWALS.

THIS FAMILY AUTOMOBILE AMENDED DECLARATION

REPLACES ALL PRIOR DECLARATIONS, IF ANY, AND WITH POLICY PROVISIONS AND
ANY ENDORSEMENTS ISSUED TO FORM A PART THEREOF COMPLETES THIS POLICY.

NAMED INSURED AND ADDRESS:

PHILLIPS, NICKY TED & GLORIA E
Redacted

METHOD OF PAYMENT: INSURED BILL

CHANGE EFFECTIVE: 10-14-13

ORIGIN: AGENT

CHANGES: VEH, COV, CL/USE

RATING ADDRESS:

Redacted

AGENT: D2899-T 1-HEC

CLYDE MCNEILL

Redacted

FOR CUSTOMER SERVICE:
864-488-0044

DESCRIPTION OF INSURED PROPERTY

RATED	VEH OR DESCRIPTION	ID NUMBER	TYPE
1 2	2004 GMC ENVY SLE 4D	1GKDS13S742194281	AUTO
2 1	2005 TOY TACOMA REG CA	5TEPX42N45Z075527	PICKUP

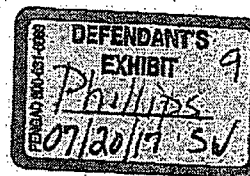
RATING INFORMATION, COVERAGES, PREMIUMS, AND LIMITS OF LIABILITY

INSURANCE IS PROVIDED ONLY WITH RESPECT TO THOSE OF THE FOLLOWING COVERAGES WHICH ARE INDICATED BY A SPECIFIC LIMIT OF LIABILITY AND/OR PREMIUM APPLICABLE THERETO.

VEHICLE	04 GMC ENVY SLE 68G00NO	05 TOY TACOMA REG 68G00NO
CLASS CODE		
BODILY INJURY LIABILITY	\$83.00	\$58.00
LIMIT PER PERSON/OCCURRENCE	250,000/500,000	250,000/500,000
PROPERTY DAMAGE LIABILITY	\$26.00	\$24.00
LIMIT PER OCCURRENCE	100,000	100,000
UNINSURED MOTORIST	\$14.00	\$13.00
LIMIT PER PERSON/ACCIDENT	25,000/50,000	25,000/50,000
PROPERTY DAMAGE (\$200 DED.)	25,000	25,000
UNDERINSURED MOTORIST	\$45.00	\$38.00
LIMIT PER PERSON/ACCIDENT	25,000/50,000	25,000/50,000
PROPERTY DAMAGE	25,000	25,000
COMPREHENSIVE	NO COVERAGE	NO COVERAGE
COLLISION	NO COVERAGE	NO COVERAGE

TOTAL

Redacted



IMPORTANT NOTICE: THIS POLICY REDUCES THE APPLICABLE LIMITS FOR BODILY INJURY LIABILITY, PROPERTY DAMAGE LIABILITY, UNINSURED MOTORIST AND UNDERINSURED MOTORIST COVERAGES SHOWN ON THIS DECLARATIONS PAGE TO THE LEGALLY REQUIRED MINIMUM FINANCIAL RESPONSIBILITY LIMITS IN THE STATE WHEN AN INSURED VEHICLE IS OPERATED BY ANYONE OTHER THAN YOU OR A RELATIVE.

	VEHICLES	ENDORSEMENTS	TAX/FEE	TOTAL PREMIUM	
TOTAL PREMIUMS	<i>Redacted</i>				CLYDE MCNEILL AUTHORIZED REPRESENTATIVE
DATE PRINTED	10/17/13				SEE DECLARATION SECTION II FOR ADDITIONAL INFORMATION SEE REVERSE SIDE FOR IMPORTANT INFORMATION
	UPD-17-05				

SM-484 (1-05)

THIS IS NOT A BILL

Phillips, Ricky T.

AMERICAN NATIONAL PROPERTY AND CASUALTY COMPANY
AMERICAN NATIONAL GENERAL INSURANCE COMPANY
OFFER OF OPTIONAL ADDITIONAL UNINSURED MOTORIST COVERAGE
AND OPTIONAL UNDERINSURED MOTORIST COVERAGE

02

I. EXPLANATION OF COVERAGES

Automobile liability insurance coverage pays other motor vehicle drivers and their passengers for damages caused by you and for which you are legally responsible. There are two types of automobile liability insurance coverage: bodily injury and property damage. Bodily injury coverage pays for bodily injuries to others inflicted by your motor vehicle. Property damage coverage pays for damages which your motor vehicle causes to other motor vehicles or property.

Under South Carolina law, an insurance company may refuse to write your automobile liability insurance for a number of reasons. If an insurance company decides to write your automobile liability insurance coverage, however, it must provide at least \$25,000.00 of bodily injury coverage for each person whom you may injure in any single accident and \$50,000.00 of bodily injury coverage for two or more people whom you may injure in any single accident. The insurance company must also provide at least \$25,000.00 in property damage coverage for each accident you may cause. You may have seen these limits described as \$25,000/\$50,000/\$25,000 or 25-50-25. These limits are commonly known as minimum limits. In order to drive your automobile upon the roads of this State, you must have at least these minimum limits of insurance, unless you post a satisfactory bond or pay a \$550 fee to drive uninsured. There is no requirement that an insurance company offer higher than minimum limits of automobile liability insurance coverage. If your insurance company does offer more than the minimum limits, you will be required to pay an additional premium for those increased limits of protection.

An insurer that writes your automobile liability insurance coverage must also offer two additional coverages which will protect you in the event you are damaged in an automobile accident by an at-fault driver who either has no automobile insurance or whose automobile insurance liability limits are less than the damages in that accident. These coverages are termed additional uninsured motorist coverage and optional underinsured motorist coverage, respectively. You may also see them referred to as UM and/or UIM. If you decide to purchase either of these coverages, you will be required to pay an additional premium for each of these coverages.

Uninsured motorist coverage compensates you, or other persons insured under your automobile insurance policy, for amounts which you may be legally entitled to collect as damages from an owner or operator of an at-fault uninsured motor vehicle. An uninsured motor vehicle is a motor vehicle which either has no liability insurance coverage or is operated by a hit-and-run driver. By law, your automobile insurance policy automatically provides uninsured motorist coverage of \$25,000/\$50,000/\$25,000. There is a \$200 deductible for uninsured property damage claims.

You also have the right to buy additional uninsured motorist coverage, in various limits up to the limits of the liability coverage you have purchased. The limits of additional uninsured motorist coverage which your insurance company is authorized to write and for which you are eligible are shown on this form, together with the additional premium for those increased limits. You may not purchase uninsured motorist coverage with limits in excess of your liability limits.

Underinsured motorist coverage compensates you, or other persons insured under your automobile insurance policy, for amounts which you legally may be entitled to collect as damages from an owner or operator of an at-fault underinsured motor vehicle. An underinsured motor vehicle is a motor vehicle which is covered by some form of liability insurance, but which is insufficient to fully compensate you for your damages.

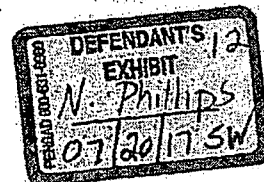
Your automobile insurance policy does not automatically provide any underinsured motorist coverage. However, you have the right to buy, and your insurance company is required to offer, optional underinsured motorist coverage in various limits up to the limits of liability coverage you have purchased. The limits of optional underinsured motorist coverage which your insurer is authorized to write and for which you are eligible are shown on this form, together with the additional premiums for those limits. You may not purchase underinsured motorist coverage with limits in excess of your liability limits.

If you reject optional underinsured or additional uninsured motorist coverages shown on this form and if you are involved in an automobile accident that is not your fault, this form may be used by your insurance company as evidence against you if you make a claim for additional uninsured motorist coverage or optional underinsured motorist coverage.

If you do not complete this form and return it to your insurance company or insurance agent within 30 days, your insurance company is required by law to add additional uninsured motorist coverage and optional underinsured motorist coverage, in the same limits as your automobile liability insurance, to your automobile insurance policy. You will be required to pay an additional premium for each of these coverages and your policy may be canceled for non-payment of that additional premium.

SA-1427 (6-07)

1



Phillips, Nicky Ted

In the future, if you wish to increase or to decrease your limits of additional uninsured motorist coverage or optional underinsured motorist coverage, you must contact either your insurance agent or your insurance company. You will not be presented with another copy of this form by your insurance agent or insurance company upon the renewal of your automobile liability insurance policy. You will not be presented with another copy of this form by your insurance agent or current insurance company when you extend, change, supersede, or replace your automobile liability insurance policy.

Please read this form carefully. Your insurance agent or your insurance company must answer any questions which you may have. If you have any further questions, you may contact the Department of Insurance at:

Office of Consumer Services
State of South Carolina Department of Insurance
1201 Main St., Ste. 1000
Post Office Box 100105
Columbia, South Carolina 29202-3105
(803) 737-6180
(800) 768-3487
E-mail Address: CnsmMail@dol.state.sc.us

These Vehicle Descriptions Apply to All Coverages Listed Below:

Veh. 1 - Description 04 GMC ENVOY SLE 4D VIN 1GKDS13S742194281
Veh. 2 - Description 05 TOY TACOMA REG CAB 4WD VIN 5TEPX42N46Z075527
Veh. 3 - Description _____ VIN _____
Veh. 4 - Description _____ VIN _____

II. OFFER OF ADDITIONAL UNINSURED MOTORIST COVERAGE

Minimum uninsured motorist coverage limits of \$25,000/\$50,000/\$25,000 are automatically provided by your insurance policy. If you select *additional* uninsured motorist coverage, the premium charge will be increased. The schedule below indicates the premium charges for minimum and increased limits:

UNINSURED MOTORIST BODILY INJURY COVERAGE

Limits of Coverage			Premium			
			Vehicle 1	Vehicle 2	Vehicle 3	Vehicle 4
\$ 25,000	/	\$ 50,000	\$ 10	\$ 9	\$ 0	\$ 0
\$ 50,000	/	\$100,000	11	10	0	0
\$100,000	/	\$300,000	12	10	0	0
\$250,000	/	\$500,000	15	13	0	0
\$300,000	/	\$500,000	17	15	0	0
\$500,000	/	\$500,000	17	15	0	0
\$500,000	/	\$1 Million	19	16	0	0
\$1 Million	/	\$1 Million	22	19	0	0

This section is not to be marked by anyone other than the applicant/insured.

Do you wish to purchase additional Uninsured Motorist Bodily Injury Coverage? Yes ☒ No ☒

If your answer is "no", then you must sign here: Nicky Ted Phillips

If your answer is "yes", then specify the limits which you desire. These limits cannot exceed your automobile insurance liability limits and must be the same for all vehicles on this policy.

I select _____ / _____ limits.

UNINSURED MOTORIST PROPERTY DAMAGE COVERAGE

Limits of Coverage	Premium			
	Vehicle 1	Vehicle 2	Vehicle 3	Vehicle 4
\$25,000	\$ 4	\$ 4	\$ 0	\$ 0
\$50,000	6	6	0	0
\$100,000	8	8	0	0
\$250,000	10	10	0	0

This section is not to be marked by anyone other than the applicant/insured.

Do you wish to purchase additional Uninsured Motorist Property Damage Coverage? Yes ☒ No ☒

If your answer is "no", then you must sign here: Nick, Ted Phillips

If your answer is "yes", then specify the limits which you desire. These limits cannot exceed your automobile insurance property damage liability limits.

I select _____ limit for Veh. 1

I select _____ limit for Veh. 3

I select _____ limit for Veh. 2

I select _____ limit for Veh. 4

III. OFFER OF UNDERINSURED MOTORIST COVERAGE

Minimum underinsured motorist coverage limits are \$25,000/\$50,000/\$25,000. If you select additional underinsured motorist coverage, the premium charge will be increased. The schedule below indicates the premium charges for minimum and increased limits:

UNDERINSURED MOTORIST BODILY INJURY COVERAGE

Limits of Coverage			Premium			
			Vehicle 1	Vehicle 2	Vehicle 3	Vehicle 4
\$25,000	/	\$ 50,000	\$ 44	\$ 37	\$ 0	\$ 0
\$ 50,000	/	\$100,000	61	53	0	0
\$100,000	/	\$300,000	73	63	0	0
\$250,000	/	\$500,000	106	91	0	0
\$300,000	/	\$500,000	116	100	0	0
\$500,000	/	\$500,000	120	104	0	0
\$500,000	/	\$1 Million	138	120	0	0
\$1 Million	/	\$1 Million	160	138	0	0

This section is not to be marked by anyone other than the applicant/insured.

Do you wish to purchase Underinsured Motorist Bodily Injury Coverage? Yes ☒ No ☒

If your answer is "no", then you must sign here:

If your answer is "yes", then specify the limits which you desire. These limits cannot exceed your automobile insurance liability limits and must be the same for all vehicles on this policy.

I select: 25, 50 limits.

UNDERINSURED MOTORIST PROPERTY DAMAGE COVERAGE

Limits of Coverage:	Premium			
	Vehicle 1	Vehicle 2	Vehicle 3	Vehicle 4
\$25,000	\$ 1	\$ 1	\$ 0	\$ 0
\$50,000	2	2	0	0
\$100,000	3	3	0	0
\$250,000	3	3	0	0

This section is not to be marked by anyone other than the applicant/insured.

Do you wish to purchase Underinsured Motorist Property Damage Coverage? Yes ☒ No ☐

If your answer is "no", then you must sign here: _____

If your answer is "yes", then specify the limits which you desire. These limits cannot exceed your automobile insurance property damage liability limits.

I select 25,000 limit for Veh. 1

I select _____ limit for Veh. 3

I select 25,000 limit for Veh. 2

I select _____ limit for Veh. 4

IV. APPLICANT'S ACKNOWLEDGMENT

By my signature, I acknowledge that I have read -- or I have had read to me -- the above explanations and offers of additional uninsured motorist coverage and optional underinsured motorist coverage. I understand that the above explanations of these coverages are intended only to be brief descriptions of additional uninsured motorist coverage and optional underinsured motorist coverage, and that payment of benefits under either of these coverages is subject both to the terms and conditions of my automobile insurance policy and to the laws of the State of South Carolina.

My signature below further acknowledges that I understand the coverages as they have been explained to me, and the type and amounts of coverage marked on the preceding pages have been selected by me. This is the type and amount of insurance coverage I wish to purchase.

Type or Print Your Name: Phillips, Nicky Ted

Your Signature: Nicky Ted Phillips

Your Address: Redacted

Today's Date: 8/10/20-13



1919 E. SUNSHINE
SPRINGFIELD, MISSOURI 65899-0001
(417) 887-0220
WWW.ANPAC.COM

AMERICAN NATIONAL PROPERTY AND CASUALTY CO

POLICY NUMBER

39-A-448-05L-0

POLICY TERM

03-30-14 TO 09-30-14

AND SUBSEQUENT RENEWALS.

THIS FAMILY AUTOMOBILE RENEWAL DECLARATION

REPLACES ALL PRIOR DECLARATIONS, IF ANY, AND WITH POLICY PROVISIONS AND ANY ENDORSEMENTS ISSUED TO FORM A PART THEREOF COMPLETES THIS POLICY.

METHOD OF PAYMENT: INSURED BILL

NAMED INSURED AND ADDRESS

PHILLIPS, NICKY TED & GLORIA E
Redacted

RATING ADDRESS:

Redacted

AGENT: D2899-T 1-HEC

CLYDE MCNEILL

Redacted

FOR CUSTOMER SERVICE:

864-488-0044

DESCRIPTION OF INSURED PROPERTY

RATED	VEH OR DESCRIPTION	ID NUMBER	TYPE
1 2	2004 GMC ENVY SLE 4D	1GKDS13S742194281	AUTO
2 1	2005 TOY TACOMA REG CA	5TEPX42N45Z075527	PICKUP

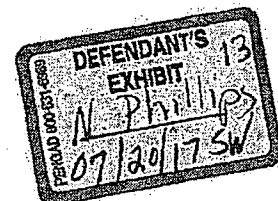
RATING INFORMATION, COVERAGES, PREMIUMS, AND LIMITS OF LIABILITY

INSURANCE IS PROVIDED ONLY WITH RESPECT TO THOSE OF THE FOLLOWING COVERAGES WHICH ARE INDICATED BY A SPECIFIC LIMIT OF LIABILITY AND/OR PREMIUM APPLICABLE THERETO.

VEHICLE	04 GMC ENVY SLE	05 TOY TACOMA REG
BODILY INJURY LIABILITY	\$48.00	\$30.00
LIMIT PER PERSON/OCCURRENCE	250,000/500,000	250,000/500,000
PROPERTY DAMAGE LIABILITY	\$19.00	\$13.00
LIMIT PER OCCURRENCE	100,000	100,000
UNINSURED MOTORIST	\$14.00	\$13.00
LIMIT PER PERSON/ACCIDENT	25,000/50,000	25,000/50,000
PROPERTY DAMAGE (\$200 DED.)	25,000	25,000
UNDERINSURED MOTORIST	\$45.00	\$38.00
LIMIT PER PERSON/ACCIDENT	25,000/50,000	25,000/50,000
PROPERTY DAMAGE	25,000	25,000
COMPREHENSIVE	NO COVERAGE	NO COVERAGE
COLLISION	NO COVERAGE	NO COVERAGE

TOTAL

Redacted



IMPORTANT NOTICE: THIS POLICY REDUCES THE APPLICABLE LIMITS FOR BODILY INJURY LIABILITY, PROPERTY DAMAGE LIABILITY, UNINSURED MOTORIST AND UNDERINSURED MOTORIST COVERAGES SHOWN ON THIS DECLARATIONS PAGE TO THE LEGALLY REQUIRED MINIMUM FINANCIAL RESPONSIBILITY LIMITS IN THE STATE WHEN AN INSURED VEHICLE IS OPERATED BY ANYONE OTHER THAN YOU OR A RELATIVE.

TOTAL PREMIUMS	VEHICLES	ENDORSEMENTS	TAX/FEE	TOTAL PREMIUM	CLYDE MCNEILL AUTHORIZED REPRESENTATIVE
DATE PRINTED	02/28/14				

SEE DECLARATION SECTION II FOR ADDITIONAL INFORMATION
SEE REVERSE SIDE FOR IMPORTANT INFORMATION

SM-484 (1-06)

THIS IS NOT A BILL

ELECTRONICALLY FILED - 2018 May 09 2:17 PM - CHEROKEE - COMMON PLEAS - CASE#2016CP1100809

1 STATE OF SOUTH CAROLINA

2 COUNTY OF CHEROKEE

COURT OF COMMON PLEAS

3 NICKY TED PHILLIPS and GLORIA E. PHILLIPS,

4 Plaintiffs,

5 vs.

CASE NO. 2016-CP-11-0809

6 AMERICAN NATIONAL PROPERTY AND CASUALTY COMPANY,
7 CLYDE MCNEILL AGENCY, and CLYDE EDWIN MCNEILL,
8 Individually and in his capacity as Agent of
American National Property and Casualty Company,

9 Defendants.

10 DEPOSITION OF: CLYDE EDWIN MCNEILL

11 DATE: December 14, 2017

12 TIME: 2:10 PM

13 LOCATION: American National Insurance
14 1252 Overlook Drive, Suite 9
15 Gaffney, SC

16 TAKEN BY: Counsel for the Plaintiffs

17 REPORTED BY: AMY R. COPE,
18 Court Reporter

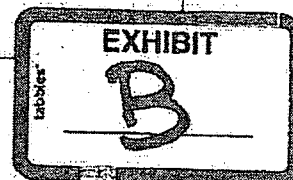
19 A. WILLIAM ROBERTS, JR., & ASSOCIATES

20 Fast, Accurate & Friendly

21 Charleston, SC	Hilton Head, SC	Columbia, SC
(843) 722-8414	(843) 785-3263	(803) 731-5224
22 Greenville, SC	Myrtle Beach, SC	Charlotte, NC
(864) 234-7030	(843) 839-3376	(704) 573-3919



A. WILLIAM ROBERTS, JR., & ASSOCIATES (800) 743-DEPO
scheduledepo.com



1 Q. Is that the declaration page -- the dec 52
2 page of prior to the policy that was in place at
3 the collision; is that right? We had a hard time
4 keeping track of all this stuff after the last
5 deposition.

6 A. Yeah, this looks like a renewal. His
7 coverage dates are 9/30/13 to 3/30/14.

8 Q. Okay.

9 A. When was the accident?

10 Q. August the 8th, 2014.

11 A. Okay.

12 Q. I believe, I'll make sure.

13 MR. HANNA: Off the record.

14 (Off-the-record conference.)

15 (PLF EXH. 3, ANPAC family automobile
16 amended declaration, was marked for
17 identification.)

18 BY MR. DERRICK:

19 Q. Give that one a look and see.

20 A. There you go. You can see right there,
21 date printed 10 -- the change date was 10/14/13.

22 Q. So that's -- the effective date is
23 10/14, and then that is printed on 10/17?

24 A. Yes, sir, I believe so.

25 Q. Okay.

1 A. It looks like I was wrong on my dates
2 that I thought, remember, I thought it was 10/28.

3 (PLF. EXH. 4, Policy change screen
4 shot, Bates stamped ANPAC 000307 through 312, was
5 marked for identification.)

6 BY MR. DERRICK:

7 Q. This is Exhibit 4. Check that out
8 right there.

9 A. Uh-huh.

10 Q. What does that look like?

11 A. This is where I changed -- I changed
12 Ted's usage of his personal policy; the Toyota, I
13 changed it to farm use.

14 Q. Okay.

15 A. Because, I mean, he is a farmer and we
16 do have a classification for pickup trucks on the
17 personal auto policy for farm use.

18 Q. And then does it also say that you
19 increased the limits on there too?

20 A. No, sir, all this says is just
21 change -- no, it does say increase limits, I
22 apologize, the second page there. That's when we
23 did these changes back here on this one here, it
24 all falls -- I got it, this is Number 3. Are these
25 mine to keep or are you taking them back?

1 Q. No, she'll take those at the end of the 54
2 day.

3 A. We increased the limits on 10/14 and
4 that reflects that as well and changed the use of
5 the vehicle to farm use. So, yeah, I had quite
6 frankly forgotten that we changed the use.
7 Changing the use is not the same thing as changing
8 the limits. And you can see here on the last page,
9 it even shows -- or the second to last page, it
10 shows the limits that were changed.

11 Q. So would it be fair say that this
12 document says that the limits were changed and the
13 use was changed on 10/14?

14 A. Yes.

15 Q. And that would be similar to the dec
16 page that we saw a minute ago that was Exhibit 3?

17 A. Yes, Exhibit 3, that's exactly right,
18 yes, sir.

19 (PLF. EXH. 5, Policy change request
20 summary for Nicky Ted Phillips, was marked for
21 identification.)

22 BY MR. DERRICK:

23 Q. Okay. Do you recognize that guy?

24 A. Yeah, this is just a duplication,
25 showing the limits on the personal line vehicles

A W R

A. WILLIAM ROBERTS, JR., & ASSOCIATES (800) 743-DEPO
scheduledepo.com

Page 54

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1 Q. Mr. McNeill, my name is Ross Plyler. I ⁸³
2 represent ANPAC in this case. I just have a few
3 questions for you. Will you look at Exhibit
4 Number, I think it's 7, in your stack there. And
5 this is the document that on the bottom right-hand
6 corner starts with McNeill 834.

7 A. It's 837.

8 Q. Well, 834 ---

9 A. Oh, yes, the front page. Got you.

10 Q. -- 834 through 837, correct?

11 A. Yes.

12 Q. I've just got a couple of questions
13 about this particular document. If you'll look
14 with me on page 2 of this exhibit, you've got the
15 two vehicles that are typed in there, '04 GMC Envoy
16 and the '05, I guess that's a Toyota Tacoma
17 truck --

18 A. Yes, sir.

19 Q. -- did you tell us earlier that that
20 information is automatically populated in the form
21 when you print it?

22 A. Yes, it's populated in what we call our
23 software called Paris.

24 Q. Okay. And that information is taken
25 from the policy or do you input that information or

1 is it automatic?

2 A. Well, if I type in the -- if I type in
3 the information on the application, you know, if
4 it's like a new application. But this was a change
5 and so the information was already in the system.

6 Q. Okay. And at the bottom of this page,
7 page 2, there is some writing. There's a box
8 checked -- and the question is: Do you wish to
9 purchase additional uninsured motorist bodily
10 injury coverage?

11 A. Correct.

12 Q. The box is checked no?

13 A. Right.

14 Q. Do you know who checked that box?

15 A. I probably checked it because I asked
16 Mr. Phillips if he wanted to purchase it and he
17 said no. And so I also X-ed the box for his
18 signature.

19 Q. And is that signature in that box on
20 page 2?

21 A. Yes, sir.

22 Q. And are you going through this form
23 with him one-by-one or all the same time --

24 A. Yes, sir.

25 Q. -- and then we go back and sign or are

A W R

A. WILLIAM ROBERTS, JR., & ASSOCIATES (800) 743-DEPO
scheduledepo.com

Page 84

1 we going through section two first and then section
2 three --

3 A. Yes, sir, you're talking about on the
4 offer of coverage form?

5 Q. I'm talking about this exhibit that
6 we're looking at, Exhibit Number 7.

7 A. Yes, sir. Well, you're talking about
8 number two and number three, are you talking about
9 the uninsured questionnaire and then the
10 underinsured offer of coverage?

11 Q. Yes, sir, I'm sorry, I misunderstood
12 you --

13 A. That's okay.

14 Q. -- I'm asking if you go through it
15 section-by-section and have him sign each time?

16 A. Yes, sir. Uh-huh.

17 Q. Well, let's turn then to page 3 and
18 there's a section at the top for uninsured motorist
19 property damage coverage. And are those values,
20 the premium numbers, are those automatically filled
21 in when the document is printed?

22 A. Yes, sir.

23 Q. In the box where there's some writing,
24 the question reads: Do you wish to purchase
25 additional uninsured motorist property damage

1 coverage and there's an X under the no --

2 A. Uh-huh.

3 Q. -- spot. Do you know if you -- did you
4 write that X or did he write the X?

5 A. I wrote the X, yes, sir.

6 Q. And this is still in section two, I
7 guess, of the form, right?

8 A. Uh-huh.

9 Q. Top of page 3, and then there's a
10 signature there, Nicky Ted Phillips; is that his
11 signature?

12 A. Yes, sir.

13 Q. Did he sign that in your presence?

14 A. Yes, sir.

15 Q. And then you said you may have put the
16 X there on the signature line showing where to
17 sign?

18 A. I did.

19 Q. Now to section three, which is the
20 offer of underinsured motorist coverage.

21 A. Uh-huh.

22 Q. There are some values here in the
23 premiums, is that information prepopulated in the
24 form when you print it?

25 A. Yes, sir.



1 Q. And then there's some writing here at
2 the bottom of this page 3. It says: Do you wish
3 to purchase underinsured motorist bodily injury
4 coverage? And that's a yes, that box is checked
5 yes?

6 A. Yes, sir.

7 Q. Did you check that one?

8 A. Yes, sir.

9 Q. And then there's numbers written in, it
10 says: If your answer is yes, specify the limits
11 which you desire, these limits cannot exceed your
12 automobile insurance liability limits, must be the
13 same for all vehicles on the policy.

14 Are you with me?

15 A. Correct. Yes.

16 Q. And there's numbers written there, it
17 says: I select 25/50 limits?

18 A. Yes, sir.

19 Q. Did you write those numbers or did he
20 write those numbers?

21 A. I wrote them.

22 Q. Okay. Is that the selection that he
23 made?

24 A. Yes, sir.

25 Q. And you've discussed that with him?

A W R

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1 A. Yes, let's see -- yes, sir. 88

2 Q. Okay. And then let's turn to page 4,
3 which is the last page of this Exhibit Number 7.
4 And this is -- at the very top, there's
5 underinsured motorist property damage coverage.

6 Again, are those premium numbers
7 prepopulated in the form when you print it?

8 A. Yes, sir.

9 Q. And there's some writing in the box
10 here at the top of page 4, the question is: Do you
11 wish to purchase underinsured motorist property
12 damage coverage? And the box is checked yes.

13 A. Yes, sir.

14 Q. Did you check that box?

15 A. Yes, sir.

16 Q. And is that because that's what
17 Mr. Phillips wanted to do?

18 A. Yes, sir.

19 Q. And then at the bottom of that
20 particular box, there's some other numbers written
21 in, the selection of \$25,000 limit for vehicle
22 number one and \$25,000 limit for vehicle two, did
23 you write those numbers in there?

24 A. Yes, sir.

25 Q. And did you write those numbers in

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1 there before Mr. Phillips signed the very bottom of ⁸⁹
2 page 4?

3 A. No, sir, and I'll tell you why -- hang
4 on, I didn't listen to your complete question.
5 Yes, I did write the numbers in there before he
6 signed page 4. I thought you were asking a
7 different question. If you'll go back to a
8 previous statement that we had when we were
9 discussing -- this is the date that we did the
10 umbrella policy, the 28th, I believe, when we were
11 discussing the coverages to write the umbrella
12 policy, Ted --

13 MR. HANNA: That's 14. Look for
14 Exhibit 14. That's the umbrella application; is
15 that what you're looking for? It's Exhibit 14.

16 THE WITNESS: Yes, it is. This was --
17 he had -- you know, as I had said, he had indicated
18 that he didn't want any underinsured. He was just
19 concerned about having the coverage in case he got
20 sued. And I made the statement, Ted, I feel like
21 you need to have at least some. And he said, yeah,
22 okay, I will. So he agreed to it, I don't know if
23 he necessarily wanted it, but he agreed to it.

24 BY MR. PLYLER:

25 Q. Maybe wanted it, but --



1 A. He didn't ask for it. 90

2 Q. -- but he agreed to it after that
3 discussion?

4 A. Yes, sir.

5 Q. And then at the bottom of this page 4,
6 still looking back on Exhibit Number 7, the name
7 Nicky Ted Phillips and his address *Redacted*

8 *Redacted* is that information prepopulated
9 in the form before it's printed?

10 A. Yeah, on the ANPAC forms it is, on the
11 ANPAC personal line forms, it is.

12 Q. Well, I'm just talking about this
13 particular form on Exhibit Number 7 --

14 A. Yes, it is.

15 Q. -- this select/reject form for the
16 personal auto policy?

17 A. Correct.

18 Q. And is that Nicky Ted Phillips'
19 signature on the bottom of page 4?

20 A. Yes, sir.

21 Q. Did he sign that in your presence?

22 A. Yes, sir.

23 Q. And it's dated October 28th, 2013?

24 A. Yes, sir.

25 Q. And again, I just want to be clear

A W R

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1 about your answer, but when he signed this section 91
2 number four on page number 4, had the values on the
3 bottom of page 3 and the top of page 4, already
4 been entered in there; already been written in?

5 A. When he signed, yes, they had already
6 been entered when he signed, yes, sir.

7 MR. PLYLER: I think that's all the
8 questions that I've got then, Mr. McNeill.

9 MR. HANNA: I have no questions.

10 (The witness, after having been advised
11 of his right to read and sign this transcript,
12 waives that right.)

13 (The deposition was concluded at 4:56 PM.)
14
15
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18
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20
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22
23
24
25

39-A-448-05L-0



PHILLIPS, NICKY TED & GLORIA R
Redacted



Are you tired of handling all the paper documents sent to you in the mail? If you choose our secure, convenient, and environmentally friendly paperless option, we will organize your ANPAC insurance documents for you.

Sign up today at www.anpac.com. When you choose to GO Paperless, you can:

- Save time and reduce handling by receiving less mail.
- Access your insurance information even when you're away from home.
- Decrease the likelihood that your personal information can be stolen from the mail.
- Control which policies are paperless.
- Help the environment.

Log on to *Client Services* at www.anpac.com to enroll in our paperless option, view policy information, or make a web payment.

**IMPORTANT POLICY DOCUMENTS
ARE ENCLOSED. PLEASE REVIEW THESE
DOCUMENTS CAREFULLY.**

WE APPRECIATE YOUR BUSINESS!

SM-2056 (8-10)

A 1-HEC D2899-T CLYDE MCNEILL

ANPAC 00924-17-05

PHILLI-000000216

PRINTED: 10-17-13

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ANPAC1000 E. SUNSHINE
SPRINGFIELD, MISSOURI 65801-0001
(417) 671-0023
© 2010 ANPAC CO.**AMERICAN NATIONAL PROPERTY AND CASUALTY CO**

POLICY NUMBER

38-A-448-081-0

POLICY TERM

09-30-13 TO 03-30-14

AND SUBSEQUENT RENEWALS

THIS FAMILY AUTOMOBILE AMENDED DECLARATIONREPLACES ALL PRIOR DECLARATIONS, IF ANY, AND WITH POLICY PROVISIONS AND
ANY ENDORSEMENTS ISSUED TO FORM A PART THEREOF COMPLETES THIS POLICY

METHOD OF PAYMENT: INSURED BILL

NAMED INSURED AND ADDRESS

PHILLIPS, NICKY TED & GLORIA E

Redacted

CHANGE EFFECTIVE: 10-14-13

ORIGIN: AGENT

CHANGES: VEH, COV, CL/USE

RATING ADDRESS:

Redacted

AGENT: D2898-T 1-HEC

CLYDE MCNEILL

Redacted

FOR CUSTOMER SERVICE:

884-488-0044

DESCRIPTION OF INSURED PROPERTY**RATED**

VEH	DR	DESCRIPTION	ID NUMBER	TYPE
1	2	2004 GMC ENVY SLE 4D	1GKDS135742194281	AUTO
2	1	2005 TOY TACOMA REG CA	5TEPX42N45Z075527	PICKUP

RATING INFORMATION, COVERAGES, PREMIUMS, AND LIMITS OF LIABILITY

INSURANCE IS PROVIDED ONLY WITH RESPECT TO THOSE OF THE FOLLOWING COVERAGES WHICH ARE INDICATED BY A SPECIFIC LIST OF LIABILITY AND/OR PREMIUMS APPLICABLE THERETO

VEHICLE	04 GMC ENVY SLE 6BGOONO	08 TOY TACOMA REG 6BGOONO
CLASS CODE		
BODILY INJURY LIABILITY	\$83.00	\$58.00
LIMIT PER PERSON/OCCURRENCE	250,000/500,000	250,000/500,000
PROPERTY DAMAGE LIABILITY	\$28.00	\$24.00
LIMIT PER OCCURRENCE	100,000	100,000
UNINSURED MOTORIST	\$14.00	\$13.00
LIMIT PER PERSON/ACCIDENT	25,000/50,000	25,000/50,000
PROPERTY DAMAGE (\$200 DED.)	25,000	25,000
UNDERINSURED MOTORIST	\$48.00	\$38.00
LIMIT PER PERSON/ACCIDENT	25,000/50,000	25,000/50,000
PROPERTY DAMAGE	25,000	25,000
COMPREHENSIVE	NO COVERAGE	NO COVERAGE
COLLISION	NO COVERAGE	NO COVERAGE
TOTAL	Redacted	

IMPORTANT NOTICE: THIS POLICY REDUCES THE APPLICABLE LIMITS FOR BODILY INJURY LIABILITY, PROPERTY DAMAGE LIABILITY, UNINSURED MOTORIST AND UNDERINSURED MOTORIST COVERAGES SHOWN ON THIS DECLARATIONS PAGE TO THE LEGALLY REQUIRED MINIMUM FINANCIAL RESPONSIBILITY LIMITS IN THE STATE WHEN AN INSURED VEHICLE IS OPERATED BY ANYONE OTHER THAN YOU OR A RELATIVE.

VEHICLES	ENDORSEMENTS	TAX/FEE	TOTAL PREMIUM
TOTAL PREMIUMS	Redacted		
DATE PRINTED	10/17/13		
UPD-17-08			
SM-484 (1-08)			
PHILLI-000000217			
			CLYDE MCNEILL AUTHORIZED REPRESENTATIVE
			SEE DECLARATION SECTION E FOR ADDITIONAL INFORMATION SEE REVERSE SIDE FOR IMPORTANT INFORMATION
			ANPAC-000317

THIS IS NOT A BILL

**IMPORTANT INFORMATION ON HOW TO REPORT A CLAIM
BUCKLE UP AND DRIVE DEFENSIVELY**

One in five drivers will have an accident this year. We hope it is not you. However, if it happens, remember to get the following information from the other driver:

1. Vehicle Owner's Name, Address, and Telephone Numbers
2. Make and Model of Vehicle
3. Driver's License Number
4. Driver's Name (If other than owner), Address, and Telephone Numbers
5. Driver's License Number
6. Insurance Company Name and Policy Number
7. Owner's and Driver's Place of Employment
8. Promptly File State Safety Responsibility Forms

REMEMBER TO REPORT YOUR CLAIM TO ANPAC® IMMEDIATELY (TOLL FREE) 1-800-333-2860

ANPAC.000218

PHILL-000000218

39-A-448-05L-0

PHILLIPS, NICKY TED & GLORIA E

10-14-13

DECLARATIONS, SECTION II PAGE 1

POLICY TERM: 09-30-13 TO 09-30-14

VEH. DR. # RATING INFORMATION

1	2	DRIVER IS 45-64 YEARS OLD, FARM USE, MILEAGE IS < 7500, MULTI-CAR
2	1	DRIVER IS 45-64 YEARS OLD, FARM USE, MILEAGE IS < 7500, MULTI-CAR

VEH. DR. # OPERATOR INFORMATION

VEH.	DR. #	OPERATOR INFORMATION	AD&D	INC-LOSS	ACCDI/CONV/INEXP
2	1	PRINCIPAL M MAR PHILLIPS NICKY TED	N	N	O O O
1	2	PRINCIPAL F MAR PHILLIPS GLORIA E	N	N	O O O

VEH. POLICY DISCOUNTS

1	TLC; PAC+;
2	TLC; PAC+;

VEH. THIS POLICY IS SUBJECT TO THE FOLLOWING FORMS AND ENDORSEMENTS

1, 2	SA1382 07-99	UNINSURED MOTORIST PROP DAMAGE
1, 2	SA1383 02-99	UNDERINSURED MOTOR PROP DAMAGE
1, 2	SA1705 06-12	SC AUTO AMENDATORY ENDORSEMENT
1, 2	SA4055C 10-00	SC FAMILY AUTO POLICY

LOSS PAYEE(S)/ADDITIONAL INTEREST(S)

IMPORTANT POLICY INFORMATION

ANPAC 000219

PHILLI-000000219

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39 A 44805L EFF DATE: 10/14/13 AGT: D2899 MCNEILL, CLYDE EDWIN J276
 PARIS/DLL BUILDS: 3246 / AMOUNT QUOTED: Redacted SUBMITTED BY: YD2899

CHANGE AREA: VEHICLE
 CHANGE TYPE: CHANGE
 CHANGE REASON: ADDED FARM USE TO VEH #2
 COMMENTS: NONE

CHANGE INFORMATION

VEHICLE: 2
 DRIVER: 1
 VEH YEAR: 2005
 VEH MAKE: TOY
 VEH MODEL: TACOMA REG CA
 VIN:
 SYMBOL:
 CLASS: OPG00N0
 MILEAGE: 7000
 REG TO INS:
 DATE PURCHASED: / /
 COST NEW:
 VEH USE: 4

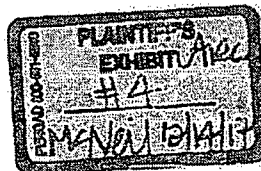
ORIGINAL INFORMATION

2
 1
 2005
 TOY
 TACOMA REG CA
 5TEPX42N45Z075527
 DB
 6YG00N0
 8000
 Y
 00/00/00
 0
 2

PF KEYS: PF4 - EXIT PF7 - PAGE BACK PF8 - PAGE FORWARD PF11 - PIP POP UP

HARDWARE NAME IS JENNY ANN CLEMENS AT A341 FROM UNDW UW ADMIN/TRN
 PRINTED ON 01-17-2017 AT 13:38:20

PHILLI-000000307



ANPAC 000307

39 A 44805L EFF DATE: 10/14/13 AGT: D2899 MCNEILL, CLYDE EDWIN J276
VEH TERR: 00
MH ALUMINUM IND: N
VAN CUSTOMIZED: N
VAN CUSTOM VALUE: 0
PROC BEGIN DATE: 0

CHANGE AREA: DRIVER
CHANGE TYPE: CHANGE
CHANGE REASON: INCREASED LIMITS
COMMENTS: NONE
CHANGE INFORMATION

DRIVER: 1
VEHICLE: 2
DRIVER NAME:
OPERATOR STATUS:
DRIVER SSN: Redacted
GENDER:
MARITAL STATUS:
DRIVER DOB:
LICENSE:

ORIGINAL INFORMATION

2
PHILLIPS NICKY TED
PRINCIPAL
M
MARRIED
Redacted

PF KEYS: PF4 - EXIT PF7 - PAGE BACK PF8 - PAGE FORWARD PF11 - PIP POP UP

HARDWARE NAME IS JENNY ANN CLEMENS AT A341 FROM UNDW UW ADMIN/TRN
PRINTED ON 01-17-2017 AT 13:38:22

PHILLI-000000308

ANPAC 000308

39 A 44805L EFF DATE: 10/14/13 AGT: D2899 MCNEILL, CLYDE EDWIN J276
LICENSE ST: 39
YEARS LIC ST: 00
YEARS LIC TOTAL: 48
DRIVER TRAINING: N
GOOD STUDENT: N
HAS PRIOR INS: Y
BANKRUPTCY: N
MONTHS EMPLOYED: 00
OCCUPATION: AF_FARMRANCHOWNR
PREV INSURER: ANPAC
PREV POL NUM: 39A44805L
EXPIRATION DATE: 03/30/14

CHANGE AREA: VEHICLE
CHANGE TYPE: CHANGE
CHANGE REASON: INCREASED LIMITS
COMMENTS: NONE
CHANGE INFORMATION
VEHICLE: 2
DRIVER: 1

ORIGINAL INFORMATION
2
1

PF KEYS: PF4 - EXIT PF7 - PAGE BACK PF8 - PAGE FORWARD PF11 - PIP POP UP

HARDWARE NAME IS JENNY ANN CLEMENS AT A341 FROM UNDW UW ADMIN/TRN
PRINTED ON 01-17-2017 AT 13:38:24

ANPAC 000309

PHILLI-000000309

39 A 44805L EFF DATE: 10/14/13 AGT: D2899 MCNEILL, CLYDE EDWIN J276
VEH YEAR: 2005
VEH MAKE: TOY
VEH MODEL: TACOMA REG CA
VIN: TACOMA REG CA
SYMBOL: 5TEPX42N452075527
CLASS: 68G00N0
MILEAGE: DB
REG TO INS: OPG00N0
DATE PURCHASED: 7000
COST NEW: Y
VEH USE: 5 00/00/00
VEH TERR: 0
MH ALUMINUM IND: 4
VAN CUSTOMIZED: 00
VAN CUSTOM VALUE: N
PROC BEGIN DATE: 0
0
CHANGE AREA: COVERAGE
CHANGE TYPE: CHANGE
CHANGE REASON: INCREASED LIMITS

PF KEYS: PF4 - EXIT PF7 - PAGE BACK PF8 - PAGE FORWARD PF11 - PIP POP UP

HARDWARE NAME IS JENNY ANN CLEMENS AT A341 FROM UNDW UW ADMIN/TRN
PRINTED ON 01-17-2017 AT 13:38:26

PHILLI-000000310

ANPAC 000310

39 A 44805L EFF DATE: 10/14/13 AGT: D2899 MCNEILL, CLYDE EDWIN J276

COMMENTS: NONE

CHANGE INFORMATION		ORIGINAL INFORMATION	
VEHICLE: 1	SYMB	1	SYMB
BI: 250/500	058	50/100	
PD: 100,000	059	50,000	
MED: DELETE		1000	
CHANGE INFORMATION		ORIGINAL INFORMATION	
VEHICLE: 2	SYMB	2	SYMB
BI: 250/500	055	50/100	
PD: 100,000	056	50,000	
MED: DELETE		1000	

EXCEPTION

COMMENTS: CLIENT IS NOW FULL TIME FARMER

PRO307

POLICY DATA HAS CHANGED OR SAM DATA MAY BE OUT OF DATE. CLIC
K VIEW/MESSAGES FOR DETAILS. REFRESH SAM & RE-ENTER CHANGES
TO USE CURRENT DATA.

COMMENTS: CLIENT IS NOW FULL TIME FARMER

PF KEYS: PF4 - EXIT PF7 - PAGE BACK PF8 - PAGE FORWARD PF11 - PIP POP UP

HARDWARE NAME IS JENNY ANN CLEMENS AT A341 FROM UNDW UW ADMIN/TRN
PRINTED ON 01-17-2017 AT 13:38:28

ANPAC 000311

PHILEX-000000311

39 A 44805L

EPP DATE: 10/14/13 AGT: D2899 MCNEILL, CLYDE EDWIN J276
VC0058
CHANGING VEHICLE WITH BUSINESS USE. NO OTHER VEHICLE HAS BUS
INESS USE.
2005 TOY TACOMA REG CAB

PF KEYS: PF4 - EXIT PF7 - PAGE BACK PFB - PAGE FORWARD PF11 - PIP POP UP

HARDWARE NAME IS JENNY ANN CLEMENS. AT A341 FROM UNDW UW ADMIN/TRN
PRINTED ON 01-17-2017 AT 13:38:30

PHILLI-000000312

ANPAC 000312

Phillips, Ricky Td

AMERICAN NATIONAL PROPERTY AND CASUALTY COMPANY
AMERICAN NATIONAL GENERAL INSURANCE COMPANY
OFFER OF OPTIONAL ADDITIONAL UNINSURED MOTORIST COVERAGE
AND OPTIONAL UNDERINSURED MOTORIST COVERAGE

02

I. EXPLANATION OF COVERAGES

Automobile liability insurance coverage pays other motor vehicle drivers and their passengers for damages caused by you and for which you are legally responsible. There are two types of automobile liability insurance coverage: bodily injury and property damage. Bodily injury coverage pays for bodily injuries to others inflicted by your motor vehicle. Property damage coverage pays for damages which your motor vehicle causes to other motor vehicles or property.

Under South Carolina law, an insurance company may refuse to write your automobile liability insurance for a number of reasons. If an insurance company decides to write your automobile liability insurance coverage, however, it must provide at least \$25,000.00 of bodily injury coverage for each person whom you may injure in any single accident and \$50,000.00 of bodily injury coverage for two or more people whom you may injure in any single accident. The insurance company must also provide at least \$25,000.00 in property damage coverage for each accident you may cause. You may have seen these limits described as \$25,000/\$50,000/\$25,000 or 25-50-25. These limits are commonly known as minimum limits. In order to drive your automobile upon the roads of this State, you must have at least these minimum limits of insurance, unless you post a satisfactory bond or pay a \$550 fee to drive uninsured. There is no requirement that an insurance company offer higher than minimum limits of automobile liability insurance coverage. If your insurance company does offer more than the minimum limits, you will be required to pay an additional premium for those increased limits of protection.

An insurer that writes your automobile liability insurance coverage must also offer two additional coverages which will protect you in the event you are damaged in an automobile accident by an at-fault driver who either has no automobile insurance or whose automobile insurance liability limits are less than the damages in that accident. These coverages are termed additional uninsured motorist coverage and optional underinsured motorist coverage, respectively. You may also see them referred to as UM and/or UIM. If you decide to purchase either of these coverages, you will be required to pay an additional premium for each of these coverages.

Uninsured motorist coverage compensates you, or other persons insured under your automobile insurance policy, for amounts which you may be legally entitled to collect as damages from an owner or operator of an at-fault uninsured motor vehicle. An uninsured motor vehicle is a motor vehicle which either has no liability insurance coverage or is operated by a hit-and-run driver. By law, your automobile insurance policy automatically provides uninsured motorist coverage of \$25,000/\$50,000/\$25,000. There is a \$200 deductible for uninsured property damage claims.

You also have the right to buy additional uninsured motorist coverage, in various limits up to the limits of the liability coverage you have purchased. The limits of additional uninsured motorist coverage which your insurance company is authorized to write and for which you are eligible are shown on this form, together with the additional premium for those increased limits. You may not purchase uninsured motorist coverage with limits in excess of your liability limits.

Underinsured motorist coverage compensates you, or other persons insured under your automobile insurance policy, for amounts which you legally may be entitled to collect as damages from an owner or operator of an at-fault underinsured motor vehicle. An underinsured motor vehicle is a motor vehicle which is covered by some form of liability insurance, but which is insufficient to fully compensate you for your damages.

Your automobile insurance policy does not automatically provide any underinsured motorist coverage. However, you have the right to buy, and your insurance company is required to offer, optional underinsured motorist coverage in various limits up to the limits of liability coverage you have purchased. The limits of optional underinsured motorist coverage which your insurer is authorized to write and for which you are eligible are shown on this form, together with the additional premiums for those limits. You may not purchase underinsured motorist coverage with limits in excess of your liability limits.

If you reject optional underinsured or additional uninsured motorist coverages shown on this form and if you are involved in an automobile accident that is not your fault, this form may be used by your insurance company as evidence against you if you make a claim for additional uninsured motorist coverage or optional underinsured motorist coverage.

If you do not complete this form and return it to your insurance company or insurance agent within 30 days, your insurance company is required by law to add additional uninsured motorist coverage and optional underinsured motorist coverage, in the same limits as your automobile liability insurance, to your automobile insurance policy. You will be required to pay an additional premium for each of these coverages and your policy may be canceled for non-payment of that additional premium.

SA-1427 (6-07)

1

PHILLI-000000672



McNeill_0834

Phillips, Nicky Ted

In the future, if you wish to increase or to decrease your limits of additional uninsured motorist coverage or optional underinsured motorist coverage, you must contact either your insurance agent or your insurance company. You will not be presented with another copy of this form by your insurance agent or your insurance company upon the renewal of your automobile liability insurance policy. You will not be presented with another copy of this form by your insurance agent or current insurance company when you extend, change, supersede, or replace your automobile liability insurance policy.

Please read this form carefully. Your insurance agent or your insurance company must answer any questions which you may have. If you have any further questions, you may contact the Department of Insurance at:

Office of Consumer Services
State of South Carolina Department of Insurance
1201 Main St., Ste. 1000
Post Office Box 100105
Columbia, South Carolina 29202-3105
(803) 737-6180
(800) 768-3467
E-mail Address: CnsmMail@doi.state.sc.us

These Vehicle Descriptions Apply to All Coverages Listed Below:

Veh. 1 - Description 04 GMC ENVOY SLE 4D VIN 1GKDS13S742194281
Veh. 2 - Description 05 TOY TACOMA REG CAB 4WD VIN 5TEPX42N45Z075627
Veh. 3 - Description _____ VIN _____
Veh. 4 - Description _____ VIN _____

II. OFFER OF ADDITIONAL UNINSURED MOTORIST COVERAGE

Minimum uninsured motorist coverage limits of \$25,000/\$50,000/\$25,000 are automatically provided by your insurance policy. If you select additional uninsured motorist coverage, the premium charge will be increased. The schedule below indicates the premium charges for minimum and increased limits:

Limits of Coverage			Premium			
			Vehicle 1	Vehicle 2	Vehicle 3	Vehicle 4
\$ 25,000	/	\$ 50,000	\$ 10	\$ 9	\$ 0	\$ 0
\$ 50,000	/	\$100,000	11	10	0	0
\$100,000	/	\$300,000	12	10	0	0
\$250,000	/	\$500,000	15	13	0	0
\$300,000	/	\$500,000	17	15	0	0
\$500,000	/	\$500,000	17	15	0	0
\$500,000	/	\$1 Million	19	16	0	0
\$1 Million	/	\$1 Million	22	19	0	0

This section is not to be marked by anyone other than the applicant/insured.

Do you wish to purchase additional Uninsured Motorist Bodily Injury Coverage? Yes ☒ No ☐

If your answer is "no", then you must sign here: _____

If your answer is "yes", then specify the limits which you desire. These limits cannot exceed your automobile insurance liability limits and must be the same for all vehicles on this policy.

I select _____ / _____ limits.

SA-1427 (6-07)

2

PHILLI-000000673

McNeill 0835

UNINSURED MOTORIST PROPERTY DAMAGE COVERAGE

Limits of Coverage	Premium			
	Vehicle 1	Vehicle 2	Vehicle 3	Vehicle 4
\$25,000	\$ 4	\$ 4	\$ 0	\$ 0
\$50,000	6	6	0	0
\$100,000	8	8	0	0
\$250,000	10	10	0	0

This section is not to be marked by anyone other than the applicant/insured.

Do you wish to purchase additional Uninsured Motorist Property Damage Coverage? Yes ☒ No ☒

If your answer is "no", then you must sign here: Nicky Ted Phillips

If your answer is "yes", then specify the limits which you desire. These limits cannot exceed your automobile insurance property damage liability limits.

I select _____ limit for Veh. 1

I select _____ limit for Veh. 3

I select _____ limit for Veh. 2

I select _____ limit for Veh. 4

III. OFFER OF UNDERINSURED MOTORIST COVERAGE

Minimum underinsured motorist coverage limits are \$25,000/\$50,000/\$25,000. If you select additional underinsured motorist coverage, the premium charge will be increased. The schedule below indicates the premium charges for minimum and increased limits:

UNDERINSURED MOTORIST BODILY INJURY COVERAGE

Limits of Coverage		Premium			
		Vehicle 1	Vehicle 2	Vehicle 3	Vehicle 4
\$ 25,000	/ \$ 50,000	\$ 44	\$ 37	\$ 0	\$ 0
\$ 50,000	/ \$100,000	61	53	0	0
\$100,000	/ \$300,000	73	63	0	0
\$250,000	/ \$500,000	105	91	0	0
\$300,000	/ \$500,000	118	100	0	0
\$500,000	/ \$500,000	120	104	0	0
\$500,000	/ \$1 Million	138	120	0	0
\$1 Million	/ \$1 Million	180	138	0	0

This section is not to be marked by anyone other than the applicant/insured.

Do you wish to purchase Underinsured Motorist Bodily Injury Coverage? Yes ☒ No ☒

If your answer is "no", then you must sign here: _____

If your answer is "yes", then specify the limits which you desire. These limits cannot exceed your automobile insurance liability limits and must be the same for all vehicles on this policy.

I select 25 / 50 limits.

UNDERINSURED MOTORIST PROPERTY DAMAGE COVERAGE

Limits of Coverage	Premium			
	Vehicle 1	Vehicle 2	Vehicle 3	Vehicle 4
\$25,000	\$ 1	\$ 1	\$ 0	\$ 0
\$50,000	2	2	0	0
\$100,000	3	3	0	0
\$250,000	3	3	0	0

This section is not to be marked by anyone other than the applicant/insured.

Do you wish to purchase Underinsured Motorist Property Damage Coverage? Yes ☒ No ☐

If your answer is "no", then you must sign here: _____

If your answer is "yes", then specify the limits which you desire. These limits cannot exceed your automobile insurance property damage liability limits.

I select 25,000 limit for Veh. 1

I select _____ limit for Veh. 3

I select 25,000 limit for Veh. 2

I select _____ limit for Veh. 4

IV. APPLICANT'S ACKNOWLEDGMENT

By my signature, I acknowledge that I have read - or I have had read to me - the above explanations and offers of additional uninsured motorist coverage and optional underinsured motorist coverage. I understand that the above explanations of these coverages are intended only to be brief descriptions of additional uninsured motorist coverage and optional underinsured motorist coverage, and that payment of benefits under either of these coverages is subject both to the terms and conditions of my automobile insurance policy and to the laws of the State of South Carolina.

My signature below further acknowledges that I understand the coverages as they have been explained to me, and the type and amounts of coverage marked on the preceding pages have been selected by me. This is the type and amount of insurance coverage I wish to purchase.

Type or Print Your Name: Phillips, Nicky Ted

Your Signature: Nicky Ted Phillips

Your Address: Redacted

Today's Date: 8/28/13

Phillips, Rocky

AMERICAN NATIONAL PROPERTY AND CASUALTY COMPANY
AMERICAN NATIONAL GENERAL INSURANCE COMPANY
OFFER OF OPTIONAL ADDITIONAL UNINSURED MOTORIST COVERAGE
AND OPTIONAL UNDERINSURED MOTORIST COVERAGE

02

I. EXPLANATION OF COVERAGES

Automobile liability insurance coverage pays other motor vehicle drivers and their passengers for damages caused by you and for which you are legally responsible. There are two types of automobile liability insurance coverage: bodily injury and property damage. Bodily injury coverage pays for bodily injuries to others inflicted by your motor vehicle. Property damage coverage pays for damages which your motor vehicle causes to other motor vehicles or property.

Under South Carolina law, an insurance company may refuse to write your automobile liability insurance for a number of reasons. If an insurance company decides to write your automobile liability insurance coverage, however, it must provide at least \$25,000.00 of bodily injury coverage for each person whom you may injure in any single accident and \$50,000.00 of bodily injury coverage for two or more people whom you may injure in any single accident. The insurance company must also provide at least \$25,000.00 in property damage coverage for each accident you may cause. You may have seen these limits described as \$25,000/\$50,000/\$25,000 or 25-50-25. These limits are commonly known as minimum limits. In order to drive your automobile upon the roads of this State, you must have at least these minimum limits of insurance, unless you post a satisfactory bond or pay a \$550 fee to drive uninsured. There is no requirement that an insurance company offer higher than minimum limits of automobile liability insurance coverage. If your insurance company does offer more than the minimum limits, you will be required to pay an additional premium for those increased limits of protection.

An insurer that writes your automobile liability insurance coverage must also offer two additional coverages which will protect you in the event you are damaged in an automobile accident by an at-fault driver who either has no automobile insurance or whose automobile insurance liability limits are less than the damages in that accident. These coverages are termed additional uninsured motorist coverage and optional underinsured motorist coverage, respectively. You may also see them referred to as UM and/or UIM. If you decide to purchase either of these coverages, you will be required to pay an additional premium for each of these coverages.

Uninsured motorist coverage compensates you, or other persons insured under your automobile insurance policy, for amounts which you may be legally entitled to collect as damages from an owner or operator of an at-fault uninsured motor vehicle. An uninsured motor vehicle is a motor vehicle which either has no liability insurance coverage or is operated by a hit-and-run driver. By law, your automobile insurance policy automatically provides uninsured motorist coverage of \$25,000/\$50,000/\$25,000. There is a \$200 deductible for uninsured property damage claims.

You also have the right to buy additional uninsured motorist coverage, in various limits up to the limits of the liability coverage you have purchased. The limits of additional uninsured motorist coverage which your insurance company is authorized to write and for which you are eligible are shown on this form, together with the additional premium for those increased limits. You may not purchase uninsured motorist coverage with limits in excess of your liability limits.

Underinsured motorist coverage compensates you, or other persons insured under your automobile insurance policy, for amounts which you legally may be entitled to collect as damages from an owner or operator of an at-fault underinsured motor vehicle. An underinsured motor vehicle is a motor vehicle which is covered by some form of liability insurance, but which is insufficient to fully compensate you for your damages.

Your automobile insurance policy does not automatically provide any underinsured motorist coverage. However, you have the right to buy, and your insurance company is required to offer, optional underinsured motorist coverage in various limits up to the limits of liability coverage you have purchased. The limits of optional underinsured motorist coverage which your insurer is authorized to write and for which you are eligible are shown on this form, together with the additional premiums for those limits. You may not purchase underinsured motorist coverage with limits in excess of your liability limits.

If you reject optional underinsured or additional uninsured motorist coverages shown on this form and if you are involved in an automobile accident that is not your fault, this form may be used by your insurance company as evidence against you if you make a claim for additional uninsured motorist coverage or optional underinsured motorist coverage.

If you do not complete this form and return it to your insurance company or insurance agent within 30 days, your insurance company is required by law to add additional uninsured motorist coverage and optional underinsured motorist coverage, in the same limits as your automobile liability insurance, to your automobile insurance policy. You will be required to pay an additional premium for each of these coverages and your policy may be canceled for non-payment of that additional premium.

SA-1427 (8-07)

1



ANPAC 000076

Phillips, Nicky T.

In the future, if you wish to increase or to decrease your limits of additional uninsured motorist coverage or optional underinsured motorist coverage, you must contact either your insurance agent or your insurance company. You will not be presented with another copy of this form by your insurance agent or insurance company upon the renewal of your automobile liability insurance policy. You will not be presented with another copy of this form by your insurance agent or current insurance company when you extend, change, supersede, or replace your automobile liability insurance policy.

Please read this form carefully. Your insurance agent or your insurance company must answer any questions which you may have. If you have any further questions, you may contact the Department of Insurance at:

Office of Consumer Services
State of South Carolina Department of Insurance
1201 Main St., Ste. 1000
Post Office Box 100105
Columbia, South Carolina 29202-3105
(803) 737-6180
(800) 768-3487
E-mail Address: CnsmMail@dol.state.sc.us

These Vehicle Descriptions Apply to All Coverages Listed Below:

Veh. 1 - Description 04 GMC ENVOY SLE 4D VIN 1GKDS13S742194281
Veh. 2 - Description 05 TOY TACOMA REG CAB 4WD VIN 5TEPX42N45Z075527
Veh. 3 - Description _____ VIN _____
Veh. 4 - Description _____ VIN _____

II. OFFER OF ADDITIONAL UNINSURED MOTORIST COVERAGE

Minimum uninsured motorist coverage limits of \$25,000/\$50,000/\$25,000 are automatically provided by your insurance policy. If you select *additional* uninsured motorist coverage, the premium charge will be increased. The schedule below indicates the premium charges for minimum and increased limits:

UNINSURED MOTORIST BODILY INJURY COVERAGE

Limits of Coverage:			Premium			
			Vehicle 1	Vehicle 2	Vehicle 3	Vehicle 4
\$ 25,000	/	\$ 50,000	\$ 10	\$ 9	\$ 0	\$ 0
\$ 50,000	/	\$100,000	11	10	0	0
\$100,000	/	\$300,000	12	10	0	0
\$250,000	/	\$500,000	15	13	0	0
\$300,000	/	\$500,000	17	15	0	0
\$500,000	/	\$500,000	17	15	0	0
\$500,000	/	\$1 Million	19	16	0	0
\$1 Million	/	\$1 Million	22	19	0	0

This section is not to be marked by anyone other than the applicant/insured.

Do you wish to purchase additional Uninsured Motorist Bodily Injury Coverage? Yes ☒ No ☒

If your answer is "no", then you must sign here: Nicky T. Phillips

If your answer is "yes", then specify the limits which you desire. These limits cannot exceed your automobile insurance liability limits and must be the same for all vehicles on this policy.

I select _____ / _____ limits.

UNINSURED MOTORIST PROPERTY DAMAGE COVERAGE

Limits of Coverage	Premium			
	Vehicle 1	Vehicle 2	Vehicle 3	Vehicle 4
\$25,000	\$ 4	\$ 4	\$ 0	\$ 0
\$50,000	6	6	0	0
\$100,000	8	8	0	0
\$250,000	10	10	0	0

This section is not to be marked by anyone other than the applicant/insured.

Do you wish to purchase additional Uninsured Motorist Property Damage Coverage? Yes ☒ No ☒

If your answer is "no", then you must sign here: Nicky Ted Phillips

If your answer is "yes", then specify the limits which you desire. These limits cannot exceed your automobile insurance property damage liability limits.

I select _____ limit for Veh. 1

I select _____ limit for Veh. 3

I select _____ limit for Veh. 2

I select _____ limit for Veh. 4

III. OFFER OF UNDERINSURED MOTORIST COVERAGE

Minimum underinsured motorist coverage limits are \$25,000/\$50,000/\$25,000. If you select additional underinsured motorist coverage, the premium charge will be increased. The schedule below indicates the premium charges for minimum and increased limits:

UNDERINSURED MOTORIST BODILY INJURY COVERAGE

Limits of Coverage			Premium			
			Vehicle 1	Vehicle 2	Vehicle 3	Vehicle 4
\$ 25,000	/	\$ 50,000	\$ 44	\$ 37	\$ 0	\$ 0
\$ 50,000	/	\$100,000	61	53	0	0
\$100,000	/	\$300,000	73	63	0	0
\$250,000	/	\$500,000	106	91	0	0
\$300,000	/	\$500,000	116	100	0	0
\$500,000	/	\$500,000	120	104	0	0
\$500,000	/	\$1 Million	138	120	0	0
\$1 Million	/	\$1 Million	160	138	0	0

This section is not to be marked by anyone other than the applicant/insured.

Do you wish to purchase Underinsured Motorist Bodily Injury Coverage? Yes ☒ No ☒

If your answer is "no", then you must sign here: _____

If your answer is "yes", then specify the limits which you desire. These limits cannot exceed your automobile insurance liability limits and must be the same for all vehicles on this policy.

I select 250,000 limits.

UNDERINSURED MOTORIST PROPERTY DAMAGE COVERAGE

Limits of Coverage	Premium			
	Vehicle 1	Vehicle 2	Vehicle 3	Vehicle 4
\$25,000	\$ 1	\$ 1	\$ 0	\$ 0
\$50,000	2	2	0	0
\$100,000	3	3	0	0
\$250,000	3	3	0	0

This section is not to be marked by anyone other than the applicant/insured.

Do you wish to purchase Underinsured Motorist Property Damage Coverage? Yes ☒ No ☐

If your answer is "no", then you must sign here: _____

If your answer is "yes", then specify the limits which you desire. These limits cannot exceed your automobile insurance property damage liability limits.

I select 25,000 limit for Veh. 1

I select 25,000 limit for Veh. 2

I select _____ limit for Veh. 3

I select _____ limit for Veh. 4

IV. APPLICANT'S ACKNOWLEDGMENT

By my signature, I acknowledge that I have read -- or I have had read to me -- the above explanations and offers of additional uninsured motorist coverage and optional underinsured motorist coverage. I understand that the above explanations of these coverages are intended only to be brief descriptions of additional uninsured motorist coverage and optional underinsured motorist coverage, and that payment of benefits under either of these coverages is subject both to the terms and conditions of my automobile insurance policy and to the laws of the State of South Carolina.

My signature below further acknowledges that I understand the coverages as they have been explained to me, and the type and amounts of coverage marked on the preceding pages have been selected by me. This is the type and amount of insurance coverage I wish to purchase.

Type or Print Your Name: Phillips, Nicky Ted

Your Signature: Nicky Ted Phillips

Your Address: Redacted

Today's Date: 4/10/2013

State of South Carolina)

County of Cherokee)

Nicky Ted Phillips and)

Gloria E. Phillips,)

Plaintiffs,)

v.)

American National Property)

and Casualty Company, Clyde)

McNeill Agency, and Clyde)

Edwin McNeill, Individually)

and in his capacity as an)

agent of American National)

Property and Casualty)

Company,)

Defendants.)

2016-CP-11-00809

Deposition

of

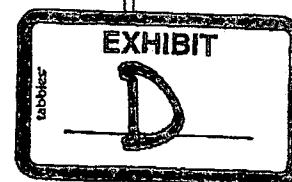
Gloria E. Phillips

Date: July 20, 2017

Time: 2:55 p.m.

Location: Roe Cassidy Coates & Price, PA, 1052 North
Church Street, Greenville, South Carolina

Reported by
Susan A. Wyant



1 Q Okay. And the last time you were employed by them,
2 how -- when did you retire?

3 A November the 15th in 2014.

4 Q Okay.

5 A Thirteen I mean, thirteen.

6 Q Gotcha. All right. All right. As far as the
7 background information I want, as far as dealing
8 with Mr. McNeill or the McNeill Agency, have you
9 ever had any personal dealings with them?

10 A The only thing I went up there and did was transfer
11 my 401K when I retired.

12 Q Okay. But that would've been sometime in 2013?

13 A Uh-huh.

14 Q Okay. Around that time? Okay.

15 Have you ever had any discussions that you can
16 recall with Mr. McNeill or anybody at his agency
17 regarding the changes to the insurance that we've
18 been talking about --

19 A No.

20 Q -- relative to this suit?

21 A No.

22 Q At the time that your husband went to go do that,
23 were you aware that he was going to do that?

24 A No.

25 Q Okay. Do you believe that he had the authority to

1 do that --

2 A Yes.

3 Q -- for you?

4 A Yes.

5 Q Okay. Gotcha. When I looked through some of our
6 files, I could only find one -- I'm going to make
7 one --

8 MR. HANNA: (To the court reporter) Let's
9 make this Exhibit 1 to her exhibit (as
10 spoken.)

11 Defendants' Exhibit Number 1, "American
12 National Property and Casualty Company
13 American National General Insurance
14 Company Offer of Optional Additional
15 Uninsured Motorist Coverage and Optional
16 Underinsured Motorist Coverage."

17 Q There we go. Okay. I'm going to hand you what's
18 been marked as Exhibit 1 to your exhibit -- excuse
19 me -- to your deposition. It's a four-page
20 document.

21 A It's when I got the Envoy. Yes.

22 Q There's one more page, just to make sure you look
23 at them all. There should be four. My question
24 is: Does -- do you recognize your signature on any
25 of those pages?

1 Q Okay. You --

2 A He told me he had went up and changed it.

3 Q Okay. So let me -- let me rephrase my question:
4 You didn't know he was going to do it, but he told
5 you right after it happened?

6 A Uh-huh.

7 Q That a yes?

8 A Yes.

9 Q Okay. All right. So it wasn't some mystery or
10 anything to you?

11 A No.

12 Q Okay. And you were okay with him doing that,
13 correct?

14 A Yes, sir.

15 Q Okay. And, for what it was worth, what -- did you
16 have any -- as an aside, do you have any knowledge
17 of what the difference between liability coverage,
18 underinsured coverage, and uninsured coverage is?

19 A No. He took care of all the insurance.

20 Q Okay. And so when he came back and said -- what
21 did he -- what, exactly, did you understand had
22 happened when he came back and --

23 A He just said he went and upped our insurance.

24 Q Okay. And beyond, quote, upping the insurance, it
25 was not -- did y'all have any specific discussion

1 Plyler and ask -- answer any questions he has.
2 I may have a couple of follow-ups when he's
3 done.

4 EXAMINATION

5 BY MR. PLYLER:

6 Q Ms. Phillips, my name is Ross Plyler. I represent
7 ANPAC, the insurance company in this case. I just
8 have a few questions for you.

9 The -- do you -- do you have any idea what
10 prompted your husband to go to -- to Mr. McNeill's
11 office to make changes to his policy -- to the
12 policy?

13 A Because of my daughter's wreck.

14 Q Okay.

15 A And Jerry Ellis's wreck.

16 Q Okay. What -- what about those accident do you
17 think prompted him to -- or do you know?

18 A Because the insurance. The one that hit my
19 daughter didn't have any insurance.

20 Q Anything else?

21 A No.

22 Q Have you ever talked with anyone -- anyone at -- at
23 ANPAC about your insurance or changing insurance or
24 what kind of coverages you had or anything like
25 that?

1 A No.

2 Q Is the only person that you'd ever talked to Clyde
3 McNeill?

4 A I don't know. I guess. I don't know.

5 Q Anybody else from his -- did you ever talk to
6 anybody else from his group?

7 A No. No.

8 Q You ever call anybody on the -- on the -- on the
9 phone from a corporate office or anybody ever call
10 you about insurance matters from ANPAC?

11 A No. No.

12 Q Do you know what kind of insurance coverage you --
13 or that you believe you were supposed to have?

14 A I don't know. I just know he was going to up it.

15 Q But you're not sure exactly what that -- what that
16 -- what that means other than just being upped or
17 increased?

18 A No. Just being upped so if we had an accident,
19 we'd be covered. It's all I -- I don't know.

20 Q Covered in what way? Do you have any idea?

21 A Well, if somebody tried to sue us or if, you know,
22 we got hurt or -- I don't know.

23 MR. PLYLER: Ms. Phillips, I think that's all
24 the questions I have.

25 MR. DERRICK: Got nothing further.

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF CHEROKEE) IN THE COURT OF COMMON PLEAS
3
4 NICKY TED PHILLIPS, ET)
5 AL,)
6 PLAINTIFFS,) TRANSCRIPT OF RECORD
7 -vs-) 2016-CP-11-00809
8 AMERICAN NATIONAL)
9 PROPERTY AND CASUALTY,) MAY 9, 2018
10 ET AL,) GAFFNEY, SOUTH CAROLINA
11 DEFENDANTS.)

12
13 B E F O R E:
14 THE HONORABLE R. KEITH KELLY, JUDGE.
15

16 A P P E A R A N C E S:
17 MICHAEL BROOKS DERRICK, ESQUIRE
18 ATTORNEY FOR THE PLAINTIFF
19 ROSS BUCHANAN PLYLER, ESQUIRE
20 ATTORNEY FOR DEFENDANT AMERICAN NATIONAL
21 PROPERTY AND CASUALTY COMPANY
22 JEFFREY IAN SILVERBERG, ESQUIRE
23 ATTORNEY FOR DEFENDANT CLYDE MCNEIL AND
24 CLYDE MCNEIL AGENCY
25

MICHAEL R. WATTS
CIRCUIT COURT REPORTER

INDEX

WITNESSES

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(NO WITNESSES CALLED)

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EXHIBITS

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NO.	DESCRIPTION	ID.	EV.
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(NO EXHIBITS MARKED)

1 (PROCEEDINGS, MAY 9, 2018)

2 THE COURT: Nicky Ted Phillips and Gloria Phillips
3 v. American National Property and Casualty, et al.

4 I believe we are here for the defendant's summary
5 judgment?

6 MR. SILVERBERG: Yes, Your Honor.

7 Your Honor, we filed a copy of the memo. I have
8 exhibits, but I think I'm only going to be referring to one,
9 so I'll just go ahead and put that one on top.

10 THE COURT: Gentlemen, if you will identify
11 yourself for the record, please?

12 MR. SILVERBERG: Your Honor, my name is Jeff
13 Silverberg and I represent Clyde McNeil and Clyde McNeil
14 Agency.

15 THE COURT: Yes, sir.

16 MR. DERRICK: Brooks Derrick. I represent Mr. And
17 Mrs. Phillips, Nicky Ted and Gloria.

18 THE COURT: All right.

19 MR. PLYLER: Ross Plyler here on behalf of
20 American National Property and Casualty.

21 THE COURT: Thank you.

22 MR. SILVERBERG: May it please the court?

23 Your Honor, there is several causes of action
24 that's been asserted against my clients in this case, but at
25 its core this case is about whether or not my client and

1 American National made a meaningful offer of underinsured
2 motorist coverage to the plaintiffs.

3 The plaintiffs were involved in a motor vehicle
4 accident in August of 2014, and there was insufficient
5 liability coverage, so they sought underinsured motorist
6 coverage under their auto policy, which at the time had
7 \$250,000, \$500,000 of liability, and it had underinsured
8 motorist coverage of 25,000 per person, 50,000 per accident.

9 And the allegations, again, center around whether
10 or not the plaintiffs asked for more than the 25 to 50 that
11 was on the policy.

12 Just a little background information. I'll try to
13 keep it brief and hit the highlights.

14 The plaintiffs are husband and wife. They are
15 both named insureds on the policy. They first obtained the
16 policy through my client, who was an insurance agent, and
17 McNeil Agency is his agency. He sells for American
18 National.

19 They first got an auto policy insuring two
20 vehicles back in September 2010. At that time they had only
21 50,000 and 100,000 in liability, and they had 25 -- they
22 selected 25,000 and 50,000 in UIM.

23 Fast forward a few years.

24 On October 15th of 2013, right around then, Mr.
25 Phillips went to my client, Mr. McNeil, and said "I would

1 like to add a farm truck to my policy."

2 Mr. McNeil said "well, you have to do a different
3 policy or a commercial policy."

4 So on that date they obtained -- Mr. Phillips
5 obtained a commercial auto policy with \$75,000 in liability
6 on the truck. He filled out a UIM select/reject form
7 rejecting UIM, so no UIM under that policy.

8 About two weeks later Mr. Phillips comes to Mr.
9 McNeil's office and says -- you know, it's undisputed that
10 his concern, or one of his concerns, was that he didn't want
11 to get sued and lose everything that him and his wife had
12 worked hard for.

13 Now, plaintiff is now claiming that he basically
14 told Mr. McNeil that he also wanted to raise his UIM
15 coverage, but, you know, the plaintiff also testified at his
16 deposition that the two of them didn't discuss how much
17 coverage was on the auto policy. They didn't discuss UIM
18 coverage at that meeting.

19 Now, we dispute that. Mr. McNeil disputes that
20 they didn't discuss that, but for purposes of this motion
21 I'm taking what the plaintiff said at his word and that is
22 that they didn't discuss it.

23 So as a result of that October 28th, 2013 meeting
24 the plaintiff applied for an umbrella policy.

25 Now, again, that would -- we would argue that's

1 evidence that his main concern of going to see my client
2 that day was to get -- was to increase liability coverage,
3 because he did apply for that umbrella policy.

4 In order to get the umbrella policy Mr. Phillips
5 had to raise the coverage under his other policies. So the
6 auto policy, the limits of liability were increased from the
7 50/100 to 250/500.

8 And then Mr. Phillips executed a UIM select form,
9 which is attached as Exhibit 7, which is what I handed up,
10 and he selected twenty -- on page three you will see he
11 selected 25,000/50,000, which coincidentally was the same
12 amount he had on the auto policy when it was first issued.
13 That's page three of Exhibit 7 that's at the bottom.

14 Now, plaintiff claims he didn't read this form
15 before he signed it, but he admits that that's his signature
16 on page four.

17 You know, of course, we would argue that you can't
18 avoid -- you know, we cite case law in our memo, you can't
19 avoid the effect of a document by claiming that you didn't
20 read it.

21 But, nevertheless, the plaintiffs have asserted a
22 number of causes of action, all of them based on the notion
23 that my client, Mr. McNeil, failed to increase the UIM on
24 the policy back in October, on October 28th, 2013.

25 Now, notably there is no evidence, the plaintiff

1 hasn't presented any evidence as to how much Mr. Phillips
2 requested UIM coverage. In fact, at Mr. Phillips deposition
3 he admitted that to this day, or at least as of the date of
4 the deposition, he did not know what UIM insurance was, what
5 it was for. So he basically has taken the position in this
6 lawsuit that he never knew what UIM coverage was, but he
7 knows that he asked for more than the 25/50 that was
8 selected on Exhibit 7 before you.

9 So we have moved for summary judgment. Argued,
10 you know, based on the grounds that we believe we are
11 entitled to the conclusive presumption that we made a
12 meaningful offer of UIM coverage to the plaintiffs pursuant
13 to South Carolina Code Section 38-77-350.

14 Now, if you will allow me to approach the bench,
15 Your Honor, I can give you that code so you can reference
16 it.

17 Now, I have talked with opposing counsel before
18 this hearing and he submitted a memo in opposition to our
19 motion, and he can correct me if I'm wrong, but I believe
20 that there is no dispute that the form Mr. Phillips signed,
21 the one that's marked as Exhibit 7 to our memo, that there
22 is no dispute that Subsection (A) of this statute has been
23 met. In other words, this form contains all the required --
24 or the minimum information that the statute requires in
25 order to be entitled to the conclusive presumption.

1 What this case really turns on is Subsection (B),
2 and I will just read it. It says "if this form is signed by
3 the named insured after it has been completed by the
4 insurance producer or representative of the insurer, it is
5 conclusively presumed that there was an informed knowing
6 selection of coverage and neither the insurance company nor
7 an insurance agent is liable to the named insured or another
8 insured under the policy for the insured's failure to
9 purchase optional coverage or higher limits."

10 So my understanding is that, of course, the
11 plaintiffs are hung up on that first -- right after the
12 first clause where it says "after it has been completed by
13 an insurance producer or representative" -- let me rephrase
14 this.

15 It basically says the form should be signed after
16 it's been completed by an insurance agent. I'm
17 paraphrasing.

18 And so the argument is, if you look at page three
19 of Exhibit 7 of the UIM select form signed by Mr. Phillips,
20 the bottom -- on the bottom box you will see that the
21 question says "do you wish to purchase underinsured motorist
22 bodily injury coverage," and there is an X by yes.

23 And then below that it says at the bottom "I
24 select," and in handwriting it says "25/50" and that's the
25 limit.

1 So the position of the plaintiffs and what Mr.
2 Phillips testified in his deposition is that he doesn't
3 remember that handwriting being there when he signed page
4 four, when he signed the document. He is saying it wasn't
5 there.

6 Now, I'll remind the court he also testified that
7 he didn't read the document before he signed it, but
8 according to him that handwriting was not there, and I think
9 that's basically the alleged disputed issue that should
10 preclude summary judgment.

11 And so my response to that is a case I cite in my
12 memo and that's the Wygant v. USAA case. And I also have a
13 copy of that case that I could hand up to the court.

14 Briefly the facts of this case, because I think
15 it's pretty much on point, you had a named insured who died
16 in a motor vehicle accident and his wife was claiming that
17 the decedent had rejected UIM coverage, and the wife argued
18 that a meaningful offer of UIM wasn't made, and, therefore,
19 the policy should be reformed.

20 The parties agreed in that case that the named
21 insured had signed the form, but they disputed who actually
22 completed the form.

23 All right. In particular the question was who
24 checked the box no next to the question of do you want
25 underinsured coverage?

1 Now, I will point out that this statute -- that
2 this case came interpreted a version of Subsection (B) that
3 required the insured to fill out the form himself. In 2006,
4 that Subsection (B) was amended, so now there is no
5 requirement that the insured fill out the form himself.
6 It's just that he has to sign the form. The insurance agent
7 can fill out the form. Anyway. So there is a dispute as to
8 who checked no box.

9 The wife and both parties moved for summary
10 judgment, the USAA and the wife, and the wife actually got
11 summary judgment saying that there was no meaningful offer
12 of UIM to the husband.

13 The Court of Appeals -- oh, I'm sorry, the Supreme
14 Court reversed that decision and actually granted summary
15 judgment to the insured. The court held that, you know,
16 even though the insured couldn't produce direct proof that
17 the insured had made the check marks, the fact that the
18 plaintiff had signed an acknowledgement, along with some
19 other evidence, was sufficient to hold that Subsection (B)
20 was complied with.

21 And interestingly enough the UIM form before you
22 on page four has a similar acknowledgement, as was in the
23 Wygant case.

24 In particular, I'll note that the plaintiff signed
25 under the acknowledgement language that says -- you know, it

1 says "I understand that the above explanation, you know,
2 based I acknowledge that I have read or have been read to me
3 the above explanations and alters of additional uninsured
4 motorist coverage and optional underinsured motorist
5 coverage."

6 Then if you look at the last sentence or the last
7 paragraph of the acknowledgement, "my signature below
8 further acknowledges that I understand the coverages as they
9 have been explained to me and the type and amounts of
10 coverage marked on the preceding pages have been selected by
11 me. This is the type and amount of insurance coverage I
12 wish to purchase."

13 So like in Wygant where that language was
14 sufficient to -- for the insured to overcome the argument
15 that form wasn't filled out by the insured, so too I would
16 submit to the court that signing that acknowledgement, any
17 argument that that handwriting wasn't on the form when the
18 plaintiff signed it does not preclude summary judgment,
19 because in addition to that acknowledgement, where Mr.
20 Phillips indicates he selected the amount of coverage marked
21 on the preceding pages, we also have some other evidence
22 that that was what Mr. Phillips asked for.

23 First of all, it's the same amount of UIM that was
24 on the policy when it was first obtained in September of
25 2010.

1 And, again, I'll make the point that the plaintiff
2 claims he didn't read the policy, but that, you know, he
3 knows that the amounts weren't there when he signed it. It
4 just contradicts -- he's contradicting himself there.

5 And then, again, plaintiff has not presented
6 today, has not said how much UIM he actually requested. He
7 is just saying that he requested more than was given him.

8 Finally, the policy was actually renewed after
9 this form was signed. There was another six month renewal,
10 and I have attached that, I believe it's Exhibit 9, so, you
11 know, the plaintiffs could have -- would have seen when they
12 received that what their UIM coverage was. So they had
13 plenty of time to determine whether or not the amount they
14 allegedly asked for was provided.

15 And we cite several -- we cite cases in my brief,
16 you know, that says that the insured has an obligation to
17 read the policy and to learn of its contents, just as -- you
18 know, to take -- to avail himself of the opportunity to
19 understand what's in his policy. So there was plenty of
20 time before the accident to figure out whether or not he had
21 the UIM coverage he claimed he asked for.

22 So, you know, just like in the Wygant case, we
23 believe there is enough evidence here such that we can
24 obtain summary judgement on the ground that we are entitled
25 to the conclusive presumption provided by 38-77-350.

1 We also believe that -- you know, we have cited
2 case law basically saying that even though Ms. Phillips
3 didn't sign this form, that Mr. Phillips had the authority
4 to sign on her behalf, and both Mr. Phillips and Ms.
5 Phillips -- Mrs. Phillips testified that essentially Mr.
6 Phillips had that authority.

7 And I have cited cases in my brief saying that we
8 have a husband and wife obtaining insurance. I mean, there
9 is -- you could find an implied agency relationship
10 involved, to the extent that opposing counsel is challenging
11 whether or not the rejection -- or the form is binding on
12 Ms. Phillips.

13 Now, I do want to quickly address some affidavits
14 that the plaintiffs filed in opposition to our motion for
15 summary judgment. I'm sure the court has those and the
16 court -- I'm sure plaintiffs counsel will probably give you
17 another copy, but my argument essentially is that these are
18 affidavits I think from former employees of my client and I
19 would basically just say that I don't think these are
20 admissible and I would ask the court not to consider these.
21 There is nothing in here to suggest that any of these two
22 individuals have, you know, knowledge of or personal
23 knowledge of the application process that took place between
24 Mr. Phillips and my client. It alleges, you know -- and so
25 pursuant to Rule 602 of the Rules of Evidence there is no

1. personal knowledge; therefore, it shouldn't be admissible.

2. It's also not specific to anything in particular.

3. There is bunch of just broad allegations about how my client
4. ran his business. And to that extent, even if it was
5. testimony that was specific and relevant to the issues in
6. this case -- for instance, there is no allegation that there
7. has ever been an incidence where my client has filled in the
8. amount selected after the fact. There is nothing in the
9. affidavits that directly says that, but to my prior point is
10. this is inadmissible character evidence, evidence of prior
11. bad acts. It's inadmissible pursuant to Rule 404.

12. To the extent Your Honor believes this does create
13. some sort of issue of fact, we would obviously request the
14. opportunity to depose these individuals before any ruling on
15. the motion.

16. Okay. So that's basically you know, my main
17. argument.

18. We also have asked that in the alternative, to the
19. extent you believe we are not entitled to summary judgment
20. on the conclusive presumption, we basically ask that the
21. court hold that we have complied with Subsection (A) and
22. that the only issue as to whether or not my clients are
23. entitled to the conclusive presumption is whether or not the
24. 25/50 in handwriting on the form was there before or after
25. the plaintiff signed.

1 There are also -- we would also like summary
2 judgment on the agency issue whether or not it's binding as
3 to Ms. Phillips. Again, I would incorporate all arguments
4 in my memorandum before you and filed with the court.

5 And then, quickly, because, you know, to the
6 extent we do not get summary judgment or you do not believe
7 we should get the conclusive presumption as a matter of law
8 at this time, I would also request partial summary judgment
9 onto the various other causes of action asserted in this
10 lawsuit, one of which is a breach of fiduciary duty.

11 We would argue that, you know, first of all,
12 whether there is a fiduciary duty as a matter of law for the
13 court to decide. You know, we cite case law in our memo
14 that just an insurance agent -- you know, relationship
15 between an agent and an insured does not create a fiduciary
16 duty or fiduciary relationship. You know, that that -- that
17 the plaintiff trusted my client in and of itself doesn't
18 create a fiduciary relationship. And, again, I cite some
19 cases in my memo to that effect.

20 The plaintiffs memo in opposition suggests, well,
21 they were friends, so that is something more and that -- you
22 know, my argument would be that, well, if you look at the
23 testimony of my client that when my client says that they
24 were friends, all the examples he gives are more like a
25 business friendship, like he did my floors, he did my

1 cabinets, he repaired them, I bought a car from him.
2 That's -- it's not, you know, like this we were high school
3 buddies sort of relationship.

4 And I will -- it is -- I did think it was
5 noteworthy that well, my client said yeah, we are friendly.
6 The plaintiff never testified that he was friends with
7 Clyde, with my client.

8 And then I guess the overarching argument, too,
9 with this breach of fiduciary duty, you know, usually the
10 core of such a claim is that somebody owes you a duty --
11 that my client owes the plaintiff a duty to act in his best
12 interests and not in his own -- not in my client's way, his
13 own interests. And here you can't say that my client acted
14 in his own self-interests when he gave -- allegedly gave
15 less UIM than was requested, because my client is an
16 insurance agent. He earns commission the more insurance he
17 sells. He would have earned more commission had he
18 increased the UIM more. So there is no -- there is no
19 self-interests there. So I would argue that the lack of a
20 duty and the lack of any evidence that my client was acting
21 in his interests, you know, entitled us to summary judgment
22 on a breach of fiduciary duty cause of action.

23 There is also a cause of action for fraud and
24 negligent misrepresentation.

25 You know, there is a number of elements to a

1 negligent misrepresentation claim. The ones I'll focus on
2 are that a false representation was made, and whether or not
3 my client had a pecuniary interest in that representation,
4 and then whether or not there was justifiable reliance on
5 that representation.

6 As for the false representation, again, plaintiffs
7 have not provided evidence or have not established that they
8 specifically requested a specific amount of UIM coverage.
9 In fact, I cite, you know, testimony in my brief the
10 plaintiff said that at no point during that October meeting
11 did they even discuss what kind of coverage he had on the
12 vehicles at the time. So, you know, there is no evidence
13 that there was any representation by my client that he would
14 give them additional UIM coverage.

15 And then with respect to, you know, the pecuniary
16 interests, again, my client, if he had any pecuniary
17 interests, it was in getting Mr. Phillips to buy as much
18 coverage as possible. So if -- if he made a false
19 representation, which, you know, to Mr. Phillips, he did so
20 at his own financial detriment.

21 And then finally the other element, you know, that
22 the plaintiff justifiably relied on the representation.
23 Again, I'll point to the fact that this policy was renewed.
24 They got a renewal declaration page. They could have seen
25 how much coverage was on there. The plaintiffs have an

1 obligation to read their policy. They know what's in it.

2 So I would argue that this negligent
3 misrepresentation claim fails for failure to satisfy any
4 three of those elements, whether a false representation was
5 made, whether my client had a pecuniary interest in making
6 the representation, and whether or not the plaintiffs
7 justifiably relied on that.

8 As to the fraud claim, which as we know has even a
9 higher standard of proof, clear and convincing, you know,
10 again, one of the elements -- I would argue that all the
11 elements apply with respect to the -- there is no evidence
12 of a false representation, no evidence of reliance, but I go
13 even further and point out that for a fraud action, you have
14 to actually prove knowledge of the falsity. And, you know,
15 I cite a case that basically says you can't complain of
16 fraud when the plaintiff could have looked at the document
17 and ascertained how much insurance was in the document. I
18 mean, you can't say that we misrepresented you, we were
19 fraudulent -- you know, we made a fraudulent representation
20 to you when you could have easily just looked at your
21 document to see what you have.

22 Last but not least, the Unfair Trade Practices
23 Act. I have a feeling that I think -- I don't know if
24 opposing counsel is still intending to go forward with that,
25 but we cite case law that basically says that you can't

1 pursue a claim for, you know, when it comes to insurance,
2 bad -- you know, when it comes to bad faith or bad -- you
3 know, fraudulent or any sort of insurance practice, that
4 that's -- you can't pursue that pursuant to the Unfair Trade
5 Practices Act.

6 So, in summary, we believe that -- my clients
7 believe that we are entitled to the conclusive presumption.
8 But to the extent that the court disagrees with our opinion,
9 we would like partial summary judgment and a specific ruling
10 that the only issue is whether or not the limits on the UIM
11 form were there before signing, or after Mr. Phillips signed
12 it. And then we would like partial summary judgment on the
13 remaining causes of action. Thank you.

14 THE COURT: Thank you.

15 Yes, sir.

16 MR. DERRICK: I'm not sure if Mr. Plyler would
17 like to --

18 THE COURT: I'm sorry, Mr. Plyler.

19 MR. PLYLER: Yes, Your Honor, Ross Plyler here on
20 behalf of AMPAC.

21 I won't belabor this because we filed a similar
22 motion. The insurance company is also named as a defendant
23 on most of the claims, in addition to a declaratory judgment
24 action.

25 Our arguments are the same as were outlined by

1 counsel for Clyde McNeil Agency.

2 I will just highlight one thing, Your Honor,
3 before we move on. The Statute, 38-77-350 (B), does allow
4 or does cover insurance companies and insurance agents. If
5 the form is signed by the named insured, after it has been
6 completed by an insurance producer or representative, it is
7 conclusively presumed that there was an informed, knowing
8 selection of coverage and neither the insurance company nor
9 the insurance agent is liable to the named insured.

10 So the statute -- the statute does apply also to
11 limit liability against the company.

12 We think there is no real dispute here about that
13 the form is in compliance with those requirements of
14 Subsection (A). We have been over that and we do believe
15 that we are -- that entitles the company as well to that
16 presumption that's outlined in Subsection (B) and (D).

17 If there is an issue of dispute in this case, as
18 it was just mentioned, was it signed before or after some of
19 the handwriting was inserted into the form. That may be a
20 dispute, but it's not a material dispute, Your Honor, and
21 that's very important, because under the Wygant case that
22 was cited to you earlier and the acknowledgement that the
23 insured signed, they -- the insured specifically said this
24 is what I marked, this is what I indicated. That was
25 important in that case. It's important in this case too to

1 show that's the selection. That's that -- there was a
2 meaningful offer made and a valid selection made, so that
3 statute applies.

4 But even if Your Honor believes that that
5 presumption doesn't apply, then we can go back to the old
6 Wannamaker Test that we used to be operating on before the
7 statute. Even going through those elements of the
8 Wannamaker Test, Your Honor, that puts us back in looking at
9 the -- again, looking at this form. You know, is the form
10 commercially reasonable? Does it outline the levels of
11 coverage? Does it show that there is going to be an
12 increase in premium? Does it outline -- you know, does it
13 outline those things and fit that four-factor Wannamaker
14 Test?

15 And, Your Honor, there is not even really a
16 material -- a genuine issue of material fact that it does.
17 Those -- all those elements of Wannamaker are met too. So
18 you could decide this case on that basis. You could decide
19 this case. Even if we have an issue under the statute,
20 there is no genuine issue as to Wannamaker, and that's a
21 fallback. Just because the statute isn't complied with
22 doesn't mean we lose. It just means we lose that
23 presumption. So we can go -- we can go to Wannamaker. Your
24 Honor, I just wanted to stress that.

25 The other causes of action that to the extent they

1 are put forward against the company should also be granted
2 the same -- we have the same -- the exact same argument as
3 the McNeil Agency does.

4 And then if the court answers those questions,
5 like we believe it should, that makes it a declaratory
6 judgment action as to how much coverage is there really a
7 moot point.

8 So, Your Honor, I won't belabor the court's time,
9 but we do believe we have -- that there is no genuine issue
10 and the company is similarly entitled to summary judgment on
11 those claims.

12 THE COURT: Yes, sir.

13 MR. DERRICK: Your Honor, Brooks Derrick again for
14 Mr. And Mrs. Phillips.

15 This court should deny defendants motions for
16 summary judgement for just one reason. This case is all
17 about facts. This case requires a fact finder to look into
18 the eyes of the parties and the witnesses to determine and
19 weigh the credibility of both those -- or all of those
20 folks.

21 This is -- this case is not about the validity of
22 some form or whether Mr. Phillips submitted a -- clicked a
23 button on line. It's about whether or not when Mr. Phillips
24 walked into Clyde McNeil's office, the man that he's trusted
25 for over ten years, and he relied on him, trusted and relied

1 on him to get what he wanted.

2 He walked in there and said armed with two events
3 in his life. He walked in and said "I want to raise all my
4 insurance."

5 And the two events in his life was, one, his
6 daughter had been in a car wreck. His daughter had been
7 injured; broken her back, tragically. That -- in that
8 situation the liability carrier did not have enough
9 insurance and she -- luckily for her they had \$300,000 of
10 underinsured motorist coverage and she was able to collect.

11 The second issue in his family was a family member
12 had been sued for a whole bunch of money.

13 So after those two events, at the urging of his
14 family, repeated your urging of his family, he went to Clyde
15 McNeil's office on October the 28th, 2013, to raise all of
16 his insurance.

17 After talking to Mr. McNeil about these events,
18 telling him those two situations, Mr. McNeil then presented
19 him with a document.

20 Now, this is -- this case is all about what
21 happens next, right? This case -- Mr. Phillips testimony is
22 that -- if you will look at this Exhibit 7 that they have
23 presented, every handwriting, every mark, except for Mr.
24 Phillips signature, is that of Mr. McNeil.

25 Now, Mr. Phillips testimony is that when he sat

1 down at this document, none of the checks or the X's or the
2 numbers were present on this document. And Mr. Phillips,
3 trusting the man that he had been buying insurance for for
4 over ten years, even had life insurance -- life insurance
5 policies and everything there, trusted him when he said
6 "okay, Nicky, I want you to sign here, here, and here." Mr.
7 Phillips signed those documents and left that office that
8 day thinking that he had raised all his insurance.

9 He did not understand or understand the phrase
10 what underinsured motorist coverage was, or anything. He
11 just knew that he needed to protect himself for those two
12 events that had happened in his family; his daughter's
13 tragic broken back, and then the other family member that
14 had been sued. Those two events brought him into the
15 office.

16 And if -- we spoke beforehand and I am of an
17 agreement that 38-77-50 (A), I think this form as it's
18 outlined here is perfectly fine. What we are contesting and
19 what we would say is a material fact here is the language of
20 (B), which was inserted in 2006, specifically said that if
21 this form is signed by the named insured after it has been
22 completed by an insurance producer or representative of the
23 insurer, that is the dispute here. This is -- that is a
24 fact that Mr. McNeil says is one way and Phillips say is
25 another way.

1 This all --

2 I'm sorry, looking at Wygant, I just want to
3 address a couple of things they said a minute ago. Wygant
4 is -- the language in Wygant says "contrary to the Circuit
5 Judge's finding, USA presented sufficient evidence to show
6 that Wygant both completed and executed the form."

7 That's not the case here. This is -- Wygant is
8 not a presumption that the insurer should win. In that
9 situation the insured had completed the form. It was only a
10 dispute on one box.

11 In this form all of the handwriting is not Mr.
12 Phillips, except for his signature.

13 I think this case is all about who is telling the
14 truth, who remembers what happened that day and it's going
15 to require the opportunity for a fact finder to stare in the
16 eyes of all these folks and figure out what exactly
17 happened.

18 I think the timing of the completion of that form
19 is fundamental to this case. It's as fundamental as whether
20 or not the light was green or red in a car wreck case, and
21 we certainly wouldn't allow summary judgment in a situation
22 like that, and we shouldn't here. And for that I believe
23 that the intense evaluation of a fact finder is required and
24 you should deny summary judgment.

25 THE COURT: Thank you, sir.

1 Anything else?

2 MR. SILVERBERG: Just very quickly, Your Honor.

3 THE COURT: Okay.

4 MR. SILVERBERG: With respect to those two
5 incidents, just so the court knows, the incident with the
6 daughter that dealt with UIM coverage, the plaintiff
7 testified that happened years before he initially got the
8 policy in 2010; whereas, the family friend who got sued and
9 didn't have enough liability coverage, that had happened in
10 2013. So that was a much more pressing event. I think
11 that's noteworthy.

12 As respects to, again, the Wygant court, I think
13 we have the other evidence that plaintiffs counsel claims we
14 don't have, because in addition to the signed
15 acknowledgement, we also have, you know, the fact that
16 plaintiff said he didn't read it. He didn't read the form.
17 Well, if he didn't read the form, how are you going to now
18 say that that handwriting wasn't there when I signed it. It
19 just doesn't make sense.

20 And to this day I still do not know how much the
21 plaintiff claims he requested in UIM coverage. All we keep
22 hearing is "I want to raise my insurance."

23 Okay. How much was it supposed to be raised? The
24 plaintiffs still have not answered that ultimate question.
25 So, anyway, that's all I have.

1 THE COURT: Anything?

2 MR. PLYLER: Nothing further, Your Honor.

3 THE COURT: Thank you.

4 It's under advisement. Watch your e-mail
5 addresses.

6 (END OF REQUESTED TRANSCRIPT OF RECORD)
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CERTIFICATE

I, the undersigned, Michael R. Watts, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case in the Court of Common Pleas for Cherokee County, South Carolina, on the 9th day of May, 2018.

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

OCTOBER 20, 2018

Michael R. Watts

Michael R. Watts
Circuit Court Reporter

CERTIFICATE OF COUNSEL

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

April 25, 2019



Thomas B. Pritchard (S.C. Bar No. 65006)
PARKER NELSON & ASSOCIATES
211 King Street, Suite 107
Charleston, SC 29401
(843) 727-2500
tpritchard@pnalaw.net

M. Brooks Derrick (S.C. Bar No. 76330)
LAW OFFICE OF M.B. DERRICK, LLC
224 NE Main Street
Simpsonville, SC 29681
(864) 757-0757
brooks@derricklawoffice.com
Attorneys for Appellants

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