

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM ANDERSON COUNTY S.C. SUPREME COURT
Court of Common Pleas

J. Cordell Maddox, Jr., Circuit Court Judge

Appellate

Case No. 2019-001596

Nationwide Mutual Fire Insurance Company Respondent,

v.

Sharmin Christine Walls, Randi Harper, Wendy Timms in her
capacity as Personal Representative of the Estate of Christopher
Adam Timms, Deborah Timms Defendants,

Of whom,

Sharmin Christine Walls, Randi Harper, Wendy Timms in her
capacity as Personal Representative of the Estate of Christopher
Adam Timms, Deborah Timms Petitioners.

APPENDIX

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IN THE STATE OF SOUTH CAROLINA

In the South Carolina Court of Appeals

SC Court of Appeals

DEC 30 2016

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

RECEIVED

J. Cordell Maddox, Jr., Circuit Court Judge

RECEIVED
DEC 30 2016
SC Court of Appeals

Case No. 2016-000679

Nationwide Mutual Fire Insurance Company.....Appellant

v.

Sharmin Christine Walls, Randi Harper, Wendy Timms in her
capacity as Personal Representative of the Estate of Christopher
Adam Timms, Deborah Timms, ...Defendants,

Of whom,

Sharmin Christine Walls, Randi Harper, and Wendy Timms in her
capacity as Personal Representative of The Estate of Christopher
Adam Timms, ...Respondents,

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF ANDERSON

CIVIL ACTION NO: 2009-CP-04-00907

Nationwide Mutual Fire Insurance Company,

Plaintiff,

ORDER

vs.

Sharmin Christine Walls, Randi Harper,
Wendy Timms in her capacity as Personal
Representative of The Estate of Christopher
Adam Timms, Deborah Timms,

Defendants.

This matter comes before me on the motion of Nationwide Mutual Fire insurance Company to alter or amend the judgment rendered by the court on August 18, 2014 and filed with the Anderson County Clerk of Court on August 20, 2014. A hearing was held on this motion on Friday, March 6, 2015. Appearing on behalf of the Plaintiff was J.R. Murphy, Esquire. Appearing on behalf of the Defendants were Michael F. Mullinax, III, Esquire and J. Kirkman Moorhead, Esquire. Attorney Chip Howard joined in the arguments on behalf of the Defendants but did not personally attend the hearing. After reviewing the record in this case and hearing the able arguments of counsel, the court hereby grants the motion in part and denies it in part and substitutes this Order for the prior Order entered in the case.

PROCEDURAL HISTORY

On March 4, 2009, Nationwide Mutual Fire Insurance Company (Nationwide) filed this declaratory judgment action against the defendants seeking a declaration that a flight from law enforcement and a felony exclusion in a policy issued to Sharmin Walls applied to an accident that occurred on July 11, 2008. Nationwide also sought a declaration that Korey Mayfield was

the operator of the vehicle at the time of the accident. The defendants asserted various counterclaims that were settled prior to trial in exchange for the undisputed portion of Nationwide's coverage of \$50,000 per accident. Defendants also reached settlements with another automobile insurer, Safe Auto, which provided an additional \$50,000 of liability coverage for Korey Mayfield's liability. Also, Mayfield pled guilty to and was convicted of reckless homicide – a felony – as a result of this accident. The Court found Mayfield was the driver of the vehicle at the time of the accident and entered an Order of Summary Judgment on that issue on August 29, 2011. The Court held a bench trial on September 12, 2013. The only issue remaining at trial was the application of the flight from law enforcement exclusion and felony exclusion to the Nationwide policy.

UNDISPUTED FACTS

Prior to trial, the parties submitted a Stipulation of Fact and Nationwide submitted an Exhibit List to which all parties stipulated the admissibility of the exhibits. Therefore, many of the facts are undisputed. In addition, the court viewed the dash cam video of the highway patrolman.

On July 11, 2008, Randi Harper, Christopher Timms, and Sharmin Christine Walls were passengers in a Chevrolet Lumina owned by Walls and operated by Korey A. Mayfield travelling in a southerly direction on South Carolina Highway 81 just north of Masters Boulevard in Anderson County. South Carolina State Trooper Travis Wilson observed the vehicle crossing the yellow line and going approximately 12 miles an hour over the speed limit. At that time, Trooper Wilson decided to pull the car over and activated his blue lights.

Mayfield went from the far left lane (81 is a four-lane road) to the far right turning lane and disregarded the stop signal, continuing down 81 South. Trooper Wilson gave chase. The

evidence in the record established that Sharmin Walls and the passengers all demanded that Mayfield stop the vehicle. While driving on 81 South, Trooper Wilson's vehicle reached speeds of 109 miles per hour. Mayfield then turned left off of 81 South onto Fred Dean Road. In order to keep up with the Mayfield vehicle on Fred Dean Road, Trooper Wilson's vehicle reached speeds exceeding 95 miles per hour. Mayfield then turned right onto Flat Rock road and left onto Leatherdale Road and, in the process, disregarded multiple stop signs.

After Mayfield turned left onto Leatherdale Road, Trooper Wilson received instructions to terminate the pursuit, which he did. The Mayfield vehicle was out of sight before Trooper Wilson turned off his sirens and blue lights. Trooper Wilson then proceeded down Leatherdale Road to ensure that Mayfield made it safely through several upcoming curves

Approximately one mile from where Trooper Wilson terminated the chase, Mayfield lost control of the vehicle and ran off the road in a single-car accident. Tragically, Timms was killed in the accident and Walls, Harper, and Mayfield each sustained serious bodily injuries. The time between when Trooper Wilson terminated the chase and his arrival at the scene of the accident was approximately 1 minute and 27 seconds. At the time that Mayfield lost control of the vehicle, he was travelling a minimum speed of 72 miles per hour. The speed limit on that portion of Leatherdale Road was 35 miles per hour.

Pursuant to North Carolina v. Alford, 400 U.S. 25, 91 S. Ct. 160 (1970), Korey Mayfield pled guilty to and was convicted of reckless homicide – a felony – as a result of this accident. Mayfield was found to be the driver of the vehicle by an Order of Summary Judgment in this case on August 29, 2011.

Nationwide issued an automobile liability policy number 61-39-M 424 728 09-11-08 to Sharmin Walls that was in effect on the date of the accident. The policy provides stated limits of

coverage of \$100,000 per person and \$300,000 per occurrence for liability coverage. As to the liability coverage only, the policy provides the following exclusions:

- B. This coverage does not apply, with regard to any amounts above the minimum limits required by the South Carolina Financial Responsibility Law as of the date of the loss, to:

* * *

6. Bodily injury or property damage caused by:

- a) You;
- b) a relative; or
- c) anyone else while operating your auto;
 - (1) while committing a felony; or
 - (2) while fleeing a law enforcement officer.

In this action, Nationwide seeks a declaration that these exclusions apply. Because Nationwide does not dispute that the policy provides the State minimum \$25,000 per person and \$50,000 per accident limits for bodily injury liability, Nationwide has already paid \$50,000 collectively to the defendants. Therefore, only the remaining amount is in dispute.

FINDINGS OF FACT

A. Mayfield was still fleeing from law enforcement at the time of the accident.

Although the above-stated facts are all undisputed, the parties at trial did dispute whether Mayfield was still "fleeing a law enforcement officer" at the time the accident occurred. The Court finds that Mayfield was still fleeing law enforcement at the time of the accident because his course of conduct and manner of driving continued up until the time of the crash.

At Mayfield's criminal trial, Harper testified that the last thing she remembered prior to the accident was that she looked back "and the cop was right there." Likewise, Mark Yost – who witnessed the accident – stated that Mayfield was still travelling at a high rate of speed at the time of the accident and that Trooper Wilson arrived shortly afterwards.

The damage to the vehicle was severe and the Greenville County Sheriff's Office Accident Reconstruction Team determined that Mayfield was "traveling a MINIMUM speed of 72 miles per hour" at the time of the accident, emphasizing that the actual speed of vehicle at the time that Mayfield lost control was actually higher. That is over twice the posted speed limit of 35 miles per hour. The Court finds, after reviewing the chase video, timeline, and other evidence, that Mayfield was still fleeing from Trooper Wilson at the time of the accident even though Trooper Wilson had terminated the chase a mile earlier.¹

B. The accident occurred when Mayfield was committing a felony.

Korey Mayfield was convicted of reckless homicide as a result of this accident. South Carolina Code Annotated § 56-5-2910 states in pertinent part: "A person who is convicted of, pleads guilty to, or pleads nolo contendere to reckless homicide is guilty of a felony"

LEGAL ANALYSIS

Even though the Court finds that the accident occurred while Mayfield was fleeing from law enforcement and in the commission of a felony, the court finds that the exclusions violate South Carolina public policy, and therefore these exclusions are unenforceable based upon the Supreme Court's recent holding in Williams v. Government Employees Insurance Company (GEICO), 409 S.C. 586, 762 S.E.2d 705 (2014).²

Generally, "[i]nsurers have the right to limit their liability and to impose whatever conditions they desire upon an insured, provided they are not contravening a statute or public policy." Hansen v. United Services Auto. Assoc., 350 S.C. 62, 71-72, 565 S.E.2d 114, 118 (Ct.

¹ Smith v. State Farm Mut. Auto. Ins. Co., 122 Ga. App. 430, 177 S.E.2d 195 (Ct. App. 1970) (holding that a driver was still fleeing from law enforcement even though the accident occurred after the pursuing officer had lost sight of the fleeing car).

App. 2002) (citation omitted). Nationwide contends that the felony and flight from law enforcement provisions comport with public policy because the exclusions do not exclude all coverage, but instead reduce the amount of coverage to South Carolina's minimum statutory limits.

Although Nationwide has called the flight from law enforcement and felony provisions "exclusions," the Supreme Court in Williams, held that such provisions are better referred to as "step-down provisions." Williams, 409 S.C. at 592 n.2, 762 S.E.2d at 708. The Supreme Court held that such step-down provisions violate South Carolina Code § 38-77-142. Id. at 607, 762 S.E.2d at 716-17 ("We find this provision is in direct contravention to the prohibition set forth in section 38-77-142.").

The declaratory judgement action brought by Nationwide seeks to avoid payment of damages under the so-called "Flight From Law Enforcement Exclusion". The Defendant's position is that this clause is unenforceable and not applicable to the factual situation before this Court on the following basis:

- 1) Such clause is unconscionable.
- 2) The language contained in the Nationwide policy is ambiguous and must be construed in favor of the insured and coverage up to the maximum limits purchased by Walls should be awarded.
- 3) The facts at issue preclude the application of the Nationwide exclusion to this matter and Walls should be awarded full damages.

The South Carolina Courts have held that where an insurance policy contains an internal inconsistency, created by an exclusion which purports to bar coverage for claims arising out of the very operation sought to be insured, the policy is to be rendered ambiguous, and the Court

² The Supreme Court's decision in Williams came out after the trial in this matter and constitutes an intervening change in the law.

must resolve that ambiguity in favor of the insured. Isle of Palms Pest Control v. Monticello Ins. Co. 319 S.C. 12, 459 SE2d 318, (CT App 1994). A contract is ambiguous when it is capable of more than one meaning when viewed objectively by a reasonably intelligent person who has examined the context of the entire integrated agreement and who is cognizant of the customs, practices, usages, and terminology as understood in the particular business. Hansen v. United States Auto Ass'n, 350 S.C. 62, 565 S.E. 2d 114 (Ct. App. 2002).

It is also the law of this State that conflicting terms in an insurance policy create ambiguity and are construed liberally in favor of the insured and strictly against the carrier, Super Duper, Inc. v. PA. Nat'l Mutual Cas. Co. 683 S.C. 2d 792 (2009).

South Carolina Courts have long held that the purpose of insurance is to protect the insured, who takes out the policy and pays for it. Gentry v. Yorkshire Insurance Co., Ltd. 192 S.C. 125, 5 S.E. 2d 565 (S.C. 1939).

Where language used in an insurance contract is ambiguous, or where it is capable of two reasonable interpretations, that construction which is most favorable to the insured, will be adopted. Hansen v. USAA 350 S.C. 62, 565 S.E. 2d 114 (Ct. App. 2002).

The purpose of the South Carolina Financial Responsibility Law is to provide benefits and protection against the peril of injury or death caused by an insured. It, therefore, permits an insured to protect himself against damages in excess of that required by the minimum limits coverage which in this case, was a choice intentionally and voluntarily exercised by Sharmin Walls.

The limitation language in the Nationwide policy is unconscionable in the context of the facts of this case. Walls purchased this policy of insurance with coverage of \$100,000.00 per person, and it was nowhere made clear in the policy, that the coverage that she purchased and paid for would be reduced in the event of certain circumstances. One circumstance was "fleeing a police officer". However, the only rational reading of the this provision of the policy would

make it applicable only to the "insured purchaser" being guilty of such conduct. ***Based upon the facts of the case before me, the driver of this vehicle was in fact and under definitions, approved in numerous cases in this state, a "non-permissive driver".***

Walls, the owner of the automobile and purchaser of the insurance as well as the remaining passengers were totally innocent, and to deprive them of this coverage based on the "step-down", in my opinion, is unconscionable and this clause as applied to the facts of this case is void as against public policy. Therefore, the Court finds that the limiting language does not apply to Defendant's as an innocent insured under the Nationwide policy.

If Nationwide is allowed to escape liability for the increased coverage intentionally purchased by Walls to protect herself, then the insurance company is taking a premium and denying the insured the protection which she sought. If it is allowed to do so, it will be against precedent set by this Court in the case of Unison Insurance Company v. Schmidt 339 S.C. 362, 529 S.E. 2d, 280 (2000)

when in an uninsured motorist case the Court case stated as follows:

"We do not believe, however, the legislature intended an otherwise insured passenger to lose coverage when an unauthorized driver takes the wheel. The construction of the statute urged by respondent [insurance carrier] would relieve the carrier of responsibility when a named insured is the victim of a car-jacking. We will reject a statutory interpretation when to accept it would lead to a result so plainly absurd that it could not have been intended by the legislature or would defeat the plain legislative intent." See Schmidt supra.

It is clear that the step-down provision violates the public policy of this State and the law of this State, as is set forth in the case of Williams, supra.

"Any endorsement, provision... included in any policy of insurance which purports or seeks to limit or reduce the coverage afforded by the provisions required by this Section is void."
S.C. Code Ann. §38-77-142(c).

The Court in Williams, supra, stated:

"the purpose of the Motor Vehicle Financial Responsibility Act (MVFRA), contained in Title 56 of the South Carolina Code, is to give greater protection to those injured through the negligent operation of automobiles. [Williams, supra 409 S.C. at 599, 762 S.E.2d at 712.].

"Public policy considerations include not only what is expressed in State Law, such as the Constitution and the Statutes, and decision of the Courts, but also a determination whether the Agreement is capable of producing harm, such that its enforcement would be contrary to the public interest or manifestly injurious to the public welfare..."

"Therefore, once the face amount of coverage is agreed on, it may not be . . . limited by conflicting policy provisions that effectively retract this stated coverage. Any other interpretation of S.C. Code §38-77-142(c) would render this Section useless, and the General Assembly is presumed not to perform useless acts..."

Sharmin Walls purchased this policy, and the testimony in evidence shows Such clause was not set out in bold print or otherwise made apparent to Walls in the insurance policy

Therefore, Nationwide's flight from law enforcement and felony step-down provisions violate this State's public policy as stated in South Carolina Code § 38-77-142 and are unenforceable.

CONCLUSION

The Court finds that Defendants are entitled to coverage up to the full limits stated on the policy, subject to a reduction for amounts already paid by Nationwide. Although the accident occurred while Mayfield was fleeing from a law enforcement officer and committing a felony, the step-down provisions violate § 38-77-142 and are unenforceable pursuant to the Supreme Court's holding in Williams v. GEICO.

It is so ORDERED.

16B

J. Maddox
The Honorable J. Cordell Maddox, Jr.

Date: 2/26/16

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U.S. DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CO. 101 of 103 AND
FEDERAL DEPOSITIONS

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS

2009-CP-04-0907

Nationwide Mutual Fire Insurance Co.,

Plaintiff

vs.

Sharmin Christine Walls, Randi Harper,
Estate of Christopher Adam Timms and
Korey Mayfield,

Defendants

Sharmin Christine Walls,

Cross-Plaintiff

vs.

Korey A. Mayfield,

Cross-Defendant

ORDER

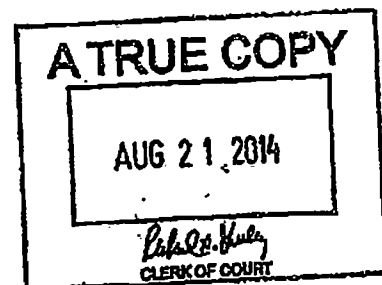
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COMMON PLEAS AND
GENERAL SESSIONS

This matter involves an automobile wreck which occurred on July 11, 2008 when an automobile owned by Sharmin Christine Walls (hereinafter "Walls") crashed causing serious bodily injury to Walls and to Randi Harper (hereinafter "Harper") and Korey Mayfield (hereinafter "Mayfield") who was driving, and the death of Adam Timms.

It is undisputed at this time that Mayfield was driving the automobile, and the sole fault of the wreck and resulting injuries to Walls and others, was directly caused by and due to the gross negligence, recklessness and wilfulness of Mayfield.

Mayfield did not have the express or implied permission of the insured Walls to drive the automobile at the time of the accident or, in the alternative, exceeded the scope of permission after Mayfield's action in attempting to elude the police.

Page 1 of 7



Walls had procured a policy of insurance through Nationwide Mutual Fire Insurance Company in the amount of \$100,000/\$300,000 liability limits for bodily injury/property damage with similar limits for Uninsured Coverage.

LIMITATION OF COVERAGE

The policy of insurance as set forth on pages L3 - L4, contained a clause limiting coverage in excess of the minimum limits required by the South Carolina Financial Responsibility Law (SCFRL) upon the happening of certain events.

Such clause was not explained to, nor was there any meaningful disclosure to Walls at the time of purchase, nor was the exclusion or limitation set out in bold print or otherwise made apparent to Walls at the time of the purchase of the insurance policy.

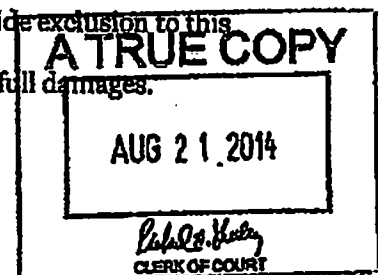
~~It is Nationwide's contention that the policy clause limits coverage under the claim to no~~ more than the minimum limits and Nationwide has submitted that paragraph 6C(ii) "while fleeing a law enforcement officer" precludes additional benefits over the \$25,000/\$50,000 minimum as a result of the crash.

Walls' damages exceed the sum of \$200,000.00 in medical costs alone.

The declaratory judgement action brought by Nationwide seeks to avoid payment of damages under the so-called "Flight From Law Enforcement Exclusion". Walls' position is that this clause is unenforceable and not applicable to the factual situation before this Court on the following basis:

- 1) Such clause is unconscionable.
- 2) The language contained in the Nationwide policy is ambiguous and must be construed in favor of the insured and coverage up to the maximum limits purchased by Walls should be awarded to Walls, Harper and Timms.
- 3) The facts at issue preclude the application of the Nationwide exclusion to this matter and Walls, Harper and Timms should be awarded full damages.

Page 2 of 7



LAW

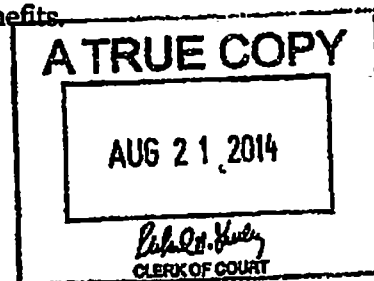
I. The South Carolina Courts have held that where an insurance policy contains an internal inconsistency, created by an exclusion which purports to bar coverage for claims arising out of the very operation sought to be insured, the policy is to be rendered ambiguous, and the Court must resolve that ambiguity in favor of the insured. Isle of Palms Pest Control v. Monticello Ins. Co. 319 S.C. 12, 459 SE2d 318, (CT App 1994) . A contract is ambiguous when it is capable of more than one meaning when viewed objectively by a reasonably intelligent person who has examined the context of the entire integrated agreement and who is cognizant of the customs, practices, usages, and terminology as understood in the particular business. Hansen v. United States Auto Ass'n. 350 S.C. 62, 565 S.E. 2d 114 (Ct. App. 2002).

It is also the law of this State that conflicting terms in an insurance policy create ambiguity and are construed liberally in favor of the insured and strictly against the carrier, Super Duper, Inc. v. P.A. Nat'l Mutual Cas. Co. 683 S.C. 2d 792 (2009).

South Carolina Courts have long held that the purpose of insurance is to protect the insured, who takes out the policy and pays for it. Gentry v. Yorkshire Insurance Co., Ltd. 192 S.C. 125, 5 S.E. 2d 565 (S.C. 1939).

Where language used in an insurance contract is ambiguous, or where it is capable of two reasonable interpretations, that construction which is most favorable to the insured, will be adopted. Hansen v. USAA 350 S.C. 62, 565 S.E. 2d 114 (Ct. App. 2002).

The purpose of the South Carolina Financial Responsibility Law is to provide benefits and protection against the peril of injury or death by an insured. It, therefore, permits an insured to protect himself against damages in excess of that required by the minimum limits coverage which in this case, was a choice intentionally and voluntarily exercised by Sharmin Walls and to which the other innocent passengers should have the benefits.

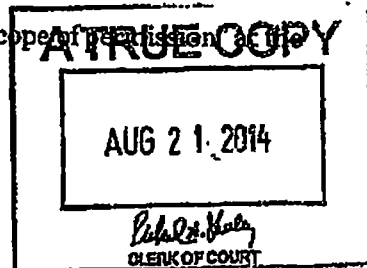


The limitation language in the Nationwide policy is unconscionable in the context of the facts of this case. Walls purchased this policy of insurance with coverage of \$100,000.00 per person, and it was nowhere made clear in the policy, nor was her attention drawn to the limitation language of the policy, that the coverage that she purchased and paid for would be reduced in the event of certain circumstances. One circumstance was "fleeing a police officer". However, the only rational reading of the this provision of the policy would make it applicable only to the "insured purchaser" being guilty of such conduct. Based upon the facts of the case before me, the driver of this vehicle was in fact and under definitions, approved in numerous cases in this state, an "uninsured non-permissive driver". Walls, the owner of the automobile and purchaser of the insurance and the other passengers were totally innocent people, and to ~~deprive them of this coverage based on the policy language based upon bad acts over which they~~ had no control, is unconscionable and this clause as applied to the facts of this case is void as against public policy. Therefore, the Court finds that the limiting language does not apply to Walls, Harper and Timms as innocent insureds under the Nationwide policy and in the alternative as an additional ground for recovery, that even if Walls, Harper and Timms should be excluded under the limitation language, that they should be held as an innocent parties to be able to recover under the uninsured provisions contained in this ambiguous insurance policy. Therefore it is my finding and my conclusion as a matter of law, that Walls, Harper and Timms are entitled to recover from Nationwide insurance, based upon their liability limits of \$100,000.00 for their damages and injuries.

UNINSURED MOTORIST PROVISION

Walls also purchased in the contract with Nationwide, Uninsured Motorists Benefits (UM) in the amount of \$100,000.00 and which provision does not contain any limitation of recovery. The evidence in the case demonstrates that there was no "permissive use" by Mayfield or, in the alternative, that Mayfield exceeded any "scope of permission" at the

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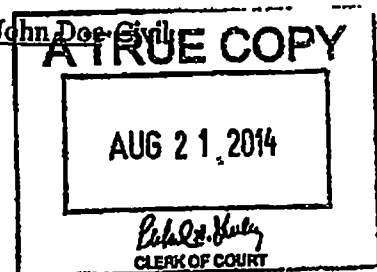
time he began his increased speed in order to elude the Police officer. Therefore, pursuant to United Fire Insurance Company v MaCloskie 320 SC 459, 465 SE2d 759, (1996) the vehicle would then be deemed "uninsured" as to the innocent passengers (including the owner, Sharmin Walls), and they should be permitted to recover pursuant to the UM provisions of the policy.

"Courts will not extend terms of insurance contracts beyond their plain meaning, nor require coverage for permissive use which was either not contemplated or was expressly prohibited by the named insured." Macloskie, supra.

If Nationwide is allowed to escape liability for the increased coverage intentionally purchased by Walls to protect herself and innocent passengers, then the insurance company is taking a premium and denying the insured the protection which she sought. If it is allowed to do so, it will be against precedent set by this Court in the case of Unison Insurance Company v. Schmidt 339 S.C. 362, 529 S.E. 2d, 280 (2000) when in an uninsured motorist case the Court case stated as follows:

"We do not believe, however, the legislature intended an otherwise insured passenger to lose coverage when an unauthorized driver takes the wheel. The construction of the statute urged by respondent [insurance carrier] would relieve the carrier of responsibility when a named insured is the victim of a car-jacking. We will reject a statutory interpretation when to accept it would lead to a result so plainly absurd that it could not have been intended by the legislature or would defeat the plain legislative intent." See Schmidt supra.

Walls, Harper and Timms in this case are innocent passengers in a vehicle being driven by an unauthorized driver. They are, either entitled to the full benefits which purchased by Walls under the liability portion of the policy, or since all of the facts demonstrate that Mayfield is an unauthorized driver, in that any permission to drive which he may have had, was revoked long before the injury suffered by the passengers; then they are entitled to recover under the Uninsured Provisions of the policy (UM), in which it is submitted the limitation would not apply.[as there is no Policy Provision which would limit the recovery to less than the \$100,000.00 which Walls purchased in UM coverage]; See also Morris v. John Doe-Civil



Action No. 6:12-02236-TMC, United States District Court, South Carolina, Greenville Division, District Judge Timothy M. Cain agreeing with the reasoning set forth in *Schmidt* and other Courts "that allow innocent insureds to recover from their insurers under uninsured motorist provisions for injuries caused by an uninsured person stealing the insured's car.

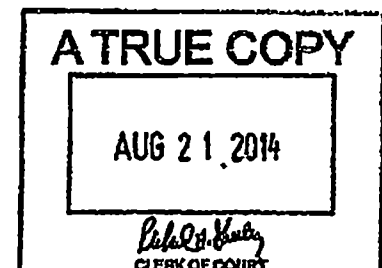
There is uncontroverted evidence that either Mayfield was an unauthorized driver (non-permissive user); or in fact commandeered the vehicle without the consent of Walls, which would then entitle her to recovery under the Uninsured Provisions of the policy.

As to Nationwide's claim that Walls, Harper and Timms are judicially estopped from claiming benefits under the uninsured portion of her policy, the Court notes that the pleadings in this matter make claim against Nationwide for any and all benefits payable under the policy of insurance, which would include uninsured and underinsured. Settlement of the undisputed portion of the liability coverage provided as follows:

"PROVIDED, HOWEVER, all parties agree that this settlement only applies to the undisputed portion of the Nationwide Mutual Policy described above, and Walls retains the right to pursue full coverage of the remaining \$100,000.00 per person coverage in the pending action."

Nationwide and any other liability carriers, voluntarily paid sums to partially reimburse Walls for her damages. There was no litigation over whether the coverage applied, or whether the vehicle was insured or uninsured. The fact that Nationwide voluntarily paid their coverage cannot be used to attempt to deny Walls' coverage under valid provisions of her policy.

Therefore, this Court finds that Walls, Harper and Timms are entitled to recover under either the liability portion of the policy, based upon the fact that such language is unconscionable and void as against public policy and in derogation of the rights of its insureds, or in the alternative, the innocent passengers are permitted to recover up to \$100,000.00 under the uninsured provision of Wall's policy, for the reasons above stated.



I find however, that Nationwide should receive credit for the sums it has previously paid to Walls, Harper and Timms.

AND IT IS SO ORDERED.



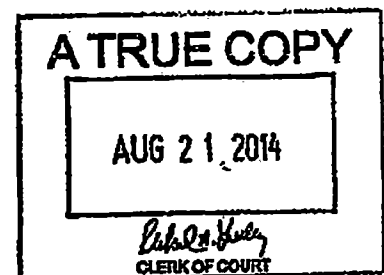
THE HONORABLE J. CORDELL MADDOX, JR.
JUDGE, TENTH JUDICIAL CIRCUIT

Anderson, South Carolina

~~August~~
July 18, 2014

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COMMON PLEAS AND
GENERAL SESSIONS

Page 7 of 7

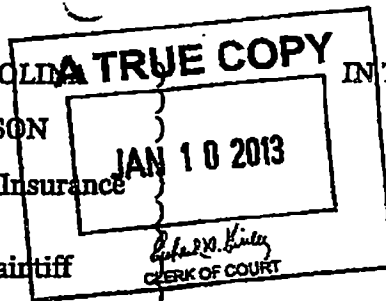


1-8-13

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

Nationwide Mutual Fire Insurance
Company

Plaintiff



IN THE COURT OF COMMON PLEAS

2009-CP-04-0907



ADDENDUM TO TRIAL COURT ORDER

Sharmin Christine Walls, Randi
Harper, Estate of Christopher Adam
Timms, and Korey Mayfield,

Defendants

Sharmin Christine Walls,

Cross-Plaintiff

vs.

Korey A. Mayfield,

Cross-Defendant

As to the damages suffered by Sharmin Walls as a result of the injury, it appears she had a spinal cord injury with multi-trauma, including a closed head injury, with loss of consciousness. This injury resulted in a C6-C7 fusion; she suffered a tibia/fibula fracture for which she still has an antalgic gait; her injuries have combined with bipolar disorder, post-traumatic stress disorder, rheumatoid arthritis, mitral valve prolapse and a neurogenic bowel and bladder. Her initial medicals and specials totaled in excess of \$179,000.00 and she has continued to be treated both neurologically and medically for the myriad of problems that she suffers from, all of which either were caused by or aggravated as a result of the injury.

In addition to that, as a result of her injuries and psychological condition, she appears to be unemployable. Under South Carolina Law, the elements of actual damage in a negligence case consists of, among others, the following:

- loss or impairment of earning capacity;
- medical expenses;
- future damages resulting from permanent injuries;
- disfigurement;
- psychological trauma;

- mental anguish;
- mental distress;
- apprehension;
- anxiety;
- emotional injury;
- psychological injury;
- depression;
- pain and suffering;
- loss of enjoyment of life

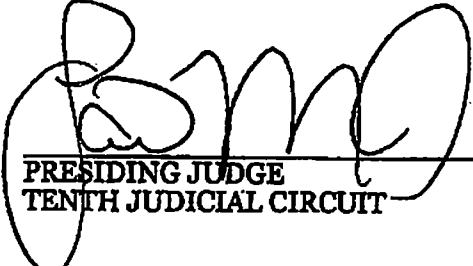


Based upon the review of this file, and the matters presented to me, I find that Sharmin Walls is entitled to be compensated for damages for all of the above. It is unfortunate that there is a limitation on recovery, due to the insurance proceeds available. I find that the proceeds should be allocated as follows:

1/3 to attorney's fees (\$6,000.00) in addition to costs incurred by the attorneys for Ms. Wall.

I further find that only 1/4 of the remaining balance due to the Cross-Plaintiff Sharmin Walls should be allocated to medical expenses and that the remaining 3/4 should be allocated solely to pain and suffering and the loss of enjoyment of life.

AND IT IS SO ORDERED.


PRESIDING JUDGE
TENTH JUDICIAL CIRCUIT

Anderson, South Carolina

July 1-8-13 2012

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STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

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JAN - 3 2013

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2009-CP-04-0907



Nationwide Mutual Fire Insurance
Company,

L. L. King
CLERK OF COURT

Plaintiff

v.

Sharmin Christine Walls, Randi Harper,
Wendy Timms in her capacity as Personal
Representative of the Estate of
Christopher Adam Timms, and Deborah
Timms,

Defendants

and

Wendy Timms in her capacity as Personal
Representative of the Estate of
Christopher Adam Timms and Deborah
Timms,

Cross-Plaintiffs

vs.

Sharmin Christine Walls and Korey A.
Mayfield,

Cross-Defendants

**ORDER APPROVING
SETTLEMENT ON BEHALF OF
SHARMIN CHRISTINE WALLS**

RECEIVED
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CLERK'S OFFICE
GENERAL SESSIONS

This matter came to be heard before me upon the attached verified Petition seeking approval of a compromise settlement of all claims and causes of actions of Sharmin Christine Walls as against Korey A. Mayfield, as such, settlement has been agreed to by both parties subject to this Court's approval.

It appears that due consideration has been given to the advisability of accepting the

proposed settlement offer of Eighteen Thousand and 00/100 (\$18,000.00) Dollars and Martha C. Gentry as Guardian ad Litem of Sharmin Walls, and who has the care of Sharmin Christine Walls has recommended to the Court that the settlement as outlined in the attached Petition be approved.

Upon reading and carefully considering the verified Petition addressed to this Court, and upon seeing, observing, and interviewing the aforesaid Martha C. Gentry, Parent and Guardian ad Litem of Sharmin Christine Walls, and who has the care of Sharmin Walls, and Sharmin Christine Walls, I have concluded that the proposed settlement offer is fair and just, is in the best interest of Sharmin Christine Walls, and that the same should be approved.

Upon reading and carefully considering the verified Petition and interviewing the Petitioner, I further find that any and all outstanding medical bills and expenses and any outstanding medical liens will be satisfied from the proceeds of this settlement.

Upon reading and carefully considering the verified Petition and interviewing the Petitioner, I further find that attorney's fees in the amount of Six Thousand and 00/100 (\$6,000.00) Dollars are justified and fair under the present circumstances, and as such the amount of attorneys' fees as set forth in the Petition are approved.

IT IS THEREFORE ORDERED that the settlement as set forth in the attached Petition is hereby approved and that upon payment and receipt of Eighteen Thousand and 00/100 (\$18,000.00) Dollars to Petitioner, as Guardian ad Litem of Sharmin Christine Walls, the Petitioner is authorized and directed to execute a Release fully and completely discharging the Defendant, Korey A. Mayfield, Michael E. Mayfield, Safe Auto Insurance Company, and all other persons, firms or corporations whomsoever, of and from any and all claims, past, present and future, known and unknown, which Sharmin Christine Walls has, or

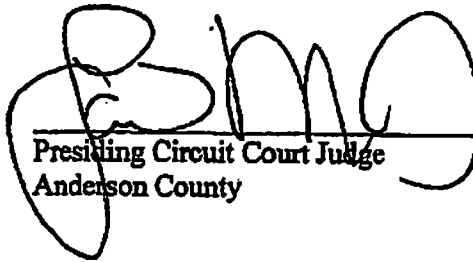


may in the future be entitled to have, on account of the matters and things set forth in the Petition.

This is not an Order for Judgment, but merely an approval of the settlement as provided by the statutes and laws of this State, and therefore,

IT IS ORDERED that the Clerk of Court shall not enter this as a money judgment.

IT IS SO ORDERED this 26 day of Nov, 2012, at Anderson, South Carolina.



Presiding Circuit Court Judge
Anderson County

CLERK OF COURT
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STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Nationwide Mutual Fire Insurance Company,
Plaintiff,

vs.

Sharmin Christine Walls, Randi Harper,
Wendy Timms in her capacity as Personal
Representative of The Estate of Christopher
Adam Timms, Deborah Timms, and Korey
Mayfield,

Defendants,

and

Wendy Timms in her capacity as Personal
Representative of The Estate of Christopher
Adam Timms, Deborah Timms,

Cross-Plaintiffs,

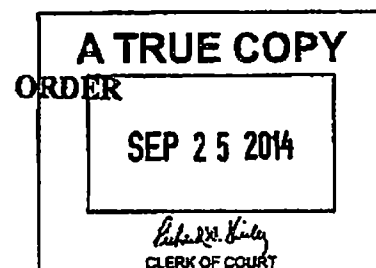
vs.

Sharmin Christine Walls and Korey A.
Mayfield,

Cross-Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO: 2009-CP-04-00907



GENERAL
SESSIONS

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ANDERSON SC

This matter comes before me upon motion of the Plaintiff, Nationwide Mutual Fire Insurance Company for an Order granting partial Summary Judgment and declaring that Defendant Korey A. Mayfield was the operator of the insured vehicle at the time of the accident of July 11, 2008. It appearing that this motion is proper, in that there is no genuine issue as to any material fact, the motion for partial summary judgment declaring that Korey Mayfield was the operator of the vehicle insured with Nationwide at the time of the accident on July 11, 2008 is hereby granted.

The accident out of which this declaratory matter arises occurred on July 11, 2008 in Anderson County. The vehicle in which the Defendants were traveling was owned by Defendant Sharmin Walls and insured with Nationwide Mutual Fire Insurance Company under policy number 61-39-m 424 728 07-11-08. The court has been asked to declare that Korey Mayfield was the operator of the vehicle at the time of the accident. In support of Nationwide's motion for summary judgment on this issue, it has submitted the affidavit of Defendant Randi Harper as well as the transcript which Korey Mayfield made an *Alford* plea to the criminal charges filed against him as a result of the accident. There has been no opposition to these filings. Therefore, based on the only evidence in the record before this court, i.e., the affidavit of Randi Harper, Nationwide's motion is proper. Moreover, even if Mayfield was still disputing that he was the operator of the vehicle at the time of the accident, he is collaterally estopped from re-litigating that issue as a result of his offered plea. Zurcher v. Bilton, 379 S.C. 132, 666 S.E.2d 224 (2008) (a defendant [who maintains his innocence but pleads guilty] must likewise accept the collateral consequences of that decision, holding that the entry of an *Alford* plea at a criminal proceeding has the same preclusive effect as a standard guilty plea). *Id.* at 227. Therefore, as a result of his *Alford* plea, Mayfield is collaterally estopped from litigating the issue of whether he was driving the vehicle in this declaratory action and as such, Nationwide is entitled to partial summary judgment as set forth in its motion.

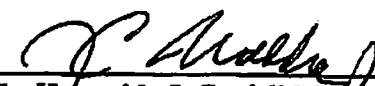
In addition, in light of the court's ruling on this motion, and the prior partial settlement agreement between the parties, the cross claims of the Defendants against Sharmin Walls and Korey Mayfield are hereby dismissed as moot.

Therefore, it is

RCP

ORDERED, ADJUGED and DECREED that Korey Mayfield was the operator of the vehicle owned by Sharmin Walls and insured by Nationwide Mutual Fire Insurance Company under policy number 61-39-M 424 728 at the time of the accident of July 11, 2008 alleged in the Complaint and the cross claims of Wendy Timms v. Sharmin Walls and Korey Mayfield are dismissed as moot.

IT IS SO ORDERED.


The Honorable J. Cordell Maddox
Presiding Judge of the Tenth Judicial Circuit

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CLERK OF SUPERIOR COURT
GENERAL SESSIONS

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

Nationwide Mutual Fire Insurance Company,
Plaintiff,

v.

Sharmin Christine Walls, Randi Harper,
Wendy Timms in her capacity as Personal
Representative of the Estate of Christopher
Adam Timms, Deborah Timms, and Korey A.
Mayfield,

Defendants.

and

Wendy Timms in her capacity as Personal
Representative of the Estate of Christopher
Adam Timms and Deborah Timms,

Cross-Plaintiffs,

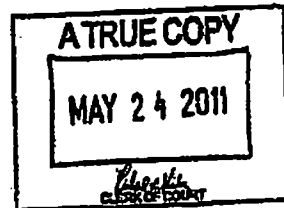
v.

Sharmin Christine Walls and Korey A.
Mayfield,

Cross-Defendants.

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 09-CP-04-907

ORDER APPROVING WRONGFUL
DEATH SETTLEMENT



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GENERAL SESSIONS

This matter is before the Court pursuant to a Petition of Wendy Timms, as
Personal Representative of the Estate of Christopher Adam Timms for Approval of
claims for a wrongful death action.

The Court has read and thoroughly considered the Petition and considered the

statements and argument of counsel for the parties before the Court.

It appears and I find:

Wendy Timms was duly appointed personal representative of the estate of Christopher Adam Timms by the Probate Court for Anderson County by order dated August 1, 2008.

The within matter is before the Court seeking approval of the settlement of the wrongful death action, and the matter is properly before the Court and the Court has jurisdiction of the parties and the subject matter.

It appears that on or about July 11, 2008, the decedent, Christopher Adam Timms was a passenger in a vehicle owned by Sharmin Christine Walls and proceeding on Leatherdale Road in an easterly direction in Iva, South Carolina when the vehicle was involved in a single car accident. The circumstances leading up to and surrounding the accident have been thoroughly investigated by investigators, adjusters, and attorneys representing Wendy Timms, Personal Representative, and similar personnel representing respondent, Korey A. Mayfield, Michael E. Mayfield, and Safe Auto Insurance Company. The attorneys for the Personal Representative, Wendy Timms, and the attorneys for respondent have arrived at an agreed settlement for the wrongful death claims of the estate, as well as any and all other claims or causes of action Wendy Timms' intestate may have against respondent, as a result of said accident and death.

It further appears and I find that Christopher Adam Timms' statutory beneficiaries and heirs at law are his mother, Deborah E. Timms, and Wendy Timms, Personal Representative of the estate.

It further appears and I find that the insurer for Korey A. Mayfield and Michael E.

Mayfield has excess coverage with Safe Auto Insurance Company of Fifty Thousand (\$50,000.00) Dollars for all claims from this accident. Safe Auto Insurance Company has tendered the sum of Eighteen Thousand (\$18,000.00) Dollars as settlement of this estate.

Upon reading and carefully considering the verified Petition and interviewing the Petitioner, I further find that the outstanding liens, including liens to Iva Rescue Squad and Inter-Serv, and totaling One Thousand Five Hundred Fifty-seven and 41/100 (\$1,557.41) dollars will be satisfied by the proceeds of this settlement. The Petitioner agrees that the Estate of Christopher Adam Timms shall be responsible for paying any and all additional outstanding bills of medical providers, funeral expenses or other providers on behalf of the Decedent and/or the Estate of Christopher Adam Timms. The Petitioner further agrees that the Estate will be solely responsible for satisfying any and all medical, funeral or other liens held by any and all third-party medical or other providers, should they exist, and that these outstanding bills and liens will be satisfied out of the proceeds of this settlement, and that neither the Defendant nor Michael E. Mayfield, nor Safe Auto Insurance Company will be responsible for these bills, expenses or liens.

Upon reading and carefully considering the verified Petition and interviewing the Petitioner, I further find that the attorney fees in the amount of Six Thousand and 00/100 (\$6,000.00) Dollars, as well as reimbursement for costs in the amount of Two Hundred Fifty and 00/100 (\$250.00) Dollars are justified and fair under the present circumstances, and as such the amount of attorney fees set forth in the Petition are approved.

Upon reading and carefully considering the verified Petition and interviewing the Petitioner, I further find that your Petitioner has agreed to disburse the remaining proceeds in the amount of Ten Thousand One Hundred Ninety-two and 59/100 (\$10,192.59) to the

Decedent's mother, Deborah E. Timms.

Based on the foregoing findings, it is:

Ordered

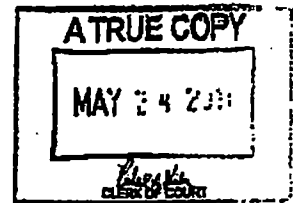
1. The settlement of the wrongful death action for the gross sum of Eighteen Thousand (\$18,000.00) Dollars is approved. It is further ordered and approved that the attorney's fee in the amount of Six Thousand and 00/100 (\$6,000.00) Dollars, as well as reimbursement for costs in the amount of Two Hundred Fifty and 00/100 (\$250.00) Dollars as indicated is approved.
2. It is further ordered that the outstanding liens totaling One Thousand Five Hundred Fifty-seven and 41/100 (\$1,557.41) dollars and any other liens and/or bills and expenses will be satisfied by the proceeds of this settlement.
3. It is further ordered that the settlement proposals set forth hereinabove and in the Petitioner's Petition are approved, and that upon payment and receipt of Eighteen Thousand and 00/100 (~~30~~,000.00) Dollars to the Petitioner, for disbursement pursuant to the language of the Petition, the Petitioner, Wendy Timms, as Personal Representative of the Estate of Christopher Adam Timms, is hereby authorized and directed to execute such documents as will effect a Policy Release in favor of Korey A. Mayfield, Michael E. Mayfield, and Safe Auto Insurance Company, their agents, servants, employees, successors, heirs, executors,

administrators and assigns, from any and all claims or actions
whatsoever arising out of the injury to and subsequent death of
Christopher Adam Timms.

AND IT IS SO ORDERED.


The Honorable J. Cordell Maddox, Jr.
Presiding Judge, Anderson County
Court of Common Pleas

May 24, 2011
Anderson, South Carolina



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GENERAL SESSIONS

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Nationwide Mutual Fire Insurance Company,

Plaintiff,

vs.

Sharmin Christine Walls, Randi Harper,
Wendy Timms in her capacity as Personal
Representative of The Estate of Christopher
Adam Timms, Deborah Timms, and Korey
Mayfield,

Defendants,

and

Wendy Timms in her capacity as Personal
Representative of The Estate of Christopher
Adam Timms, Deborah Timms,

Cross-Plaintiffs,

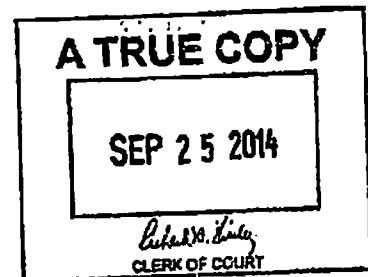
vs.

Sharmin Christine Walls and Korey A.
Mayfield,

Cross-Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO: 2009-CP-04-00907



ORDER APPROVING SETTLEMENT

GENERAL SESSIONS

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CLERK OF COURT

This matter comes before the Court on Petition of Wendy Timms as Personal Representative of the Estate of Christopher Adam Timms.

On or about July 11, 2008, Christopher Adam Timms was a passenger in a vehicle owned by Sharmin Walls and upon information and belief being operated by Korey Mayfield on Leatherdale Road in Anderson County, South Carolina, when Korey Mayfield lost control of vehicle and crashed. Christopher Adam Timms died from injuries sustained in the accident.

LCB

Nationwide Mutual Fire Insurance Company has offered to pay the sum of Seven Thousand Four Hundred Sixty Nine and 17/100 (\$7,469.17) Dollars to your Petitioner for the benefit of the Estate in a partial settlement of any and all claims which the Estate might have against Sharmin Walls and/or Korey Mayfield under the aforementioned survival statute or otherwise. In addition, Nationwide Mutual Fire Insurance Company has offered to pay the further sum of Twelve Thousand Five Hundred Thirty and 83/100 (\$12,530.83) Dollars to your Petitioner for the benefit of the statutory beneficiaries for a partial release of any and all claims against Sharmin Walls and/or Korey Mayfield because of the death of decedent that may arise under such applicable Nationwide Mutual Fire Insurance policy.

Upon full consideration of this matter, it appears to the Court that the settlement proposals outlined hereinabove and in the Petition are fair and just and in the best interest of the parties. Accordingly, it is

ORDERED, ADJUDGED AND DECREED that the settlement proposals set forth hereinabove and in the Petitioner's Petition are approved, and that upon payment of the amounts set forth therein, the Petitioner, as Personal Representative, is hereby authorized and directed to execute such documents as will effect a partial settlement of this matter with Sharmin Walls, Korey Mayfield, their heirs and assigns from any and all claims or actions whatsoever arising out of the injury to and death of Christopher Adam Timms.


The Honorable J. Cordell Maddox, Jr.
Presiding Judge for the Tenth Judicial Circuit

DATED: May 21, 2010

GENERAL SESSIONS

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STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Nationwide Mutual Fire Insurance Company,

Plaintiff,

vs.

Sharmin Christine Walls, Randi Harper,
Wendy Timms in her capacity as Personal
Representative of The Estate of Christopher
Adam Timms, Deborah Timms, and Korey
Mayfield,

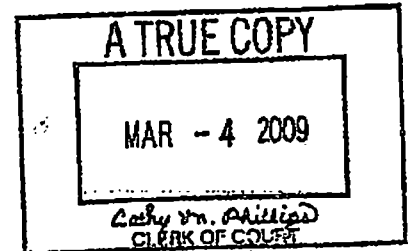
Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO:

2009-CP-04-00907

COMPLAINT FOR
DECLARATORY JUDGMENT
AND INTERPLEADER



The Plaintiff, Nationwide Mutual Fire Insurance Company (Nationwide) brings this action for declaratory judgment pursuant to Sections 15-53-10 through 15-53-140 of the South Carolina Code and Rules 22 and 57 of the South Carolina Rules of Civil Procedure against the above-named Defendants and respectfully shows unto the Court as follows:

JURISDICTION AND VENUE

1. Nationwide is a corporation organized and existing under the laws of the State of Ohio with its principal place of business in Columbus, Ohio.
2. Upon information and belief, Defendant Sharmin Christine Walls is a resident of Anderson County, South Carolina.
3. Upon information and belief, Defendant Randi Harper is a resident of Anderson County, South Carolina.
4. Upon information and belief, the deceased, Christopher Timms, was, at the time of his death, a citizen and resident of Anderson County, South Carolina, and the Defendant Wendy Timms has been duly qualified as the personal representative of his estate.

gm
01

5. Upon information and belief, Defendant Deborah Timms is a resident of Anderson County, South Carolina, and was the mother of the decedent, Christopher Timms.

6. Upon information and belief, Defendant Korey Mayfield is a resident of Anderson County, South Carolina.

7. The automobile accident which is the subject of the claims occurred on or about July 11, 2008 in Anderson County, South Carolina.

8. Jurisdiction and venue are proper in this Court.

NATURE OF THE CLAIM

9. This is an action for Declaratory Judgment pursuant to §§ 15-53-10 through 15-53-140 of the South Carolina Code and Rule 57 of the South Carolina Rules of Civil Procedure for the purpose of construing and interpreting the terms of an insurance contract issued by Nationwide and for a determination of the rights and obligations, if any, of the parties arising from said insurance contract in connection with an automobile accident that occurred in Anderson County, South Carolina on or about July 11, 2008. An actual controversy exists regarding the issue of coverage under the insurance policy.

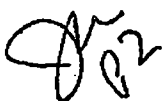
THE POLICY

10. Nationwide issued Policy Number 61-39-m 424 728 07-11-08 (the "Policy") to Sharmin C. Walls for the period June 17, 2008 to December 17, 2008. The Policy provides automobile liability coverage subject to certain terms, conditions, limitations and exclusions. A copy of the Policy is attached hereto as Exhibit 1.

11. Under the terms of the Policy, Nationwide agreed as follows, on page L1:

1. We will pay for damages for which you are legally liable as a result of an accident arising out of the:

a) ownership;



b) maintenance or use; or

c) loading or unloading;

of your auto. A relative also has this protection. So does any person or organization who is liable for the use of your auto while used with your permission.

2. Damages must involve:

a. property damage; or

b. bodily injury.

12. In addition to the coverage described in Paragraph 10, the Policy contains certain exclusions which preclude or otherwise limit coverage under the Policy. Specifically, the Policy contains the following exclusion on pages L3-L4:

B. This Coverage does not apply, with regard to amounts above the minimum limits required by the South Carolina Financial Responsibility Law as of the date of the loss to:

...

6. Bodily injury or property damage caused by:

a. you;

b. a relative; or

c. anyone else while operating your auto;

(i) while committing a felony; or

(ii) while fleeing a law enforcement officer.

13. The Declarations show that the Nationwide policy provides bodily injury coverage limits of \$100,000 per person, up to a combined total of \$300,000 per occurrence, and property damage limits of \$100,000.

14. The Nationwide policy's "Limits and Conditions of Payment" include the following limitation, which appears on page L4:

Amounts Payable for Liability Losses

Our obligation to pay Property Damage or Bodily Injury Liability

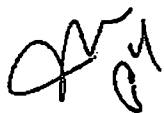
losses is limited to the amounts per person and per occurrence stated in the Declarations. The following conditions apply to these limits

1. The limit shown:

...

- b) for Bodily Injury Liability for any one person is for all legal damages, including all derivative claims, claimed by anyone arising out of and due to bodily injury to one person as a result of one occurrence.
The per-person limit is the total amount available when one person sustains bodily injury, including death, as a result of one occurrence. No separate limits are available to anyone for derivative claims, statutory claims, or any other claims made by anyone arising out of bodily injury, including death, to two or more persons as a result of one occurrence. This total limit is subject to the limit for any one person.
- c) for Bodily Injury Liability for each occurrence is the total limit of our liability for all legal damages when two or more persons sustain bodily injury, including death, as a result of one occurrence. No separate limits are available to anyone for derivative claims, statutory claims, or any other claims arising out of bodily injury, including death, to two or more persons as a result of one occurrence. This total limit is subject to the limit for any one person.

2. Liability limits apply as stated in the Declarations. The insuring of more than one person under this policy does not increase our liability limits.



FACTUAL ALLEGATIONS

15. Defendants Korey Mayfield, Randi Harper, Sharmin Walls, and the decedent, Christopher Timms were involved in a single-car accident which occurred on or about July 11, 2008 on Leatherdale Road in Anderson County.

16. The Defendants have raised liability claims against Defendants Mayfield and/or Walls.

17. Defendants Wendy Timms and Deborah Timms, pressing claims for wrongful death and loss of consortium, respectively, have alleged that the above-referenced accident occurred when Defendant Korey Mayfield negligently and/or recklessly wrecked a 1998 Chevrolet owned by Defendant Sharmin Walls, causing the death of Christopher Timms, a passenger.

18. On information and belief, Defendants Sharmin Walls, Korey Mayfield, and Randi Harper, who were also in the 1998 Chevrolet at the time, were injured in the accident.

19. Defendants Wendy Timms and Deborah Timms have further alleged that Defendant Sharmin Walls was negligent in entrusting the vehicle to Defendant Mayfield.

20. Upon information and belief, the Defendants herein dispute who was actually driving the 1998 Chevrolet at the time of the accident. One or more, including Defendants Walls and Wendy and Deborah Timms, have said that Defendant Mayfield was driving, while one or more, including Defendant Harper, have said that Defendant Walls was driving.

21. Upon information and belief, the Defendants herein who maintain that Defendant Mayfield was driving the car, including Defendant Walls, have said that, at the time of the accident, Defendant Mayfield was attempting to elude pursuit by a law enforcement officer, who was pursuing the vehicle with siren and blue lights engaged.



FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment as to Driver's Identity)

22. The allegations of the preceding paragraphs are incorporated by reference herein.

23. Nationwide seeks a judgment declaring the rights and duties of Nationwide relative to an actual, present and existing controversy between Nationwide and Defendants Korey Mayfield, Sharmin Walls, Randi Harper, Wendy Timms, and Deborah E. Timms as to the extent of coverage available to each, if any, with respect to the claims at issue arising out of the July 11, 2008 accident described above.

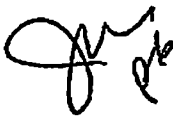
24. Nationwide seeks a declaration concerning which Defendant, among the Defendants Walls and Mayfield, was the driver of the vehicle and therefore is not entitled to pursue a liability claim against himself or herself within the scope of the Nationwide policy.

FOR A SECOND CAUSE OF ACTION
**(Declaratory Judgment as to Applicability of
Flight-From-Law-Enforcement Exclusion)**

25. The allegations of the preceding paragraphs are incorporated by reference herein.

26. Nationwide seeks a declaration concerning the applicability of liability Exclusion B.6., for injuries arising in the course of an insured's flight from a law enforcement officer, and its effect in barring coverage for Defendants' liability claims in excess of the minimum limits required by the South Carolina Financial Responsibility Act, such that the coverage limits available with respect to said claims, against Defendants Walls or Mayfield or against both, are \$25,000 per person, up to a maximum total for all bodily injury claims of \$50,000 per occurrence.

27. In addition to the foregoing provisions, Nationwide pleads all other conditions, terms, warranties, limits, definitions and exclusions of the Policy that may also be found to be



applicable as Nationwide's investigation of this matter continues and reserves the right to amend its complaint in this action as additional or more specific information becomes available.

FOR A SECOND CAUSE OF ACTION
(Interpleader)

27. The allegations of the preceding paragraphs are incorporated by reference herein.

28. Pursuant to Rule 22 of the South Carolina Rules of Civil Procedure, Nationwide seeks an order dividing among the eligible Defendants the available limits of the subject insurance policy, as said limits are determined by resolution of the matters set out in its First Cause of Action herein.

WHEREFORE, Nationwide respectfully requests that this Court enter a judgment declaring that Defendants are not entitled to combined coverage of more than \$50,000 for bodily injury claims arising out of the July 11, 2008 accident and that either Defendant Mayfield or Defendant Wall is not entitled to liability coverage for injuries arising out of his or her negligent operation of the vehicle. Nationwide further respectfully requests that this Court divide the applicable proceeds of the policy among the eligible Defendants. Finally, Nationwide requests that this Court award such further relief as it deems necessary and proper, including but not limited to an award of costs to Nationwide.

MURPHY & GRANTLAND, P.A.



J.R. Murphy, Esquire
PO Box 6648

Columbia, South Carolina 29260

(803) 782-4100

(803) 782-4140 (facsimile)

Attorneys for Defendant

Nationwide Mutual Fire Insurance Company

Columbia, South Carolina

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF ANDERSON

CIVIL ACTION NO: 2009-CP-04-00907

Nationwide Mutual Fire Insurance Company,

Plaintiff,

vs.

CERTIFICATE OF SERVICE

Sharmin Christine Walls, Randi Harper,
Wendy Timms in her capacity as Personal
Representative of The Estate of Christopher
Adam Timms, Deborah Timms, and Korey
Mayfield,

Defendants.

I, the undersigned employee of the law offices of Murphy & Grantland, P.A., Attorneys for Plaintiff, do hereby certify that I have served a copy of the foregoing Summons and Complaint in connection with the above-referenced case by mailing a copy of the same by United States Mail, Certified – Return Receipt Requested postage prepaid, to the following address(es):

Milford O. Howard, Esquire
Dunaway and Associates
Post Office Box 1965
Anderson, SC 29622

Donald L. Allen
The Allen Law Firm
320 E. River Street
Anderson, SC 29622

Michael F. Mullinax, III, Esquire
PO Box 2665
Anderson, SC 29622

Mallory Wiltshire
Mallory Wiltshire

Columbia, South Carolina
March 5, 2009

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS

2009-CP-04-0907

Nationwide Mutual Fire Insurance
Company)

Plaintiff)

vs.)

Sharmin Christine Walls, Randi
Harper, Estate of Christopher
Adam Timms and Korey Mayfield)

Defendants)

Sharmin Christine Walls,

Cross-Plaintiff)

vs.)

Korey A. Mayfield,

Cross-Defendant)

**ANSWER, COUNTERCLAIM
AND CROSS-CLAIM**

The Defendant, Sharmin Christine Walls, hereinafter "Walls", answering the Complaint of the Plaintiff, would respectfully show unto the Court:

1.

This Defendant admits the allegations contained in Paragraph 2 of the Complaint

2.

This Defendant does not have sufficient information with which to form a belief as to the allegations of Paragraphs 1, 3, 4, 5 and 6, and therefore denies same.

3.

Defendant admits the allegations of Paragraphs 7 and 8.

4.

Paragraph 9 is admitted.

5.

Defendant does not have sufficient information with which to form belief as to the identify of the policy issued by Nationwide to Sharmin Walls for the period of June 17, 2008 to December 17, 2008 and would show unto the Court that a certified true copy of said policy as to the policy provisions and dates set and times should be presented to the Court and that policy then would be the best evidence of the coverage, terms, conditions, limitations and exclusions. This Defendant does not have sufficient information with which to form a belief as to the allegations of Paragraphs 10, 11, 12, 13 and 14.

6.

Paragraph 15 is admitted.

7.

Paragraph 16 is admitted.

8.

Defendant does not have sufficient information with which to form a belief as to the allegations of Paragraphs 17.

9.

Paragraph 18 is admitted.

10.

Paragraph 19 is specifically denied.

11.

This Defendant does not have sufficient information with which to form a belief as to Paragraph 20, but would emphatically and specifically state that the driver of the vehicle involved at the time wreck, which occurred on July 11, 2008, was Korey Mayfield.

12.

The allegations contained in Paragraph 21 are specifically denied and strict proof thereof demanded.

13.

Insofar as the allegations of Paragraphs 22, 23, 24, 25 and 26 seek to provide a declaration of rights and responsibilities and a requirement of payment from the Plaintiff, Nationwide, this Defendant would admit same.

14.

This Defendant would specifically deny the allegations contained in Paragraph 26 and 27, and require that the Plaintiffs make such allegations more definite and certain and be required to specifically state any provisions, conditions or limitations of their alleged policy which will be relied upon in the trial of this case.

15.

The allegations of Paragraph 28 are admitted.

16.

This Defendant denies each and every allegation contained in the Complaint except as to those herein above specifically admitted, modified and/or explained.

FOR A SECOND DEFENSE AND BY WAY OF COUNTERCLAIM
BREACH OF CONTRACT

The preceding allegations are re-alleged.

17.

The Plaintiff sold it's policy of insurance to the Defendant Walls and specific inquiries were made in order to purchase both liability, UM and UIM coverage for the named and defined insureds in the policy.

18.

That the Defendant Walls paid all premiums due on said policies and all other acts that she was required to.

19.

That all times relevant hereto, the insurance policy aforementioned was in full force and effect and all premiums were current and Defendant complied with all conditions precedent to payment of first party benefits and UIM benefits in the amount of \$100,000.00 each.

20.

That this Defendant is informed and believes that due to the extremely horrendous nature of the injuries that she suffered and the exorbitant amount of medical expenses that she has, that her injuries and damages greatly exceed the coverages provided by the policies and the Defendants failure and refusal to pay the limits provided for in the policy in the amount of \$100,000.00 constitutes a breach of contract without reasonable cause, and in bad faith, pursuant to §38-59-40, South Carolina Code of Laws, 1976.

FOR A THIRD DEFENSE

The preceding allegations are re-alleged.

21.

That there is no evidence of any kind or nature that exists or that has been provided to this Defendant by Plaintiff, showing that any alleged exclusion including the "flight from law enforcement" exclusion applies to the facts of this case and therefore, the Plaintiff's Second Cause of Action should be dismissed with prejudice.

FOR A FOURTH DEFENSE AND BY WAY OF COUNTERCLAIM

The preceding allegations are re-alleged.

22.

That the attempt by the Plaintiffs to limit liability limits from the limits lawfully contracted for by this Defendant is unconscionable and is in bad faith and should be stricken from the policy as being void and against the public policy of this state.

FOR A FIFTH DEFENSE AND BY WAY OF COUNTERCLAIM

The preceding allegations are re-alleged.

23.

That the Plaintiff has acted in bad faith and/or was negligent, reckless, wilful and wanton in one or more of the following particulars, to wit:

- (a) In refusing to honor claims for first party benefits at the limit set in the policy of insurance between Plaintiff and Defendants;
- (b) In unreasonably delaying payment of Defendant's claims
- (c) In failing to communicate to the Defendants any reasonable justification for failing to honor Defendant's claims;
- (d) In failing to attempt in good faith to effect a fair, prompt and equitable settlement of claims;
- (e) In compelling Defendant to have to be engaged in a lawsuit in which her rights and benefits are severely limited contrary to her understanding and representations made by the agent of the Plaintiff at the time the policy was issued.
- (f) That as a proximate and direct result of the negligence, bad faith, recklessness and wantonness, Defendant has been damaged including but not limited to mental and emotional distress created by the delay and bad faith refusal of the Plaintiff to pay, the cost of hiring legal counsel to pursue the claim, the cost and expenses associated with bringing this action and the loss of interest on the

money owed by the Plaintiff due to their refusal to timely honor claims;

- (g) That Defendant is therefore is informed and believes that she is entitled to judgment against the Plaintiff for loss and damage in the sums to be determined by a jury for both actual and punitive damages.

CROSS-CLAIM AGAINST DEFENDANT KOREY MAYFIELD

The preceding allegations are re-alleged.

24.

The preceding allegations not inconsistent herewith are hereby incorporated herein by reference as fully and effectually as if set forth.

25.

The Cross-Plaintiff (hereinafter "Walls"), and the Cross-Defendant, (hereinafter "Mayfield"), are citizens and residents of Anderson County, South Carolina, and the wreck which caused serious injuries to Walls occurred in Anderson County, South Carolina. Accordingly, all parties, matters and things contained herein are within the jurisdiction of this Court.

26.

On July 11, 2008, at approximately 5:16 p.m., Walls was a passenger in a vehicle owned by her and which was being driven at the time by Korey A. Mayfield, traveling on Leatherdale Road in Anderson County in a 1988 Chevrolet automobile.

27.

That Korey A. Mayfield caused or was one of the causes of a serious wreck which resulted in serious and debilitating injuries to Walls.

28.

That Walls suffered injuries to her brain and multiple traumas to her body and was treated and currently continues to be treated for major pain and disability.

29.

The aforesaid collision and resulting injuries were the direct and proximate result of, or were due to and occasioned by, the negligence, gross negligence, recklessness, wilfulness and wantonness of Defendant Mayfield in the following particulars, to wit:

- (a) In operating a motor vehicle at a speed that was excessive for the circumstances in there existing ;
- (b) In failing to keep a proper lookout for others, when to fail to do so, the Defendant knew, or should have known, would result in damage to others, and, more

particularly, to Walls;

- (c) In failing to keep the vehicle under proper control at all time in view of the circumstances then and there existing;
- (d) In failing to keep a proper lookout for others on the highway, when to fail to do so, he knew, or should have known, would result in damage to others, and, more particularly, to this Walls;
- (e) In failing to devote his full attention to the highway he was operating the vehicle on when he knew, or should have known, that to fail to do so would result in damage to others and more particularly, to the Walls;
- (f) In driving said vehicle in a reckless, high speed manner, when the Mayfield knew or should have known that to fail to do so would result in damage and injury to others including the Walls;
- (g) In failing to reduce his speed;
- (h) In failing to look or to see what Mayfield should have seen had he been looking, when he knew, or should have known that such would cause an accident by failing to do so;
- (i) In failing to give any signals or warning to Walls that he was about to proceed at a high rate of speed, or disobey the traffic and other laws of the State of South Carolina;
- (j) In operating said vehicle in a highly improper and prudent manner in view of the circumstances then and there existing;
- (k) In not being mentally and physically alert to the impending dangers;
- (l) In failing to stop, swerve or change the course of the vehicle, when, it was apparent, or should have been apparent, by the exercise and due care, that the vehicle was about to wreck;
- (m) In operating said vehicle in violation of the laws of the State of South Carolina;
- (n) In failing to exercise the degree of care and prudence a reasonable person would have exercised under the same or similar conditions;
- (o) In operating a vehicle under the influence and senses impaired from the use of alcohol and/or drugs;
- (p) In overcorrecting his vehicle when it left the road and in failing to take evasive action in order to avoid colliding with a tree.

30.

That by reason of and in consequence of the aforesaid negligence, carelessness, recklessness, wilfulness, wantonness and unlawful acts of Mayfield, and as a direct and

proximate result thereof, Walls received severe personal injuries, necessitating medical treatment therefore, and the Walls was shocked, injured, bruised and lacerated in and about various parts of her body, limbs and suffered brain injury and as a direct result thereof, has been and will be incapacitated permanently, or for a long period of time, during all of which period of time, she has suffered and will continue to suffer great pain and mental anguish, has been prevented and will be prevented from pursuing her normal and ordinary affairs; has expended and will be compelled to expend sums of monies for doctors, medicines, nurses, hospitals, x-rays, and has otherwise been damaged in excess of One Million Dollars, actual and punitive damages.

WHEREFORE, Plaintiff prays:

1. For judgement against the Plaintiffs for actual and punitive damages;
2. For reformation of the insurance policy;
3. For an order striking any provisions as to limitations of coverage in the policy provided by the Plaintiffs;
4. For judgement on its cross-claim against the Defendant for damages actual and punitive in excess of one million dollars.
5. For judgement against the Defendant Mayfield for actual and punitive damages in such amount in excess of one million dollars, as the Court may award.
6. For such other further relief at the Court may deem just and proper.

MULLINAX LAW FIRM, P.A.


Michael F. Mullinax
Post Office Box 2665
Anderson, SC 29622
864/261-6242
ATTORNEY FOR THE DEFENDANT,
SHARMIN CHRISTINE WALLS

Anderson, South Carolina

April 9, 2009

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS

2009-CP-04-0907

Nationwide Mutual Fire Insurance Co.,

Plaintiff

vs.

Sharmin Christine Walls, Randi Harper,
Estate of Christopher Adam Timms and
Korey Mayfield,

Defendants

Sharmin Christine Walls,

Cross-Plaintiff

vs.

Korey A. Mayfield,

Cross-Defendant

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Mullinax Law Firm, P.A., Attorney for the Defendant, Sharmin Christine Walls, and I have this date written below, served the within Answer, Counterclaim and Cross-Claim on the Attorney for the Plaintiff, by depositing a copy of same in the United States Mail, postage prepaid, and addressed as follows:

Mr. William H. Frye
Murphy & Grantland, P.A.
Post Office Box 6648
Columbia, SC 29260

Laura C. Mullinax
Laura C. Mullinax
MULLINAX LAW FIRM, P.A.

Anderson, South Carolina

April 10, 2009

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF ANDERSON

CIVIL ACTION NO: 2009-CP-04-00907

Nationwide Mutual Fire Insurance Company,

Plaintiff,

**PLAINTIFF'S REPLY TO COUNTERCLAIM
AND CROSSCLAIM OF DEFENDANT
SHARMIN WALLS**

vs.

Sharmin Christine Walls, Randi Harper,
Wendy Timms in her capacity as Personal
Representative of The Estate of Christopher
Adam Timms, Deborah Timms, and Korey
Mayfield,

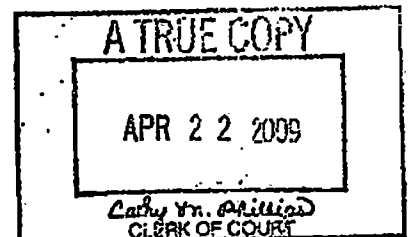
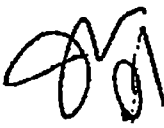
Defendants.

**TO: MICHAEL F. MULLINAX, ESQUIRE, ATTORNEY FOR DEFENDANT
SHARMIN WALLS AND TO DEFENDANT ABOVE-NAMED:**

The Plaintiff, replying to the Counterclaim and Crossclaim of Defendant, Sharmin Walls,
would show unto the Court:

FOR A FIRST DEFENSE

1. The Plaintiff reiterates the allegations of its Complaint as if fully set forth verbatim herein and denies any allegations in the Counterclaim and Crossclaim inconsistent therewith.
2. The Plaintiff denies each and every allegation of the Counterclaim and Crossclaim not hereinafter specifically admitted.
3. As to paragraph seventeen (17), the Plaintiff would show that it issued a policy to Defendant Walls and fully complied with any duties imposed on it by South Carolina law regarding the issuance of said policy; otherwise, paragraph seventeen (17) is denied.
4. Paragraph eighteen (18) is admitted upon information and belief.
5. Paragraph nineteen (19) and twenty (20) are denied.



FOR A FIRST DEFENSE TO THE SECOND COUNTERCLAIM

6. In response t the second counterclaim, Nationwide reiterates its responses to the preceding allegations of the answer, counterclaim and crossclaim as if fully set forth verbatim herein.

7. Paragraph twenty-two (22) is denied.

FOR A FIRST DEFENSE TO THE THIRD COUNTERCLAIM

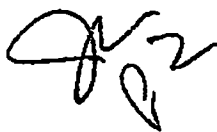
8. In response t the third counterclaim, Nationwide reiterates its responses to the preceding allegations of the answer, counterclaim and crossclaim as if fully set forth verbatim herein.

9. Paragraph twenty-three (23) is denied.

FOR A SECOND DEFENSE

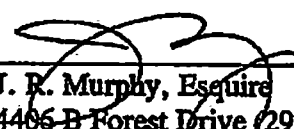
10. The Plaintiff would show, upon information and belief, that the counterclaim and crossclaim fails to state facts sufficient to constitute a cause of action pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure and, therefore, the Defendant's counterclaim and crossclaim should be dismissed with costs.

WHEREFORE, having fully answered, Nationwide prays that the counterclaim of the Defendant Walls be dismissed, for the court to inquire into these matters and make declarations as set forth in Nationwide's complaint together with the costs of this action and such other and further relief as the court may deem just and proper.



Nationwide demands a jury trial on the counterclaim of Defendant Walls.

MURPHY & GRANTLAND, P.A.



J. R. Murphy, Esquire
4406-B Forest Drive (29206)
Post Office Box 6648
Columbia, South Carolina 29260
(803) 782-4100
Attorneys for Plaintiff Nationwide Mutual
Fire Insurance Company

p3
Columbia, South Carolina
April 21, 2009

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Nationwide Mutual Fire Insurance Company,

Plaintiff,

vs.

Sharmin Christine Walls, Randi Harper,
Wendy Timms in her capacity as Personal
Representative of The Estate of Christopher
Adam Timms, Deborah Timms, and Korey
Mayfield,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO: 2009-CP-04-00907

CERTIFICATE OF SERVICE

I, the undersigned employee of the law offices of Murphy & Grantland, P.A., Attorneys
for Plaintiff, do hereby certify that on April 21, 2009, I have served a copy of the foregoing
Plaintiff's Reply to Counterclaim and Crossclaim of Defendant Sharmin Walls in
connection with the above-referenced case placing same in the U.S. mail, postage paid to:

Milford O. "Chip" Howard, Esquire
Tom W. Dunaway, III, Esquire
Dunaway and Associates
Post Office Box 1965
Anderson, SC 29622

J. Kirkman Moorhead, Esquire
Krause, Moorhead & Draisen, P.A.
207 East Calhoun Street
Anderson, SC 29621

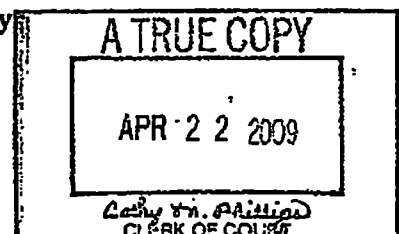
Donald L. "Chuck" Allen
The Allen Law Firm
320 E. River Street
Anderson, SC 29622

Michael F. Mullinax, III, Esquire
PO Box 2665
Anderson, SC 29622



Sandra R. Branson
Legal Assistant to J.R. Murphy

Columbia, South Carolina



STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Nationwide Mutual Fire Insurance Company,

Plaintiff,

vs.

Sharmin Christine Walls, Randi Harper,
Wendy Timms in her capacity as Personal
Representative of The Estate of Christopher
Adam Timms, Deborah Timms, and Korey
Mayfield,

Defendants

and

Wendy Timms in her capacity as Personal
Representative of The Estate of Christopher
Adam Timms, Deborah Timms,

Cross-Plaintiffs,

vs.

Sharmin Christine Walls and Korey A.
Mayfield,

Cross-Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO: 2009-CP-04-00907

STIPULATION AND AGREEMENT

WHEREAS, Nationwide has initiated the above-referenced matter to determine coverage and the identity of the driver of the vehicle owned by Sharmin Walls and insured by Nationwide under policy number 61 39 M 424728 for accident that occurred on July 11, 2008 in Anderson County; and

WHEREAS, the parties are desirous of stipulating to the value of the bodily injury claims of the various Defendants so that the cross-claims based on negligent operation and/or negligent entrustment of the vehicle and any counterclaims for alleged bad faith of Nationwide can be dismissed while the declaratory judgment action is pending; and

WHEREAS, Nationwide is willing to stipulate to the value of these cases as follows:

1. If Sharmin Walls is found to be a passenger and Nationwide's prevails on the issue that the bodily injury coverage is reduced to \$25,000/\$50,000, Nationwide will pay her \$20,000 under the bodily injury coverage in exchange for a release of Korey Mayfield. If Sharmin Walls is found to be a passenger and the bodily injury coverage is determined to be \$100,000/\$300,000, Nationwide will pay her \$100,000 in exchange for a release of Korey Mayfield. If Sharmin Walls is found to be the driver, she would be barred from recovery under the bodily injury coverage of this policy.

2. If Nationwide prevails on the issue that the bodily injury coverage is reduced to \$25,000/\$50,000, Nationwide will pay the Estate of Christopher Adam Timms \$20,000 under the bodily injury coverage in exchange for a release of Korey Mayfield and Sharmin Walls. If the bodily injury coverage is determined to be \$100,000/\$300,000, Nationwide will pay the Estate of Christopher Adam Timms \$100,000 under the bodily injury coverage in exchange for a release of Korey Mayfield and Sharmin Walls.

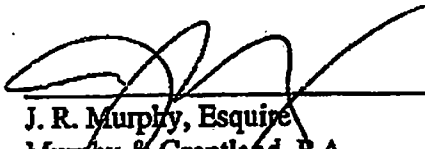
3. If the bodily injury coverage is reduced to \$25,000/\$50,000, Nationwide will pay Randi Harper \$10,000 under the bodily injury coverage in exchange for a release of Korey Mayfield and Sharmin Walls. If the bodily injury coverage is determined to be \$100,000/\$300,000, Nationwide will pay Randi Harper ^{\$100,000} ~~\$25,000~~ under the bodily injury coverage in exchange for a release of Korey Mayfield and Sharmin Walls.

4. If Korey Mayfield is found to be a passenger and bodily injury coverage is reduced to \$25,000/\$50,000, Nationwide will pay him \$20,000 under the bodily injury coverage in exchange for a release of Sharmin Walls. If Korey Mayfield is found to be a passenger and the bodily injury coverage is determined to be \$100,000/\$300,000, we will pay him \$100,000 in

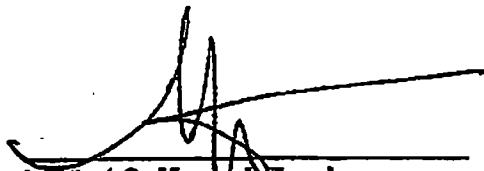
exchange for a release of Sharmin Walls. If Korey Mayfield is found to be the driver, he would be barred from recovery under the bodily injury coverage of this policy.

WHEREFORE, the parties agree the payments set forth shall be made after a final decision in the above declaratory judgment action, including appeal, in the declaratory judgment action, except that the payments to the Estate of Christopher Adam Timms and Randi Harper, in the amount of \$20,000.00 and \$10,000.00, respectively, will be paid as soon as this Stipulation and Agreement is executed by all parties. The parties further agree that all tort lawsuits against Sharmin Walls and Korey Mayfield, whether independent from this action or asserted as a crossclaim, and any and all counterclaims or direct actions against Nationwide for bad faith will be dismissed with prejudice upon execution of this Stipulation and Agreement. A consent stipulation of dismissal as to all such claims will be circulated and executed by all parties once this document has been fully executed by those same parties.

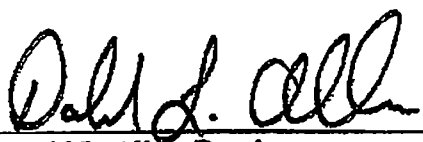
WHEREFORE, the undersigned, as counsel for their respective clients, set their hands and seals this 1st day of May, 2009 declaring their acceptance of the terms and conditions of this Stipulation and Agreement.



J. R. Murphy, Esquire
Murphy & Grantland, P.A.
4406-B Forest Drive (29206)
Post Office Box 6648
Columbia, South Carolina 29260
(803) 782-4100
Attorneys for Plaintiff Nationwide Mutual
Fire Insurance Company



Milford O. Howard, Esquire
Tom W. Dunaway, III, Esquire
Dunaway and Associates
Post Office Box 1965
Anderson, SC 29622
864-224-1144
Attorney for Christopher Timms



Donald L. Allen, Esquire
The Allen Law Firm
320 E. River Street
Anderson, SC 29622
864-226-6184
Attorney for Korey Mayfield



Michael F. Mullinax, III, Esquire
P.O. Box 2665
509 North McDuffie Street
Anderson, SC 29622
864-261-6242
Attorney for Sharmin Walls



J. Kirkman Moorhead, Esquire
Krause, Moorhead & Draisen, P.A.
207 East Calhoun Street
Anderson, SC 29621
864-225-4000
Attorney for Randi Harper

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO: 2009-CP-04-00907

Nationwide Mutual Fire Insurance Company,

Plaintiff,

vs.

Sharmin Christine Walls, Randi Harper,
Wendy Timms in her capacity as Personal
Representative of The Estate of Christopher
Adam Timms, Deborah Timms, and Korey
Mayfield,

Defendants

and

Wendy Timms in her capacity as Personal
Representative of The Estate of Christopher
Adam Timms, Deborah Timms,

Cross-Plaintiffs,

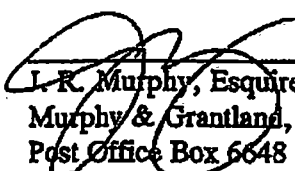
vs.

Sharmin Christine Walls and Korey A.
Mayfield,

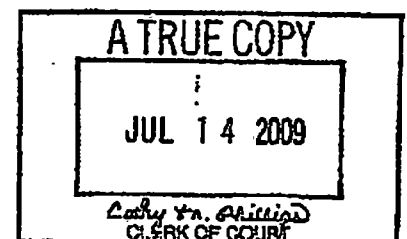
Cross-Defendants.

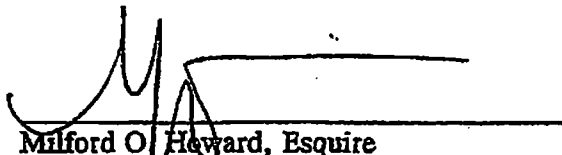
STIPULATION OF DISMISSAL

Pursuant to Rule 41(a)(1), the parties herein agree that the Counterclaim of Sharmin Christine Walls against the Plaintiff, Nationwide Mutual Fire Insurance Company, is hereby dismissed with prejudice and forever ended. All other causes of action asserted by the parties shall remain on the docket.

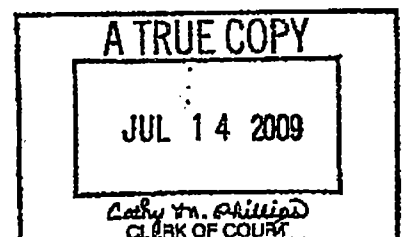

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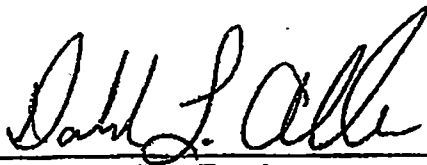
Page 1 of 7




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Page 2 of 7





Donald L. Allen, Esquire

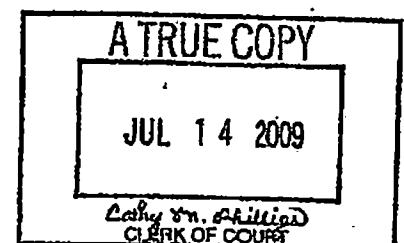
The Allen Law Firm

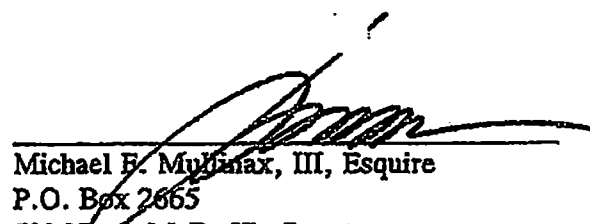
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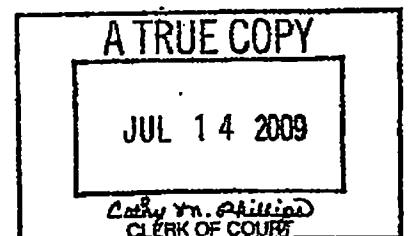
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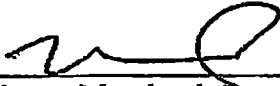
Attorney for Randi Harper, Korey Mayfield

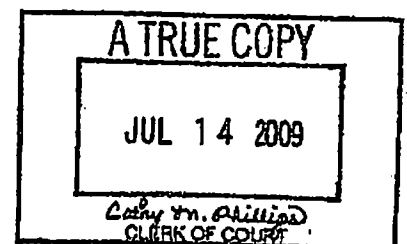


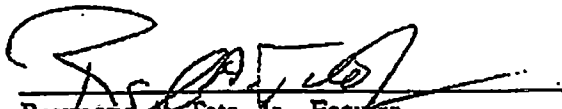


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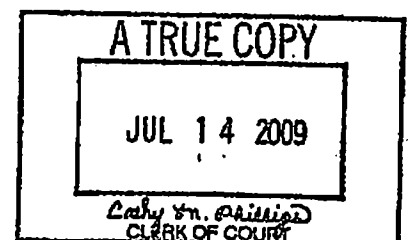



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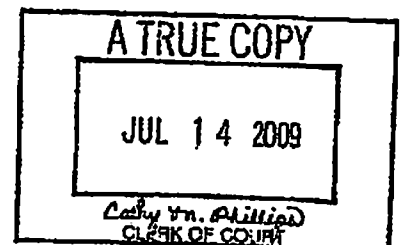

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STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 09-CP-04-907

Nationwide Mutual Fire Insurance Company,

Plaintiff,

v.

Sharmin Christine Walls, Randi Harper,
Wendy Timms in her capacity as Personal
Representative of the Estate of Christopher
Adam Timms, Deborah Timms, and Korey A.
Mayfield,

Defendants.

and

Wendy Timms in her capacity as Personal
Representative of the Estate of Christopher
Adam Timms and Deborah Timms,

Cross-Plaintiffs,

v.

Sharmin Christine Walls and Korey A.
Mayfield,

Cross-Defendants.

NOTICE OF APPEARANCE

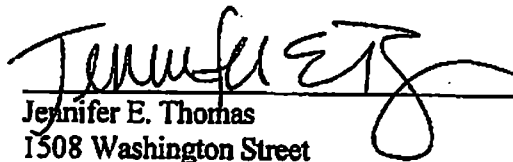
Δ Mayfield

YOU WILL PLEASE TAKE NOTICE that the undersigned as attorney for Safe Auto Insurance Company, a potential excess liability motorist carrier for Defendant Korey A. Mayfield, hereby gives notice of its appearance so that it may protect its interest and defend this action if appropriate and/or if the primary liability carrier for Defendant Korey A. Mayfield should withdraw from the defense of this action.

Safe Auto Insurance Company further gives notice that it reserves all of its rights pursuant to the South Carolina Code of Laws and any and all other applicable statutes and authorities of South Carolina or those of any other controlling jurisdiction. Notice is further given that, to the extent that its failure to do so might affect its liability or any of its rights, Safe Auto denies the allegations of the Plaintiff's Complaint for lack of sufficient information at this time.

Respectfully submitted,

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



Jennifer E. Thomas

1508 Washington Street

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(803) 758-6000

Attorney for Safe Auto Insurance Company, potential
excess liability carrier for Defendant Korey A. Mayfield

November 23, 2009

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

Nationwide Mutual Fire Insurance Company,
Plaintiff,

v.

Sharmin Christine Walls, Randi Harper,
Wendy Timms in her capacity as Personal
Representative of the Estate of Christopher
Adam Timms, Deborah Timms, and Korey A.
Mayfield,

Defendants.

and

Wendy Timms in her capacity as Personal
Representative of the Estate of Christopher
Adam Timms and Deborah Timms,

Cross-Plaintiffs,

v.

Sharmin Christine Walls and Korey A.
Mayfield,

Cross-Defendants.

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 09-CP-04-907

CERTIFICATE OF SERVICE

I, Helen J. Grant, an employee of Howser, Newman & Besley, L.L.C., do hereby certify that I have served the foregoing NOTICE OF APPEARANCE, in the above-captioned case, by causing a copy of the same to be personally deposited in a United States Postal Service mail box, postage prepaid, with the return address clearly visible, addressed to the attorneys of record as indicated below:

PLAINTIFF'S ATTORNEY

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Columbia, SC 29260

**DEFENDANT/CROSS-DEFENDANT WALLS'
ATTORNEY**

Michael F. Mullinax, Esquire
P.O. Box 2665
Anderson, South Carolina 29622

DEFENDANTS/CROSS PLAINTIFFS TIMM'S ATTORNEY

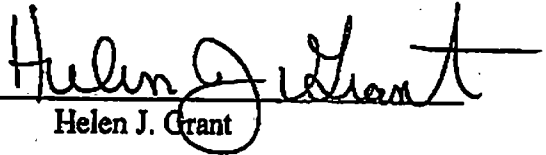
Tom W. Dunaway, III, Esquire
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DEFENDANT RANDI HARPER'S ATTORNEY

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DEFENDANT KOREY A. MAYFIELD'S ATTORNEY

Donald L. Chuck Allen
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Post Office Box 2861
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Helen J. Grant

November 23, 2009

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF ANDERSON

CIVIL ACTION NO: 2009-CP-04-00907

Nationwide Mutual Fire Insurance Company,

Plaintiff,

vs.

Sharmin Christine Walls, Randi Harper,
 Wendy Timms in her capacity as Personal
 Representative of The Estate of Christopher
 Adam Timms, Deborah Timms,

Defendants.

SUPPLEMENTAL MEMORANDUM

Plaintiff Nationwide Mutual Fire Insurance Company (Nationwide), by and through its undersigned counsel, hereby submits this supplemental Memorandum of Law in response to the defendants' newly-raised contention that the subject vehicle was uninsured at the time of the accident:

BACKGROUND

This case arises out of an automobile accident that occurred while Korey Mayfield was fleeing from police in a vehicle owned by Sharmin Walls and occupied by Walls, Christopher Adam Timms, and Randi Harper. After leading South Carolina Highway Patrol on a high-speed chase which reached speeds in excess of 100 miles per hour, Mayfield lost control of the vehicle and crashed into multiple trees. Tragically, Timms was killed in the accident and Walls and Harper were also injured. As a result of the accident, Korey Mayfield pled guilty to reckless homicide, a felony.

Nationwide Mutual Fire Insurance Company (hereinafter "Nationwide") filed this declaratory judgment action seeking a determination that the liability coverage under the policy

was limited to a total of \$50,000.00. This amount has previously been paid to the three Defendants in exchange for a covenant not to execute in favor of Mayfield and Walls. The Defendants also received a total of \$50,000.00 of liability coverage under a policy issued by Safe Auto to Mayfield that provided excess liability coverage. Specifically, Nationwide relies on exclusions that limit coverage to the statutory minimum when bodily injury results from the use of the vehicle while fleeing from law enforcement or in the commission of a felony.

The Court held a bench trial on September 12, 2013, where the defendants for the first time raised a contention that the vehicle was uninsured and that they were therefore entitled to uninsured motorist coverage under Nationwide's policy. The Court allowed all parties to submit supplemental memorandums within 10 days following the hearing on that issue.

SUMMARY

There are multiple reasons, both factual and procedural, why Defendants are not entitled to claim uninsured motorist coverage under the Nationwide policy for this case. At first blush, this car does not qualify as an uninsured motor vehicle. Two separate insurers made liability payments totaling \$100,000 to the Defendants. While the vehicle was underinsured, it was not uninsured under the Nationwide policy definition nor the applicable South Carolina statute.

In addition, the Defendants previously dismissed any counterclaims against Nationwide and crossclaims against potentially liable parties in exchange for the above-referenced payments. In doing so, they limited themselves to the question of additional *liability* coverage under the Nationwide policy. Therefore, they should be barred from presenting a claim that the vehicle was uninsured at the time of the accident. This is underscored by the additional fact that claims were made against Sharmin Walls for negligent entrustment which would clearly trigger

the liability coverage of the policy. Therefore, the car simply does not qualify as an uninsured vehicle.

ARGUMENT

I. The Lumina does not satisfy the statutory definition for an "uninsured motor vehicle."

South Carolina Code Annotated § 38-77-30(14) defines an "uninsured motor vehicle" in pertinent part as a motor vehicle as to which:

- (a) there is not bodily injury liability insurance and property damage liability insurance both at least in the amounts specified in Section 38-77-140, or
- (b) there is nominally that insurance, but the insurer writing the same successfully denies coverage thereunder, or

S.C. Code Ann. § 38-77-30(14). South Carolina Code Annotated § 38-77-140 requires liability insurance in the amount of \$25,000 per person and \$50,000 per accident. *See* S.C. Code Ann. § 38-77-140.

In this case, Defendants cannot satisfy the first part of the definition because *two* insurance carriers each provided liability insurance up to the minimum limits required by § 38-77-140. First, Nationwide issued a policy of insurance on the Lumina that protected Sharmin Walls as its owner and Korey Mayfield as a permissive user. Second, Safe Auto issued a policy of insurance that insured Korey Mayfield while he was operating the Lumina. Both carriers have paid out their undisputed liability coverage limits and this case has been tried to determine whether any additional liability coverage exists under the Nationwide policy.

Moreover, Defendants cannot demonstrate that any other subsection applies since neither Nationwide nor Safe Auto attempted to deny coverage, let alone successfully denied coverage. The pleadings submitted in this case confirm that Defendants received payments totaling

\$50,000 for liability coverage from Nationwide and Safe Auto under liability coverages provided by their respective policies. Either of these payments standing alone would preclude the argument that the Lumina was an uninsured motor vehicle.

II. The Lumina cannot satisfy the policy definition of uninsured motor vehicle.

The policy defines "uninsured motor vehicle" in pertinent part as follows:

1. a) An uninsured motor vehicle is:

- (1) one for which there is no auto liability bond, insurance or other security in effect, applicable to the vehicle, owner, or operator, or any other liable person or organization, at the time of the accident, in at least the amounts required by the financial responsibility law where your auto is principally garaged.**
- (2) one for which the insuring company denies coverage or is or becomes insolvent.**

(Pl.'s Ex. 9, p.U2). This definition closely follows the statutory definition.

The Lumina does not satisfy the first part of the definition. In this case, Walls, the owner of the vehicle, was insured by Nationwide for her liability arising out of claims for negligent entrustment and Mayfield was insured for his operation of the vehicle as a permissive user. Moreover, Mayfield was insured under the Safe Auto policy while operating the Lumina.

The Lumina also does not satisfy the second definition because neither Nationwide nor Safe Auto challenged the applicability of liability coverage and paid their undisputed liability limits.

III. Defendants' reliance on the carjacking cases is misplaced because Sharmin Walls gave Mayfield implied permission to use the car and, unlike those cases, two liability policies apply in this case.

Defendants relied upon cases dealing with non-permissive use to argue that Mayfield's non-permissive use of the vehicle made the Lumina uninsured as a matter of law. However,

none of the cases cited by Defendants dealt with a situation where at least one liability insurance policy applied to the accident. In this case, even if the liability coverage on the Nationwide policy did not apply – which has never been Nationwide’s contention – the Safe Auto policy provided liability coverage for Mayfield’s use of the vehicle. Upon receiving the full liability limits from Safe Auto, Defendants became precluded from arguing that the Lumina was uninsured.

In addition, the evidence presented at trial clearly shows that Mayfield had implied permission to operate the Lumina at least up until the chase began. Randi Harper testified at Mayfield’s criminal trial that the group was in the Lumina to go to the store and get gas. (Pl.’s Ex. 3, p. 6, lines 4-14). Prior to the drive, the group – including Sharmin Walls – had been partying and drinking alcohol. (Pl.’s Ex. 3, p.30, lines 4-14). In a recorded statement taken after the accident, Walls also confirmed that the group had been drinking and she willingly got in the car knowing that Mayfield was driving and without objection:

Q: Okay. And was there a reason that Corey-, uh, Corey, Maypop, was there a reason he was driving?

A: Well, I had been, uh, drinking some wine, so I. . .

Q: Okay.

A: Didn’t feel like it was safe for me to drive. I been pretty funny about it.

Q: Okay. So you gave him permission to drive?

A: Well, no, I didn’t give anybody permission to do anything. It was, it was just put to me, this is what we’re going to do, and, and they had been over there before, or, you know, wanting to use my vehicle or whatever. And, um, I had drank that wine, and I was like, well, I remember thinking, *well, I, I better go and make sure everything’s okay.*

* * *

Q: But, I mean, you didn't tell, um, Maypop that he could not drive your car? I mean, you kind of went along with, with going, and him driving your car?

A: I have no idea. I don't know.

(Pl.'s Ex. 11, pp. 5-6) (emphasis added). At a minimum, when Walls climbed into her car with Mayfield at the wheel without protest, she gave him her implied permission to drive. Moreover, someone who voluntarily gets into a car without threat or coercion cannot later claim that there were "car jacked".

IV. Defendants are judicially estopped from asserting the car was uninsured.

Defendants successfully made liability claims against both Nationwide and Safe Auto. As a result of those claims, Nationwide paid its undisputed policy limits and Safe Auto paid its stated policy limits for liability coverage. Walls and Timms settlements were approved by this court. The acceptance of those proceeds, which were approved by the court, judicially estopped Defendants from now asserting that the vehicle was actually uninsured and the payments made by Nationwide and Safe Auto were erroneous.

The Supreme Court of South Carolina established the following elements for judicial estoppel and therefore judicial estoppel should apply:

(1) Two inconsistent positions taken by the same party or parties in privity with one another; (2) the positions must be taken in the same or related proceedings involving the same party or parties in privity with each other; (3) the party taking the position must have been successful in maintaining that position and have received some benefit; (4) the inconsistency must be part of an intentional effort to mislead the court; and (5) the two positions must be totally inconsistent.

Cothran v. Brown, 357 S.C. 210, 215-16, 592 S.E.2d 629, 632 (2004) (citation omitted). Here,

1) the two inconsistent positions are both taken by the Defendants; 2) the proceedings are related

as they all relate to accident; 3) the Defendants were successful in obtaining court approval of the settlements and collecting the full limits of liability from Safe Auto; 4) Defendants' eleventh-hour assertion that the Lumina was actually uninsured after collecting a combined \$100,000 in liability coverage evinces an attempt to mislead the Court; and 5) the two positions are totally inconsistent as the Lumina cannot be both insured and uninsured. Therefore, judicial estoppel should apply.

The New York Appellate Division applied judicial estoppel in the reverse scenario where insureds obtained uninsured motorist coverage and then filed suit to obtain liability coverage from the insurer. *Douglas v. Government Employees Ins. Co.*, 654 N.Y.S. 2d 39, 237 A.D. 2d 246 (App. Div. 1997). In that case, "[t]he plaintiffs proceeded to arbitration on the claim and recovered a substantial award premised on the theory that the offending vehicle was not covered by insurance." *Id.* at 40. Therefore, the doctrine of judicial estoppel precluded them from subsequently claiming inconsistent relief by requesting a declaration that the vehicle actually carried liability coverage. *Id.* Although the Appellate Division analyzed the opposite situation, the basis of the holding is that claims for uninsured and liability coverage are mutually exclusive and inconsistent. Therefore, the logic applies equally to the facts of this case and Defendants are judicially estopped from obtaining liability payments and then taking the inconsistent position that the vehicle was uninsured.

Defendants collected the full liability limits from both Nationwide and Safe Auto by claiming that the Lumina was insured and obtained approval from this Court for those settlements. Because they were successful in claiming liability coverage under both the Nationwide and Safe Auto policies, permitting a change in position at this stage in the litigation

would permit Defendants to "blow both hot and cold." See *Quinn v. The Sharon Corp.*, 343 S.C. 411, 416, 540 S.E.2d 474, 476 (Ct. App. 2000). ("a litigant cannot 'blow both hot and cold'").

V. The dismissal of the counterclaims and crossclaims bars the assertion that the vehicle was uninsured.

Each defendant entered into settlement agreements with Nationwide accepting Nationwide's minimum limits of liability coverage in exchange for a covenant not to execute against Sharmin Walls and Korey Mayfield.¹ Each agreement reveals that the Defendants are accepting money from Nationwide as payment of Nationwide's liability coverage and reserving their right to pursue additional liability limits. For example, the Settlement Agreements executed by the Estate and Harper provide: "WHEREAS, Wendy Timms, as Personal Representative of the Estate of Christopher Adam Timms, and Nationwide Mutual Fire Insurance Company are desirous of determining the amount of *liability coverage* payable under the policy issued by Nationwide"² There is simply no allegations that the vehicle was uninsured at the time of the loss or that uninsured motorist coverage should apply. Moreover, Walls herself filed a stipulation of dismissal dismissing all counterclaims against Nationwide with prejudice. Stipulation of Dismissal, July 14, 2009. Since neither she nor any other Defendant made any allegation or sought a declaration regarding uninsured motorist coverage in their counterclaims, those claims are now barred.

Sharmin Walls signed a similar Settlement Agreement wherein Nationwide agreed to pay and Walls reserved her right to obtain additional liability coverage: "WHEREAS, . . . the Covenantor [Sharmin Walls] is desirous of protecting her right to proceed to suit against the

¹ Sharmin Walls signed a covenant not to execute against Mayfield.

² The Settlement Agreements for the Estate and Harper are nearly identical. Where the above-quoted language refers to "Wendy Timms," Randi Harper's agreement states "Randi Harper." The two are interchangeable for purposes of this memorandum.

Covenantee for purposes of litigating the coverage issues and potentially collecting *excess liability coverage*.” (Walls Settlement Agreement, November 3, 2012) (emphasis added). The agreement goes on, “Walls retains the right to pursue Full coverage of the *remaining* \$100,000.00 per person coverage in the pending action.” (Walls Settlement Agreement, November 3, 2012) (emphasis added). At trial, Walls conceded that the payment of \$20,000.00 from Nationwide came from Nationwide’s liability coverage. Therefore, the “remaining” coverage must be remaining liability coverage. The Defendants did not preserve any claim for uninsured motorist coverage.

Moreover, the counterclaims and crossclaims that were initially asserted but subsequently dismissed did not mention or seek a determination that Mayfield’s use of the Lumina was non-permissive or that the vehicle was uninsured. To the extent that Defendants ever sought a declaration regarding uninsured motorist benefits via their counterclaims, those claims have all been dismissed. Of the three defendants, Sharmin Walls is the only one that has arguably ever raised mention of uninsured motorist coverage. In her Answer, Counterclaim, and Cross-Claim, she mentions that Walls intended to purchase “liability, UM and UIM coverage.” (Walls’ Answer, ¶ 17). There is no mention of non-permissive use or that the Lumina was uninsured at the time.³ The Estate’s counterclaim only alleges that the policy limitation raised in Nationwide’s “interpretation of the referenced insurance policy’s limitation of liability benefits in this matter is clearly unconscionable, in bad faith and should be stricken as against the public policy of this State.” (The Estate’s Answer, ¶ 12). The Estate also asserts that there is no

³ In fact, Walls would have had difficulty arguing that the vehicle was uninsured when she herself was a defendant in cross-claims and direct claims asserted by the Estate and Randi Harper. Nationwide’s payments to Randi Harper and the Estate were in exchange for covenants protecting Walls as an insured under the policy.

evidence concerning the flight from law enforcement.⁴ (The Estate's Answer, ¶ 13). Neither of these allegations make any mention or reference to uninsured motorist coverage. Harper's Answer is not labeled an Answer and Counterclaim, however, to the extent that she properly asserts a counterclaim, it only alleges that the facts of the accident do not show that the exclusion applies. (Harper's Answer, ¶ 14).

On July 14, 2009, Sharmin Walls filed a Stipulation of Dismissal dismissing her counterclaims against Nationwide with prejudice. (Stipulation of Dismissal, July 14, 2009). Neither the Estate nor Harper made any allegations or sought any declarations regarding uninsured motorist coverage in their counterclaims. The only issue presently before the Court is Nationwide's declaratory judgment, which only deals with liability coverage. Defendants failed to preserve any claims that the vehicle was uninsured.

VI. Walls could have protected herself and the passengers in her vehicle by purchasing underinsured motorist coverage, but she did not.

"[T]he law in South Carolina is clear that underinsured coverage and uninsured coverage are mutually exclusive." *Fireman's Ins. Co. of Newark, New Jersey v. State Farm Mut. Auto. Ins. Co.*, 295 S.C. 538, 370 S.E.2d 85 (1988). The undisputed payments of liability coverage place the Lumina squarely in the definition of underinsured motor vehicle:

"Underinsured motor vehicle" means a motor vehicle as to which there is bodily injury liability insurance or a bond applicable at the time of the accident in an amount of at least that specified in Section 38-77-140 and the amount of the insurance or bond is less than the amount of the insureds' damages.

S.C. Code Ann. § 38-77-30(15). Both Safe Auto and Nationwide provided liability insurance in at least the amount specified in § 38-77-140 and Defendants' injuries exceed that amount. Therefore, the Lumina was underinsured. Because the two phrases "uninsured" and

⁴ At trial, the Court stated that there is no doubt Mayfield was still fleeing from law enforcement when the accident occurred.

"underinsured" are mutually exclusive, the Lumina cannot also qualify as uninsured. Although Walls could have protected herself and her passengers by purchasing optional underinsured motorist coverage, it is undisputed that she rejected that coverage. Therefore, to the extent that Walls pleads with the court to allow uninsured motorist coverage since she had no ability to stop Mayfield once he began fleeing from police, she could have fully protected herself and her passengers by simply purchasing underinsured motorist coverage. That would have adequately protected any insured from the actions of a person who initially has permission to use the insured vehicle but later drives in violation of the policy provisions reducing the amount of liability coverage as occurred in this case.

CONCLUSION

The undisputed payments of liability coverage from not one, but two liability carriers precludes any claim that the Lumina was uninsured at the time of the accident. Moreover, by dismissing their counterclaims and cross-claims, the only matter that is properly before the court is Nationwide's declaratory claim regarding liability coverage. No party has properly preserved a claim that the vehicle was actually uninsured and any such claim would be totally inconsistent with their previous position that Safe Auto and Nationwide's liability policies applied to this accident. By accepting minimum liability limits from both Safe Auto and Nationwide, Defendants are judicially estopped from asserting that they are entitled to uninsured motorist coverage as a result of this accident.

[SIGNATURE ON FOLLOWING PAGE]

Respectfully submitted,

MURPHY & GRANTLAND, P.A.



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Wesley B. Sawyer, Esquire

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Attorneys for the Plaintiff

Nationwide Mutual Fire Insurance Company

Columbia, South Carolina
September 20, 2013

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Nationwide Mutual Fire Insurance Company,

Plaintiff,

vs.

Sharmin Christine Walls, Randi Harper,
Wendy Timms in her capacity as Personal
Representative of The Estate of Christopher
Adam Timms, Deborah Timms,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO: 2009-CP-04-00907

**PLAINTIFF'S MOTION TO ALTER OR
AMEND**

TO: THE DEFENDANTS ABOVE-NAMED:

YOU WILL PLEASE TAKE NOTICE that the undersigned, as attorneys for the Plaintiff, Nationwide Mutual Fire Insurance Company, will move before the presiding judge of the Anderson County Court of Common Pleas at the Anderson County Courthouse at 10:00 a.m. on the tenth (10th) day after service hereof, or as soon thereafter as counsel may conveniently be heard, for an Order altering or amending the Order denying judgment in this case on the grounds that the order misapprehends SC authority and fails to adequately set forth factual findings resulting in an erroneous ruling. This motion will be supported by a memorandum of law to be submitted and based upon the pleadings and the trial record.

This Motion is made pursuant to Rule 59 of the South Carolina Rules of Civil Procedure and will be based upon the pleadings, case decisions and motions previously filed. Counsel for the undersigned received written notice of the Order from the Court on August 25, 2014.

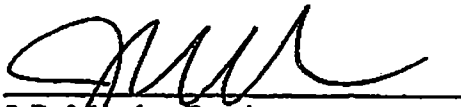
A TRUE COPY

AUG 28 2014

Patricia H. Huley
CLERK OF COURT

Therefore, based on the above, Nationwide requests that the Court reconsider its ruling.

MURPHY & GRANTLAND, P.A.

A handwritten signature in black ink, appearing to be 'JRM', written over a horizontal line.

J. R. Murphy, Esquire
Post Office Box 6648
Columbia, South Carolina 29260
(803) 782-4100
Attorney for the Plaintiff

Columbia, South Carolina
August 25, 2014

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF ANDERSON

CIVIL ACTION NO: 2009-CP-04-00907

Nationwide Mutual Fire Insurance Company,

Plaintiff,

vs.

Sharmin Christine Walls, Randi Harper,
Wendy Timms in her capacity as Personal
Representative of The Estate of Christopher
Adam Timms, Deborah Timms,

Defendants.

MEMORANDUM IN SUPPORT OF
PLAINTIFF'S MOTION TO ALTER OR

AMEND **A TRUE COPY**

OCT 16 2014

Robert D. King
CLERK OF COURT

Plaintiff Nationwide Mutual Fire Insurance Company ("Nationwide"), by and through its undersigned counsel, respectfully submits this Memorandum in Support of its Motion to Alter or Amend:

BACKGROUND

This case was tried at a bench trial before the Court in the Anderson County Courthouse on September 12, 2013. Nationwide filed this declaratory judgment action seeking a determination that it only owed the State minimum liability limits of \$25,000 per person and \$50,000 per accident because the operator of the insured motor vehicle, Korey Mayfield, was fleeing from law enforcement when the accident occurred. The key factual issue at trial was whether Mayfield was still fleeing from law enforcement at the time of the accident. After presentation of the evidence at trial, the Court expressed from the bench that there was "no doubt" in the Court's mind that Mayfield was still fleeing from law enforcement when the accident occurred.¹ However, the Court's Order of August 18, 2014, never makes a factual

¹ Counsel for Nationwide requested a copy of the trial transcript on September 4, 2014. Nationwide will supplement this memorandum with reference to the transcript once received.

determination as to whether Mayfield was fleeing from law enforcement at the time of the accident.

Just a few days before trial, Defendants alleged for the first time that they were going to argue that the claim was actually one for uninsured motorist (UM) coverage. However, Defendants had previously dismissed all of their counterclaims in exchange for payment of Nationwide's undisputed liability coverage. Defendants also received the full policy limits of liability coverage from Safe Auto, who insured Korey Mayfield. Therefore, Defendants failed to preserve any claims for UM coverage. The Court's August 18, 2014 Order fails to address the dismissal of all counterclaims and cross-claims by Defendants prior to trial.

Defendants also failed to present a copy of the Safe Auto's insurance policy or to present evidence of any of that policy's terms. On the other hand, Nationwide presented evidence – via the Court's own record and multiple releases – showing that Safe Auto paid the liability limits under its policy. As the party seeking uninsured motorist coverage, Defendants bore the burden of persuasion and production to show that Korey Mayfield did not qualify as an insured under either the Safe Auto or the Nationwide policies. Defendants failed to present any such evidence and, therefore, the Court's factual determination is unsupported by the record.

More importantly, Defendants accepted undisputed policy limits from Nationwide and the policy limits from Safe Auto as settlement and obtained Court approval of those settlements. Therefore, Defendants are judicially estopped from now asserting the contrary position that the Nationwide or Safe Auto policies did not provide any liability coverage. Although Nationwide raised this issue both at trial and in a Supplemental Memorandum filed with the Court on September 20, 2013, the Court's Order of August 18, 2014, does not evaluate the necessary elements for judicial estoppel or make any factual determinations in relation to that analysis.

Although Nationwide denies that Defendants are entitled to UM coverage, if the vehicle was uninsured at the time of the accident, then Nationwide is entitled to a set-off via subrogation for the full \$50,000 paid by Safe Auto. Also, the Court's August 18, 2014, Order also makes a number of factual findings that were not presented in evidence.²

STANDARD OF REVIEW

A party may file a motion to reconsider under Rule 59(e) when it believes the court has misunderstood, failed to fully consider, or failed to rule on an issue and the party wished the court to reconsider or rule on it. *Elam v. South Carolina Dep't of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). On the other hand, a party must move under Rule 59(e) when an issue is raised and argued, but not ruled upon by the court. *Rodriguez v. Gutierrez*, 391 S.C. 323, 330, 705 S.E.2d 94, 98 (Ct. App. 2011). The motion allows "a party one final chance not only to call the court's attention to a possible misapprehension of an earlier argument, but also to revisit a previously raised argument." *Elam*, 361 S.C. at 22, 602 S.E.2d at 779.

- I. **Korey Mayfield was fleeing from law enforcement and committing a felony at the time of the collision.**

Nationwide filed a Complaint for Declaratory Judgment and Interpleader on March 4, 2009. The Complaint does not mention any form of coverage except liability. The Complaint seeks only two enumerated declarations: 1) "Declaratory Judgment as to Driver's Identity", and 2) a "Declaratory Judgment as to the Applicability of Flight-From-Law-Enforcement Exclusion." (Compl. p. 6). Prior to trial, Nationwide obtained summary judgment that Mayfield was driving the vehicle at the time of the accident, leaving the application of the Flight-From-Law-Enforcement exclusion as the only matter before the court.

² Because the other issues raised above are dispositive, Nationwide will merely list these items to preserve the issue.

At trial, Nationwide presented evidence – largely undisputed – showing that Mayfield was still fleeing from State Trooper Travis Wilson when the accident occurred. Nationwide also presented undisputed evidence that Mayfield was convicted of reckless homicide – a felony – and that his conduct violated other criminal statutes designated as felonies under South Carolina law.

After hearing the evidence and seeing Trooper Wilson's dash cam video, the Court expressed from the bench its belief that Mayfield was still fleeing from law enforcement when the accident occurred. The undisputed evidence at trial showed that Mayfield was still driving at over twice the posted speed limit at the time of the accident, which occurred within a mile of where Trooper Wilson turned off his blue lights. However, the Court's written Order of August 18, 2014 is completely silent on this key factual question that was raised at trial. Therefore, Nationwide asks that the Court's factual determinations be added to the Order.

II. The Exclusion is both valid and enforceable under South Carolina law.

The Court's Order determines as a matter of law that the exclusion is ambiguous and unconscionable. Respectfully, the contractual language is clear and Defendants did not present any alternative readings of the exclusion that would permit coverage in this case. Moreover, numerous courts have held that this exclusion does not violate public policy.

a. The Flight-From-Law-Enforcement exclusion is plain and unambiguous.

"A contract is ambiguous when it is capable of more than one meaning or when its meaning is unclear." *Bardsley v. Government Employees Ins. Co.*, 405 S.C. 68, 75, 747 S.E.2d 436, 439-40 (2013) (citation omitted). "Accordingly, when a court makes a finding of ambiguity, *it must set forth either how a provision is capable of more than one meaning or is obscure in meaning*. A simple finding of ambiguity, absent any reasoning, is insufficient." *Id.*

The Court's Order of August 18, 2014 fails to either set forth an alternative reasonable reading of the exclusion that would provide coverage under the facts of this claim. The exclusion is plain:

B. This coverage does not apply, with regard to any amounts above the minimum limits required by the South Carolina Financial Responsibility Law as of the date of the loss, to:

6. Bodily injury or property damage caused by:

- a) You;
- b) a relative; or
- c) anyone else while operating your auto;

- (1) while committing a felony; or
- (2) while fleeing a law enforcement officer.

(Stip. of Facts ¶ 14). The Court's Order states "However, the only rational reading of this provision of the policy would make it applicable only to the 'insured purchaser' being guilty of such conduct." (Order of August 18, 2014, p. 4). However, this reading ignores parts b) and c) of the exclusion, applying not only to "You", but extending application of the exclusion to any relatives or "anyone else while operating your auto." This Court entered summary judgment, finding that Korey Mayfield was operating the insured automobile. Therefore, he is "anyone else . . . operating your auto" and the exclusion applies if he was fleeing law enforcement or committing a felony. Because Mayfield was doing both, the exclusion applies by its plain terms. Defendants failed to present any logical alternative reading of the exclusion that would provide coverage in this case. Therefore, the exclusion is unambiguous.

Although the Court's basis for finding the exclusion unconscionable is not expressly clear, it appears that one justification is that "it was nowhere made clear in the policy, nor was [Walls'] attention drawn to the limitation language of the policy, that the coverage she purchased and paid for would be reduced in the event of certain circumstances." (Order of August 18,

2014, p. 4). Respectfully, the Stipulation of Facts submitted to the Court states that the policy included the exclusion. Moreover, neither Walls nor any other individual involved in the insurance transaction testified at the hearing. There was no evidence presented at trial showing that Walls was not aware of the exclusion or that it was not clearly presented in the policy.

Moreover, the holding that the exclusion is unconscionable because it was not brought to Walls' attention is based upon a mistake of law. South Carolina's appellate courts have never held that a policy exclusion was unenforceable because it was not brought to an insured's attention. Rather, "[i]nsurance policies are subject to the general rules of contract construction." *South Carolina Farm Bureau Mut. Ins. Co. v. Dawsey*, 371 S.C. 353, 356, 638 S.E.2d 103, 104 (Ct. App. 2006) (citation omitted). "Although exclusions in a policy are construed against the insurer, insurers have the right to limit their liability and to impose conditions on their obligations provided they are not in contravention of public policy or a statutory prohibition." *Id.* (citations omitted). If Defendants had tried to submit evidence to change the plain terms of the policy, such evidence would have been inadmissible parol evidence. See *Blue Bird Ice Cream Co. v. American Employers' Ins. Co. of Boston, Mass.*, 182 S.C. 384, 189 S.E. 657 (1937) (holding that parol evidence is inadmissible when the policy is plain and unambiguous). "[I]n cases where there is no ambiguity, contracts of insurance, like other contracts, must be construed according to the terms which the parties have used, to be taken and understood in their plain, ordinary and popular sense." *Precision Walls, Inc. v. Liberty Mut. Fire Ins. Co.*, __ S.E.2d __, 2014 WL 3610895, *5 (Ct. App. 2014) (citation omitted). "The court cannot torture the meaning of policy language to extend coverage not intended by the parties." *Id.* (quoting *Dawsey*, 371 S.C. at 638 S.E.2d at 105 (other citations omitted)).

South Carolina's appellate courts have never placed the burden of bringing exclusions that are plainly stated in the insurance policy to the insured's attention. Rather, the plain language of the policy is designed to do just that. Requiring that one exclusion have special formatting to grab the insured's attention would – by definition – render another exclusion less noticeable. Moreover, if every exclusion used the same font, then none would stand out against each other. Rather than creating this impossible burden for insurers, South Carolina – like other jurisdictions – adopts the reasonable rule that an insured has the burden and expectation of reading her insurance policy and knowing its contents.

In her Return to Motion to Alter or Amend Judgment, sent to the Court on September 10, 2014, Defendant Walls cites the Supreme Court's recent decision in *Williams v. Government Employees Insurance Company (GEICO)*, __ S.E.2d __ (Aug. 20, 2014) for the proposition that the flight-from-law-enforcement exclusion is arbitrary and, therefore, unenforceable. Defendant Walls misreads the Court's holding in *Williams*. In fact, the *Williams* decision shows that the exclusion is unambiguous and should be enforced.

As the Supreme Court held in *Williams*, "[a]n ambiguity exists only when the language is reasonably capable of being understood in more than one way." *Id.* at *5. A provision is only ambiguous if it is obscure or it has an alternative reasonable reading that would result in coverage. The meaning of the flight-from-law-enforcement exclusion is plain and unavoidable. When the operator of the vehicle causes injury while fleeing from law enforcement or committing a felony, the exclusion applies. However, because such an exclusion is only enforceable to the extent that coverage exceeds the amounts required by South Carolina Code § 38-77-140, the policy makes this effect clear.

South Carolina's financial responsibility laws do not permit an exclusion for criminal acts or flight-from-law-enforcement to delete mandatory coverage in its entirety. *See South Carolina Farm Bureau Mut. Ins. Co. v. Mumford*, 299 S.C. 14, 382 S.E.2d 11 (Ct. App 1989) (holding that intentional acts exclusion was unenforceable to the extent that it reduced liability coverage below the minimum limits required by South Carolina law). Therefore, Nationwide wrote its policy to inform the insured that the exclusion would only apply to amounts in excess of the minimums required by South Carolina law. Nationwide drafted the policy clearly and articulately so that the named insured would understand when the exclusion would apply and its actual legal effect. There is no alternative reading of the exclusion.

b. The exclusion fosters strong public policy created by the South Carolina legislature's criminalization of certain conduct.

Nationwide reasonably excludes excess coverage for the operation of a vehicle in the commission of a felony or while fleeing from law enforcement. Relying upon *Williams*, Walls claims that *all* exclusions in an automobile liability policy are void as against public policy. However, after reading South Carolina Code § 38-77-142, the Supreme Court held: "Therefore, once the face amount of coverage is agreed upon, it may not be *arbitrarily* reduced or limited by conflicting policy provisions that effectively retract this stated coverage." *Id.* at *9. The Supreme Court in *Williams* went on to analyze whether the family member step-down provision in that case was arbitrary. *Id.* at *9-11. If the holding were as broad as Walls suggests – invalidating all exclusions regardless of their merit – then the Supreme Court would have had no reason to move forward with analyzing whether the provision in that case was arbitrary. Therefore, reading that case as a whole and the Court's holding, an insurer may not include exclusions that violate public policy as stated either in the State's statutes or by the State's

Courts. *Id.* at *6. A provision that reduces coverage when the injured party is a family member violates public policy because it is arbitrary and capricious. As the Supreme Court held:

Public policy considerations include not only what is expressed in state law, such as the constitution and statutes, and decisions of the courts, but also a determination of whether the agreement is capable of producing harm such that its enforcement would be contrary to the public interest or manifestly injurious to the public welfare.

Id. at *6 (citing *Country Preferred Ins. Co. v. Whitehead*, 365 Ill. Dec. 669, 979 N.E.2d 35, 42 (2012)). Unlike the family member step-down provision in *Williams*, numerous courts across the country have held that a flight-from-law-enforcement or criminal acts exclusion comports with public policy.

The reason for the exclusion is obvious: the insured risk is greatly increased when a driver is fleeing from law enforcement or using a vehicle in the commission of a crime. "If a single insured is allowed, through an intentional act, to consciously control risks covered by the policy, the central concept of insurance is violated." *Bohner v. Ace American Ins. Co.*, 359 Ill. App. 3d 621, 626, 834 N.E.2d 635, 641 (App. 2 Dist. 2005) (citation omitted).

A litany of other courts have held that similar criminal acts or flight-from-law-enforcement exclusions are valid and do not violate public policy. See *Alfa Specialty Ins. Co. v. Jennings*, 906 So. 2d 195 (Ala. Civ. App. 2005) (holding that a criminal acts exclusion in an automobile liability policy did not violate public policy); *Southern Farm Bureau Cas. Ins. Co. v. Easter*, 374 Ark. 238, 287 S.W.3d 537 (2008) (holding that eluding-lawful-arrest exclusion did not violate public policy as stated in state's compulsory insurance statute or no-fault statute); *Hix v. Hertz Corp.*, 307 Ga. App. 369, 705 S.E.2d 219 (Ct. App. 2010) (same); *Bohner*, *supra* (holding that criminal act exclusion was enforceable and did not violate public policy). Moreover, some states expressly permit such exclusions by statute. See N.J. Stat. Ann. § 39:6A-

7(a)(1). Public policy is always harmed when a policy gives insured's license to engage in criminal conduct. *Bailey v. Lincoln General Ins. Co.*, 255 P.3d 1039, 1048 (Colo. 2011). In fact, public policy strongly *favours* criminal acts exclusions: "Indeed, this public-policy principle is so compelling that, in many jurisdictions, insurers may actually violate public policy if the fail to include criminal-acts or intentional-acts exclusions in their policies." *Id.* at 1048.

A key aspect of the Supreme Court's holding in *Williams* was the arbitrariness of holding that an injured person's recovery could be limited solely because that injured person was related to the tortfeasor. Family members are part of the group specifically defined as "insureds" under the statutory scheme. *See* § 38-77-30(7). "To allow an insurer to determine the extent to which an injured party can recover within the insured's policy coverage based solely on a familial relationship is arbitrary and capricious and violative of public policy." *Williams*, at *10. In other words, the limitation applied based upon the identity of the victim, not the nature of the insured's conduct.

The flight-from-law-enforcement exclusion operates in very different manner from the family-member step-down provision. Specifically, coverage is not dependent upon the identity of the *victim*, but rather coverage is dependent upon the *conduct of the insured*. The exclusion is designed to discourage certain undesirable behavior by excluding the protections afforded by the policy when the insured undertakes that conduct. Certainly, a flight-from-law-enforcement exclusion comports with and parallels the legislature's stated public policy against fleeing from law enforcement because the legislature has criminalized such conduct. Therefore, rather than violating public policy, the flight-from-law-enforcement exclusion actually *supports* public policy.

III. The question of uninsured motorist coverage was not properly before the Court.

An issue that is not raised in either the Complaint or a Counterclaim is not properly before the Court at trial. *See Roland v. State Farm Ins. Co.*, 289 S.C. 173, 345 S.E.2d 722 (1986) (holding that fact that uninsured motorist issue was presented in trial memorandum did not place matter before trial court to decide, and thus, trial court erred in determining question of uninsured motorist coverage); *Ray Thomas Petroleum, Inc. v. Davide Reza Kave Petroleum Co.*, 2012 WL 10826229 (Ct. App. Jan. 25, 2012) (unpublished) (holding that matters not raised in complaint were not properly before the court). "[A] judgment or decree, whether in law or equity, must conform to both the pleadings and the proofs and be in accordance with the theory or action on which the pleadings are framed and the case was tried." *Roland*, 289 S.C. at 175, 345 S.E.2d at 723. As the Supreme Court held in *Blue Bird*:

The oft-quoted saying that a cause well pleaded is a cause half won, contains more than a modicum of truth. And no doubt the converse of this statement is true. The rule of liberal construction does not make good pleadings less necessary or desirable and while the pleader is to be given the benefit of every allegation made or reasonably implied from the language employed, there must be sufficient facts stated to furnish a reasonable basis for the implication or inference.

189 S.E. at 659.

Nationwide's Complaint sought two declaratory judgments. After granting summary judgment on the first issue — who was driving the vehicle at the time of the accident, the only remaining issue at trial was whether the flight-from-law-enforcement exclusion applied. (Order of August 29, 2011) (granting summary judgment and holding that Korey Mayfield was operating the vehicle at the time of the collision). Walls was the only defendant to raise any

counterclaim that could arguably address uninsured motorist coverage.³ However, Walls' counterclaim never alleges any factual allegations of non-permissive use or that the vehicle was uninsured. Moreover, Walls voluntarily dismissed all of her counterclaims and cross-claims trial. (Stipulation of Dismissal, July 14, 2009). Therefore, any issues raised in her counterclaims were not properly before the court.

Neither Randi Harper nor the Estate of Christopher Adam Timms asserted counterclaims relating to uninsured motorist coverage. The Estate's Counterclaim alleged only two paragraphs:

12. That the Plaintiff's interpretation of the referenced insurance policy's limitation of liability benefits in this matter is clearly unconscionable, in bad faith and should be stricken as being against the public policy of this State
13. That the Plaintiff has provided no proof to this Court that any evidence exists concerning the Flight-from-Law-Enforcement Exclusion referenced in Plaintiff's Second Cause of Action as it applies to the facts in this case and should be dismissed.

(Answer, Counterclaim and Cross-Claim of Wendy Timms). Likewise, Harper's Answer and Counterclaim makes no mention of UM coverage:

- (14) This Defendant alleges that, assuming the terms of the Plaintiff's policy are as alleged in its Complaint, but without admitting the same, the factual circumstances surrounding the accident of July 11, 2008 do not satisfy the alleged conditions, limitations or exclusions such that the Plaintiff is entitled to limit its exposure below those limits stated in the declarations pertaining to said policy.

(Answer of Defendant Randi M. Harper). Neither the Estate nor Harper assert any factual allegations to support a claim for UM coverage.

³ Nationwide expressly denies that Walls asserted a counterclaim for UM coverage. Walls asserted the counterclaim for UIM coverage and sought to reform the policy to include UIM coverage equal to the bodily injury limits. However, Walls abandoned this claim upon Nationwide's production of her signed written rejection of optional coverage. See S.C. Code § 38-77-350(B) (providing a conclusive presumption of a meaningful offer when a named insured applicant signs a written rejection of coverage that otherwise complies with the requirements of § 38-77-350(A)).

Defendants did not move to amend their Answers to assert any counterclaims at or before trial. Moreover, Nationwide specifically raised Defendants' failure to preserve any UM claims at trial and, therefore, did not try the issue by consent. See Rule 15(b), SCRC. Also, the Estate and Harper asserted cross-claims and/or direct actions against Sharmin Walls for negligently entrusting the vehicle to Mayfield. (Answer, Counterclaim and Cross-Claim of Wendy Timms, ¶¶ 14-19, 24-41). No Defendant made any allegations that Mayfield was a non-permissive user until *after* obtaining a limits settlement from Mayfield's personal automobile liability carrier, Safe Auto, and the minimum limits settlement from Nationwide in exchange for covenants not to execute protecting both Mayfield and Walls.

Walls dismissed her counterclaim against Nationwide, thereby failing to preserve any claim for UM coverage. Timms and Walls dismissed their counterclaims and failed to raise the issue of UM in their Answers. Moreover, because they asserted claims against Walls for negligent entrustment, the vehicle was insured. Obviously, Walls cannot be disqualified as a non-permissive user of her own vehicle because she otherwise qualifies as the "named insured." See S.C. Code § 38-77-30(7).

Nationwide filed this declaratory action on March 4, 2009. Defendants never raised a signal that they were seeking UM coverage until days before the bench trial held on September 12, 2013, over four years later. During that four-year period, Defendants obtained court approval for multiple settlements with both Nationwide and Safe Auto wherein both carriers tendered their undisputed liability coverage. Under no set of facts presented to the Court could Safe Auto's payments be deemed to come from any coverage other than liability coverage. Because Defendants failed to raise and preserve any claim that Nationwide owes UM coverage, the Court lacked any basis upon which to hold that the Defendants are entitled to UM coverage.

IV. Defendants failed to present any evidence upon which the Court could make a factual determination that Mayfield was an uninsured driver.

As the parties seeking coverage under the UM portion of Nationwide's policy, Defendants bore the burden at trial of showing that the vehicle was an "uninsured motor vehicle" as that phrase is defined in the Nationwide policy. *See Garrett v. Pilot Life Ins. Co.*, 241 S.C. 299, 303, 128 S.E.2d 171, 173 (1962) (holding that a party bringing an action on a policy has the burden to show that he received an injury of nature and kind against which policy insured). Nationwide defined "uninsured motor vehicle" to include, in relevant part:

- (1) one for which there is no auto liability bond, insurance or other security in effect, applicable to the vehicle owner, operator, or any other liable person or organization, at the time of the accident, in at least the amounts required by the financial responsibility law where your auto is principally garaged.
- (2) one for which the insuring company denies coverage or is or becomes insolvent.

(Pl.'s Ex. 9, p. U2).⁴ This definition closely mirrors the statutory definition. *See* S.C. Code Ann. § 38-77-30(14). As discussed in greater detail in Nationwide's Supplemental Memorandum, Defendants obtained liability settlements equal to the state-minimum limits from both Nationwide *and* Safe Auto. In other words, Defendants seek UM coverage despite recovering \$100,000 in liability payments between two liability insurers. These settlements are part of the Court's record and were undisputed at trial.

Nationwide presented uncontested evidence that Safe Auto paid settlements in exchange for protection of Korey Mayfield. Therefore, Defendants bore the burden of production and proof at trial to show that the Safe Auto policy did not provide liability coverage. However, Defendants failed to put into evidence the Safe Auto policy or its terms. The only evidence –

⁴ In its August 18, 2014 Order, the Court appears to find that Mayfield was uninsured merely because he became a non-permissive user and, in other cases, Courts have found such non-permissive use rendered the vehicle an uninsured motor vehicle. (Aug. 18, 2014 Order, pp. 5-6). However, those cases dealt with policies that excluded coverage under those circumstances. Defendants must prove that the vehicle was uninsured under the policies at issue in this case. That means that Defendants must show that *neither* the Nationwide policy nor the Safe Auto policy provided liability limits equal to the statutory minimum limits at the time of the accident.

which was undisputed at trial – was that Safe Auto tendered its liability limits and that the Court approved those settlements as to Walls and Timms. Therefore, it was impossible for the Court to make a determination that the vehicle satisfied the definition of an “uninsured motor vehicle” under the terms of the Nationwide policy. The Court had no evidence upon which to make that determination. The undisputed evidence at trial was that Safe Auto (and Nationwide) provided coverage to Korey Mayfield (and Walls) and (that both) made liability payments equal to the state minimum limits, therefore precluding application of UM coverage in this case.

V. The Court ignores the payments from Safe Auto in its judicial estoppel determination.

The Court’s Order finds that “Nationwide and any other liability carriers, voluntarily paid sums to partially reimburse Walls for her damages. There was no litigation over whether the coverage applied, or whether the vehicle was insured or uninsured.” (Aug. 18, 2014 Order, p. 6). Respectfully, there was no litigation because Defendants took the position that liability coverage from Nationwide *and* Safe Auto applied and both carriers agreed under the facts. Defendants never represented to either carrier their position that Mayfield was a non-permissive user. Moreover, they can’t have it both ways. Defendants took the position that liability coverage under Safe Auto’s policy applied and obtained a full policy-limits settlement from Safe Auto. Now, after obtaining the favorable settlement, Defendants take the position that Safe Auto’s coverage does not apply, and they are using the judicial system to succeed in these contradictory positions. This epitomizes South Carolina’s example of when judicial estoppel applies:

In order for the judicial process to function properly, litigants must approach it in a truthful manner. Although parties may vigorously assert their version of the facts, they may not misrepresent those facts in order to gain some advantage in the process. The doctrine thus punishes those who take the truth-seeking function of the system lightly. When a party has formally asserted a certain

version of the facts in litigation, he cannot later change those facts when the initial version no longer suits him.

Quinn v. Sharon Corp., 343 S.C. 411, 414, 540 S.E.2d 474, 475-76 (Ct. App. 2000) (quoting *Hayne Federal Credit Union v. Bailey*, 327 S.C. 242, 251-52, 489 S.E.2d 472, 477 (1997)). Defendants asserted one version of the facts, even going so far as to allege negligent entrustment against Walls. They benefited from this position by obtaining settlements from Nationwide and Safe Auto. Then, and only then, did Defendants “change those facts when the initial version no longer suit[ed]” them. *Id.*

Numerous courts have held that a party who obtains a favorable settlement based upon one assertion of fact will be judicially estopped from asserting a contrary set of facts to obtain additional recovery. See *Loomis v. Church*, 76 Idaho 87, 277 P.2d 561 (1954) (holding plaintiff was judicially estopped from alleging that driver of her vehicle was negligent after obtaining settlement with driver of other vehicle by asserting that driver of her vehicle was not negligent); *Kale v. Obuchowski*, 985 F.2d 360 (7th Cir. 1993) (estopping husband from asserting interest in property in subsequent bankruptcy proceeding after disclaiming interest in family court proceeding and obtaining favorable property settlement as a result); *Rissetto v. Plumbers and Steamfitters Local 343*, 94 F.3d 597, 605 (9th Cir. 1996) (applying judicial estoppel where plaintiff previously obtained worker’s compensation settlement of full amount of benefits by asserting that she was unable work, estopping plaintiff from then suing employer for age discrimination and constructive discharge, which required a showing that she could work).

As Judge Easterbrook states in *Kale*, often “a settlement represents capitulation. Persons who triumph by inducing their opponents to surrender have ‘prevailed’ as surely as persons who induce the judge to grant summary judgment.” 985 F.2d at 362 (citing *Maher v. Gagne*, 448 U.S. 122, 100 S. Ct. 2570 (1980)). In this case, Safe Auto settled for its full policy limits. There

is no better example of a settlement representing capitulation. Nonetheless, Defendants want to "blow both hot and cold" and now allege that the Safe Auto policy did not provide any coverage. *See Quinn*, 343 S.C. at 416, 540 S.E.2d at 476 (Anderson, concurring) ("A court must be able to rely on the statements made by the parties because truth is the bedrock of justice. Therefore, a litigant cannot 'blow both hot and cold.'"). Defendants' own actions prove otherwise: They accepted full liability limits from Safe Auto. Therefore, they should be estopped from asserting a contrary position now.

VI. If the Court finds that Defendants are entitled to UM coverage, Nationwide is entitled to a \$50,000 offset based upon their settlements with Safe Auto.

South Carolina Code § 38-77-150(C) provides: "Benefits paid pursuant to this section are subject to subrogation and assignment" The Nationwide policy provides in pertinent part:

Coverage Exclusions

Coverage does not apply:

* * *

2. Under Uninsured Motorists coverage for any insured who, without our written consent, settles with any person or organization who may be liable for the bodily injury or property damage and thereby impairs our right to recover our payments.

* * *

General Policy Conditions

* * *

10. SUBROGATION

We have the right of subrogation under the:

- a) Physical Damage;
- b) Uninsured Motorists, subject to the limitations outlined below; and
- c) Medical Payments;

coverages in this policy and its endorsements. This means that after paying a loss to you or others under this policy, we will have the insured's right to sue for or otherwise recover such loss from anyone else who may be held liable. Also, we may require reimbursement from the insured out of any settlement or judgment that duplicates our payments. These provisions will be applied in accordance with state law. Any insured will sign such papers, and do whatever else is necessary, to transfer these rights to us, and will do nothing to prejudice them.

Uninsured Motorists coverage is subject to subrogation only:

- i) up to the limits specified in the Financial Responsibility Act; or
- ii) if an uninsured motorist has selected the option to be uninsured by paying the fee specified in the Financial Security provisions of the South Carolina Motor Vehicle Code.

There is no right of subrogation applicable to Underinsured Motorists Coverage.

(Pl.'s Ex. 9, pp. U2-U3, G3).

Nationwide has a subrogation interest in any sums it pays to its insureds under UM coverage. Defendants obtained settlements from Safe Auto as the liability carrier for Korey Mayfield. Under the terms of the policy – which comply with South Carolina law – Nationwide has a subrogation interest in those payments, totaling \$50,000 and – if it is required to pay its full policy limits for UM coverage – Nationwide is entitled to reimbursement for those sums received from Safe Auto. To the extent that Defendant's failed to obtain written consent from Nationwide or to otherwise protect Nationwide's subrogation interest in those sums, the policy does not provide coverage. Therefore, to the extent the Court finds that Nationwide owes UM coverage, a finding that Nationwide contests, any amounts owed under the policy must be reduced both by Nationwide's previous payments totaling \$50,000 and Safe Auto's previous payments totaling \$50,000.

VII. Findings of fact not supported in the record.

The Court made the following findings of fact despite a lack of any evidence on these issues:

- 1) On page 2 of the Order, the Court states "Such clause was not explained to, nor was there any meaningful disclosure to Walls at the time of purchase, nor was the exclusion or limitation set out in bold print or otherwise made apparent to Walls at the time of the purchase of the insurance policy."

Walls did not testify at trial and none of these issues was presented through testimony or other admissible means of presenting evidence.

- 2) On page 6 of the Order, the Court states "There is uncontroverted evidence that either Mayfield was an unauthorized driver (non-permissive user); or in fact commandeered the vehicle without the consent of Walls"

The evidence in this case showed that Walls, the owner of the vehicle, elected to get into the vehicle and allowed Mayfield to operate the vehicle because she had been drinking:

Q: Okay. And was there a reason that Corey-, uh, Corey, Maypop, was there a reason he was driving?

A: Well, I had been, uh, drinking some wine, so I . . .

Q: Okay.

A: Didn't feel like it was safe for me to drive. I been pretty funny about it.

Q: Okay. So you gave him permission to drive?

A: Well, no, I didn't give anybody permission to do anything. It was, it was just put to me, this is what we're going to do, and, and they had been over there before, or, you know, wanting to use my vehicle or whatever. And, um, I had drank that wine, and I was like, well, I remember thinking, *well, I, I better go and make sure everything's okay.*

Q: But, I mean, you didn't tell, um, Maypop that he could not drive your car? I mean, you kind of went along with, with going, and him driving your car?

A: I have no idea. I don't know.

(Pl.'s Ex. 11, pp. 5-6) (emphasis added). Despite her self-serving statement, Walls gave her implied – if not express – permission or Mayfield to operate the car by climbing into the rear passenger seat without objection. With Mayfield driving, the group made multiple stops before the chase began. (Pl.'s Ex. 11, p. 8). Although Defendants now claim that Mayfield was not a permissive user of the vehicle, Timms and Harper both asserted claims against Walls for negligent entrustment as the owner of the vehicle, which requires his permissive use of the vehicle. (The Estate's Answer, ¶ 14); (Harper's Answer, ¶ 14). Timms and Harper both executed Covenants Not to Execute in favor of Walls based upon their liability claims against Walls. Therefore, there was substantial evidence that Mayfield was a permissive user of the insured vehicle at the time of the accident.

- 3) On page 6 of the Order, the Court states "the pleadings in this matter make claim against Nationwide for any and all benefits payable under the policy of insurance, which would include uninsured and underinsured."

Respectfully, neither the Estate nor Harper's counterclaim make a claim for UM coverage. As quoted above in Part III, both the Estate and Harper's counterclaims are silent with respect to UM coverage and focus only on the liability coverage. The Estate alleges that the flight-from-law-enforcement exclusion is unenforceable and that Nationwide failed to present sufficient evidence to support application of the exclusion. (Answer, Counterclaim and Cross-Claim of Wendy Timms, ¶¶ 12-13). Likewise, Harper's counterclaim merely alleges that the facts don't trigger the exclusion. (Answer of Defendant Randi M. Harper, ¶ 14). Moreover, Walls had already dismissed her counterclaim before trial. Therefore, anything alleged in her counterclaim was rendered moot and not properly before the Court at trial.

CONCLUSION

For the above-stated reasons, Nationwide respectfully asks this Court to amend its Order, reconsider its findings, and apply the plain terms of the flight-from-law-enforcement exclusion. Nationwide presented largely uncontested evidence that Mayfield was fleeing from law enforcement and committing a felony at the time of the accident. Moreover, an exclusion that discourages insureds from participating in illegal conduct comports with and furthers important public policy considerations. Therefore, the unambiguous exclusion applies and Nationwide does not owe any additional sums to the Defendants.

Additionally, the Court makes a finding that Defendants are entitled to UM coverage even though this issue was not properly preserved for trial and is not stated in any of the pleadings that were before the Court. Moreover, Defendants bore the burden of showing that the Safe Auto policy did not provide liability coverage for the accident. By failing to submit a copy of the Safe Auto policy or otherwise show evidence that Mayfield did not qualify as an insured under that policy, Defendants failed to meet their burden and the Court had no factual basis in the record upon which to find that the vehicle was uninsured. Lastly, Defendants successfully obtained policy-limits settlements from not one, but two liability carriers. With the exception of Harper, they also sought court approval of those settlements. Therefore, they should be judicially estopped from now asserting that the Safe Auto policy did not provide coverage for this accident or that the car was uninsured.

The Order also makes a number of factual findings that were not presented at trial. Also, to the extent that Nationwide owes any UM coverage, which is expressly denied, Nationwide is entitled to a set-off for amounts Defendants received from Safe Auto without properly preserving Nationwide's subrogation interests.

Therefore, Nationwide respectfully requests that the Court reconsider and amend its August 18, 2014 Order to make a factual determination on the key question before the Court: Whether Mayfield was fleeing from law enforcement or committing a felony at the time of the accident. Nationwide also asks that the Court apply the plain and unambiguous terms of the policy exclusion to the facts of this case and enter an Order that Nationwide has paid all sums owed under the policy.

MURPHY & GRANTLAND, P.A.



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(803) 782-4100
Attorneys for the Plaintiff

Columbia, South Carolina
October 14, 2014

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Nationwide Mutual Fire Insurance Company,

Plaintiff,

vs.

Sharmin Christine Walls, Randi Harper,
Wendy Timms in her capacity as Personal
Representative of The Estate of Christopher
Adam Timms, Deborah Timms,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO: 2009-CP-04-00907

CERTIFICATE OF SERVICE

A TRUE COPY

OCT 16 2014

Richard M. Kelly
CLERK OF COURT

I, the undersigned employee of the law offices of Murphy & Grantland, P.A., Attorneys for Plaintiff, do hereby certify that on October 14, 2014, I have served a copy of the foregoing Memorandum in Support of Nationwide Mutual Fire Ins. Co.'s Motion to Alter or Amend in connection with the above-referenced case placing same in the U.S. mail, postage paid to:

Milford O. "Chip" Howard, III, Esquire
Howard Law Firm, P.A.
Post Office Box 9754
Greenville, SC 29604

J. Kirkman Moorhead, Esquire
Krause, Moorhead & Draisen, P.A.
207 East Calhoun Street
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Michael F. Mullinax, III, Esquire
P.O. Box 2665
509 North McDuffie Street
Anderson, SC 29622

Columbia, South Carolina

Sandra R. Branson
Sandra R. Branson

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF ANDERSON

CIVIL ACTION NO: 2009-CP-04-00907

Nationwide Mutual Fire Insurance Company,

Plaintiff,

vs.

STIPULATION OF FACT

Sharmin Christine Walls, Randi Harper,
Wendy Timms in her capacity as Personal
Representative of The Estate of Christopher
Adam Timms, Deborah Timms, and Korey
Mayfield,

Defendants.

Nationwide Mutual Fire Insurance Company, Sharmin Christine Walls, Randi Harper, Wendy Timms in her capacity as Personal Representative of the Estate of Christopher Adam Timms, and Deborah Timms, hereby agree and stipulate as follows:

1. On July 11, 2008, Randi Harper, Christopher Timms, and Sharmin Christine Walls were passengers in a Chevrolet Lumina operated by Korey A. Mayfield travelling in a southerly direction on South Carolina Highway 81 just north of Masters Boulevard in Anderson County.
2. South Carolina State Trooper Travis Wilson observed the vehicle crossing the yellow line and going approximately 12 miles an hour over the speed limit.
3. At that time, Trooper Wilson decided to pull the car over and activated his blue lights.
4. Mayfield went from the far left lane (81 is a four-lane road) to the far right turning lane and disregarded the stop signal, continuing down 81 South. Trooper Wilson gave chase.
5. While driving on 81 South, the Trooper Wilson's vehicle reached speeds of 109 miles per hour.

6. Mayfield then turned left off of 81 South onto Fred Dean Road. In order to keep up with the Mayfield vehicle on Fred Dean Road, Trooper Wilson's vehicle reached speeds exceeding 95 miles per hour.

7. Mayfield then turned right onto Flat Rock road and left onto Leatherdale Road and, in the process, disregarded multiple stop signs.

8. After Mayfield turned left onto Leatherdale Road, Trooper Wilson received instructions to terminate the pursuit, which he did.

9. The Mayfield vehicle was out of sight before Trooper Wilson turned off his sirens and blue lights.

10. Trooper Wilson then proceeded down Leatherdale Road to ensure that Mayfield made it safely through several upcoming curves.

11. Approximately one mile from where Trooper Wilson terminated the chase, Mayfield lost control of the vehicle and ran off the road in a single-car accident.

12. The time between Trooper Wilson termination of the chase and his arrival at the scene of the accident was approximately 1 minute and 27 seconds.

13. At the time that Mayfield lost control of the vehicle, he was travelling a minimum speed of 72 miles per hour. The speed limit on that portion of Leatherdale Road was 35 miles per hour.

14. Nationwide issued an automobile liability policy number 61-39-M 424 728 09-11-08 to Sharmin Walls that was in effect on the date of the accident. The policy provides stated limits of coverage of \$100,000 per person and \$300,000 per occurrence for both liability and uninsured motorist coverage. As to the liability coverage only, the policy provides the following exclusions:

B. This coverage does not apply, with regard to any amounts above the minimum limits required by the South Carolina Financial Responsibility Law as of the date of the loss, to:

* * *

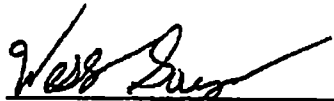
6. Bodily injury or property damage caused by:

- a) You;
- b) a relative; or
- c) anyone else while operating your auto;
 - (1) while committing a felony; or
 - (2) while fleeing a law enforcement officer.

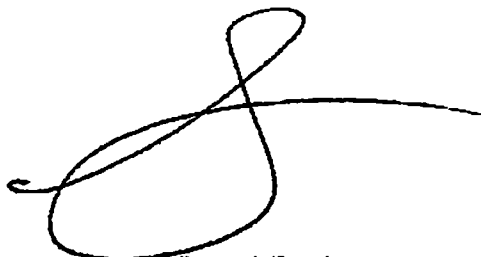
There are no such exclusions applicable to the Uninsured Motorists Coverage.

15. Pursuant to *North Carolina v. Alford*, 400 U.S. 25, 91 S. Ct. 160 (1970), Korey Mayfield pled guilty to and was convicted of reckless homicide – a felony – as a result of this accident.

16. Mayfield was found to be the driver of the vehicle by an Order of Summary Judgment in this case on August 29, 2011.



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Fire Insurance Company

A handwritten signature in black ink, appearing to be 'M. Howard', with a large loop and a long horizontal stroke extending to the right.

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Attorney for Christopher Timms

Stipulation of Fact Page 4 of 6

 9/5/13
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Stipulation of Fact Page 5 of 6



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864-225-4000
Attorney for Randi Harper

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

COURT OF COMMON PLEAS

Nationwide Mutual Fire)
Insurance Company,)

Plaintiff,)
v.)

Case No.: 2009-CP-04-00907

ORIGINAL

Sharmin Christine Walls, Randi)
Harper, Wendy Timms in her)
capacity as Personal Representative)
of The Estate of Christopher Adam)
Timms, Deborah Timms, and Korey)
Mayfield,)
Defendants.)

TRANSCRIPT OF HEARING

The within Hearing in the above-captioned matter was held on September 12, 2013, before The Honorable J. Cordell Maddox in the Anderson County Courthouse, 100 South Main Street, Anderson, SC 29622; attended by counsel as follows:

APPEARANCES:

John Robert Murphy, Esq.,
Wesley Brian Sawyer, Esq.,
Attorneys for the Plaintiff.

Michael F. Mullinax, Esq.,
Timothy A. Nowacki, Esq.,
Milford Oliver Howard, III., Esq.,
Attorneys for Defendants.

Vivian H. Cross
Circuit Court Reporter – 10th Judicial Circuit
P O Box 704
Belton, South Carolina 29627
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Nationwide Mutual Fire Ins. Co., v. Sharmin Christine Walls, et al.
Case No. 2009-CP-04-00907
Hearing of September 12, 2013
Before The Honorable J. Cordell Maddox

4

1 Harper, and Timms, uh, the three, uh, passengers in the
2 vehicle are all of the -- still parties. So the claim is
3 Nationwide involving those three. If our captions are
4 not consistent with that that's our fault, but that's---

5 THE COURT: Yeah, we'll -- we'll amend to that
6 affect.

7 MR. MURPHY: Okay.

8 THE COURT: Okay, and this is a Declaratory Judgment
9 action filed by Nationwide, right?

10 MR. MURPHY: Yes, Your Honor.

11 THE COURT: Okay.

12 MR. MURPHY: Well, may it please The Court?

13 THE COURT: Yes, sir.

14 MR. MURPHY: Your -- Your Honor, J. R. Murphy for
15 Nationwide. We, uh -- the Counsel in the case have
16 agreed to, uh, a more abbreviated trial based on a
17 stipulation of the fact and the exhibits, uh, that we
18 have just agreed upon and submitted. I believe they have
19 been filed with The Court. Exhibits number one through
20 twelve have been given to the Court Reporter and are --
21 are, uh, by stipulation, so I -- I believe they would be
22 in evidence and there may be some reference also to some
23 of the prior orders or pleadings in connection with this
24 case. It has been pending for a while, and, Your Honor,
25 if it -- if it's okay with you, I think the attorneys --

1 provisions in the policy. We think the public policies
2 against applying this limitation are met in the sense
3 that it's a limitation to the statutory minimum, and it
4 is not a -- a complete exclusion. It would not be
5 permissible. We think it's similar to the intentional
6 act exclusion that was analyzed in the same way in the
7 *Munford* Case and to some of these other fleeing or felony
8 exclusions that are in -- have been addressed by courts
9 in other states.

10 Your Honor, I do want to briefly address, because
11 counsel has indicated that they -- in their brief -- that
12 they believe that this court should rule that this is an
13 uninsured case, and, uh, as such, uh, providing them with
14 the full uninsured motorist limits in this case. Well,
15 Nationwide did not deny coverage in this case and in fact
16 paid the undisputed liability limits that would be
17 available even with the application of this exclusion,
18 uh---

19 THE JUDGE: And that was the primary carrier --
20 carrier?

21 MR. MURPHY: And it's the primary carrier.
22 Moreover, Mr. Mayfield's carrier, Safe Auto, also paid
23 the limits once it was established that he was the
24 driver. There's an order approving that partial
25 settlement with Sharmin Walls in this court record. And

1 because of that, this, uh, this car would not qualify as
2 an uninsured motor vehicle under either the policy
3 provision or South Carolina Code Section 38-77-30. The
4 policy provision is found, I think, on page U-1 in the
5 policy, if I'm not -- actually it's on U-2. Not to be
6 confused with the ban, but on U-2, an uninsured motor
7 vehicle is:

8 And then it lists several of those and one is, um,
9 one in which there is no auto liability, bond insurance,
10 or other security in effect applicable to the vehicle
11 owner, operator, or any other liable person.

12 In this case there's actually two policies that were
13 in effect and applicable. One to the owner, which is
14 this Nationwide policy, in which the liability limits
15 were paid in exchange for protections for the putative
16 insured, Ms. Walls and Mr. Mayfield. And, there was
17 actually a second auto liability insurance policy
18 applicable to Mr. Mayfield. So this vehicle would not
19 qualify. Uh, the insuring company did not deny coverage.
20 Neither company did, and so it would not be number two.

21 And then, of course, the other provisions there,
22 three and four, those track very closely with South
23 Carolina Code Section 38-77-30, uh, which, uh, define an
24 uninsured motor vehicle, uh, to be one to which no auto
25 liability, bond or policy applies.

1 Um -- uh, there -- there is not bodily injury
2 liability insurance or property damage or liability
3 insurance both at least in the amounts specified. And
4 then, of course, this had two different policies that
5 would have provided coverage in the operation of this
6 vehicle; one for the owner and one for the operator.

7 So, Your Honor, we, uh -- we would show that that is
8 not -- that declaration was not pled or asked for. The
9 only -- the only complaint for relief, or claim for
10 relief is the discussion of this liability exclusion that
11 contains the fleeing from law enforcement and the
12 committing a felony subparts.

13 But, to the extent that anyone is going to argue
14 that there should be uninsured motorist coverage, uh,
15 there certainly cannot be, in light of the undisputed
16 record in this case, that not one but two automobile
17 liability policies applied at the time of this accident
18 for this vehicle and as such it cannot qualify either
19 statutorily or under the policy as an uninsured motor
20 vehicle.

21 You know, the -- the argument that how could these
22 passengers protect themselves, Ms. Walls could have
23 protected herself with underinsured coverage, but if she
24 rejected that coverage and whether or not that was a --
25 rejected after a meaningful offer was resolved by

1 voluntary dismissal of that claim. So---

2 **THE JUDGE:** So that's been resolved?

3 **MR. MURPHY:** That's been resolved and not before
4 you. So, Your Honor, based on that, we simply ask The
5 Court to grant judgment in favor of Nationwide that
6 there's no additional coverage based on, uh, this
7 exclusion.

8 **THE JUDGE:** Okay; thank you. Yes, Sir.

9 **MR. MULLINAX:** If it please The Court, Mike Mullinax
10 for Sharmin Walls.

11 Your Honor, we're here today because Nationwide
12 Insurance Company is trying to evade their
13 responsibilities under the contracts of insurance that
14 Sharmin Walls intentionally and voluntarily purchased.

15 The policy was pled in the Answer, Counterclaim and
16 Cross-claim where we have some coverage under all of the
17 provisions of the policy contained in the pleadings and
18 my answer on behalf of Ms. Walls where we asked for
19 coverage pursuant to the policy provisions including U-M
20 and U-I-M.

21 Mr. Murphy is correct in that U-I-M itself has been
22 resolved, but there was a rejection. However, the
23 remainder of the policy provisions, including liability
24 and U-M, remain in effect and legally before The Court,
25 because this Court and Courts across this state are the

STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)
)

IN THE COURT OF
COMMON PLEAS
2009-CP-04-00907

NATIONWIDE MUTUAL FIRE)
INSURANCE COMPANY,)
)

VS.)

SHARMIN CHRISTINE WALL,)
RANDI HARPER, WENDY TIMMS,)
in her capacity as P.R.)
of the Estate of)
CHRISTOPHER ADAM TIMMS,)
DEBORAH TIMMS and KOREY)
MAYFIELD,)
DEFENDANTS)

TRANSCRIPT OF RECORD

MARCH 6, 2015
ANDERSON, SOUTH CAROLINA

B E F O R E:

THE HONORABLE J. CORDELL MADDOX, JR.

A P P E A R A N C E S:

JOHN ROBERT MURPHY, ESQUIRE
ATTORNEY FOR PLAINTIFF

MICHAEL F. MULLINAX, ESQUIRE
ATTORNEY FOR DEFENDANT/WALL

JOHN K. MOORHEAD, ESQUIRE
ATTORNEY FOR DEFENDANT/HARPER

VIVIAN CROSS,
CIRCUIT COURT REPORTER

* * * MARCH 6, 2015 * * *

THE COURT: . What have y'all got? Tell me a little bit about this because I'm just getting the file.

MR. MURPHY: Your Honor, this is a case you are somewhat familiar with. The motion is a motion to alter or amend the judgment that you entered after we tried the case with the -- mainly a stipulation. And it was a coverage case involving a high speed, fleeing the police with a gentleman named Korey Mayfield. I think you also had some involvement in the -- in the criminal aspect --

THE COURT: Yeah.

MR. MURPHY: -- of the charge against him. And Nationwide brought this case to determine coverage under the auto policy issued to the owner, which was a lady named Sharmin Wall, who was also a passenger in the vehicle, along with two others at the time of the accident.

And after we tried the case, there were -- there's about three or four things in the order that I just wanted to raised because --

THE COURT: Yeah.

MR. MURPHY: -- I'll be glad for you to change your mind, but I'm not here on sour grapes. I'm here

1 arbitrary and unconscionable, not ambiguous or
2 incapable of being determined.

3 So we just wanted to raise that. I think Your
4 Honor has -- has -- as I understood your ruling, but it
5 was unclear in the order that you found that he -- his
6 conduct fell within the exclusion, but the exclusion
7 was not enforceable for other reasons. That's a
8 different -- that's a different argument I would be
9 taking up as opposed to we're not really sure whether
10 -- whether his conduct fell within the language of the
11 exclusion at all, so that --

12 THE COURT: Well, I think he was fleeing quite
13 frankly. If you want to -- I mean look, you know, the
14 fact that they pulled back doesn't mean that he
15 suddenly stopped fleeing. And so if you're comfortable
16 with me saying that he was fleeing, and that more
17 clearly defines the issue, I'm okay with that.

18 MR. MURPHY: That's all -- I think I'm entitled to
19 that based on --

20 THE COURT: I do, too.

21 MR. MURPHY: -- in the case, and then we can
22 argue. And then, Your Honor, the -- the -- when we
23 talked about -- one case that has come up since then
24 that has been argued in support of an invalidation of
25 the exclusion in total, is the Williams v. Geico case.

1 So, procedurally, we would ask that -- that that
2 should not have been allowed. And it should at least
3 be addressed as to why it was allowed because it
4 doesn't appear to be.

5 Substantively, we don't believe there was any
6 evidence to support it. The only evidence was that
7 perhaps they thought he was driving unsafely and they
8 wanted him to pull over, but there's nothing -- it
9 falls far short of revoking permission --

10 MR. MULLINAX: Your Honor, to -- to not create an
11 extended hearing on that basis, we feel the Williams
12 case -- and the comments that I would make concerning
13 it, we don't think the uninsured -- we don't have a
14 problem with deleting that.

15 MR. MURPHY: Okay.

16 THE COURT: Okay, good. Okay. So by agreement,
17 y'all are deleting that from the --

18 MR. MULLINAX: We'll -- yeah, we'll stipulate --

19 THE COURT: Okay.

20 MR. MULLINAX: -- that. We'll delete the
21 uninsured provisions on that.

22 MR. MURPHY: Well, that will simplify things a lot
23 then, Your Honor. That's pretty much all I have.

24 THE COURT: Good deal.

25 MR. MURPHY: And, you know, I would suggest -- my

CERTIFICATE OF REPORTER

I, SHARON D. JONES, CERTIFIED COURT REPORTER,
DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE,
ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE
PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL OF
THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE COURT OF
COMMON PLEAS OF ANDERSON COUNTY, SOUTH CAROLINA ON THE
6TH OF MARCH, 2015.

I DO FURTHER CERTIFY THAT I AM NEITHER OF
KIN, COUNSEL NOR INTEREST TO ANY PARTY HERETO.

07.01.16

Sharon D. Jones

SHARON D. JONES,
CERTIFIED COURT REPORTER
MY COMMISSION EXPIRES: 9/22/24

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF ANDERSON

CIVIL ACTION NO: 2009-CP-04-00907

Nationwide Mutual Fire Insurance Company,

Plaintiff,

vs.

Sharmin Christine Walls, Randi Harper,
Wendy Timms in her capacity as Personal
Representative of The Estate of Christopher
Adam Timms, Deborah Timms, and Korey
Mayfield,

Defendants.

EXHIBIT LIST

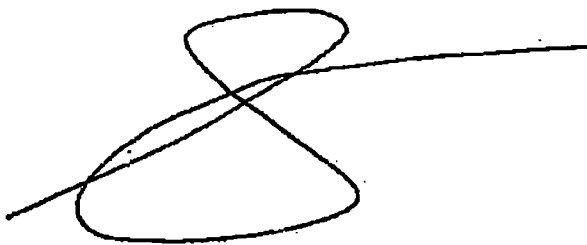
Nationwide Mutual Fire Insurance Company, hereby lists the following exhibits for trial, which exhibits Sharmine Christine Walls, Randi Harper, Wendy Timms in her capacity as Personal Representative of the Estate of Christopher Adam Timms, and Deborah Timms hereby agree and stipulate are admissible without testimony of an identifying witness:

1. The dash cam video from State Trooper Travis Wilson's cruise;
2. The following portions of Trooper Wilson's trial testimony from the October 19, 2010 criminal trial of Korey Mayfield: 5:1-14:11; 24:24-25:19; 28:18-29:9; 34:23-35:25;
3. The following portions of Randi Harper's trial testimony from the October 19, 2010 criminal trial of Korey Mayfield: 5:1-6:16; 7:20-10:22; 16:2-16:19; 19:19-20:11; 30:5-30:13;
4. The following portions of the transcript from October 22, 2010 guilty plea hearing of Korey Mayfield: 4:1-8:11; 9:16-23; 11:8-10; 14:7-15; 17:18-20:7;
5. The sentence sheet for Korey Mayfield;
6. A copy of the report prepared by Greenville County Sheriff's Office Accident Reconstruction Team;
7. A copy of the July 11, 2008 handwritten statement of Mark P. Yost;
8. Two photographs depicting the extent of damage to the vehicle;

9. The Nationwide Mutual Fire Insurance Company policy issued to Sharmin Walls;
10. The underlying Complaints captioned Sharmin Walls v. South Carolina Department of Public Safety and the Anderson County Sheriff's Department, Civil Action No. 2010-CP-04-02405; Randi Michelle Harper v. South Carolina Department of Public Safety, Civil Action No. 2010-CP-04-02411; and Wendy Timms, as Personal Representative of the Estate of Christopher Adam Timms, Deborah E Timms, Individually v. South Carolina Department of Public Safety and Anderson County Sheriff's Department, Civil Action No. 2010-CP-04-02413;
11. Recorded statement of Sharmin Walls taken by Julie Howe on July 25, 2008, Claim No.: 6139M424728-071108-01, consisting of 12 pages; and
12. Settlement Agreement dated December 3, 2012, between Sharmin Christine Walls and Nationwide Mutual Fire Insurance Company, consisting of 3 pages.



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(803) 782-4100
Attorneys for Plaintiff Nationwide Mutual
Fire Insurance Company

A handwritten signature in black ink, consisting of a large, stylized 'H' or 'M' shape with a long horizontal stroke extending to the right.

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Attorney for Christopher Timms

EXHIBIT LIST Page 3 of 5



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Attorney for Sharmin Walls

EXHIBIT LIST Page 4 of 5



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207 East Calhoun Street
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864-225-4000
Attorney for Randi Harper

State of South Carolina

In the Court of General Sessions

County of Anderson

State of South Carolina,

2009-GS-04-1206

Plaintiff,

October 19, 2010

-vs-

Testimony of Travis Wilson

Korey A. Mayfield,

Transcript of Record

Defendant.

BEFORE:

The Honorable J. Cordell Maddox, Jr., Judge

APPEARANCES:

Jennings Byford, Esquire
Kristin W. Reeves, Esquire
Assistant Solicitor for 10th Judicial Circuit
Attorney for the State

D. Chuck Allen, Esquire
Attorney for the Defendant

Renee H. Tollison
Circuit Court Reporter



WITNESS INDEX

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
Travis Wilson				
Byford	5		34	
Allen		25		
Certificate of Reporter				37

1 TRAVIS D. WILSON,

2 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

3 DIRECT EXAMINATION

4 BY MS. BYFORD:

5 Q. Trooper Wilson, could you please tell the jury
6 what you do for a living?

7 A. I'm a trooper with the South Carolina Highway
8 Patrol.

9 Q. And how long have you been with the Highway
10 Patrol?

11 A. About four years and about nine months.

12 Q. Okay. And how long have you been in law
13 enforcement in general?

14 A. The same time, four years nine months.

15 Q. So you started with the Highway Patrol?

16 A. Yes, ma'am.

17 Q. What sort of training do you have as a law
18 enforcement officer?

19 A. There's an eighteen-week process that goes on in
20 Columbia at a state-run facility that trains all law
21 enforcement.

22 Q. And are you a certified law enforcement officer?

23 A. Yes, ma'am.

24 Q. Okay. I want to take you to July 11th, 2008. The
25 vehicle in question in court today, can you tell us how

1 you first took notice of that vehicle, how you first
2 came in contact with it.

3 A. I was on routine patrol on Keys Street traveling
4 back towards Roosevelt when I just happened to fall in
5 behind the vehicle. It was traveling down Keys Street
6 in the same direction I was.

7 Q. Okay. And what did you notice about the vehicle?

8 A. The ---

9 Q. Can you describe the vehicle, first of all? I
10 apologize.

11 A. It's a gold Chevy Lumina. It's a four-door
12 passenger car. The first thing that caught my eye was
13 that it had a paper tag on it. And I'm not familiar
14 with the business that was on the tag. But the numbers
15 on the tag, the first digit for the month and the two
16 digits with the date appeared to be written with a
17 different pen than the two slashes and the year as if
18 they were -- the thing that come across my mind was it
19 possibly had been altered at the time.

20 Q. What else did you notice about the vehicle?

21 A. As we got on down to 81, the vehicle -- 81 is a
22 four-lane road with a paved median. The vehicle went
23 into the median, crossed the yellow line, come back in
24 to the far outside of its lane and went back in. It
25 did that two or three times. And also got up above the

1 speed limit, which was a forty-five mile an hour posted
2 speed limit, running about twelve over the speed limit.

3 Q. Okay. Did you make a decision at that point to
4 pull them over?

5 A. Yes, ma'am.

6 Q. Okay. And did you activate your blue lights?

7 A. Yes, ma'am.

8 Q. What happens in your car when you activate your
9 blue lights?

10 A. When the lights are activated, the camera system
11 as well as my body mike -- which, you know, all the
12 traffic in the car is recorded.

13 Q. Okay. And did that happen in this case?

14 A. Yes, ma'am.

15 Q. Okay. And did you provide that, a video of that
16 or a DVD containing that information on it, to the
17 State?

18 A. Yes, ma'am.

19 Q. Okay. And have you viewed that video?

20 A. Yes, ma'am.

21 Q. And is it an accurate representation of what took
22 place that day?

23 A. Yes, ma'am.

24 Q. Okay.

25 MS. BYFORD: Your Honor, at this time -- and

1 I believe it's already been stipulated to. But the
2 State would move to introduce Exhibit 1, which is the
3 DVD, into evidence.

4 MR. ALLEN: There's no objection, Your Honor.

5 THE COURT: All right. Without objection.

6 (WHEREUPON, State's Exhibit 1 was admitted into
7 evidence.)

8 Q. I'm not going to play it quite yet. If you could
9 briefly sort of give us an idea of what we're going to
10 see on the video.

11 A. It will start at just north of Masters Boulevard
12 on 81 South. At the time we were in the far left lane.
13 There was a red light for all traffic going southbound
14 which was the direction we were traveling. I followed
15 behind the vehicle just for a second or two with the
16 blue lights already activated. As we got to the
17 intersection, the vehicle went from the far left lane
18 to the right-hand lane which was a turn lane,
19 disregarded the stop signal there, and we continued
20 down 81 South.

21 Q. Okay. At approximately what speeds were you
22 traveling?

23 A. The maximum speed on 81 was a hundred and nine
24 miles an hour, was the max speed of my patrol vehicle.

25 Q. Okay. What happened after you were on 81? Where

1 did you go after that?

2 A. We traveled down 81, made a left on Fred Dean
3 Road. Fred Dean Road comes back in to Flat Rock Road.
4 While traveling down Fred Dean, we was probably in the
5 eighties or so. The vehicle was left of center a good
6 bit of the time. Went down, made a right on Flat Rock
7 Road. As the vehicle made a left on Leatherdale Road
8 is when the corporal who was on -- that was over the
9 chase that day, it was his decision to terminate the
10 pursuit.

11 Q. Okay. And as you're traveling in the car, are you
12 talking to dispatch?

13 A. Yes, ma'am. I'm relaying my location, speeds,
14 traffic conditions ---

15 Q. Okay.

16 A. --- as well as the corporal already knew the
17 reasons for the stop.

18 Q. Okay. And is that standard protocol when y'all
19 are being -- when y'all are in pursuit?

20 A. Yes, ma'am.

21 Q. Okay. And does the corporal then make a decision
22 based on the information you're relaying whether or not
23 to -- do you have to have permission to continue to
24 pursue the vehicle?

25 A. Yes, ma'am.

1 Q. And so at what point did the corporal tell you to
2 terminate the pursuit?

3 A. As we were approaching Leatherdale Road, the gold
4 Chevy had done made a left on Leatherdale. And I was
5 preparing to make the left turn onto Leatherdale Road
6 when it was terminated.

7 Q. Okay. And what will we see on the video when that
8 happens? What can they look for?

9 A. Once the pursuit's terminated, on the video it
10 will show my speed in my patrol car. The speeds -- my
11 speed dies down drastically. I think it plays for a
12 few seconds after the speeds are slowed down. The gold
13 Chevy Lumina does get out of sight on the video, and
14 then that's when the camera will turn off.

15 Q. What did you do after the pursuit was terminated?

16 A. I traveled on down Leatherdale for the fact it is
17 a curvy road just to more or less make sure they did
18 get on down the road. And then that's when I come up
19 on the crash.

20 Q. And what did you first observe when you came up on
21 the crash site?

22 A. When I first got there, you know, the gold Lumina
23 -- because if the ditch was on the right side, the
24 front of the Lumina was facing the ditch. There was a
25 couple of trees laying across the road. And when I

1 first exited -- when I left my vehicle, there was a
2 female in a small ditch off in the woods there. And
3 then I made my approach on to the vehicle.

4 Q. Okay. While you were pursuing the car, were you
5 able to tell how many occupants were in the car?

6 A. There were four occupants. And my best view of
7 the vehicle and the occupants come when we made the
8 left off 81 onto Fred Dean Road.

9 Q. Okay. And what did you observe about the
10 occupants of the car as they made that left turn?

11 A. That the driver appeared to be a white male, dark
12 hair. I knew that the right front passenger was a male
13 as well. I was unsure of the gender of the rear two
14 passengers at the time.

15 Q. Okay.

16 MS. BYFORD: All right. At this time, Judge,
17 I'd like to publish the video to the jury.

18 THE COURT: All right.

19 MS. BYFORD: Mr. Allen, do you want to come
20 over?

21 MR. ALLEN: Yeah.

22 THE COURT: And it's only going to be
23 broadcast on that TV?

24 MS. BYFORD: Yes, sir. I think there's just
25 too much feedback if we don't do it that way. And if

1 maybe the jury can just give you a hand if they can't
2 see or hear.

3 (WHEREUPON, State's Exhibit 1, a video, was played
4 in open court before the jury.)

5 Q. Trooper Wilson, I know that tape runs on for a bit
6 more than that. What else do we see on that tape? Is
7 it ---

8 A. After that, just the rest of the E.M.S. as far the
9 ambulances getting there and the fire department starts
10 to arrive, and they start tending to all of the
11 individuals there.

12 Q. And due to the number of E.M.S. and fire, are you
13 able to really see anything else as far as the vehicle
14 was concerned?

15 A. No, ma'am. They -- after everyone gets around
16 trying to start working, you're really not able to see
17 anything else.

18 Q. Okay. I want to ask you a few questions about
19 some things we saw on the video. During the chase, you
20 tell dispatch at one time that you're letting them run
21 between seventy-five and eighty yards ahead. What's
22 the reason for that?

23 A. Fred Dean being such a curvy road, I didn't want
24 to be right behind them, you know, making them continue
25 to run the speeds they were running. Give them a

1 chance just to slow down, take some of the curves a
2 little more safely.

3 Q. Okay. And I notice as the chase is terminated,
4 you tell dispatch, she's all over the road. What do
5 you mean by that?

6 A. I've always just referred to a car as a she. I
7 mean, I've went to car shows all my life, and that's
8 just how I've always referred to a vehicle.

9 Q. Okay. When you arrived on the scene and went up
10 to the vehicle, what did you observe about the position
11 of individuals in the vehicle? If you could describe
12 that.

13 A. When I first walked up, Ms. Harper was over, like
14 I say, on the right side. As I approached the vehicle,
15 Mr. Mayfield was sitting directly behind the steering
16 wheel. But instead of having his hands on the wheel,
17 they were just kind of over his -- one on each leg. He
18 was positioned directly behind the steering wheel. His
19 feet still under the dash, you know, as if he had been
20 driving. Mr. Timms was still seatbelted in. The back
21 of his seat had been broke during the crash. His legs
22 and all were still underneath the dash. His upper body
23 was actually laid back over and behind the driver's
24 seat in the back seat. Ms. Walls was laying face down
25 on top of Mr. Timms in the back of the vehicle.

1 Q. And where were her legs?

2 A. Her legs were on the passenger side of the
3 vehicle; her upper torso was on the driver's side.

4 Q. Okay. Were her legs on the seat or sort of -- can
5 you give us a little more description about how her
6 legs were?

7 A. She -- I mean, she was completely in the back
8 seat. I'm not exactly sure if her legs were folded,
9 you know, towards the back of the car or towards the
10 front of the car, but her entire body was in the back
11 of the vehicle.

12 Q. Okay. I'm going to show you what has been marked
13 as State's Exhibit 3. And let me -- if you will sort
14 of write down just as you described -- you can use your
15 pen -- just sort of, if you'll label it how people were
16 positioned in the vehicle.

17 A. (Marking on document)

18 MS. BYFORD: Your Honor, before I admit this
19 -- the State would, at this time, move to move State's
20 Exhibit 3 into evidence.

21 MR. ALLEN: And I have no objection, Your
22 Honor. However, our screen is not functioning right
23 here if it was supposed to.

24 THE COURT: You may have to ---

25 MS. BYFORD: Is it turned on?

1 That's where she was, come to rest at.

2 Q. Okay.

3 (WHEREUPON, the witness resumed the witness
4 stand.)

5 MS. BYFORD: Okay. Judge, at this time ---

6 Q. Trooper Wilson, I'm going to show you what's been
7 marked a State's Exhibits 4, 5, 6, 7, 27, 28, 29 and
8 30. If you could review those.

9 A. Yes, ma'am.

10 Q. Okay. Are those a fair and accurate
11 representation?

12 A. Yes, ma'am.

13 MS. BYFORD: Judge, at this time, I would
14 move State's Exhibits 27, 28, 29, 30 and State's
15 Exhibits 4, 5, 6 and 7 into evidence.

16 MR. ALLEN: No objection, Your Honor.

17 THE COURT: All right. Without objection.

18 (WHEREUPON, State's Exhibits Number 4, 5, 6, 7,
19 27, 28, 29 and 30 were admitted into evidence.)

20 MS. BYFORD: Okay. And Your Honor, with the
21 Court's permission, I will publish these through a
22 different witness.

23 THE COURT: All right. That's fine.

24 Q. Okay. Trooper Wilson, I believe on the videotape
25 we heard one of the gentlemen who had come to the scene

1 say that y'all were right next to 633 Leatherdale. Is
2 that about approximately where the accident occurred?

3 A. Yes, ma'am.

4 Q. Okay. And did this collision as well as all of
5 the pursuit take place in Anderson County?

6 A. Yes, ma'am.

7 Q. Okay. As you were checking on the occupants in
8 the vehicle, did you have an opportunity to observe the
9 person seated in the driver's seat?

10 A. Yes, ma'am.

11 Q. Okay. And you were able to see him clearly?

12 A. Yes, ma'am.

13 Q. Okay. Is that person sitting in the courtroom
14 today?

15 A. Yes, ma'am.

16 Q. Could you identify him for the jury, please?

17 A. Mr. Mayfield sitting beside his attorney, Chuck
18 Allen.

19 Q. Thank you.

20 MS. BYFORD: Your Honor, at this time I have
21 no further questions.

22 THE COURT: All right. Yes, sir.

23 MR. ALLEN: May it please the Court.

24 THE COURT: Yes, sir.

25 CROSS-EXAMINATION

1 vehicle up.

2 Q. Okay. So to your knowledge, it was not secured.
3 It simply went to a commercial, unsecured
4 establishment?

5 MS. BYFORD: Your Honor, I would object to
6 this line of questioning at this time. Trooper
7 Wilson's already testified that he did not do the
8 subsequent investigation.

9 THE COURT: All right. Well, overruled. I
10 mean, if he knows the answer to it, that's fine.

11 Q. And you do not know the answer to that; is that
12 correct?

13 A. No, sir. Like I said, I just know that a regular
14 tow service did come pick the vehicle up.

15 Q. So -- and again, I believe the date was July the
16 11th of 2008.

17 A. Yes, sir.

18 Q. And this occurred somewhere around five-thirty; is
19 that right?

20 A. Somewhere in that time frame, yes, sir.

21 Q. Do you recall exactly when it was?

22 A. Not the exact time, no, sir.

23 Q. Do you recall a time that elapsed from the time
24 the pursuit was terminated and the time that you came
25 upon the accident scene?

1 A. It was a little over a minute, I do believe.

2 Q. Okay. Well, it's more like seven or eight
3 minutes, was it not?

4 A. No, sir. Not from the time -- you're talking from
5 the time the pursuit was terminated to the time I
6 arrived on the scene?

7 Q. Yes, sir.

8 A. No, sir. It was just a little over a minute or
9 so.

10 Q. Well, dispatch records would show that. Would you
11 agree with that?

12 A. Yes, sir. That and the video.

13 Q. And did you generate some handwritten notes as a
14 result of what occurred there that afternoon?

15 A. No, sir. Once I got the -- once the, I guess, my
16 command staff got down to the scene, they took me over
17 to the Anderson County office, and I issued a typed-up
18 statement.

19 Q. Okay. Okay. Well, in the comments that you made
20 there -- and this was -- you were asked this question
21 on direct examination -- you referred to the driver or
22 whomever as she, did you not?

23 A. Referred to the vehicle.

24 Q. As she?

25 A. Yes, sir.

1 MS. BYFORD: Oh, okay.

2 (WHEREUPON, Defendant's Exhibit Number 1 was
3 published to the jury.)

4 Q. So just once again, as far as -- I mean, you
5 didn't take statements from anyone once -- well, about
6 what time did you leave the scene there? Let me ask
7 you that.

8 A. It took a while. As I say, the corporal who
9 actually works Pickens and Oconee County, he got down.
10 One of the lieutenants at the time made it from
11 Greenville. As I said, I'm not sure exactly what time
12 I left. It was probably a couple of hours or so later,
13 I'm sure. I didn't leave real fast.

14 Q. All right.

15 MR. ALLEN: Your Honor, just one moment.

16 (Off record discussion)

17 MR. ALLEN: All right. Your Honor, that
18 would be all the questions I have of this witness.

19 THE COURT: Any redirect?

20 MS. BYFORD: Very briefly, Your Honor.

21 REDIRECT EXAMINATION

22 BY MS. BYFORD:

23 Q. Trooper Wilson, when the Highway Patrol is
24 involved in a pursuit that results in a collision, what
25 is the policy about who investigates?

- 1 A. Usually Anderson County Sheriff's Office
2 investigates ---
3 Q. Okay.
4 A. --- if it occurred in Anderson County.
5 Q. Do you in fact have a policy that the Highway
6 Patrol does not investigate accidents that they're
7 involved in?
8 A. Yes, ma'am.
9 Q. Okay. On the video that we've just published to
10 the jury -- and I believe y'all observed it. But just
11 to clarify, I believe the chase was terminated at
12 sixteen seventeen and thirty-nine seconds. Is that
13 correct?
14 A. Approximately somewhere in there.
15 Q. Okay. And the blue lights turn off at sixteen
16 eighteen and five seconds; is that correct?
17 A. Yes, ma'am.
18 Q. And the camera came back on at sixteen nineteen
19 and fifteen seconds?
20 A. Yes, ma'am.
21 Q. Okay. And I believe that's a minute and ten
22 second lapse if my -- so is that approximately the time
23 between when you last saw them on the video and when
24 you pulled up on the accident scene?
25 A. Yes, ma'am.

1 CERTIFICATE OF REPORTER

2 I, the undersigned Renee H. Tollison, Official
3 Court Reporter for the Tenth Judicial Circuit of the
4 State of South Carolina, do hereby certify that the
5 foregoing is a true, accurate, and partial transcript
6 of record of all the proceedings had and evidence
7 introduced in the trial of the captioned case, relative
8 to appeal, in the Circuit Court for Anderson County,
9 South Carolina, on the 19th day of October 2010.

10 This transcript may contain quoted material. Such
11 material is reproduced as read by the speaker.

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

14 February 2, 2011

15

16

17

Renee H. Tollison

Circuit Court Reporter

State of South Carolina

In the Court of General Sessions

County of Anderson

State of South Carolina,

Plaintiff,

2009-GS-04-1206

-vs-

October 19, 2010

Korey A. Mayfield,

Testimony of Randi Harper

Defendant.

Transcript of Record

BEFORE:

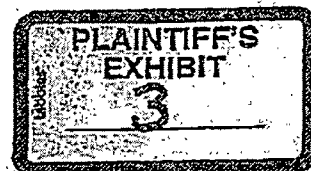
The Honorable J. Cordell Maddox, Jr., Judge

APPEARANCES:

Jennings Byford, Esquire
Kristin W. Reeves, Esquire
Assistant Solicitor for 10th Judicial Circuit
Attorney for the State

D. Chuck Allen, Esquire
Attorney for the Defendant

Renee H. Tollison
Circuit Court Reporter



WITNESS INDEX

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS	IN-CAMERA
Randi Michelle Harper					
Byford	5, 19		28		17
Allen		20			
Certificate of Reporter					31

1 RANDI MICHELLE HARPER,

2 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

3 DIRECT EXAMINATION

4 BY MS. BYFORD:

5 Q. Ms. Harper, I'm going to ask you to pull that mike
6 down and speak just a little bit louder. I want to
7 make sure everybody can hear you. Okay?

8 Ms. Harper, where do you work?

9 A. I don't work. I'm a mother.

10 Q. Okay. And how old is your ---

11 MR. ALLEN: Your Honor, excuse me. I can't
12 hear her.

13 THE COURT: Okay. Just if you would, just
14 speak up.

15 MR. ALLEN: Thank you.

16 A. I'm a mother and she's six months old.

17 Q. She's six months old, okay. And are you married?

18 A. Uh-uh (negative). About to be.

19 Q. Okay. I want to take you back to July of 2008.

20 Tell us a little bit about how you know Mr. Mayfield.

21 A. We dated for about two years.

22 Q. Okay. And how long have you known him?

23 A. About three.

24 Q. About three years, okay. So in July of 2008, were
25 you dating him?

1 A. Uh-huh (affirmative).

2 Q. Okay. And were you in the car with him that day?

3 A. Yes, ma'am.

4 Q. Okay. Can you tell us a little bit about what
5 y'all were doing that day?

6 A. We left out of Sharmin's house, and we went to the
7 store and was getting gas. And then that's when the
8 cop started chasing us.

9 Q. Okay. And the store that you went to, was that
10 Eddie's Minute Mart?

11 A. Uh-huh (affirmative).

12 Q. Okay. If you could say yes or no, just so Renee
13 can hear you, okay?

14 A. Yes, ma'am.

15 Q. Okay. Sharmin [sic], I'm going to show you a
16 diagram of a car.

17 MS. BYFORD: This is State's Exhibit 32,
18 Judge.

19 Q. And I'm going to have you -- if you will for the
20 jury, if you'll label where everybody was sitting in
21 the car when y'all left Eddie's Minute Mart.

22 A. (Witness complied)

23 MS. BYFORD: Mr. Allen, do you want to look?

24 Your Honor, at this time, I'd move State's Exhibit
25 32, which is Randi Harper's labeling of the car

1 diagram, into evidence.

2 MR. ALLEN: No, sir, I don't object. But we
3 really could use this screen here. It's the only one
4 in the courtroom that's not working, Your Honor. And
5 we've tried to make it work.

6 (WHEREUPON, State's Exhibit Number 32 was admitted
7 into evidence.)

8 MS. BYFORD: Okay. Is it working at all now?

9 MR. ALLEN: No.

10 MS. BYFORD: My technical expertise is
11 limited to turning it off and turning it on.

12 THE COURT: All right. Go ahead with this
13 one and then we'll get somebody up here. If you could
14 get somebody from downstairs.

15 MS. BYFORD: Okay.

16 MR. ALLEN: Can we approach?

17 THE COURT: Yeah.

18 (WHEREUPON, a bench conference was held off the
19 record.)

20 Q. If you could just sort of tell us -- I'm put this
21 up there so the jury can get a visual -- who was
22 driving the car that day when y'all went to Eddie's
23 Minute Mart?

24 A. Korey.

25 Q. Okay. And was he still driving it when the police

1 got behind you?

2 A. Yes, ma'am.

3 Q. Okay. And you said you've known Korey for -- at
4 the time of this accident, you'd known Korey for about
5 three years?

6 A. Yes, ma'am.

7 Q. Could you identify him for the jury, please?

8 Could you point him out to the jury?

9 A. Could I point him out?

10 Q. Yes, ma'am.

11 A. Right there in the wheelchair.

12 Q. Okay. Who was sitting in the passenger seat of
13 the car that day?

14 A. Adam.

15 Q. Okay. And where were you seated?

16 A. I was sitting behind Korey in the back seat.

17 Q. You were sitting behind Korey in the back seat?

18 A. Uh-huh (affirmative).

19 Q. Okay. And who was sitting next to you?

20 A. Sharmin.

21 Q. And what does Sharmin Walls look like? Does she
22 look like you?

23 A. I do not -- I do not even remember.

24 Q. You don't remember. How long had you known her at
25 the time?

1 A. That was the first time I ever met her.

2 Q. That was the first time you'd met her?

3 A. Uh-huh (affirmative).

4 Q. When the police got behind you, did you notice the
5 blue lights?

6 A. Uh-uh (negative). I just knew they were coming.
7 The sirens were on.

8 Q. You knew the sirens were on?

9 A. (Nodded head up and down in the affirmative)

10 Q. Okay. Did you know they were trying to pull you
11 over?

12 A. Yes, ma'am.

13 Q. Okay. And what did you say to Korey, if anything?

14 A. We were all begging him to let us get out of the
15 car.

16 Q. Okay. So y'all were all asking him to stop the
17 car?

18 A. Yes, ma'am.

19 Q. Okay. Did he stop the car?

20 A. No, ma'am.

21 Q. Okay. And I know this next part is going to be
22 real tough to talk about. But what, if anything, do
23 you remember about the accident?

24 A. The last thing I remember is looking back and the
25 cop was right there. And Adam was putting on his

1 seatbelt saying, Korey, please do not kill me.

2 THE COURT: Objection.

3 MS. BYFORD: To?

4 THE COURT: What's your objection?

5 MR. ALLEN: Hearsay.

6 MS. BYFORD: Your Honor, I would ask that
7 this be admitted under the hearsay exception of excited
8 utterance. Mr. Timms is deceased. He's unavailable.
9 And if this isn't excited utterance, Judge, I'm not
10 quite sure what would be.

11 THE COURT: Y'all come over here.

12 MS. BYFORD: Okay.

13 (WHEREUPON, a bench conference was held off the
14 record.)

15 THE COURT: All right. The objection is
16 sustained for right now. We'll deal with it in a
17 minute.

18 MS. BYFORD: Okay.

19 Q. We're going to move on for right now, Ms. Parker.

20 Okay. After the accident, what do you remember?

21 After the accident was ---

22 A. Nothing. I woke up in the hospital.

23 Q. When you woke up in the hospital, okay. Yesterday
24 Mr. Allen made a statement in his opening argument that
25 you had previously told somebody that someone other

1 approximately 11:53 a.m.)

2 THE COURT: All right. Your objection was to
3 her testimony that the decedent asked or said, don't
4 kill us. Is that correct?

5 MR. ALLEN: No. It's ---

6 MS. BYFORD: I believe she said she was just
7 -- he was just screaming for him to stop the car, that
8 both of the other occupants in the car were screaming
9 for him to stop. And my ---

10 THE COURT: What was your answer to that?

11 THE WITNESS: My answer to which question?

12 THE COURT: To what the people in the car
13 said.

14 THE WITNESS: My answer was that we was all
15 begging him to stop the car. And Adam put his seatbelt
16 on and then he said, please don't kill me.

17 THE COURT: Okay.

18 That's what I thought she said.

19 THE WITNESS: I don't want to die.

20 THE COURT: Yeah, I don't ---

21 MR. ALLEN: I objected, and I guess that's --
22 maybe she was still talking. I didn't hear that part.

23 THE COURT: Yeah, she said it. I mean, I --
24 that's what she said that -- yeah, I don't ---

25 MS. BYFORD: My argument would be that that's

1 circumstances and given her proffer, I'll allow it. I
2 mean -- but I understand your objection.

3 Okay. You can bring them back in.

4 I'll let you ask that question.

5 MS. BYFORD: Okay.

6 (WHEREUPON, the jury entered the courtroom at
7 approximately 12:03 p.m.)

8 THE COURT: We've got a question. The
9 question is, can the pictures be blown up on the
10 screen. I think that all of the TVs are working now,
11 so we'll do that from now on out. I'll make that a
12 Court's exhibit.

13 (WHEREUPON, Court's Exhibit Number 5 was marked
14 for identification only.)

15 THE COURT: Okay. You can ask the question.

16 MS. BYFORD: Okay.

17 DIRECT EXAMINATION

18 CONTINUED BY MS. BYFORD:

19 Q. Okay. Ms. Harper, let's go back just a little
20 bit. What were the other people in the car doing as
21 this police pursuit was going on?

22 A. I was telling him to stop the car. Sharmin was
23 telling him ---

24 MR. ALLEN: Objection to Ms. Walls now.

25 That's not -- we didn't ---

1 MS. BYFORD: I apologize. Let me. I'll
2 restrict my question.

3 THE COURT: Okay.

4 Q. What was Mr. Timms doing as the police pursuit was
5 going on?

6 A. Putting his seatbelt on and saying, I don't want
7 to die, Maypop. That's what he called him.

8 Q. Okay.

9 MS. BYFORD: I believe that's it, Judge.

10 THE COURT: Okay. Yes, sir.

11 MR. ALLEN: May it please the Court.

12 CROSS-EXAMINATION

13 BY MR. ALLEN:

14 Q. Ms. Harper, now, you and the others had been
15 together how long this particular afternoon?

16 A. Two hours maybe.

17 Q. And you were -- you didn't have children at that
18 time, did you?

19 A. No, sir.

20 Q. And what was going on was a lot of partying; is
21 that correct?

22 A. Yes, sir.

23 Q. And you were drinking alcohol; is that correct?

24 A. Yes, sir.

25 Q. And you, in particular, were drinking alcohol?

1 civil lawsuit is relevant to this case.

2 MR. ALLEN: Just interest and bias, Your
3 Honor. I mean, different motives for testimony.

4 MS. BYFORD: May we ---

5 THE COURT: Well, that's a factual issue. I
6 understand. And I'm not going to let him go too far
7 afield. But you can ask her if she's filed a lawsuit.
8 And if you want to introduce that, you can. But at
9 some point ---

10 MR. ALLEN: Well, that was the last question
11 I was going to ask.

12 THE COURT: Oh, okay.

13 MR. ALLEN: That was the last question.

14 Q. If you could tell me who the defendant in that
15 case is?

16 A. It was the Highway Patrol.

17 Q. Okay. The Highway Patrol. All right. Do you
18 recall that now?

19 A. I haven't -- I haven't talked to my lawyer
20 anything about that.

21 MR. ALLEN: That's all the questions I have
22 of the witness, Your Honor.

23 THE COURT: Anything on redirect?

24 MS. BYFORD: Very briefly, Judge.

25 REDIRECT EXAMINATION

1 BY MS. BYFORD:

2 Q. Regarding when you were talking to Mr. Allen in
3 April of 2009, you say you were dating Korey at the
4 time?

5 A. I had left him and then I had went back.

6 Q. Okay. And so at the time, did you want to protect
7 him?

8 MR. ALLEN: Objection to leading. She can't
9 lead her own witness, now.

10 MS. BYFORD: Judge, I didn't lead. I asked
11 her a ...

12 THE COURT: Rephrase the question.

13 MS. BYFORD: Okay.

14 Q. When you went to see Mr. Allen, were you trying to
15 protect Korey and his family?

16 A. I wasn't in my right state of mind. I still
17 ain't.

18 Q. And you said you were still taking medication.
19 Tell us what your injuries were, why you were in the
20 hospital. What were you being treated for?

21 A. Pelvic bone, pulsic F.Y. (phonic) to the shoulder
22 and my arm.

23 Q. Okay. And you broke your pelvic bone?

24 A. In three places.

25 Q. Were you medicated while you were in the hospital?

1 A. Yes, ma'am.

2 Q. Okay. So do you remember much of anything while
3 you were in the hospital?

4 A. No, ma'am.

5 Q. Okay. Mr. Allen also, I believe, had you testify
6 that you -- he said y'all had been partying and
7 drinking alcohol. Who was drinking alcohol?

8 A. We all were.

9 Q. Everybody. Korey Mayfield, also?

10 A. Yes, ma'am.

11 Q. The four of those? Okay. Do you know
12 approximately how much you all had to drink?

13 A. No, ma'am.

14 Q. Okay.

15 MS. BYFORD: That's all I have at this time,
16 Judge.

17 THE COURT: All right. Thank you, ma'am.

18 MR. ALLEN: No further questions.

19 THE COURT: You can step down.

20 (END OF REQUESTED TRANSCRIPT OF RECORD)

1 CERTIFICATE OF REPORTER

2 I, the undersigned Renee H. Tollison, Official
3 Court Reporter for the Tenth Judicial Circuit of the
4 State of South Carolina, do hereby certify that the
5 foregoing is a true, accurate, and partial transcript
6 of record of all the proceedings had and evidence
7 introduced in the trial of the captioned case, relative
8 to appeal, in the Circuit Court for Anderson County,
9 South Carolina, on the 19th day of October 2010.

10 This transcript may contain quoted material. Such
11 material is reproduced as read by the speaker.

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

14 February 2, 2011

15 
16

17 Circuit Court Reporter

State of South Carolina

County of Anderson

In the Court of General Sessions

State of South Carolina,

Plaintiff,

-vs-

Korey A. Mayfield,

Defendant.

2009-GS-04-1206

October 22, 2010

Guilty Plea Hearing

Transcript of Record

BEFORE:

The Honorable J. Cordell Maddox, Jr. , Judge

APPEARANCES:

Jennings Byford, Esquire
Kristin W. Reeves, Esquire
Assistant Solicitor for 10th Judicial Circuit
Attorney for the State

D. Chuck Allen, Esquire
Attorney for the Defendant

Renee H. Tollison
Circuit Court Reporter



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1 THE COURT: All right. My understanding is
2 y'all have worked out a plea.

3 MR. ALLEN: We've come to a resolution, Your
4 Honor.

5 THE COURT: Okay. Mr. Mayfield, I'm going to
6 let you just stay right there.

7 Do you have the sentencing sheets and all that
8 stuff?

9 MS. REEVES: I do, Judge.

10 THE COURT: All right, Mr. Mayfield. I need
11 you to raise your right hand again.

12 KOREY A. MAYFIELD,

13 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

14 EXAMINATION

15 BY THE COURT:

16 Q. My understanding is that after consultation with
17 your lawyer and with your parents and with everyone
18 else that you've decided to plead guilty under North
19 Carolina versus Alford; is that correct?

20 A. Yes, sir.

21 Q. And basically an Alford plea, I need to question
22 you just as if you were pleading guilty. While you're
23 not admitting to the facts and circumstances that gave
24 rise to this crime, you're telling me that there's

1 enough evidence that if it went to a jury, you most
2 probably would be convicted. Do you understand that?

3 A. Yes, sir.

4 Q. Okay. But do you understand that this will act
5 just as a guilty plea as far as your record and all
6 that?

7 A. Yes, sir.

8 Q. Okay. All right. Tell me -- and I know you've
9 been taking a lot of medication, and rightfully so. I
10 never meant to insinuate you were taking too many. But
11 do you understand what you're doing here today?

12 A. Yes, sir.

13 Q. And you feel clear-headed enough to plead guilty
14 under Alford?

15 A. Yes, sir.

16 Q. Have you taken any other drugs or any alcohol --
17 any other drugs other than your prescription or have
18 you had any alcohol within the last twenty-four hours?

19 A. No, sir.

20 Q. Has anybody promised you anything or threatened
21 you in any manner to get you to plead guilty today?

22 A. No, sir.

23 Q. Are you doing it under your own free will?

24 A. Yes, sir.

1 Q. Have you had time to talk to your parents and your
2 attorney about it?

3 A. Yes, sir.

4 Q. And you think it's the best thing for you to do?

5 A. Yes, sir.

6 Q. Okay. In order to plead guilty, you have to waive
7 your Constitutional rights. Do you understand that?

8 A. Yes, sir.

9 Q. Are you waiving your right to a jury trial?

10 A. Yes, sir.

11 Q. Are you waiving your right to remain silent?

12 A. Yes, sir.

13 Q. Are you waiving your right to put up a defense to
14 these charges?

15 A. Yes, sir.

16 Q. And are you also waiving your right to confront
17 the other witnesses that might be brought in to testify
18 against you?

19 A. Yes, sir.

20 Q. Okay. Have you had plenty of time to speak with
21 your lawyer?

22 A. Yes, sir.

23 Q. Are you satisfied with his services?

24 A. Yes, sir.

1 Q. Do you have any questions for him now?

2 A. No, sir.

3 THE COURT: All right. And Mr. Allen, have
4 you had plenty of time to speak to your client, and you
5 think he understands the elements of this charge?

6 MR. ALLEN: I do, Your Honor. But could I
7 say just quickly ---

8 THE COURT: Sure. Yeah.

9 MR. ALLEN: And this may just be semantics.
10 But obviously he's pleading under Alford. And I have
11 explained that to him in lay terms as basically he is
12 not contesting this at this point. He's not pleading
13 guilty, per se. He's pleading under Alford.

14 THE COURT: Right. And under Alford he's
15 basically saying that the jury most likely would
16 convict him.

17 MR. ALLEN: Correct.

18 THE COURT: And you feel like he understands
19 the plea?

20 THE ALLEN: Yes, sir. I do think he
21 understands.

22 THE COURT: Okay.

23 Q. All right. Mr. Mayfield, do you want to enter an
24 Alford plea in this case?

1 A. What is that?

2 MR. ALLEN: Again, I've explained it to him
3 kind of in the terms of no contest. It's an Alford
4 plea.

5 THE COURT: Right. But he's got to tell me.

6 Q. I mean, you understand this is a -- it's called an
7 Alford plea.

8 A. Yes, sir.

9 Q. Do you want to enter an Alford plea?

10 A. No contest.

11 Q. Okay.

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

13 MS. REEVES: Judge, you've heard the facts in
14 this case ---

15 THE COURT: Yeah.

16 MS. REEVES: --- obviously. And I believe
17 you've heard all of the -- you saw the videotape and
18 everything of the Defendant driving the vehicle
19 obviously in a reckless manner and heard that it caused
20 the death of Mr. Timms. Present today in the courtroom
21 is his mother. She does not wish to speak. However,
22 his sister-in-law, Wendy Timms, is present. She would
23 like to speak as well as Sharmin Walls' mother.

24 THE COURT: Okay.

1 MS. REEVES: She was the fourth passenger in
2 the car that we did not hear from. Her mother's name
3 is Martha Gentry, and she would like to speak. I have
4 the Defendant's prior record whenever you'd like to
5 hear that as well.

6 THE COURT: Yeah. Let me hear that now just
7 so I can ...

8 MS. REEVES: He has a 2003 minor in
9 possession, a 2004 false information to police. And
10 2007 -- he actually pled guilty on July 10th of 2008 to
11 C.D.V. second offense and forgery. He was let out of
12 jail the day before this incident happened and put on
13 probation for those two offenses.

14 THE COURT: Okay. Okay. Yes, ma'am. Give
15 us your name just for the record again.

16 MS. GENTRY: Martha Gentry. I'm Sharmin
17 Walls' mother. I have a statement that she had given
18 me before she went into the hospital back in August
19 when this first came on the docket. Whether or not I
20 can read that, I don't know. But I do ---

21 THE COURT: Sure.

22 MS. GENTRY: Okay.

23 THE COURT: I'll be happy to hear from you.

24 MS. GENTRY: She's unable to write well, so

1 ...

2 THE COURT: Right.

3 MS. GENTRY: On July the 11th, 2008, I lost
4 my best friend, Adam Timms. Korey tried to outrun law
5 enforcement while driving a car my parents had just
6 bought for my son and me. The expense of the car,
7 eighteen hundred and fifty dollars, plus transfer fees,
8 tax and tags. My parents had just gotten the tag and I
9 had not put it on -- the paper tag, meaning the metal
10 plate. I had not put it on the car. Amounted to a
11 loss of about twenty-one hundred dollars that I can't
12 reimburse them for.

13 I was in the hospital and rehab center for six
14 weeks. My son had just had major surgery, and I wasn't
15 there to take care of him. While in the hospital, I
16 had seven major surgeries. I had three neck fractures.
17 That was the first surgery. I had lacerations on my
18 scalp that had to be stitched. I had a metal rod put
19 in my leg with plates and screws at my knees, ankle and
20 on my right side. I had to have a chest tube because I
21 had a punctured lung. My collar bone was broken. I
22 had numerous right-side facial fractures. I now suffer
23 right-side brain damage.

24 I have to rely on my parents much more. They had

1 to move us to Bailey Court Apartments while I was in a
2 hospital and take care of my son who was recovering
3 from his surgery. I had no car, but wasn't able to
4 drive anyway. I had to rely on my parents for
5 transportation for numerous doctors appointments for
6 myself and my son. I have placed a major financial
7 burden on them because of this wreck.

8 We all begged Korey to stop, and he wouldn't. He
9 stated that he had just gotten out of jail and he
10 wasn't going back. He killed his best friend and my
11 best friend. I am no longer able to care for myself
12 and my son. I live daily with the anger. I have
13 nightmares waking up with Adam's head in my lap knowing
14 he was dying and I could not help him because I was
15 pinned in the back seat.

16 He took away any hope that I had of a predictable
17 future simply because he would not pull the car over
18 when the patrolman tried to stop him. He took away my
19 family's financial security. He took away Adam. I
20 asked Zack, my son, how he felt. Zack and Adam and
21 Korey were real good friends. They always took up for
22 Zack. But he said the way it affected him was he just
23 tried to block it out of his mind. All he could feel
24 is the hurt and betrayal by Korey. And that's all they

1 this time. Because it had been such a drastic attempt
2 at suicide is why she was involuntarily committed. She
3 will go before a probate judge to decide if she's going
4 to be able to come back home or if she's going to have
5 to go into long-term care. And that's all.

6 THE COURT: Okay. Thank you.

7 MS. TIMMS: Yes, Your Honor. I'm Wendy
8 Timms. I am a sister-in-law of Adam Timms. Well,
9 first, Your Honor, I would -- if I could, I would say
10 to Korey, one question the family has always had is why
11 didn't he stop. He could have prevented all of this.
12 Adam and Korey had been best friends for years. Adam
13 always took up for Korey. He cared a lot for Korey.
14 It's hard to believe that after all of those times
15 Korey couldn't take one request for him to stop.

16 Adam was always a wonderful guy. He never met a
17 stranger. He would always speak to you even if he only
18 had a second to do so. My husband and I now have four
19 children, all girls. But the two oldest ones have
20 taken it pretty hard. They loved their Uncle Adam very
21 much. And no one would believe some of the things that
22 they've asked us and some of the things that they have
23 said about Korey since this has happened.

24 My mother-in-law has taken this as best she can.

1 the earth, Your Honor.

2 So at this time, Your Honor, we would just -- we
3 would just request that the Court accept that Alford
4 plea. And I would further add, Your Honor, based on
5 his condition -- he lives with his parents. His
6 parents have been here all week, Mike and Lynn
7 Mayfield. Your Honor, he lives with them. They live
8 in the Starr Iva area. That he would be an excellent
9 candidate for probation. And I request that he receive
10 a -- even under Alford -- he'd receive a probationary
11 sentence, Your Honor, at this time.

12 He does have one child too who is four years old
13 and lives with the grandparents and with Korey, and
14 she's in school. She's in four-year kindergarten in
15 district three, I believe that is down there. But Your
16 Honor, we would make that request to the Court at this
17 time.

18 THE COURT: Okay. All right. Well, I've
19 been here since Monday and listened to all the facts.
20 And I quite frankly think that Mr. Mayfield's doing the
21 right thing. So I'm going to accept the Alford plea
22 and find it freely and voluntarily made and based upon
23 the advice of counsel. I also find that he we waived
24 his Constitutional rights.

1 You know, I get sort of tired of saying that cases
2 are tragic. They're tragic, but they're also the
3 result of the effect of consequences that -- of the
4 actions we take. And I've literally called people that
5 I knew, asking them to bring their children up here to
6 watch this because this is the nightmare scenario you
7 have that somebody's going to panic. And I watched
8 that video and was sort of shocked, you know, that, you
9 know, somebody didn't get hit head-on. I mean, it's
10 just the most terrifying thing that you see.

11 And from the judicial perspective, I'm very
12 limited in what I can do. I mean, I'm obviously
13 limited to, like everybody else on this earth, to
14 temporal punishment. My concern in a sentence like
15 I've set out or like I've decided to make is that
16 somehow people are going to think it's light.

17 I don't worry about that for you, Mr. Mayfield,
18 because quite frankly you've been punished as much as
19 you can be punished as far as I'm concerned. There's
20 nothing I could do to punish you more for these actions
21 you took. But I am concerned that people will look at
22 this and somehow feel like they can continue to do it.

23 If you did not have the medical conditions that
24 you had, quite frankly, whether you pled or not, I

1 would have probably sentenced you to ten years in
2 prison. Given your medical condition and given what I
3 have learned, both on the record and off the record, I
4 don't think you're a candidate for incarceration.
5 Quite frankly, not because of you, but because of the
6 system that we have set up. There are a few places
7 that would accept you, but it would be very difficult,
8 I think, to actively incarcerate you at this time.

9 So what I'm going to do -- the sentence is ten
10 years provided upon two years home incarceration -- and
11 that's not monitored, that's just home incarceration --
12 and then five years probation. I realize that the
13 family, that you're not happy with that, I suspect.
14 I'm not happy with it. I don't know what else to do.
15 I quite frankly think that any active jail time would
16 be a death sentence to him because I think when
17 situations like yesterday came up, I'm not sure he
18 would be able to get the treatment that he needed, just
19 because his needs are so few [sic]. I've read through
20 his medical history and also the medications he's
21 taking. It's sort of astounding.

22 And I'm not happy with it, but I think it's the
23 only thing I can do. So the two years home
24 incarceration, as I said, is not monitored. It's just

1 home incarceration.

2 MR. ALLEN: Yeah.

3 THE COURT: I'm not requiring G.P.S.

4 monitoring. I think the consequences of his actions
5 will take care of that.

6 Okay. Thank y'all.

7 MR. ALLEN: Thank you.

8 (END OF REQUESTED TRANSCRIPT OF RECORD)

1 CERTIFICATE OF REPORTER

2 I, the undersigned Renee H. Tollison, Official
3 Court Reporter for the Tenth Judicial Circuit of the
4 State of South Carolina, do hereby certify that the
5 foregoing is a true, accurate, and partial transcript
6 of record of the proceedings had and evidence
7 introduced in the trial/hearing of the captioned case,
8 relative to appeal, in the Circuit Court for Anderson
9 County, South Carolina, on the 22nd of October 2010.

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11 material is reproduced as read by the speaker.

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

14 February 2, 2011

15

16

Renee H. Tollison

TRAFFIC COLLISION INVESTIGATION
COUNTY OF ANDERSON, SOUTH CAROLINA
INVESTIGATION DATE: JULY 16, 2008

Leatherdale Rd., Iva, South Carolina

08-104057



PREPARED BY:

GREENVILLE COUNTY SHERIFFS OFFICE
ACCIDENT RECONSTRUCTION TEAM

TRAFFIC INVESTIGATORS:

Deputy Chris Bailey

Deputy Will Richter

Sergeant Jimmy Bolt

Deputy Ramon Rivera

Master Deputy Eugene Goins

Deputy Dale Silver



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INTRODUCTION

This limited report will outline findings of the Greenville County Sheriff's Office Accident Reconstruction Team relating to a traffic collision that occurred on July 11th, 2008, in Anderson, Leatherdale Rd. (County Rd. C-16-13). The collision scene is located on Leatherdale Rd. (C-16-13) approximately one quarter mile east of Charles Reed Rd. (County Rd. C-6-16), with the next closest cross street being Airline Rd. (SC 141) which is approximately one half mile east of the collision site. This collision involved one vehicle.

The vehicle was a 1998 Chevrolet Lumina, Vehicle Identification Number 2G1WE52M0W954281, displaying a Cox Enterprises paper tag. The registered owner of this vehicle is Sharmin Christine Walls of [REDACTED] South Carolina 29655. Based on information provided by ACSO, the operator of this vehicle at the time of the collision was Korey A. Mayfield of [REDACTED] South Carolina, 29625. There were three passengers in the vehicle at the time of the collision. The front passenger of this vehicle was Christopher Adam Timms of [REDACTED] South Carolina, 29655. One rear passenger was Sharmin Christine Walls of [REDACTED] South Carolina 29655. The other rear passenger at the time of the collision was Randi Michelle Harper of [REDACTED] South Carolina 29669. Christopher Timms sustained fatal injuries during the collision. Randi Harper was ejected from the vehicle during the collision. Korey Mayfield, Sharmin Walls, and Randi Harper were transported to the hospital for medical treatment.

Events of the collision are as follows: The Chevrolet was traveling east on Leatherdale Rd. when the vehicle lost control after coming out of a slight curve. The vehicle crossed over the roadway into the opposite lane of travel and went partially off of the roadway into the grass. The vehicle then came onto the roadway crossing back over the opposite lane of travel back into its lane of travel before going off the roadway onto a dirt grassy surface. The vehicle struck mailboxes, a telephone box and a dirt berm causing the vehicle to spin and strike several trees.

The weather on the day of this collision was clear during daytime conditions. The speed limit for Leatherdale Rd. in the area of the collision is 35 miles per hour.

NOTIFICATION

On July 16th, 2008 the Greenville County Sheriffs Office Accident Reconstruction Team was notified of this collision by the Anderson County Sheriffs Office. The Greenville County Sheriffs Office Accident Reconstruction Team responded to the non active collision scene to conduct an investigation. The following agencies were present at the scene:

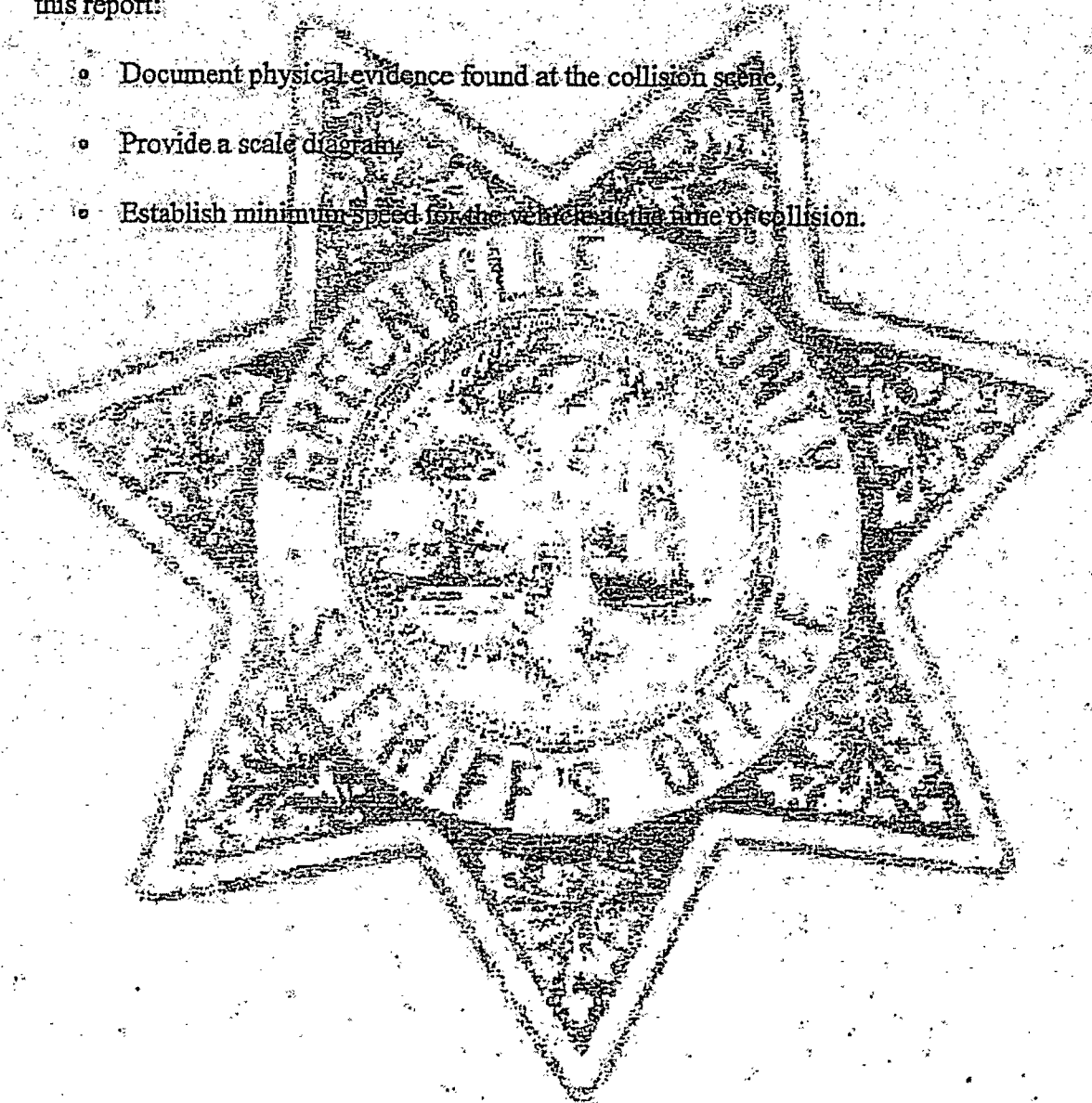
- Greenville County Sheriffs Office Accident Reconstruction Team
- Anderson County Sheriffs Office

Greenville County Sheriffs Office Reconstruction Team members met with Anderson County Sheriffs Office Deputies Joel Rrazier and Brent Modie. The Reconstruction Team was updated on the circumstances of events leading up to the collision. The Reconstruction Team took digital photographs and recorded the damage profile of the collision vehicle. The Reconstruction Team then responded to the collision scene where we began documenting evidence and photographing the scene.

ISSUES

After reviewing the collision scene, the Greenville County Sheriff's Office Accident Reconstruction Team determined the following issues would be addressed in this report:

- Document physical evidence found at the collision scene.
- Provide a scale diagram.
- Establish minimum speed for the vehicle at the time of collision.



METHODOLOGY

Using accepted collision reconstruction principles and techniques, the Greenville County Sheriffs Office Accident Reconstruction Team will attempt to determine the previously mentioned issues. The findings, inferences and conclusions of the Greenville County Sheriffs Office Accident Reconstruction Team will be based on the analysis, study and/or review the following:

- Collision Scene Field Measurements.
- Personal examination of the scene June 16th, June 17th, 2008.
- Personal examination of collision vehicle June 16th, June 18th, 2008.
- Photographs of collision vehicle taken June 11th, June 16th, 2008.
- Photographs of the scene taken June 11th, June 16th, 2008.
- Forensic mapping of the scene using laser survey equipment June 16th, 2008.
- Damage profile for collision vehicle taken June 16th, 2008.
- Written Statements from witnesses.

ROADWAY EXAMINATION

The collision scene is located in Anderson County South Carolina and involves a single vehicle. The collision scene is located on Leatherdale Rd (C-16-13) approximately one quarter mile east of Charles Reed Rd (County Rd. C-6-16), with the next closest cross street being Arline Rd (SC 141) which is approximately one half mile east of the collision site. The following is a brief description of the physical roadways, followed by a brief description of the physical evidence found at the scene.

Leatherdale Rd.

Leatherdale Rd. is a two lane county maintained roadway. The roadway is classified as east-west roadway. The roadway at the collision site is on a slight down hill grade after coming out of a curve while traveling east on Leatherdale Rd. away from Charles Reed Rd. toward Arline Rd. The roadway surface is composed of asphalt. The Chevrolet was traveling east on Leatherdale Rd. when the collision occurred.

Physical Evidence

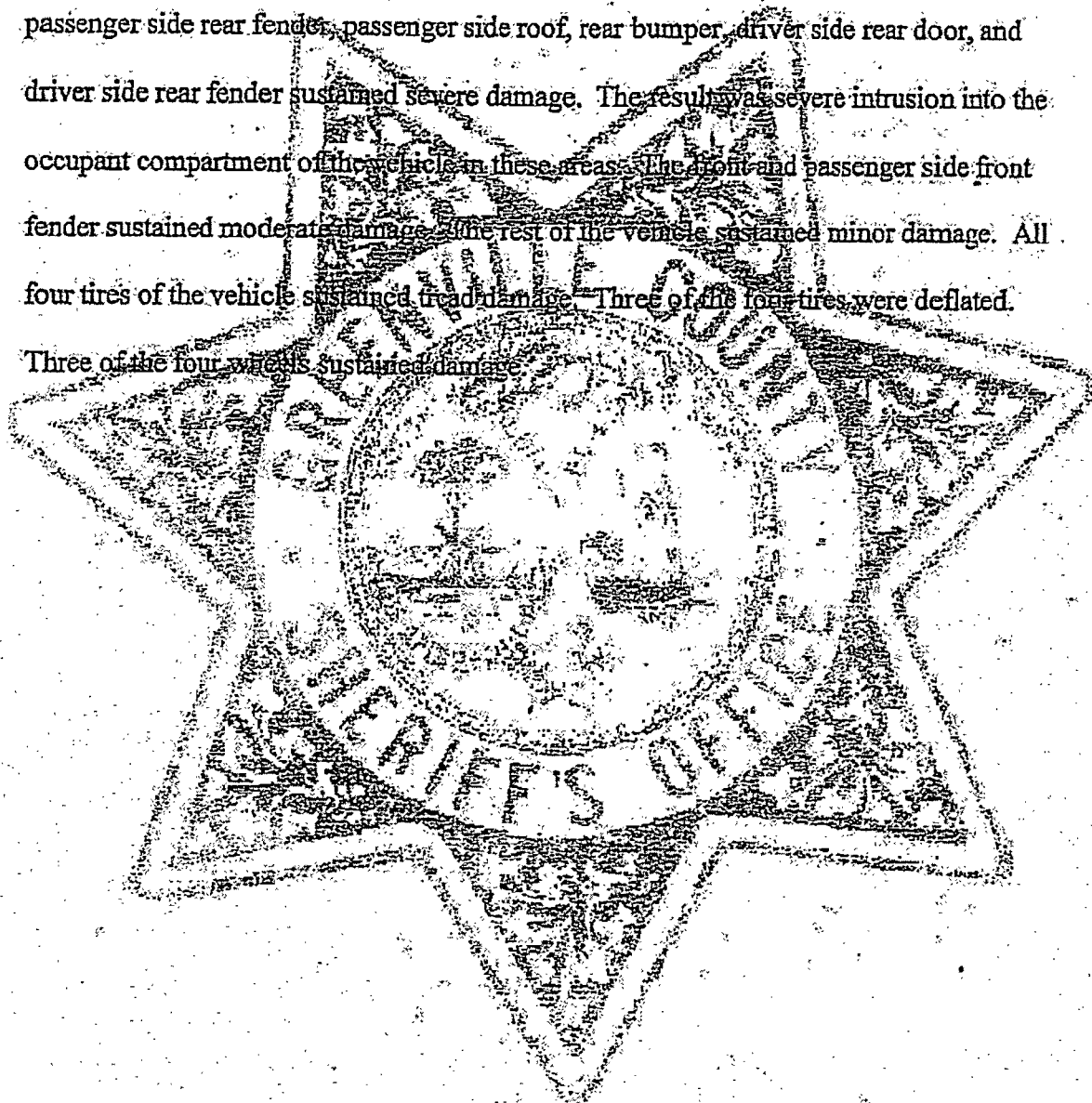
The vehicle crossed over the opposite lane of travel and went off the roadway leaving impression marks in the grass. Dark skid marks with striations were left by all four tires as the vehicle came back onto the roadway. Impression marks were left in a dirt grassy area where the vehicle went off the roadway after crossing back over its lane of travel. The vehicle struck two mailboxes and a telephone box prior to impacting a dirt

berm. Impact marks were visible on at least two large trees (10 to 12 inches). Two gouge marks were located at the final rest of the vehicle. One gouge mark measured 1 foot 4 inches in length and 6 inches wide. The other gouge marks measured 4 inches in diameter. A large fluid puddle was also visible at the final rest location of the vehicle.



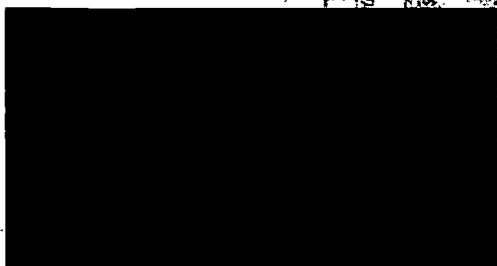
VEHICLE EXAMINATION

The entire vehicle sustained damage. The passenger side front and rear doors, passenger side rear fender, passenger side roof, rear bumper, driver side rear door, and driver side rear fender sustained severe damage. The result was severe intrusion into the occupant compartment of the vehicle in these areas. The front and passenger side front fender sustained moderate damage. The rest of the vehicle sustained minor damage. All four tires of the vehicle sustained tread damage. Three of the four tires were deflated. Three of the four wheels sustained damage.

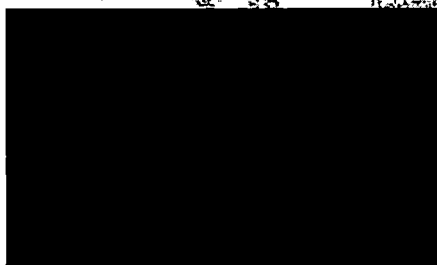


WITNESS LIST

Travis D. Wilson (SCHP Trooper)



Mark Phillip West



WITNESS SUMMARY

Travis Wilson, a 24 year old male, was pursuing the Chevrolet vehicle prior to the vehicle collision. Mr. Wilson provided a written statement as follows:

Mr. Wilson got behind the vehicle on Keys St. and followed the vehicle onto Roosevelt Dr., SC 81. Mr. Wilson attempted to stop the vehicle and advised his dispatch he was in pursuit of the vehicle on SC 81. Mr. Wilson stated the vehicle was violating several traffic laws. Mr. Wilson pursued the vehicle onto Fred Dean Rd, Flat Rock Rd, and Leatherdale Rd. Mr. Wilson terminated the pursuit on Leatherdale Rd. Mr. Wilson stated that after terminating the pursuit he drove approximately three miles down Leatherdale Rd. and found the vehicle and where it had struck several trees.

Mark Phillip Yost, a 29 year old male, was working on a phone line at 633 Leatherdale Rd. when he saw the Chevrolet vehicle lose control and strike several trees. Mr. Yost provided a written statement as follows:

While working on a phone line at 633 Leatherdale Rd. Mr. Yost heard tires squealing. He looked up and saw a silver vehicle sliding sideways. He stated the car slid back across Leatherdale Rd. sideways and struck trees causing the vehicle to spin several times before coming to a stop. He stated that he began to call 911 when he saw a Trooper pull up. Mr. Yost stated that approximately thirty minutes prior to the incident he was at Eddie's Minute Mart where he thought he saw this vehicle. He stated that a white female with blonde hair caught his attention. He stated that she was getting into the rear of the passenger side of the car and she was causing a commotion. Mr. Yost stated he saw four people in the car with two females in the back as they drove past him.

Additional Statements obtained and held in Anderson County Sheriffs Office

CONCLUSIONS

Based on the Greenville County Sheriff's Office Accident Reconstruction Team's investigation, analysis, and review, we offer certain facts, inferences, and conclusions. The facts, inferences, and conclusions stated in this report are based on all information available to the Greenville County Sheriff's Office Accident Reconstruction Team at the time the report was written. If additional information becomes available that may bear on these inferences and conclusions, Greenville County Sheriff's Office reserves the right to review all inferences, conclusions or opinions at any future point.

FINDINGS

The examination of the grass and roadway showed evidence that the vehicle crossed over the opposite lane of travel and off the road into the grass just before losing control. Skid marks from all four tires were left on the roadway when the vehicle came back onto the road. The vehicle crossed back over the opposite lane of travel and crossed over its lane of travel off of the other side of the road onto a grassy dirt surface. The vehicle struck two mailboxes and a telephone box before hitting a dirt berm. The vehicle then struck at least two large trees (10 to 12 inches) while in a spin before coming to final rest. Two gouge marks were located at final rest. One gouge mark measured 1 foot 4 inches in length and 6 inches in width. The second gouge mark measured 4 inches in diameter. A large fluid puddle was also visible where the vehicle came to final rest. The

vehicle and other physical evidence had been removed from the scene prior to the Reconstruction Team's arrival.

The vehicle sustained severe damage to the roof and both front and rear passenger side doors which resulted in intrusion into the passenger compartment. The driver side rear fender and rear trunk and bumper also sustained severe damage. The rest of the vehicle sustained moderate damage. Damage profile for the vehicle was recorded using LTI laser equipment.

All individuals involved in the collision sustained injuries. One passenger was ejected from the vehicle and another sustained fatal injuries. Two other individuals were transported to the hospital for medical treatment along with the individual that was ejected.

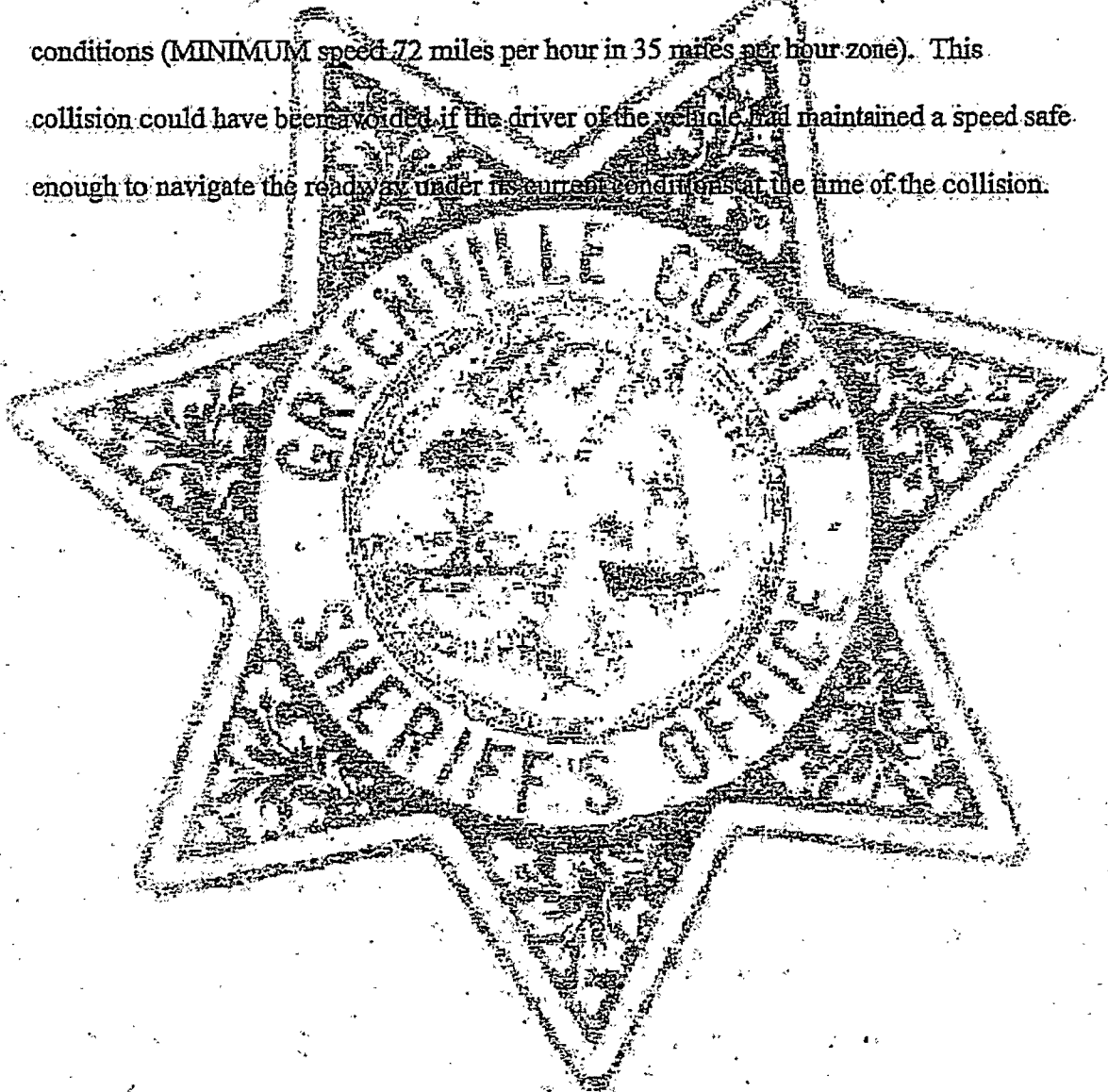
PROBABLE CAUSATION

Based on the data collected and calculations performed during this investigation the Sheriff's Office Reconstruction Team determined the speed for the Chevrolet to be traveling a MINIMUM speed of 72 miles per hour at the point the vehicle crossed into the opposite lane of travel and the driver began attempting corrective actions. Due to the excessive speed it would have been difficult if not impossible for the driver to regain control. This does not account for any speed lost from impacting mailboxes, telephone box, dirt berm, and several trees. It would be difficult to quantify the speed lost during the various impacts, although it should be noted that the vehicle still clearly possessed

sufficient enough energy during these impacts to yield severe damage to the vehicle and its occupants.

Actions which contributed to this collision:

This collision occurred because the Chevrolet was traveling too fast for roadway conditions (MINIMUM speed 72 miles per hour in 35 miles per hour zone). This collision could have been avoided if the driver of the vehicle had maintained a speed safe enough to navigate the roadway under its current conditions at the time of the collision.

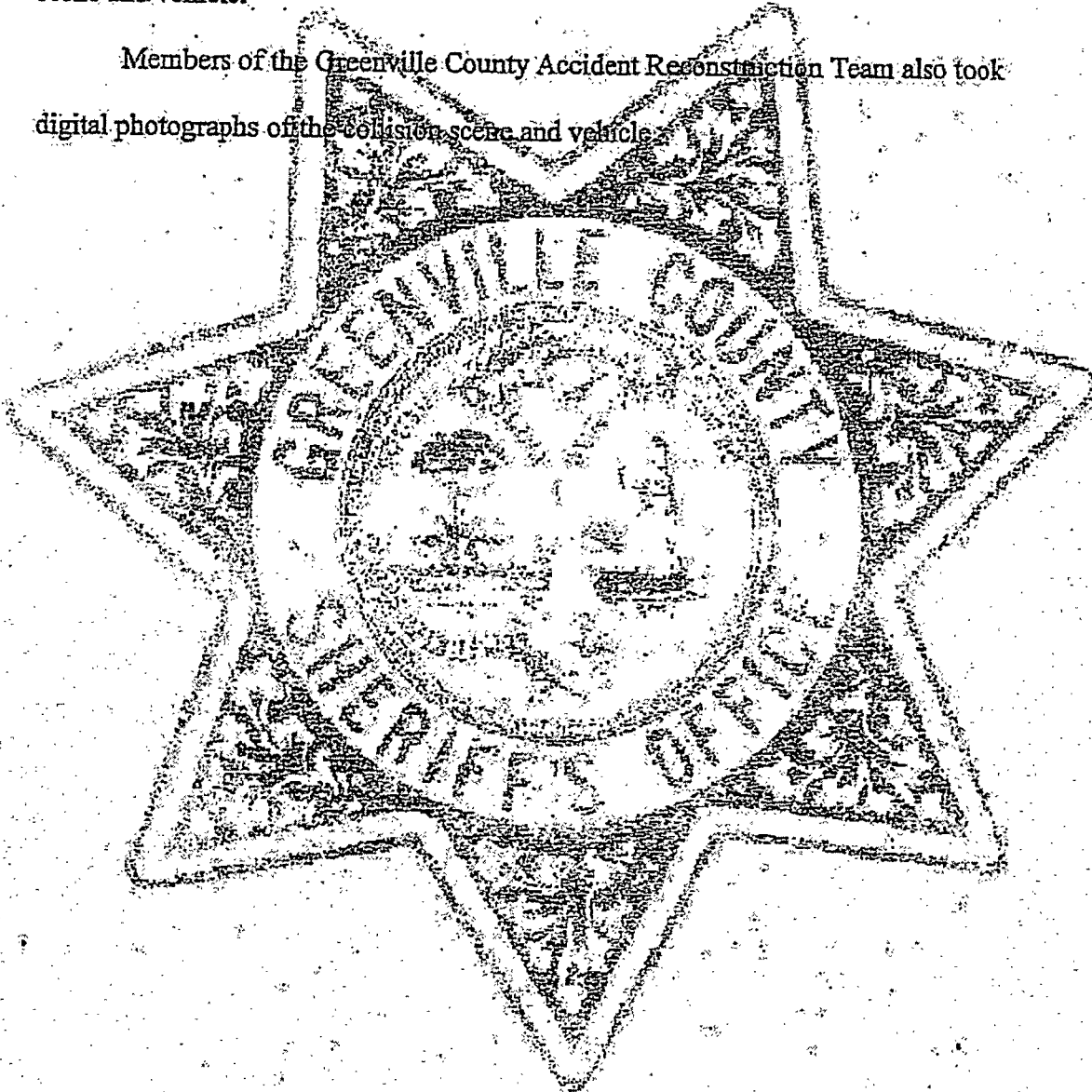


MEDIA LOG

PHOTOGRAPHS

A member for Anderson County took digital photographs of the collision scene and vehicle.

Members of the Greenville County Accident Reconstruction Team also took digital photographs of the collision scene and vehicle.



APPENDICES

The following pages contain copies of documents pertinent to this investigation.

The appendices section includes, but is not limited to the following:

- South Carolina TR-310 Traffic Collision Report (completed by ACSO);
- Witness Statements;
- Combined Speed calculations using AR Pro performed by Deputy W. Richter;
- Scale diagram showing segments A-E;
- Drag Factors & Elevation calculations using AR Pro;
- Scale CAD overview diagram of collision scene;
- Scale 3-D diagram of sequence of events;
- Damage Profile of Chevrolet Vehicle;
- GCSO incident report & supplemental reports;
- ACSO incident report;
- CAD report including call out times;
- DMV records for driver and occupants of the Chevrolet vehicle;
- DMV printout for Chevrolet Vehicle VIN;
- Vehicle Statistics for Chevrolet Vehicle from Expert Auto Stats;
- GCSO Fatality Investigation Packet;
- Copy Search Warrant executed on Chevrolet vehicle;
- Aerial photographs of collision site;

• Mutual Aid Agreement



Mark P Yost

Date

7.11.08

Page No.

STATEMENT OF:

On 7/11/08 @ 633 Leatherdale Dr, I witnessed an accident in front of 633 Leatherdale Dr. Time was around 3:15 p.m. Car skid sideways & hit several trees and came to a stop. Other vehicle was not traveling in the opposite lane when other vehicle had crashed. Highway patrol showed up 5-10 seconds later with blue lights on. Accident vehicle was traveling at a high rate of speed when wreck occurred.

My

Mark

Yost

7.11.08

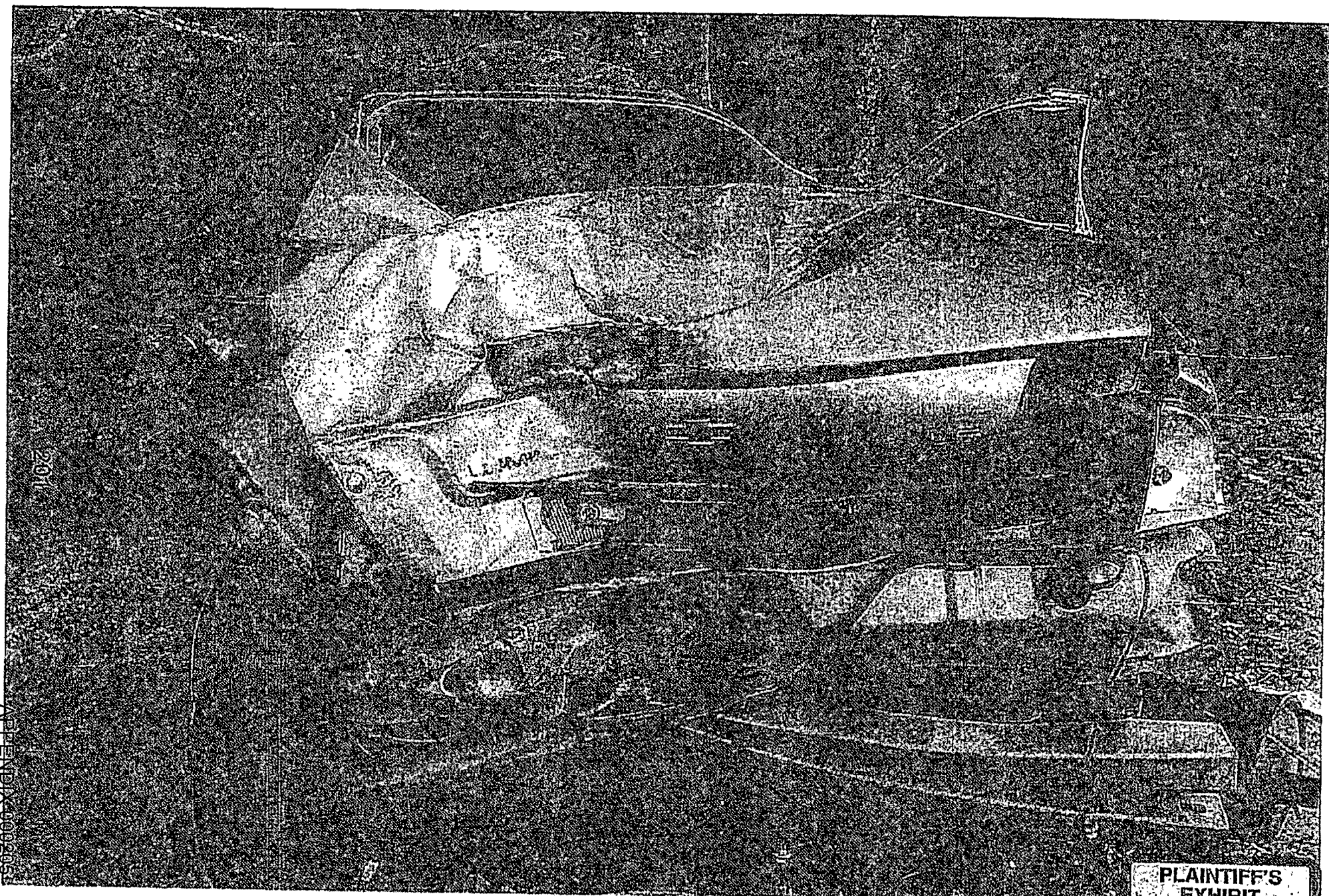
MLU

PLAINTIFF'S
EXHIBIT

7



PLAINTIFF'S
EXHIBIT
8



PLAINTIFF'S
EXHIBIT
86

2011
APPENDIX-0002051

"I certify that the attached document, comprising of 25 pages are true and correct copies for policy number 61 39 m 424 728 07-11-08."

Corina Maulista
Signature

8/25/08
Date

Personal Lines Processing Clerk
919-881-3308





AUTO POLICY DECLARATIONS

Page 01 of 02

These Declarations are a part of the policy named above and identified by policy number below. They supersede any Declarations issued earlier. Your policy provides the coverages and limits shown in the schedule of coverages. They apply to each insured vehicle as indicated. Your policy complies with the motorists' financial responsibility laws of your state only for vehicles for which Property Damage and Bodily Injury Liability coverages are provided.

Policy Number:
61 39 M 424728

Policyholder:
(Named Insured)
SHARMIN C WALLS

Issued:
JUN 16, 2008

Policy Period From:

JUN 17, 2008 to DEC 17, 2008 but only if the required premium for this period has been paid and only for six month renewal periods if renewal premiums have been paid as required. This policy is initially effective at (1) the time the application for insurance is completed, or (2) 12:01 a.m. on the first day of the policy period, whichever is later. Each renewal period begins and ends at 12:01 a.m. standard time at the address of the named insured stated herein. This policy cancels at 12:01 a.m. at the address of the named insured stated herein.

IMPORTANT MESSAGES:
NATIONWIDE MUTUAL FIRE INSURANCE COMPANY
4401 CREEDMOOR ROAD
RALEIGH NC 27612-3814
919-781-3322

INSURED VEHICLE(S) & SCHEDULE OF COVERAGES

1.	1998 CHEV LUMINA/L	ID #2G1WL52N0W9254281		Six Month Premium
	Coverages	Limits Of Liability		
	PROPERTY DAMAGE LIABILITY	\$ 100,000 EACH OCCURRENCE		\$ 187.60
	BODILY INJURY LIABILITY	\$ 100,000 EACH PERSON		
		\$ 300,000 EACH OCCURRENCE		\$ 230.40
	UNINSURED MOTORISTS			
	-BODILY INJURY	\$ 100,000 EACH PERSON		\$ 15.10
		\$ 300,000 EACH OCCURRENCE		\$ 4.10
	-PROPERTY DAMAGE	\$ 100,000 EACH OCCURRENCE		
			TOTAL	\$ 437.20
	GARAGED AT - 6951 HIGHWAY 187 S		IVA, SC 29655	

INSURED DRIVERS:

#	Driver Name	Birth Date	Marital Status
01	SHARMIN C WALLS		SINGLE
02	ZACHARY B ALLEN		SINGLE

APPLIED DISCOUNTS:

ACCIDENT FREE TRAINED DRIVER LONG TERM CUSTOMER

Policy Form & Endorsements: V039C 3329

Office Use: MAY 16, 2008 TERR: 052 CNTY: ANDERSON \$ 206.80

Issued By: NATIONWIDE MUTUAL FIRE INSURANCE COMPANY
HOME OFFICE: COLUMBUS, OHIO 43215-2220

4401 CREEDMOOR ROAD
RALEIGH NC 27612-3814
PHONE (800) 421-3535

Countersigned At: COLUMBUS, OHIO

By: JAMES M GREENWAY

IMPORTANT PHONE NUMBERS

Nationwide 24-Hour Claims Number: 1-800-421-3535

For QUESTIONS About Your Policy, Call Your NATIONWIDE AGENT : JAMES M GREENWAY

For Hearing Impaired: TTY 1-800-622-2421

Nationwide Regional Office: 800-835-7975



Endorsement 3329

Amendatory Endorsement

Please Attach this Important addition to your auto policy.

It is agreed this policy is amended as follows:

PHYSICAL DAMAGE

(damage to your auto)

ADDITIONAL DEFINITIONS APPLICABLE TO THESE COVERAGES

Item 2. is replaced to read:

2. "EQUIPMENT" means anything usual and incidental to the use of a motor vehicle as a motor vehicle. Equipment does not include customization or any type of trailer.

The following definition is added:

3. "CUSTOMIZATION" means devices, accessories, enhancements, and changes, other than those offered by the manufacturer of the motor vehicle specifically for that model, which alter the appearance, performance or function of a motor vehicle. This includes custom refinish, decals, and graphics.

COVERAGE EXCLUSIONS

We will not pay for loss:

To Customization, other than original equipment from the manufacturer, in or upon your motor vehicle. However, this exclusion does not apply up to the first \$1,500 of Customization.

LIMITS AND CONDITIONS OF PAYMENT

ACTUAL CASH VALUE

The following sentence is added:

The limit of coverage shall not be increased for Customization unless such Customization has been specifically declared to us and an additional charge is paid.

This endorsement applies as stated in the policy Declarations.

This endorsement is issued by the company shown in the Declarations as the issuing company.

NATIONWIDE INSURANCE COMPANIES
One Nationwide Plaza Columbus, OH 43215-2220
Hearing or Voice Impaired: 1-800-622-2421 (TTY only)
nationwide.com

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Insuring Agreement

For the policyholder's payment of premiums and fees in amounts we require and subject to all of the terms and conditions of this policy, we agree to provide the coverages the policyholder has selected. These selections are shown in the enclosed Declarations, which are a part of this policy contract. The selected coverages in this policy apply only to occurrences while the policy is in force. Renewal premiums for terms of six months each must be paid in advance.

Definitions

This policy uses certain common words for easy reading. They are defined as follows:

1. "POLICYHOLDER" means the first person named in the Declarations. The policyholder is the named insured under this policy but does not include the policyholder's spouse. If the first named insured is an organization, that organization is the policyholder.
2. "YOU" and "YOUR" mean:
 - a) the policyholder and spouse, if resident of the same household, when the policyholder is a person; or
 - b) the sole proprietor or majority shareholder of an organization, or general partner of a family limited partnership, as shown in the Declarations, and spouse, if resident of the same household, when the policyholder is an organization.
3. "RELATIVE" means one who regularly lives in your household and who is related to you by blood, marriage or adoption (including a ward or foster child). A relative may live temporarily outside your household.
4. "INSURED" means one who is described as entitled to protection under each coverage.
5. "WE," "US," "OUR," and "THE COMPANY" mean or refer to the company issuing the policy-Nationwide Mutual Insurance Company, Nationwide Mutual Fire Insurance Company, Nationwide Property and Casualty Insurance Company, Nationwide General Insurance Company, or Colonial Insurance Company of Wisconsin.
6. "YOUR AUTO" means the vehicle(s) described in the Declarations.
7. "MOTOR VEHICLE" means a land motor vehicle designed primarily to be driven on public roads. This does not include vehicles operated on rails or crawler treads. Other motorized vehicles designed for use mainly off public roads shall be included within the definition of motor vehicle when used on public roads.
8. "PRIVATE PASSENGER AUTO" means a:
 - a) four-wheel automobile for private passenger use;
 - b) four-wheel van; or
 - c) pickup truck having either four or six wheels.
9. "DEDUCTIBLE" means the amount of loss to be paid by the insured. We pay for covered loss above the deductible amount shown in the Declarations.
10. "OCCUPYING" means in, upon, entering, or alighting from a vehicle.
11. "BODILY INJURY" means:
 - a) physical injury;
 - b) sickness;
 - c) disease; or
 - d) resultant death;of any person which results directly from a motor vehicle accident.

12. "PROPERTY DAMAGE" means:
- a) destruction of tangible property;
 - b) damage or injury to it; and
 - c) loss of its use.
13. "BIOLOGICAL DETERIORATION OR DAMAGE" means damage or decomposition, breakdown, and/or decay of man-made or natural material due to the presence of fungi, algae, lichens, slime, mold, bacteria, wet or dry rot, and any scents or by-products of these organisms, however produced. Fungi as used above include, but are not limited to any type or form of fungus, yeast, mold, mildew, mycotoxins, spores, rust, smuts, or fleshy fungi such as mushrooms, puffballs and coral fungi.

Other words are also defined. All defined words are in bold print.

Insured Persons' Duties After an Accident or Loss

The insured will:

- 1. give us or our agent prompt notice of all losses and provide written proof of claim if required.
- 2. notify the police of all theft losses as soon as practicable.
- 3. promptly deliver to us all papers dealing with any claims or suits.
- 4. submit to an examination under oath as often as reasonably requested by us, while not in the presence of any other insured or person making a claim for any coverage under this policy, at a time and place designated by us before an individual or individuals chosen by us.
- 5. assist us and, if applicable, the defense counsel chosen for you by us, with any claim or suit.
- 6. protect damaged property insured under this policy and make it available to us for inspection before its repair or disposal.
- 7. provide access to any data and/or records, from any source and/or recorded by any method or means, that we reasonably request for use in the evaluation or defense of any claim or suit and permit us to make copies of such data or records.

Territory

The policy applies in Canada, the United States of America and its territories or possessions, or between their ports. All coverages except Uninsured and Underinsured Motorists apply to occurrences in Mexico, if within 50 miles of the United States boundary. We will base the amount of any Comprehensive or Collision loss in Mexico on cost at the nearest United States point.

NOTE: You will need to buy auto insurance from a Mexican insurance company-regardless of coverage provided by this policy-before driving in Mexico. Otherwise, you may be subject to jail detention, auto impoundment, and other legal complications in case of an accident.



Physical Damage

(damage to your auto)

ADDITIONAL DEFINITIONS APPLICABLE TO THESE COVERAGES

For purposes of these coverages only:

1. "LOSS" means direct and accidental loss or damage to your auto. Your auto includes its equipment.
2. "EQUIPMENT" means anything usual and incidental to the use of a motor vehicle as a motor vehicle. Any type of trailer is not equipment.

Coverage Agreements

COMPREHENSIVE COVERAGE

1. We will pay for loss to your auto not caused by collision or upset. We will pay for the loss less your deductible. Coverage is included for:
 - a) damage from contact with:
 - (1) animals; or
 - (2) falling or flying objects.
 - b) broken glass:
 - (1) even if caused by collision or upset; and
 - (2) if you do not have Collision coverage.

For damage to your auto's windshield, we may offer to have it repaired in lieu of replacement.

If your Comprehensive and Collision coverages have different deductibles, the smaller deductible will apply to broken glass. However, no deductible will apply to auto safety glass.

2. Also, if your auto has a loss under this coverage we will:
 - a) pay for resulting damage to your clothing and luggage or that of any relative. Maximum payment is \$200. We will pay for stolen clothing or luggage only if your auto is stolen.
 - b) repay your travel costs after your auto is stolen. Maximum payment is \$15 per day, not to exceed \$450 per occurrence. These costs must be incurred within a certain time. It starts 48 hours after you report the theft to us and the police. It ends when your auto is returned to you or we pay for its loss.
 - c) repay you for the cost of travel from where your auto was disabled to where you were going. Maximum payment is \$10.

COLLISION COVERAGE

1. We will pay for loss to your auto caused by collision or upset. We will pay for the loss less your deductible. However, we will not subtract the deductible amount for auto safety glass.
2. Also, if your auto has a loss under this coverage we will:
 - a) pay for the resulting damage to your clothing and luggage or that of any relative. Maximum payment is \$200.
 - b) repay you for the travel cost to where you were going. Maximum payment is \$10.

TOWING AND LABOR COSTS COVERAGE

We will pay towing and labor costs if your auto is disabled. We will pay only for labor costs at the place where your auto is disabled. Our maximum payment per disablement is shown in the Declarations.

Coverage Extensions

USE OF TRAILERS

The insurance on your auto covers a trailer used by you or a relative.

1. The trailer must be:
 - a) designed for use with a private passenger auto; and
 - b) used with a vehicle that is insured under these coverages.
2. The trailer must not be:
 - a) otherwise insured;
 - b) owned by you or a relative; or
 - c) used for business purposes with a vehicle that's not a private passenger auto.
3. The maximum amount payable is \$500.

USE OF OTHER MOTOR VEHICLES

The insurance on your auto also covers other motor vehicles as follows:

1. A motor vehicle you do not own, while it is used as a temporary substitute for your auto. Your auto must be out of use because of:
 - a) breakdown;
 - b) repair;
 - c) servicing; or
 - d) loss.
2. A private passenger auto newly acquired by you during the policy period even if it replaces your auto. You must report the acquisition of the vehicle to us during the first 30 days you own the vehicle. Also, if the newly acquired vehicle does not replace your auto, all household vehicles owned by you must be insured by us or an affiliate for this extension of coverage to apply.

We provide this coverage only if you do not have other collectible insurance. You must pay any added premium resulting from this coverage extension.

3. A private passenger auto owned by a non-member of your household and not covered in item 1. of this section.
 - a) This applies only while such auto is used by you or a relative.
 - b) This coverage extension does not apply to any loss:
 - (1) that results from the operation of an auto:
 - (a) repair shop;
 - (b) public garage or parking place;
 - (c) sales agency; or
 - (d) service or maintenance facility.
 - (2) involving a private passenger auto owned by an employer of an insured.
 - (3) involving a private passenger auto furnished to you or a relative for regular use.
 - (4) to any rented motor vehicle.
 - (5) to any non-owned motorcycle.
4. A rented private passenger auto, including its loss of income.
 - a) This applies only:
 - (1) while such auto is rented by you or a relative;

- (2) If such auto is rented from a rental company for less than 28 days; and
- (3) for loss of income that is:
 - (a) verifiable by us; and
 - (b) owed to a rental company because:
 - (1) the rental company had a customer willing to rent a private passenger auto; and
 - (2) there was no other vehicle available for rental in place of the damaged rented auto.
- b) This coverage extension does not apply to any loss:
 - (1) involving a private passenger auto rented or leased by anyone for or on behalf of the employer of an insured.
 - (2) to any rented motorcycle.

Coverage Exclusions

We will not pay for loss:

- 1. To more than one:
 - a) recording tape;
 - b) compact disc; or
 - c) other recording media.
- 2. To a container to be used for storing or carrying:
 - a) recording tapes;
 - b) compact discs; or
 - c) other recording media.
- 3. To any device which is a:
 - a) tape player;
 - b) compact disc player or recorder;
 - c) digital video disc player or recorder;
 - d) video cassette player or recorder;
 - e) television;
 - f) electronic navigational system;
 - g) citizens band radio;
 - h) two-way mobile radio;
 - i) telephone; or
 - j) any other device which records, emits, amplifies, receives and/or transmits sound, pictures, or data.

However, this exclusion (3.) does not apply:

- a) to such a device, its antenna or its other parts or accessories if permanently installed by the original manufacturer or new car dealer as part of the purchase agreement for the vehicle; or
- b) up to the first \$1,500 of the actual cash value of any and all such devices, antennas, or other parts and accessories that are permanently installed but were not a part of the new car purchase agreement for the vehicle. However, payment under this subpart b) shall not exceed the actual cash value of the insured vehicle in which the devices are installed.

Permanently installed means installed, using bolts, brackets, or welding, in a location designated by an auto manufacturer for such a device. A device attached only by wires is not "permanently installed." No coverage will be provided for any item that is not permanently installed. No coverage will be provided for the devices designed to detect or deter speed monitoring equipment excluded in exclusion 4. below, whether permanently installed or not.

Physical Damage

4. To scanning monitor receivers used for radar detection, or any other device designed to detect or deter the monitoring of speed.
5. To a camper or living quarters unit which can be mounted on or attached to a vehicle. We will pay the loss if:
 - a) the unit is reported to us; and
 - b) the required premium is paid;before the loss.
6. Caused by and limited to:
 - a) wear and tear;
 - b) freezing;
 - c) mechanical or electrical breakdown or failure;This exclusion (6.) does not apply to Towing and Labor Coverage.
7. To any motor vehicle while used:
 - a) to carry persons or property for a fee; or
 - b) for retail or wholesale delivery, including but not limited to pizza, magazine, newspaper and mail delivery.Exclusion 7.a) does not apply to motor vehicles used in shared-expense car pools.
8. To any motor vehicle due to an act of war, including insurrection, rebellion or revolution.
9. To any motor vehicle which occurs:
 - a) while it is being used on a temporary or permanent basis, for the transportation of, or in exchange for, any illegal substance, or in connection with any criminal trade or transaction by:
 - (1) you;
 - (2) a relative; or
 - (3) anyone else with your knowledge or permission;
 - b) due to confiscation of your auto by any law enforcement agency because of your auto's use in such activities.
10. To damages caused intentionally by or at the direction of you or a relative, including willful acts the result of which that person knows or ought to know will follow from their conduct.
11. To your auto for diminution of value or depreciation.
12. Caused by or resulting from nuclear hazard; meaning any:
 - a) nuclear reaction;
 - b) nuclear discharge;
 - c) radiation; or
 - d) radioactive contamination;whether controlled or uncontrolled or however caused, or as a consequence of any of these. Loss caused by nuclear hazard is not considered loss caused by fire, smoke, or explosion.
13. To your auto while rented, leased, or sold to others.

Sale means any type of legal conveyance of ownership including but not limited to a conditional sale, contract for sale, or rent to own, regardless of whether title has been transferred.
14. To any motor vehicle while used in any competitive event, including but not limited to drag racing, or in practice or preparation for such an event.
15. Caused directly or indirectly by biological deterioration or damage. Such loss is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.

16. To any motor vehicle which occurs:
- a) while it is being used in the commission of a felony; or
 - b) while fleeing from a law enforcement officer by:
 - (1) you;
 - (2) a relative; or
 - (3) anyone else with your knowledge or permission.

Limits and Conditions of Payment

ACTUAL CASH VALUE

The limit of our coverage is the actual cash value of your auto or its damaged parts at the time of loss. To determine actual cash value, we will consider:

1. fair market value;
2. age; and
3. condition of the property;

at the time of loss. In addition to our payment of the loss, necessary and reasonable towing and storage will be paid to protect the auto from further damage.

LOSS SETTLEMENT

At our option, we may:

1. pay you directly for a loss;
2. pay to repair or replace your auto or its damaged parts with the parts furnished either by original equipment manufacturers or non-original equipment manufacturers;
3. return stolen property at our expense and pay for any damage.

AMOUNTS PAYABLE FOR TOWING AND LABOR COSTS

The limit of our coverage for a loss is limited to the amount shown in the Declarations. Limits apply as stated in the Declarations. Insuring more than one person or vehicle under this policy does not increase our limits.

APPRAISAL

If we and the insured do not agree about the amount of a Comprehensive, Collision, or Towing and Labor loss, either party may demand appraisal within 60 days after we have received proof of loss.

Each party will:

1. Select and pay a competent and disinterested appraiser; and
2. Equally share other appraisal expenses. However, any fees of expert witnesses or attorneys will be paid by the party who hires them.

The two appraisers will select a competent and disinterested umpire. If selection of the umpire cannot be agreed upon within 15 days, the insured or the company may request that selection be made by a judge of a court of record in the county and state in which appraisal is pending.

The two appraisers will determine actual cash value at the time of loss, and the amount of loss. If they cannot agree they will submit their differences to the umpire. A written decision on which either the two appraisers agree, or one appraiser and the umpire agree, will be binding on the insured and us.

OTHER INSURANCE

If there is other insurance that covers any loss, we will pay only our share of the loss. Our share is our proportion of the total insurance collectible for the loss. For loss to motor vehicles other than your auto, we will pay only the insured loss not covered by other insurance.

Coverage Condition

AUTO RECOVERY

When an insured auto which has been stolen or abandoned is located, we have the right to take it into our care and custody.

Loss Payable Clause

This clause applies to the Comprehensive and Collision coverages provided by this policy. It protects the lienholder named in the policy Declarations.

Payment for loss will be made according to the interest of the policyholder and lienholder. At our option, payment may be made to both jointly, or to either separately. Either way, the company will protect the interests of both.

Protection of the lienholder's financial interest will not be affected by any change in ownership of the vehicle insured, nor by any act or omission by any person entitled to coverage under this policy. However, protection under this clause does not apply:

1. In any case of:
 - a) fraud;
 - b) misrepresentation, either in the application process, or in the presentation of the claim;
 - c) material omission;
 - d) conversion;
 - e) embezzlement;
 - f) secretion; or
 - g) willful damaging or destruction of your auto;committed by or at the direction of you or a relative.
2. To the loss of your auto while it is being used by you, a relative, or any person with your permission on a temporary or permanent basis, for the transportation of, or in exchange for, any illegal substance, or in connection with any criminal trade or transaction.
3. Where the loss is otherwise not covered under the terms of this policy.

The company will not notify the lienholder each time you renew this policy, and we may cancel this policy according to the terms. The company will notify the lienholder if coverage under the policy is excluded for any named driver.

The lienholder shall notify the company upon learning of any change in ownership of the vehicle.

To the extent of payment to the lienholder, the company will be entitled to the lienholder's rights of recovery. The company will do nothing to impair the right of the lienholder to recover the full amount of its claim.

IF WE BECOME OBLIGATED TO REIMBURSE A LIENHOLDER UNDER THIS COVERAGE DUE TO YOUR FAILURE TO MEET THE POLICY REQUIREMENTS OR THROUGH YOUR FAILING TO MAKE YOUR PREMIUM PAYMENTS, WE HAVE THE RIGHT TO RECOVER FROM YOU ANY MONEY WE PAY.

Assignability

No interest in these coverages can be transferred without our written consent. However, if the policyholder dies, this coverage will stay in force for the rest of the policy period. It will apply for the deceased's legal representative and those persons protected on the date of death.



Auto Liability

(for damage or injury to others caused by your auto)

Coverage Agreement

PROPERTY DAMAGE AND BODILY INJURY LIABILITY COVERAGE

1. We will pay for damages for which you are legally liable as a result of an accident arising out of the:
 - a) ownership;
 - b) maintenance or use; or
 - c) loading or unloading;

of your auto. A relative also has this protection. So does any person or organization who is liable for the use of your auto while used with your permission.

2. Damages must involve:
 - a) property damage; or
 - b) bodily injury.
3. We will pay such liability losses up to the limits stated in the Declarations. In addition to these limits and as to any covered damages, we will:
 - a) defend at our expense, with attorneys of our choice, any suit against the insured. We may settle or defend any claim or suit as we think proper.
 - b) pay:
 - (1) all expenses incurred by us; and
 - (2) all costs levied against the insured in any such suit.
 - c) pay premiums:
 - (1) of not more than \$250 per insured for bail bonds required because of an accident or traffic violation.
 - (2) for appeal bonds in defended suits and for bonds to release attached property. The amount of such bonds shall not be more than the limits of liability shown in the Declarations.

Although paying such premiums, we are not required to apply for or furnish any bonds.

- d) pay post-judgment interest on all damages awarded. We will not pay interest that accrues after such time as we have:
 - (1) paid;
 - (2) formally offered; or
 - (3) deposited in court;the amount for which we are liable under this policy.
- e) pay expenses incurred by an insured for emergency medical aid to others at the time of accident.
- f) pay all reasonable expenses incurred by an insured at our request, but not more than \$50 per day for loss of earnings.

Coverage Extensions

USE OF TRAILERS

1. This coverage applies to the use of a trailer by:
 - a) you;

Auto Liability

- b) a relative; or
- c) someone else with your permission.
- 2. The trailer must be:
 - a) designed for use with a private passenger auto; and
 - b) used with a vehicle that is insured under this coverage.
- 3. The trailer must not be used for business purposes with a vehicle that's not a private passenger auto.

USE OF OTHER MOTOR VEHICLES

This coverage also applies to certain other motor vehicles as follows:

- 1. A motor vehicle you do not own, while it is used as a temporary substitute for your auto. Your auto must be out of use because of:
 - a). breakdown;
 - b) repair;
 - c) servicing; or
 - d) loss.
- 2. A private passenger auto newly acquired by you. This coverage applies only during the first 30 days you own the vehicle, unless it replaces your auto. If the newly acquired vehicle does not replace your auto, all household vehicles owned by you must be insured by us or an affiliate for this extension of coverage to apply.

We provide this coverage only if you do not have other insurance. You must pay any added premium resulting from this coverage extension.
- 3. A motor vehicle owned by a non-member of your household and not covered in item 1. of this section.
 - a) This applies while the vehicle is being used by you or a relative. It protects the user, and any person or organization, except as noted below in b), who does not own the vehicle but is legally responsible for its use.
 - b) This does not apply to losses involving a motor vehicle:
 - (1) used in any business or any occupation of you or a relative except a private passenger auto (this does not include a motorcycle) used by you, your chauffeur, or your household employee;
 - (2) owned, rented or leased by an employer of an insured;
 - (3) rented or leased by anyone for or on behalf of an employer of an insured; or
 - (4) furnished to you or a relative for regular use. Furnished for regular use does not include a motor vehicle rented from a rental company for less than 28 days.

FINANCIAL RESPONSIBILITY

We will adjust this policy to comply:

- 1. With the financial responsibility law of any state or province which requires higher liability limits than those provided by this policy.
- 2. With the kinds and limits of coverage required of non-residents by any compulsory motor vehicle insurance law, or similar law.

However, any loss payment under this coverage will be made only over and above any other collectible motor vehicle insurance. In no case will anyone be entitled to duplicate payments for the same loss.

When we certify this policy as proof under any financial responsibility law, it will comply with the law to the extent of the coverage required by law. The insured agrees to reimburse us for any payment which we would not have been obligated to make under the terms of this policy except for the agreement outlined in this paragraph.

Coverage Exclusions

A. This coverage does not apply to:

1. Use of any motor vehicle:

- a) to carry persons or property for a fee; or
- b) for retail or wholesale delivery, including but not limited to pizza, magazine, newspaper and mail delivery.

Exclusion 2.a) does not apply to motor vehicles used in shared-expense car pools.

2. Property damage caused by any insured:

- a) to a motor vehicle that is owned or operated by, or in the custody of, that insured; or
- b) to any other property that is owned by or in the custody of any insured or anyone occupying your auto. This exclusion does not apply to a:

- (1) rented home; or
- (2) rented private garage.

- 3. Bodily injury to any person eligible to receive any benefits required to be provided or voluntarily provided by any insured under a workers' compensation law.
- 4. Bodily injury to an employee of any insured while engaged in employment. However, it does cover a domestic employee who is not, or is not required to be, covered by any workers' compensation law.
- 5. Any person protected under nuclear energy liability insurance. This exclusion applies even if that insurance has been exhausted.
- 6. The United States of America or any of its agencies. It also does not apply to any employee of the United States of America or any of its agencies while such person is acting within the scope of his or her office or employment and the provisions of the Federal Tort Claims Act apply.
- 7. Bodily injury or property damage arising out of the ownership, maintenance or use of any motor vehicle while rented, leased, or sold to others by any insured.

Sale means any type of legal conveyance of ownership including but not limited to a conditional sale, contract for sale, or rent to own, regardless of whether title has been transferred.

- 8. Bodily injury to others, where the sole remedy at law is workers' compensation benefits, or benefits under similar laws.
 - 9. Property damage caused directly or indirectly by biological deterioration or damage. Such loss is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.
 - 10. Bodily injury arising directly or indirectly from the inhalation of, ingestion of, contact with, exposure to, existence of or presence of any fungi, algae, lichens, slime, mold, bacteria, wet or dry rot and any scents or by-products of these organisms, however produced. Fungi as used above include, but are not limited to any type or form of fungus, yeasts, mold, mildew, mycotoxins, spores, rust, smute, or fleshy fungi such as mushrooms, puffballs and coral fungi.
- ### B. This coverage does not apply, with regard to any amounts above the minimum limits required by the South Carolina Financial Responsibility Law as of the date of the loss, to:
- 1. Property damage or bodily injury caused intentionally by or at the direction of an insured, including willful acts the result of which the insured knows or ought to know will follow from the insured's conduct.
 - 2. a) Any person for any occurrence arising out of the operation of an auto:
 - (1) repair shop; (3) sales agency; or
 - (2) public garage or parking place; (4) service or maintenance facility.
 - b) However, this exclusion does not apply to:
 - (1) you;

- (2) a relative; or
 - (3) a partner, employee, or agent of you or a relative;
- with regard to the use of your auto.
- 3. Bodily injury to any person eligible to receive any benefits required to be provided or voluntarily provided by any Insured under an:
 - a) unemployment compensation;
 - b) non-occupational or occupational disease;
 - c) disability benefits;or any similar law.
 - 4. Bodily injury or property damage arising out of the ownership, maintenance or use of any motor vehicle while used in any competitive event, including but not limited to drag racing, or in practice or preparation for such an event.
 - 5. Bodily injury or property damage arising out of the use of your auto in the business or occupation of you or a relative unless business use has been declared by you and the required premium has been paid.
 - 6. Bodily injury or property damage caused by:
 - a) you;
 - b) a relative; or
 - c) anyone else while operating your auto;
 - (1) while committing a felony; or
 - (2) while fleeing a law enforcement officer.

Limits and Conditions of Payment

AMOUNTS PAYABLE FOR LIABILITY LOSSES

Our obligation to pay Property Damage or Bodily Injury Liability losses is limited to the amounts per person and per occurrence stated in the Declarations. The following conditions apply to these limits:

- 1. The limit shown:
 - a) for Property Damage Liability is for all property damage in one occurrence.
 - b) for Bodily Injury Liability for any one person is for all legal damages, including all derivative claims, claimed by anyone arising out of and due to bodily injury to one person as a result of one occurrence.

The per-person limit is the total amount available when one person sustains bodily injury, including death, as a result of one occurrence. No separate limits are available to anyone for derivative claims, statutory claims, or any other claims made by anyone arising out of bodily injury, including death, to one person as a result of one occurrence.
 - c) for Bodily Injury Liability for each occurrence is the total limit of our liability for all legal damages when two or more persons sustain bodily injury, including death, as a result of one occurrence. No separate limits are available to anyone for derivative claims, statutory claims, or any other claims arising out of bodily injury, including death, to two or more persons as a result of one occurrence. This total limit is subject to the limit for any one person.
- 2. Liability limits apply as stated in the Declarations. The insuring of more than one person or vehicle under this policy does not increase our liability limits.
- 3. In any loss covered under items 2. and 3. of "USE OF OTHER MOTOR VEHICLES," the highest liability limit applicable to any one vehicle on this policy will apply.
- 4. A motor vehicle and attached trailer are considered one vehicle for Auto Liability coverage.

OTHER INSURANCE

1. In any loss involving the use of your auto, we will be liable for only our share of the loss if there is other collectible liability insurance. Our share is our proportion of the total insurance limits for the loss.
2. For losses covered under "USE OF OTHER MOTOR VEHICLES," our coverage is excess over any other collectible:
 - a) insurance;
 - b) self insurance;
 - c) proceeds from a governmental entity; or
 - d) sources of recovery.

If more than one policy issued by us or an affiliated company applies on an excess basis to the same loss, we will pay only up to the highest limit of any one of them.

Assignability

No interest in this coverage can be transferred without our written consent. However, if the policyholder dies, the Liability coverage will stay in force for the rest of the policy period. It will apply for the deceased's legal representative and those persons protected on the date of death.



Uninsured Motorists and Underinsured Motorists

(for bodily injury and property damage caused by uninsured or underinsured motorists)

ADDITIONAL DEFINITIONS APPLICABLE TO THESE COVERAGES ONLY

"UNINSURED MOTOR VEHICLE" — See definition in COVERAGE AGREEMENT section.

"UNDERINSURED MOTOR VEHICLE" — See definition in COVERAGE AGREEMENT section.

Coverage Agreement

YOU AND A RELATIVE

We will pay damages, including derivative claims, because of bodily injury suffered by you or a relative, and because of property damage. Such damages must be due by law to you or a relative from the owner or driver of:

1. an uninsured motor vehicle; or
2. an underinsured motor vehicle if the policyholder has selected Underinsured Motorists coverage, as shown in the Declarations and has paid the required premium for such coverage.

Damages must result from an accident arising out of the ownership, maintenance, or use of the uninsured motor vehicle or underinsured motor vehicle.

OTHER PERSONS

For the elected coverages, we will also pay damages, including derivative claims, which are due by law to other persons who suffer bodily injury while using or occupying with your permission:

1. your auto.
2. a motor vehicle you do not own, while it is used in place of your auto for a short time. Your auto must be out of use because of:
 - a) breakdown;
 - b) repair;
 - c) servicing; or
 - d) loss.
3. a four-wheel motor vehicle newly acquired by you to which the Auto Liability coverage of this policy applies. The coverage applies only during the first 30 days you own the vehicle, unless it replaces your auto.
4. a trailer designed to be used with a motor vehicle, while used with one of the vehicles described in items 1. through 3. above.

RECOVERY

1. Before recovery, we and the Insured must agree on two points:
 - a) whether there is a legal right to recover damages from the owner or driver of an uninsured motor vehicle or underinsured motor vehicle; and if so,
 - b) the amount of such damages.
2. Any judgment against the uninsured or underinsured will be binding on us only if copies of the pleadings in any such action have been served on us in the manner provided by law.

DEFINITIONS

For purposes of these coverages only:

1. a) An uninsured motor vehicle is:

- (1) one for which there is no auto liability bond, insurance or other security in effect, applicable to the vehicle owner, operator, or any other liable person or organization, at the time of the accident, in at least the amounts required by the financial responsibility law where your auto is principally garaged.
- (2) one for which the insuring company denies coverage or is or becomes insolvent.
- (3) one for which the owner has not qualified as a self-insurer in accordance with the applicable provisions of law.
- (4) a "hit-and-run" motor vehicle whose owner or driver remains unknown and which physically strikes:
 - (i) the insured; or
 - (ii) the vehicle the insured is occupying and causes bodily injury to the insured or property damage.

The insured must attempt to identify the other driver or owner. Physical contact is not required if the facts of an accident are confirmed by an eyewitness to the occurrence and the eyewitness signs an affidavit attesting to the truth of the facts of the accident. The eyewitness cannot be the owner or operator of the insured vehicle.

In all cases, the insured or someone on the insured's behalf must report the accident to the police within a reasonable time after its occurrence.

b) We will not consider as an uninsured motor vehicle:

- (1) any motor vehicle owned by a government unit or agency. However, any motor vehicle owned by the State or any of its political subdivisions is considered an uninsured motor vehicle when the vehicle is operated by a person without proper authorization.
- (2) any motor vehicle owned by an insured but not insured under the liability coverage of any policy.
- (3) a vehicle that is defined as an underinsured motor vehicle.

2. a) An underinsured motor vehicle is one for which liability coverage, bonds, or other securities are in effect, applicable to the vehicle owner, operator, or any other liable person or organization, in at least an amount required by the Financial Responsibility law, and their total amount:

- (1) is less than; or
- (2) has been reduced by payments to persons injured in the accident, other than an insured, to an amount less than;
the insured's damages.

b) We will not consider as an underinsured motor vehicle a vehicle that is defined as an uninsured motor vehicle.

3. We will not consider as either an uninsured motor vehicle or underinsured motor vehicle:

- a) any vehicle in use as a residence or premises; nor
- b) any equipment or vehicle designed for use mainly off public roads and not subject to vehicle registration, even while on public roads.

Coverage Exclusions

Coverage does not apply:

1. For any insured who enters suit (legal action) against a responsible party without having copies of the pleadings in any such action served on us in the manner provided by law.

2. Under Uninsured Motorists coverage for any Insured who, without our written consent, settles with any person or organization who may be liable for the bodily injury or property damage and thereby impairs our right to recover our payments.
3. To directly or indirectly benefit any workers' compensation or disability benefits carrier, or any person or organization qualifying as a "self-insurer" under a workers' compensation, disability benefits or similar laws.
4. For property damage for which the Insured has been paid.
5. Under Uninsured Motorists coverage, for the first \$200 of property damage sustained.
6. To directly or indirectly benefit any insurer of property.
7. To use of any motor vehicle by an Insured:
 - a) to carry persons or property for a fee; or
 - b) for retail or wholesale delivery, including but not limited to pizza, magazine, newspaper and mail delivery.

Exclusion 7.a) does not apply to motor vehicles used in shared-expense car pools.

8. To use of any motor vehicle by an Insured without the owner's permission.

Insured Persons' Duties

1. In making a claim under these coverages, the Insured must submit written proof of the claim to us as soon as practicable.
2. If an Insured or the Insured's legal representative brings legal action for accidental bodily injury or property damage against any party legally responsible for use of a motor vehicle involved in the accident, a copy of the summons and complaint or other process must be served immediately upon us. Service must be made according to statutory requirements.

Limits and Conditions of Payment

AMOUNTS PAYABLE FOR UNINSURED OR UNDERINSURED MOTORISTS LOSSES

Our obligation to pay losses is limited to the amounts per person and per occurrence stated in the Declarations. The following conditions apply to these limits:

1. The limit shown:
 - a) for Bodily Injury for any one person is for all covered damages, including all derivative claims, claimed by anyone arising out of and due to bodily injury to one person as a result of one occurrence.

The per-person limit is the total amount available when one person sustains bodily injury, including death, as a result of one occurrence. No separate limits are available to anyone for derivative claims, statutory claims, or any other claims made by anyone arising out of bodily injury, including death, to one person as a result of one occurrence.
 - b) for Bodily Injury for each occurrence is the total limit of our liability for all covered damages when two or more persons sustain bodily injury, including death, as a result of one occurrence. No separate limits are available to anyone for derivative claims, statutory claims, or any other claims arising out of bodily injury, including death, to two or more persons as a result of one occurrence. This total limit is subject to the limit for any one person.
 - c) for Property Damage is for all covered damages claimed by one or more insureds for property damage as a result of one occurrence.
2. Coverage applies as stated in the Declarations. The insuring of more than one person or vehicle under any policy issued by us or an affiliated company does not increase our payment limits.

Uninsured Motorists

3. Any amount payable under these coverages shall be reduced by any amounts paid or payable under any workers' compensation, disability benefits or similar law. This does not reduce the limits of this coverage.
4. The most we will pay will be the lesser of:
 - a) the difference between:
 - (1) the amount of the insured's damages; and
 - (2) the amount paid to the Insured by or for any person or organization who is or may be held legally liable for the bodily injury or property damage; or
 - b) the limit of this coverage.
5. No payment for Underinsured Motorists coverage will be made until the limits of all other liability insurance and bonds that apply have been exhausted by payments or judgments.

OTHER INSURANCE

1. If no vehicle owned by you or a relative is involved in an accident in which you or a relative sustains bodily injury or property damage while occupying a motor vehicle or otherwise:
 - a) coverage under this policy applies as excess to any coverage which applies to the vehicle involved in the accident as primary coverage.
 - b) If coverage from more than one policy issued to you or a relative applies as excess, then the one policy with the highest limit shall set the maximum recovery. We will pay our share of the loss not to exceed our share of the maximum recovery. Our share will be that percentage our coverage bears to all like coverage (Uninsured Motorists coverage or Underinsured Motorists coverage) applicable as excess.
2. If an insured sustains bodily injury or property damage while occupying your auto, and your auto is also described on the Declarations page of another policy providing applicable coverage, we are liable for only our share. Our share is that percent of damages that the coverage from this policy bears to the total of all coverage applicable to the occurrence.
3. If a vehicle owned by you or a relative is involved in an accident where you or a relative sustains bodily injury or property damage, this policy shall:
 - a) be primary if the involved vehicle is your auto described on this policy; or
 - b) be excess if the involved vehicle is not your auto described on this policy. The amount of coverage applicable under this policy shall be the lesser of the coverage limits under this policy or the coverage limits on the vehicle involved in the accident.

Subject to the above, if other policies apply as excess, we are liable only for our share. Our share is that percent of the damages that the coverage applicable from this policy bears to the total of all like coverage (Uninsured Motorists coverage or Underinsured Motorists coverage) which is applicable as excess to the occurrence.

DUPLICATE PAYMENT

We will make no duplicate payment to or for any insured for the same element of loss.

Assignability

No interest in these coverages can be transferred without our written consent. However, if the policyholder dies, these coverages will continue in force for the rest of the policy period. It will apply for the deceased's legal representative and those persons protected on the date of death.



General Policy Conditions

We, you, and anyone insured by this policy must do certain things in order for the provisions of the policy to apply. The following are policy conditions:

1. HOW YOUR POLICY MAY BE CHANGED

- a) Any terms of this policy which may be in conflict with statutes of the state in which the policy is issued are hereby amended to conform.
- b) Any insured will automatically have the benefit of any extension or broadening of coverage in this policy, as of the effective date of the change, provided it does not require more premium.
- c) No other changes may be made in the terms of this policy except by endorsement or policy revision.
- d) The premium for each coverage is based on information in our possession. Any change or correction in this information will allow us to make an adjustment of the premium as of the date the change is effective.
- e) The policyholder has a duty to notify us as soon as possible of any change which may affect the premium or the risk under this policy. This includes, but is not limited to, changes in:
 - (1) the principal garaging address of the insured vehicle(s), which must be reported to us within 30 days of the date the address change becomes effective;
 - (2) drivers;
 - (3) use of the insured vehicle(s); or
 - (4) desired coverages, deductibles, or limits.

2. OPTIONAL PAYMENT OF PREMIUM IN INSTALLMENTS

The policyholder may pay the premium for this policy in installments, under terms and conditions approved where required by the Department of Insurance. For each separate installment payment there is an installment service charge. Your agent can provide more information.

3. RENEWAL

This policy is written for a six-month policy period. We will renew it for successive policy periods, subject to the following conditions:

- a) Renewal will be in accordance with policy forms, rules, rates and rating plans in use by us at the time.
- b) All premiums, premium installment payments, and fees must be paid when due, whether payable directly to us or through any premium finance plan.
- c) A named insured has not had his or her driver's license suspended or revoked during the policy period.

Prior to the expiration of a policy term for which premium has been paid, we will mail a notice to the policyholder for the premium required to renew or maintain the policy in effect. We will mail this notice to the address last known to us.

4. NON-RENEWAL

- a) At the end of each six-month period after the effective date of this policy, we will have the right to refuse to renew the entire policy or any of its coverages.
- b) If we elect not to renew, we will mail or deliver written notice to the policyholder 15 days in advance of the date our action will take effect. Mailing of this notice to the last known address or delivery of it to the policyholder will be considered proof of notice.
- c) For nonpayment of renewal premium, coverage will terminate at the end of the last policy period for which premium was paid.

5. CANCELLATION DURING POLICY PERIOD

- a) The policyholder may cancel this policy or any of its coverages by mailing notice to us of the future date of cancellation desired. We will calculate any returned premium according to the rules, rates, fees and forms in effect and on file, if required, for our use in your state.
- b) Up to the time this policy or any coverage has been in effect 90 days, we have unlimited right of cancellation. We may cancel by mailing notice to the policyholder 10 days prior to the effective date of cancellation. While the date we mail this notice must be within 90 days, the date of cancellation need not be.
- c) After any coverage of this policy has been in force 90 days, our right to cancel such coverage during the policy period is limited.
 - (1) We may cancel:
 - (a) if premiums, premium installment payments, or fees are not paid when due, whether payable directly to us or through any premium finance plan.
 - (b) if you or any other operator who either resides in your household or customarily operates your auto has had his driver's license suspended or revoked during the policy period.
 - (c) for other reasons permitted by South Carolina law.
 - (2) We must mail or deliver notice to the policyholder 15 days prior to the effective date of cancellation.
- d) In any case of cancellation by us not requested by the policyholder, our mailing of notice to the policyholder's last known address will constitute proof of notice as of the date we mail it. We will retain premium for days covered during the policy period.
- e) Premium refund, if any due, will be made as soon as practicable after the date of cancellation. Mailing or delivery of our check will constitute tender of refund.

6. IF YOU BECOME BANKRUPT

Bankruptcy or insolvency of any insured will not relieve us of any obligation under the terms of this policy.

7. UNAUTHORIZED USE OF OTHER MOTOR VEHICLES

Protection in this policy does not apply to other motor vehicles which any insured:

- a) uses without a reasonable belief that the insured is entitled to do so.
- b) has stolen.
- c) knows to have been stolen.
- d) uses in the commission of a felony.
- e) uses to flee a law enforcement officer.

An insured whose license has been suspended, revoked or never issued, shall not be held to have a reasonable belief that the insured is entitled to operate a motor vehicle.

8. FRAUD AND MISREPRESENTATION

- a) This policy was issued in reliance on the information you provided at the time of your application for insurance coverage. We may void this policy, deny coverage under this policy, or, at our election, assert any other remedy available under applicable law, if you or any insured person seeking coverage under this policy, knowingly, or unknowingly concealed, misrepresented or omitted any material fact or engaged in fraudulent conduct at the time the application was made or at any time during the policy period.
- b) We may void this policy, deny coverage for an accident or loss, or at our election, assert any other remedy available under applicable law, if any insured person or any other person seeking coverage under this policy has knowingly or unknowingly concealed or misrepresented any material fact or engaged in fraudulent conduct in connection with the filing or settlement of any claim.

- c) If we void this policy, this shall not affect the liability coverage of this policy up to the minimum limits required by the financial responsibility law of the state of South Carolina, if we have certified your policy as proof of financial responsibility to the registrar of motor vehicles of the state of South Carolina, and if the accident occurs before we notify the named insured that the policy is void. If we void this policy, you must reimburse us if we make a payment.
- d) No person or organization who engages in fraudulent conduct in connection with the application process, an accident or filing a claim, or engages in any material misrepresentation regarding the issuance of this policy shall be entitled to receive any payment under this policy at any time.

9. LEGAL ACTION LIMITATIONS

No legal action may be brought against the company concerning any of the coverages provided in this policy until the insured has fully complied with all terms of the policy.

Under the Auto Liability coverages of this policy, no legal action may be brought against the company until judgment against the insured has been finally determined after trial. This policy does not give anyone the right to make us a party to any action to determine the liability of an insured.

10. SUBROGATION

We have the right of subrogation under the:

- a) Physical Damage;
- b) Uninsured Motorists, subject to the limitations outlined below; and
- c) Medical Payments;

coverages in this policy and its endorsements. This means that after paying a loss to you or others under this policy, we will have the insured's right to sue for or otherwise recover such loss from anyone else who may be held liable. Also, we may require reimbursement from the insured out of any settlement or judgment that duplicates our payments. These provisions will be applied in accordance with state law. Any insured will sign such papers, and do whatever else is necessary, to transfer these rights to us, and will do nothing to prejudice them.

Uninsured Motorists coverage is subject to subrogation only:

- i) up to the limits specified in the Financial Responsibility Act; or
- ii) if an uninsured motorist has selected the option to be uninsured by paying the fee specified in the Financial Security provisions of the South Carolina Motor Vehicle Code.

There is no right of subrogation applicable to Underinsured Motorists coverage.

11. DIVIDENDS

The policyholder is entitled to any dividends which are declared by the Board of Directors and are applicable to coverages in this policy.

12. NON-SUFFICIENT FUNDS AND LATE PAYMENT CHARGES

The company reserves the right to impose a fee for any premium payment that is unable to be processed due to non-sufficient funds, or if there are non-sufficient funds in an account that is being utilized for electronic funds transfer (EFT) payments, or if the premium is not paid by the due date. This is under the terms and conditions approved where required by the Department of Insurance.

If the initial premium payment for this policy is unable to be processed due to non-sufficient funds as indicated above, we reserve the right to void the policy back to the date of inception. When we void the policy, we will not be liable for any claims which occurred during the policy period. This includes any claims reported to us prior to receiving notice of the non-sufficient funds payment.

General Policy Conditions

MUTUAL POLICY CONDITIONS

(Applicable only to policies Issued by Nationwide Mutual Insurance Company-Nationwide Mutual Fire Insurance Company.)

If this policy is issued by Nationwide Mutual Insurance Company or Nationwide Mutual Fire Insurance Company, the policyholder is a member of the company issuing the policy while this or any other policy issued by one of these two companies is in force. While a member, the policyholder is entitled to one vote only regardless of the number of policies issued to the policyholder-either in person or by proxy at meetings of members of said company.

The annual meeting of members of the Nationwide Mutual Insurance Company will be held at the Home Office at Columbus, Ohio, at 10 a.m. on the first Thursday of April. The annual meeting of members of the Nationwide Mutual Fire Insurance Company will be held at the Home Office at Columbus, Ohio, at 9:30 a.m. on the first Thursday of April. If the Board of Directors of either of the above companies should elect to change the time or place of meeting, that company will mail notice of the change to the policyholder at the address last known to it. The company will mail this notice at least 10 days in advance of the meeting date.

This policy is non-assessable, meaning that the policyholder is not subject to any assessment beyond the premiums the above companies require for each policy term.

IN WITNESS WHEREOF: Nationwide Mutual Insurance Company, Nationwide Mutual Fire Insurance Company, Nationwide Property and Casualty Insurance Company, Nationwide General Insurance Company, or Nationwide Assurance Company, whichever is the issuing company as shown in the Declarations, has caused this policy to be signed by its President and Secretary, and countersigned as may be required by a duly authorized representative of the company.

Patricia B. Hatten

Secretary

Nationwide General Insurance Company
Nationwide Mutual Insurance Company
Nationwide Mutual Fire Insurance Company
Nationwide Property and Casualty Insurance Company

Stephen J. ...

President

Nationwide Mutual Insurance Company
Nationwide Mutual Fire Insurance Company

Kevin W. ...

Secretary

Nationwide Assurance Company

Dr. ...

President

Nationwide Assurance Company
Nationwide General Insurance Company
Nationwide Property and Casualty Insurance Company



Nationwide Insurance Companies/Home Office: Columbus, Ohio 43215-2220
Nationwide Mutual Insurance Company • Nationwide Mutual Fire Insurance Company
Nationwide Property and Casualty Insurance Company • Nationwide General Insurance Company
Nationwide Assurance Company

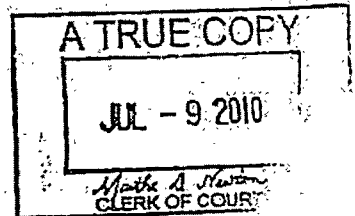
STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)
SHARMIN WALLS,)
Plaintiff)
vs.)
SOUTH CAROLINA DEPARTMENT)
OF PUBLIC SAFETY AND THE)
ANDERSON COUNTY SHERIFF'S)
DEPARTMENT)
Defendants)

IN THE COURT OF COMMON PLEAS

2010-CP-04- 02405

COMPLAINT

JURY TRIAL DEMANDED



The Plaintiff would show unto the Court and allege:

1.

That the Plaintiff, Sharmin Walls, is a citizen and resident of Anderson County, South Carolina and the Defendants are governmental entities with agents, servants and employees operating in the County of Anderson, South Carolina and all matters and things herein happened in Anderson County, South Carolina.

2.

That this Court has jurisdiction of all parties, matters and things herein.

3.

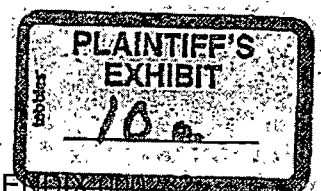
That Sharmin Christine Walls, (hereinafter "Walls") on July 11, 2008 at approximately 5:00 p.m. was sitting in the rear passenger seat of an automobile which was being driven at that time by Korey A. Mayfield and which automobile had just left her residence in Anderson County, South Carolina.

4.

That at such time and place the vehicle being operated by Korey Mayfield was being operated lawfully on the highway and that without just cause or excuse, the agent of the Defendant, South Carolina Department of Public Safety, (hereinafter "Highway Patrol") suddenly and without warning or probable cause, and without any excuse whatsoever, activated his emergency lights, turned on his sirens and initiated a high speed chase.

5.

That at all times and places herein, the Plaintiff Sharmin Christine Walls was an innocent passenger in the rear passenger seat of said automobile.



6.

That the Officer of the Highway Patrol was on duty and acting within the course and scope of his employment as a Highway Patrolman with the South Carolina Department of Public Safety at all times relevant to this cause of action.

7.

The names of the individual employees of the South Carolina Department of Public Safety and the Anderson County Sheriff's Department are not set forth herein for the reason that the respective Government agencies have refused to deliver the investigative files to the Plaintiff herein based upon the fact that there is a current criminal case pending against Korey A. Mayfield, the driver of said automobile.

8.

That despite Plaintiff's pleas with the driver to cease and pull the vehicle over, the driver, Korey A. Mayfield, as a direct and proximate result of the actions of the Highway Patrolman, increased his speed and went through numerous traffic signals and speed signs and through heavily populated areas of Anderson County with the vehicles driven by Mayfield and the Highway Patrolman reaching speeds in excess of 60 miles an hour.

9.

That on information and belief, there was no reason or probable cause for the pursuit initially and the pursuit was not broken off as it should have been. That the actions of the Defendant Highway Patrolman and his supervisor were negligent, reckless, willful, wanton and in violation of rules and procedures of the Highway Patrol and of the Department of Public Safety and the negligence, recklessness, willfulness and wantonness of the South Carolina Department of Public Safety, in failing to adequately train, instruct and supervise the individual Defendant Highway Patrolman in conducting vehicular pursuits combined to cause the injuries to the Plaintiff as is hereinafter described.

10.

That the vehicle in which the Plaintiff was riding eventually made a turn onto Leatherdale Road, where on information and belief, the vehicle in which Plaintiff was riding as a passenger, was then pursued by an officer, agent and employee of the Anderson County Sheriff's Department at a high and unlawful rate of speed. The negligent and reckless actions of the Sheriff's deputy was the proximate cause of the Mayfield vehicle not stopping before the injury to the Plaintiff occurred; and on information and belief, in addition to preventing the Mayfield vehicle from stopping, the agent of the Anderson County Sheriff's Department wrongfully, recklessly and negligently struck the rear bumper of the vehicle in which Plaintiff was riding, causing the driver, Korey Mayfield to lose control of said vehicle, resulting in the vehicle crashing into trees, causing severe brain and bodily injuries to the Plaintiff.

11.

That the actions of the Defendant Sheriff's Deputy and agent of the Sheriff's Department were negligent, reckless, willful, wanton and in violation of rules and procedures of the Sheriff's Department and of the Department of Public Safety and the negligence, recklessness, willfulness and wantonness of the Anderson County Sheriff, in failing to adequately train, instruct and supervise the individual Defendant Highway Patrolman in conducting vehicular pursuits

combined to cause the injuries to the Plaintiff as is hereinafter described.

12.

That by reason and in consequence of, the aforesaid negligence, gross negligence, carelessness, recklessness, wilfulness and unlawful acts of the South Carolina Department of Public Safety, and the Anderson County Sheriff's Department, combining and concurring jointly, severally, or in the alternative, the Plaintiff suffered severe and grievous injuries.

WHEREFORE, by reason of and in consequence of the aforesaid negligence, gross negligence, carelessness, recklessness, wilfulness, wanton and unlawful acts of the Defendants as is set forth above; and as a direct and proximate result thereof, the Plaintiff received severe personal injuries, necessitating medical treatment therefore, and she was shocked, injured, bruised and lacerated in about various parts of her body, limbs and in addition, suffered brain injury, and as a direct result thereof, has been and will be incapacitated permanently over a long period of during all of which period of she has suffered and will continue to suffer great pain and mental anguish, has been prevented and will be prevented from pursuing her normal and ordinary affairs; has expended and will be compelled to expend sums of moneys for doctors, medicines, nurses, hospitals, x-rays, and has otherwise been damaged in excess of \$1,000,000.00, actual and punitive damages.

WHEREFORE, Plaintiff prays judgement against the Defendants jointly, severally or in the alternative for actual and punitive damages ;

And for such other and further relief a the Court may deem just and proper.

MULLINAX LAW FIRM, P.A.



Michael F. Mullinax
Post Office Box 2665
Anderson, South Carolina 29622
864/261-6242
ATTORNEY FOR THE PLAINTIFF

Anderson, South Carolina
July 9, 2010

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

RANDI MICHELLE HARPER

Plaintiff(s),

-vs-

SOUTH CAROLINA DEPARTMENT OF
PUBLIC SAFETY,

Defendant(s).

COURT OF COMMON PLEAS

AMENDED COMPLAINT

C/A No. 2010-CP-04-02411

JURY TRIAL DEMANDED

The Plaintiffs, complaining of the Defendant herein, would respectfully show unto the Court and allege that:

1.

That the Plaintiff, Randi Michelle Harper, is a citizen and resident of Anderson County, South Carolina and the Defendant is a governmental entity with agents, servants and employees operating in the County of Anderson, South Carolina and all matters and things herein happened in Anderson County, South Carolina.

2.

That this Court has jurisdiction of all parties, matters and things herein.

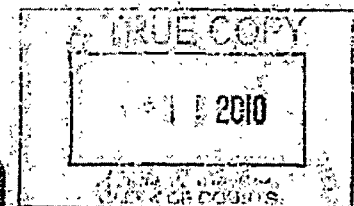
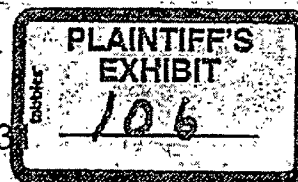
3.

That Randi Michelle Harper, (hereinafter "Harper") on July 11, 2008 at approximately 5:00 p.m. was sitting in the rear passenger seat of an automobile which was being driven at that time by Korey A. Mayfield and which automobile had just left a residence in Anderson County, South Carolina.

DLSCN 1/08/10

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APPENDIX 000235

4.

That at such time and place the vehicle being operated by Korey Mayfield was being operating lawfully on the highway and that without just cause or excuse, the agent of the South Carolina Highway Patrol, a division of the Defendant South Carolina Department of Public Safety, (hereinafter "Highway Patrol") suddenly and without warning or probable cause or any excuse whatsoever, activated his emergency lights, turned on his sirens and initiated a high speed chase.

5.

That at all times and places herein, the Plaintiff Randi Michelle Harper was an innocent passenger in the rear seat of said automobile.

6.

That the Officer of the Highway Patrol was on duty and acting within the course and scope of his employment as a Highway Patrolman with the South Carolina Department of Public Safety at all times relevant to this cause of action.

7.

That despite Plaintiff's pleas with the driver to cease and pull the vehicle over, the driver, Korey A. Mayfield, as a direct and proximate result of the actions of the Highway Patrolman, increased his speed and went through numerous traffic signals and speed signs and through heavily populated areas of Anderson County with the vehicles driven by Mayfield and the Highway Patrolman reaching speeds well in excess of posted speed limits.

8.

That on information and belief, there was no reason or probable cause for the pursuit initially and the pursuit was not discontinued as it should have been. That the actions of the Defendant Highway Patrolman and his supervisor(s) were negligent, reckless, willful, wanton and in violation of rules and procedures of the Highway Patrol and of the Department of Public Safety and the negligence, recklessness, willfulness and wantonness of the South Carolina Department of Public Safety, in failing to adequately train, instruct and supervise the individual Defendant Highway Patrolman and his supervisor(s) in conducting vehicular pursuits combined to cause the injuries to the Plaintiff as is hereinafter described.

9.

That the Defendant was willful, wanton, reckless, negligent and grossly negligent in one or more of the following particulars:

- (a) In violating pursuit policies of their respective departments;
- (b) In violating reasonable standards for pursuit recognized for police officers in similar circumstances;
- (c) In driving at a dangerous and reckless rate of speed in a residential and commercial district of South Carolina in violation of Section 56-5-1520 of the Code of Laws of the State of South Carolina 1976, as amended;
- (d) In violating the South Carolina Code and Regulations with respect to police pursuits and use of public highways;
- (e) In failing to use reasonable care in the operation of a motor vehicle under the circumstances then and there existing.
- (f) In chasing a vehicle during a police pursuit when such chase and pursuit were unjustified under all of the circumstances then and there existing.

(g) In failing to maintain proper police procedures for chase and pursuit when the Defendant knew or should have known that to do so would cause injury and damage to others upon the highway, and more particularly to the Plaintiff;

(h) In failing to properly train its agents, servants and/or employees, particularly the pursuing officer(s), in proper police procedures during chase and pursuit in violation of the laws of the State of South Carolina, when the Defendant knew or should have known that to do so would endanger the safety of others, and more particularly, the Plaintiff;

(i) In failing to prohibit its vehicle from being operated by an incompetent and/or improperly trained agent, servant and/or employee driver;

(j) In permitting its vehicle to be operated by an agent, servant and/or employee driver who said Defendant knew or should have known was inexperienced in handling automobiles; and

(k) In permitting its vehicle to be operated by a driver who the Defendant knew or should have known had the propensity to operate its vehicle at a dangerous rate of speed; and

(l) In failing to promptly discontinue the chase, when the chase should have been discontinued due to the circumstances then and there existing.

10.

The negligent and reckless actions of the Highway Patrolman and his supervisor(s) were the proximate cause of the Mayfield vehicle not stopping, the accident and the consequent severe damages to the Plaintiff, which damages include severe personal injuries, medical bills, lost wages and other foreseeable damages.

WHEREFORE, the Plaintiff prays for judgment against the Defendant in a sum to be determined by a jury at the trial of this case, both actual and punitive damages, together with costs and such other and further relief as the Court may deem just and proper.

Respectfully submitted,



J. KIRKMAN MOORHEAD
KRAUSE, MOORHEAD AND DRAISEN, PA
207 East Calhoun Street
Anderson, South Carolina 29621
Attorney for the Plaintiff
(864) 225-4000

August 11, 2010

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

IN THE COURT OF COMMON
PLEAS

Wendy Timms, as Personal
Representative of the Estate of
Christopher Adam Timms, Deborah
E. Timms, individually,

Plaintiffs,

vs.

South Carolina Department of
Public Safety and Anderson County
Sheriff's Department,

Defendants.

2010-CP-04- 02413

COMPLAINT

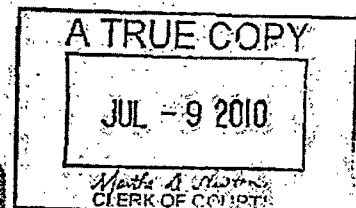
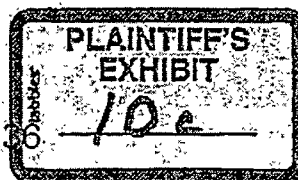
WRONGFUL DEATH AND
SURVIVAL ACTION

JURY TRIAL DEMANDED

The Plaintiffs, complaining of the Defendants herein, would respectfully show and allege unto the Court as follows:

1. The Plaintiff, Wendy Timms, is the duly appointed, qualified and acting personal representative of the Estate of Christopher Adam Timms, as defined by S.C. Code Ann. § 62-3-203, and the surviving sister-in-law of the decedent. The Plaintiff, Deborah E. Timms, is the surviving mother of the decedent. The decedent, Christopher Adam Timms, was a citizen of the County of Anderson, State of South Carolina, at the time of his death. The Defendants are governmental entities with agents, servants and employees operating in the County of Anderson, South Carolina and all matters and things herein happened in Anderson County, South Carolina.

2. The Plaintiffs bring this action pursuant to S.C. Code Ann. § 15-51-10 et seq. for the benefit of the statutory beneficiaries of Christopher Adam Timms, deceased, as designated by S.C. Code Ann. § 15-51-20, naming themselves as heirs to the decedent to recover for damages, injuries, and losses sustained by reason of the wrongful death of Christopher Adam Timms.



3. The incident which is the subject matter of this action occurred in the County of Anderson, State of South Carolina. Accordingly, all parties, matters and things contained herein are within the jurisdiction of this Court.

4. That Christopher Adam Timms, (hereinafter "Timms") on July 11, 2008 at approximately 5:00 p.m. was a passenger in an automobile which was being driven at that time by Korey A. Mayfield and which automobile had just left a residence in Anderson County, South Carolina.

5. That at such time and place the vehicle being operated by Korey Mayfield was operating lawfully on the highway and that without just cause or excuse, the agent of the Defendant, South Carolina Department of Public Safety, (hereinafter "Highway Patrol") suddenly and without warning or probable cause, for no excuse whatsoever, activated his emergency lights, turned on his sirens and initiated a high speed chase.

6. That at all times and places herein, the Plaintiff Timms was an innocent passenger in said automobile.

7. That the Officer of the Highway Patrol was on duty and acting within the course and scope of his employment as a Highway Patrolman with the South Carolina Department of Public Safety at all times relevant to this cause of action.

8. The names of the individual employees of the South Carolina Department of Public Safety and the Anderson County Sheriff's Department are not set forth herein for the reason that the respective Government agencies have refused to deliver the investigative files to the Plaintiff herein based upon the fact that there is a current criminal case pending against Korey A. Mayfield, the driver of said automobile.

9. That despite Plaintiff's pleas with the driver to cease and pull the vehicle over, the driver, Korey A. Mayfield, as a direct and proximate result of the actions of the Highway Patrolman, increased his speed and went through numerous traffic signals and

speed signs and through heavily populated areas of Anderson County with the vehicles driven by Mayfield and the Highway Patrolman reaching speeds in excess of 60 miles an hour.

10. That on information and belief, there was no reason or probable cause for the pursuit initially and the pursuit was not broken off as it should have been. That the actions of the Defendant Highway Patrolman were negligent, reckless, willful, wanton and in violation of rules and procedures of the Highway Patrol and of the Department of Public Safety and the negligence, recklessness, wilfulness and wantonness of the South Carolina Department of Public Safety, in failing to adequately train, instruct and supervise the individual Defendant Highway Patrolman in conducting vehicular pursuits combined to cause the injuries to the Plaintiff as is hereinafter described.

11. That the vehicle in which the Plaintiff was riding eventually made a turn onto Leatherdale Road, where on information and belief, the vehicle in which Plaintiff was riding as a passenger, was then pursued by an officer, agent and employee of the Anderson County Sheriff's Department at a high and unlawful rate of speed. The negligent and reckless actions of the Sheriff's deputy was the proximate cause of the Mayfield vehicle not stopping before the injury to the Plaintiff occurred; and on information and belief, in addition to preventing the Mayfield vehicle from stopping, the agent of the Anderson County Sheriff's Department wrongfully, recklessly and negligently struck the rear bumper of the vehicle in which Plaintiff was riding, causing the driver, Korey Mayfield to lose control of said vehicle, resulting in the vehicle crashing into trees, causing severe brain and bodily injuries to the Plaintiff.

12. That the actions of the Defendant Sheriff's Deputy and agent of the Sheriff's Department were negligent, reckless, willful, wanton and in violation of rules and procedures of the Sheriff's Department and of the Department of Public Safety and the negligence, recklessness, wilfulness and wantonness of the Anderson County Sheriff,

in failing to adequately train, instruct and supervise the individual Defendant Highway Patrolman in conducting vehicular pursuits combined to cause the injuries to the Plaintiff as is hereinafter described.

13. That by reason and in consequence of, the aforesaid negligence, gross negligence, carelessness, recklessness, wilfulness and unlawful acts of the South Carolina Department of Public Safety, and the Anderson County Sheriff's Department, combining and concurring jointly, severally, or in the alternative, the Plaintiff suffered severe and grievous injuries resulting in his death.

14. That the Plaintiff's actions in no way cause or contributed toward his death

FOR A SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS

15. The preceding allegations are re-alleged as if set forth herein verbatim.

16. That the conduct of the Defendants, South Carolina Department of Public Safety and Anderson County Sheriff's Department acting by and through their agents, servants and employees, was recklessly indifferent to the safety and well being of the Plaintiff and the general public and was a conscious disregard for the substantial and justifiable risk of causing harm and was so egregious that it shocks the conscience and the Defendants thereby violated Plaintiff's right to due process as guaranteed by the Fourteenth Amendment to the United States Constitution and 42 U.S.C. §1983.

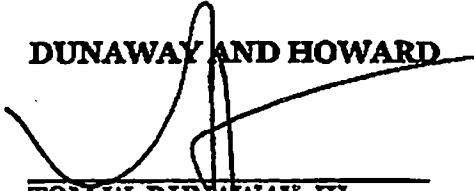
WHEREFORE, by reason of and in consequence of the aforesaid negligence, gross negligence, carelessness, recklessness, wilfulness, wanton and unlawful acts, and as a direct and proximate result thereof, the Plaintiff received severe personal injuries, causing his death. As a direct result of the Defendants' negligence, Wendy Timms as Personal Representative and Deborah Timms, individually, have incurred the following:

pecuniary loss including, but not limited to, medical expenses; mental shock and suffering; wounded feelings; grief and sorrow; loss of companionship and deprivation of the use and comfort of Christopher A. Timms' society; and funeral and burial expenses, and have otherwise been damaged in excess of \$1,000,000.00, actual and punitive damages.

WHEREFORE, Plaintiff prays judgement against the Defendants jointly, severally or in the alternative for actual and punitive damages ;

And for such other and further relief a the Court may deem just and proper.

DUNAWAY AND HOWARD


TOM W. DUNAWAY, III
MILFORD O. HOWARD, III
ATTORNEYS FOR PLAINTIFF
514 S. McDuffie Street
Post Office Box 1965
Anderson, South Carolina 29622
(864) 224-1144

Anderson, South Carolina
7/9, 2010.

File Name: nsd002088.jrb
Insured: Sharmin Walls
Claim No: 6139M424728-071108-01
Person Giving Statement: Sharmin Walls
ClaimantID: S/W1
Date Taken: 7/25/08
Date of Loss: 7/11/08
Interviewer: Julie Howe
Cov: BI
ClassID: HOWEJ4

- Q: This is Julie Howe [phonetic], and I'm speaking with Sharmin Walls on July the 25th, 2008 at approximately 11:05 in the morning, concerning an accident which occurred on July the 11th, 2008, in which Sharmin was in the vehicle. Sharmin, do you understand this interview's being recorded?
- A: Yes.
- Q: And do I have your permission to do so?
- A: Yes.
- Q: State your full name for me and spell your last name.
- A: Sharmin Christine [phonetic] Walls, W-a-l-l-s.
- Q: Okay. Your address?
- A: Uh, [REDACTED]
- Q: Okay. Did I hear y'all say you're moving?
- A: Uh-huh.
- Q: Are you moving out of this [REDACTED]?
- A: Yes.
- Q: Do you know what your new address will be?
- A: No.
- Q: Okay. You don't know what your new address, all right, um, and your date of birth?
- A: 9/23/67.
- Q: And a phone number you can be reached at, a home phone, cell phone...



A:

Q: Okay. Any other numbers?

A: My parents'.

Q: Okay.

A: Martha and Preston Gentry's [phonetic], and that's a, um, a preacher.

Q: And that's your cell phones?

A: Uh, my cell phone...

Q: Her cell phone?

A: Yeah, my mama's cell phone that I used with her, too, is, uh,

Q: Uh-huh.

A:

Q: Okay. All right, now are you married?

A: No.

Q: Do you work anywhere?

A: I'm disabled.

Q: And what are you disabled for?

A: For, uh, mental illness.

Q: All right. And you have a South Carolina driver's license?

A: Uh-huh.

Q: Is that right? Okay. And what type of vehicle were you in when this happened?

A: Uh...

Q: What kind of car is your car?

A: My car, [pause], I don't remember. What did I drive?

Q: I had it was a Lumina, is that right?

A: Yeah, it was a Lumina.

Q: Do you know what year it was?

A: My mom and dad got it for me.

Q: Do you know what year it was?

A: I think it was a '90, '99.

Q: '98?

A: '98, yeah.

Q: Okay. And what color was it?

A: It's gray.

Q: Gray? And did it have a South Carolina tag on it yet? [Pause.] Temporary tag?

A: See, I went and paid for that, and I was supposed to put the tag on.

Q: So you didn't ha-, put the tag on yet?

A: I don't think I had it on there yet, 'cause I still had some time.

Q: Okay.

A: I wasn't real worried about it.

Q: All right, so it still had a paper tag on it? So y'all had just purchased it?

A: Uh-huh.

Q: Do you know when it was purchased?

A: It was around the first of the month, first of July.

Q: First of July?

A: Or, you know, sometime before that.

Q: Okay.

A: You know, June...

Q: And it was in your name?

A: Yes.

- Q: Okay. All right. And on that day, who all was in the vehicle?
- A: Me and Adam [phonetic], Maypop and his girlfriend Randi [phonetic].
- Q: Who was the person you said?
- A: Maypop.
- Q: Maypop?
- A: Yeah.
- Q: Is that his nickname?
- A: Yeah. I don't know what it...
- Q: Maypop?
- A: Yeah.
- Q: Like M-a, M-a-y-p-o-p?
- A: That's his name.
- Q: Okay. And then Randi, his girlfriend?
- A: Yeah.
- Q: All right. And do you remember where each of y'all were seated in the vehicle?
- A: Yeah.
- Q: Okay. Who, who was sitting where?
- A: Maypop was sitting in the driver's seat driving. Adam was sitting in the front with him. And then me and Randi was sitting in the back.
- Q: And now, which side of the car were you on, on the side...
- A: I was on the right-hand side, she was on the left-hand side.
- Q: Okay. And where had y'all left from?
- A: From my house.
- Q: You left from your house? And when you left from your house, is that how you were in the car?
- A: Yep.

Q: From when you left your house?

A: Uh-huh.

Q: Okay. And was there a reason that Corey-, uh, Corcy, Maypop, was there a reason he was driving?

A: Well, I had been, uh, drinking some wine, so I...

Q: Okay.

A: Didn't feel like it was safe for me to drive. I been pretty funny about it.

Q: Okay. So you gave him permission to drive?

A: Well, no, I didn't give anybody permission to do anything. It was, it was just put to me, this is what we're going to do, and, and they had been over there before, or, you know, wanting to use my vehicle or whatever. And, um, I had drank that wine, and I was like, well, I remember thinking, well, I, I better go and make sure everything's okay.

Q: Better go and make sure everything's okay where?

A: Wherever, wherever they were going.

Q: Oh, wherever they were going, you mean go with them...

A: Yeah.

Q: To make sure everything, okay, so they came to you, so was Adam at your house, or did y'all go pick him up?

A: No, Adam, he come, we were at the house.

Q: He was at your house?

A: [No audible response.]

Q: Okay. So y'all hadn't gone to pick Adam up in your car?

A: Uh-uh.

Q: No? Okay. So Adam's at the house, and Maypop and Randi were all at the house?

A: Uh-huh.

Q: And they said, we need to go, where were y'all going?

- A: I don't know if there were actually drugs or not. I saw, I mean, I can't, I can't think of any other reason they were going to, had to be going somewhere. There was to get something they wanted, didn't have.
- Q: Okay. So you don't know where they were going, or where y'all were going or coming back from...
- A: Not specifically.
- Q: Okay. Um, so who gave Maypop the keys? Did you give him the keys to drive the car?
- A: I don't even know where the keys were at. I don't r-, I don't, where was the keys? I've got a key thing, when you open my, my back door, I got a key thing that's hanging on the wall, and I put my keys right there. That's where I used to keep them, 'cause I knew if I kept them right there, I would not lose my keys, and that's where I have my house keys, so they probably just used it, got it off of the...
- Q: Okay.
- A: I think he did.
- Q: But, I mean, you didn't tell, um, Maypop that he could not drive your car? I mean, you kind of went along with, with going, and him driving your car?
- A: I have no idea. I don't know.
- Q: Okay.
- A: I don't know what I had said about that. Like I said, I been drinking wine all that morning.
- Q: Okay. And what about, had they been drinking at your house? Do you remember?
- A: I think they had probably one alcoholic beverages. But they didn't, they didn't get it at my house.
- Q: Okay.
- A: It was, it was, uh, they had bought it and brought it with them.
- Q: Okay. Now, do you hang out with, um, with them normally?
- A: Uh, I wouldn't say hang out. Uh...
- Q: I mean, how do you know them?
- A: They're my neighbors.
- Q: They're your neighbors? Okay.
- A: Has been for a long time.

Q: Okay. So Adam, he's just a neighbor, or was he your boyfriend?

A: We were, we were seeing each other.

Q: Okay. And then, um, Maypop, he was just a neighbor?

A: Right.

Q: And then Randi? She a neighbor, or is she just....

A: Maypop.

Q: Maypop's girlfriend?

A: Girlfriend.

Q: Okay.

A: That's how I met her.

Q: Okay.

A: Was through Maypop. He brought her with him, and she was, uh, she was with him.

Q: Okay.

A: So I met her that day.

Q: So you don't remember where y'all had gone? Randi said something about you wanted to go over to a friend's your, friend of your house. Did you go to a friend's...

A: Uh-huh.

Q: House?

A: I had a friend to my house, 'cause the only things I ever associated was within Iva.

Q: Was within Iva?

A: And usually walking distance.

Q: Okay. So nobody, you didn't know anybody in Anderson?

A: Uh-uh. God, my, no.

Q: Okay. All right, so y'all had...

- A: But if I did, I wouldn't have been drinking all that damn wine. That was a personal decision I made. If I was planning on seeing one of my buddies, if they weren't in Iva, I would have known not to drink no glass of wine.
- Q: Okay. All right, so tell me what you remember happened after y'all got in the car.
- A: Well, I remember when we stopped by one of their friend's, I had never been there before, and didn't know what, or was, or who lived there. And we got back into the car. On the way home, when we saw these lights behind us. And Maypop said, I'm not going to jail today. And hat's when I practically got in the front seat, him and Adam, and begged them, I said, Maypop, please pull the car over, we're going to have a wreck. And we were going down the road, going somewhere between 80 and 100 or something, and I was begging him, pull the car over. I said, if you pull the car over, I'll jump in the seat, you ha-, you ain't got to worry about going to jail. I, but he wouldn't he wouldn't, uh, pull over. He just kept getting faster and faster and faster.
- Q: Okay. And you...
- A: And the last thing I remember is hitting a fourth tree. And we didn't hit the tree many times, and had the indention of the tree inside the car. It was purely steel wrapped around my entire body. They had to cut me out with the jaws of life, 'cause of the way I was sitting, and I was sitting up in the seat trying to get Maypop to stop. And then we started hitting the trees, just, and far, thought we was an animal.
- Q: So were the trees to the right shoulder of the road...
- A: Right.
- Q: Did y'all go off the right shoulder?
- A: From what I can remember, which I didn't remember at all...
- Q: Do you remember what road you were on?
- A: I remember the name of it.
- Q: Did, was...
- A: I remember exactly what it looks like.
- Q: Is it a two-lane road?
- A: Well, it's a old country road, mainly, with a, uh, mainly like a dirt, dirt, you know, and gravel road.
- Q: Okay.
- A: We went down, and we started hitting trees.

- Q: And does, okay, I, I think that one of the things I saw was, Leatherdale Road, does that ring a bell with you at all?
- A: I've heard of that road.
- Q: Do you think that was the road you were on?
- A: I don't know.
- Q: You don't know? Okay. Um, and...
- A: See, I was c-, starting in Anderson. I don't live in Anderson, so...
- Q: I was just going to ask you, when did the police start chasing y'all...
- A: In Anderson.
- Q: Do you remember what road you were on?
- A: No.
- Q: But it was in Anderson, like downtown Anderson area or something?
- A: Downtown, no.
- Q: No?
- A: Not downtown, yeah.
- Q: But somewhere in Anderson? Okay. Okay. And when he was still going so fast, was that police officer still behind you, do you remember, or had y'all lost him, or had he stopped chasing you?
- A: Oh, uh, I don't know when he ch-, stopped chasing us. By the time he stopped chasing us, it had knocked me out, we had hit the trees so much.
- Q: Okay.
- A: I was completely knocked out for hours before I even got back into the hospital.
- Q: Okay. So you said you about got in the front seat. Were you just like leaning up between the two seats, or were you actually in the front seat?
- A: No, I was leaning up, trying to get him to stop the car.
- Q: And was Adam doing the same thing, or...
- A: Yeah.
- Q: Adam was, too? And what about Randi?

- A: She was the same.
- Q: So you were all telling him to stop?
- A: We were all telling him to stop the car.
- Q: And why did he think he was going to go to jail?
- A: Well, they, they didn't turn the lights on for no reason. There was something wrong.
- Q: Okay. Do you think he was speeding at that point or anything?
- A: Probably.
- Q: Okay. Um, but I mean, just for speeding, you're not going to go to jail...
- A: Well, I...
- Q: Usually.
- A: Obviously he thought he was, 'cause he had already been in jail, and I guess he thought he was, they had, whatever, something had gone, he thought he was going to go back.
- Q: Okay. Now was this the first time he'd ever driven your car?
- A: Yep.
- Q: It was? Okay. Have you ever been in a car with him before?
- A: No.
- Q: Okay. So that was the first time? Um, do you know if he has his own car? Like how was, does he usually drive something?
- A: I have no idea.
- Q: Okay.
- A: Whose vehicle he drives.
- Q: And the day that this happened, was, was the weather good? Was it raining?
- A: No, it wasn't raining.
- Q: So the weather was good?
- A: Yep.

- Q: Okay. All right, now you were, um, transported to Anderson Hospital? Is that right?
- A: Yeah.
- Q: Here? Okay. And you were admitted to the hospital?
- A: Yeah.
- Q: Admitted? Okay. What kind of injuries did you have?
- A: Oh, God. My neck's broke.
- Q: Okay.
- A: My right leg was broke. And I got a spinal cord injury, and a closed head injury.
- Q: Okay. And you were moved over to this rehab hospital Wednesday? Does that sound right?
- A: Yeah.
- Q: Okay. And how long are you going to be here for, do you know?
- A: I have no idea.
- Q: Okay. All right. Now the police that investigated this, do you know if it was, uh, Anderson County police officer, Anderson City Highway Patrol?
- A: I'm pretty sure it was the county.
- Q: Anderson County? Do you know if they've charged anybody?
- A: How would I know that?
- Q: Uh, if they've told you, or told, like have they charged you with anything that you know of?
- A: Uh-uh.
- Q: No charges? Okay. All right. And so, as far as that day, were you driving this car?
- A: No.
- Q: When this happened? Okay. Um, have you ever been involved in an accident before this one?
- A: Yeah, but nothing like this.
- Q: Nothing like this? Okay. Is there anything else about this accident that you wanted to add?
- A: Well, it just sucks.

Q: Yeah.

A: The, well, it wouldn't have so many families torn up, and a man dead, if it was, he had just pulled the car over.

Q: Yeah. So what time of day did this happen at? Do you know what time it was?

A: Right around lunch.

Q: Around lunch?

A: Or that morning, late morning.

Q: So it was light outside?

A: Yeah.

Q: Daylight? Okay. All right. Have you understood the questions that I've asked you?

A: Uh-huh.

Q: And you answered them to the best of your knowledge?

A: Exactly.

Q: And you realize that we recorded this, with your permission?

A: Uh-huh.

Q: Okay. Let me turn off this recorder.

[End of Recorded Statement.]

STATE OF SOUTH CAROLINA)

COUNTY OF ANDERSON)

SETTLEMENT AGREEMENT

This COVENANT made this 3rd day of November, 2012, by and between Sharmin Christine Walls, hereinafter referred to as "Covenantor" and Korey Mayfield and Nationwide Mutual Fire Insurance Company hereinafter referred to as "Covenantees".

WHEREAS, Sharmin Christine Walls was injured in an automobile accident that occurred on or about July 11, 2008, when she was a passenger in a vehicle being operated by Korey Mayfield and was involved in an accident in Anderson County, South Carolina; and

WHEREAS, the vehicle being driven by Korey Mayfield was owned by Sharmin Christine Walls and insured by Nationwide Mutual Fire Insurance Company; and

WHEREAS, Nationwide Mutual Fire Insurance Company issued policy 61 39 M 424728 to Sharmin Walls with effective coverage dates of June 17, 2008 to December 17, 2008, containing liability limits of \$100,000.00 per person; and

WHEREAS, Nationwide Mutual Fire Insurance Company filed a declaratory judgment action against Sharmin Christine Walls and others in the Court of Common Pleas for Anderson County, civil action number 2009-CP-04-0907 involving the applicability of several exclusions contained in the policy issued by Nationwide Mutual Fire Insurance Company to Sharmin C. Walls, policy number 61 39 M 424728 and whether the policy issued to Sharmin C. Walls should be reduced to the statutory minimum coverage of Twenty Five Thousand and 00/100 (\$25,000.00) Dollars per person/Fifty Thousand and 00/100 (\$50,000.00) Dollars per occurrence by virtue of the exclusions contained therein; and

WHEREAS, the damages sustained by the Covenantor in the automobile accident of July 11, 2008, may exceed the limits of the liability coverage in the insurance policies of Covenantees and the Covenantor is desirous of protecting her right to proceed to suit against the Covenantee for purposes of litigating the coverage issues and potentially collecting excess liability coverage.

WHEREAS, All parties agree that this settlement only applies to the undisputed portion of the Nationwide Mutual Policy described above, and Walls retains the right to pursue Full coverage of the remaining \$100,000.00 per person coverage in the pending action;

NOW, FOR AND IN CONSIDERATION OF the payment of the sum of Twenty Thousand (\$20,000.00) Dollars to Sharmin Christine Walls, by Nationwide Mutual Fire Insurance Company on behalf of Korey Mayfield, the sufficiency and receipt of which is hereby acknowledged, the parties hereby agree as follows:

1. That in the event the Covenantor, is unable to resolve by agreement and settlement of her claim with Nationwide Mutual Fire Insurance Company and/or any other carrier not named in this document, the Covenantor shall have the right to bring suit against the Covenantee, Korey Mayfield and prosecute same to final judgment.



2. Notwithstanding any judgment that may be rendered in said suit, it is the express intent of the parties that the Covenantors, their respective heirs and assigns, shall never at any time, be liable to the Covenantor, her subrogees, heirs, or assigns, beyond the consideration expressed herein, by reason of any damages or injuries on which such judgment may be based except as herein stated., PROVIDED, HOWEVER, All parties agree that this settlement only applies to the undisputed portion of the Nationwide Mutual Policy described above, and Walls retains the right to pursue Full coverage of the remaining \$100,000.00 per person coverage in the pending action, In consideration of the payment to the Covenantor of the sum of Twenty Thousand and no/100 (\$20,000.00) Dollars, Covenantor, her subrogees, heirs, or assigns, shall not at any time, nor shall anyone for her or in her behalf, enforce against the Covenantees, by execution or otherwise, any judgment that may be rendered in the above mentioned lawsuit except as herein stated. Further, that upon reduction to Judgment of the aforementioned lawsuit that Covenantor, her subrogees, heirs, or assigns will provide Covenantees with an executed satisfaction of said Judgment forthwith. Moreover, that this agreement or copy hereof shall be considered a satisfaction of any Judgment in any case presented by Covenantors against Covenantees for the accident dated July 11, 2008, and can be recorded as such should Covenantor, her subrogees, heirs, or assigns fail to execute a Satisfaction of Judgment.

3. Covenantor and Covenantees expressly reserve all rights of action, claims, demands or other legal remedies against all firms and persons except as modified by the terms of this Covenant. This Covenant is not a release, nor shall it be construed as a release of any party, person, firm or corporation.

4. Covenantor expressly represents that he has been fully advised of all facts of a potential lawsuit, and all claims arising out of or in relation thereto, and is aware and fully advised that the execution of this instrument will fully and forever prevent and bar the collection of any additional payments of any kind, nature or description against the Covenantees, their personal representatives, successors, assigns, heirs, officers, employees, agents, servants or attorneys.

5. In executing this agreement, Covenantor represents and warrants that she has relied on her investigation and has not relied on any statement, representation, or commitment of any kind made by Covenantees, their personal representatives, successors, assigns, heirs, officers, employees, agents, servants or attorneys.

6. All provisions and recitals in this Covenant are intended to be and are Covenants of the parties and are a material part of this agreement and binding on the parties hereto, their personal representatives, successors, assigns, heirs, officers, employees, agents, servants or attorneys.

7. The Covenantor agrees that if there exists any subrogation, assignment, lien, or interest, whether created by contract, statute or otherwise, that she will obtain a release from the person or entity holding such interest and that the Covenantor will protect, save, defend, hold harmless, and indemnify the Covenantees from any such subrogation, assignment, claims, or interests. By entering this agreement the Covenantees do not make any representation as to the effect of this agreement on the Covenantor's claim for underinsured motorist benefits and the Covenantor expressly acknowledges this disclaimer.

8. Should any damages be incurred by Covenantants due to the failure to immediately satisfy any judgment hereafter rendered, Covenantor agrees to save, defend, hold harmless and indemnify Covenantants from any and all liability therefore.

9. The parties expressly recognize that the payment made herein in this agreement is in partial settlement and satisfaction of a doubtful and disputed claim, that the Covenantants deny any liability to the Covenantor and that this agreement and payment is not intended as, nor should it be construed as, an admission of liability.

10. All parties agree that this Covenant is a product of negotiation and agreement among the parties.

11. The provisions and stipulations hereof shall inure to the benefit of, and shall be binding upon, the heirs, executors, administrators, assigns and successors in interest of the parties hereto.

12. The execution of the Covenant Not to Execute is acknowledged to have taken place in the State of South Carolina. Further, that such Covenant shall be construed pursuant to South Carolina law.

13. The Covenantor acknowledges that she has sought the services of an attorney for advice and counsel on the consequences of executing this Covenant Not to Execute. Further, Covenantor acknowledges that Covenantants have made no representations on the availability of excess liability coverage should this Covenant be executed.

IN WITNESS WHEREOF, the parties have executed this agreement on the day, month and year first above written.

AS TO COVENANTOR:



 (SEAL)
Martha Gentry, as Guardian ad Litem of Sharmin
Christine Walls

STATE OF SOUTH CAROLINA)

COUNTY OF ANDERSON)

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT is made on this the 25th day of May, 2010, by and between Wendy Timms, as Personal Representative of the Estate of Christopher Adam Timms, Sharmin Walls and Nationwide Mutual Fire Insurance Company;

WHEREAS, Christopher Adam Timms was fatally injured in an automobile accident that occurred on or about July 11, 2008, when he was a passenger in a vehicle being operated by Korey Mayfield and was involved in an accident in Anderson County, South Carolina; and

WHEREAS, the vehicle being driven by Korey Mayfield was owned by Sharmin Walls and insured by Nationwide Mutual Fire Insurance Company; and

WHEREAS, Nationwide Mutual Fire Insurance Company issued policy 61 39 M 424728 to Sharmin Walls with effective coverage dates of June 17, 2008 to December 17, 2008, containing liability limits of \$100,000.00; and

WHEREAS, Nationwide Mutual Fire Insurance Company filed a declaratory judgment action against Wendy Timms, as Personal Representative of the Estate of Christopher Adam Timms and others in the Court of Common Pleas for Anderson County, civil action number 2009-CP-04-0907 involving the applicability of several exclusions contained in the policy issued by Nationwide Mutual Fire Insurance Company to Sharmin Walls, policy number 61 39 M 424728 and whether the policy issued to Sharmin Walls should be reduced to the statutory minimum coverage of Twenty Five Thousand and 00/100 (\$25,000.00) Dollars per person/Fifty Thousand and 00/100 (\$50,000.00) Dollars per occurrence by virtue of the exclusions contained therein; and

WHEREAS, Wendy Timms as Personal Representative of the Estate of Christopher Adam Timms, also filed a crossclaim for wrongful death against Korey A. Mayfield and Sharmin C. Walls in the above-referenced case pending in the Court of Common Pleas for Anderson County, civil action number 2009-CP-04-0907; and

WHEREAS, Wendy Timms, as Personal Representative of the Estate of Christopher Adam Timms, and Nationwide Mutual Fire Insurance Company are desirous of determining the amount of liability coverage payable under the policy issued by Nationwide Mutual Fire Insurance Company to Sharmin Walls and resolving the issue via the declaratory judgment action filed by Nationwide Mutual Fire Insurance Company, with a stipulation between Wendy Timms, as Personal Representative of the Estate of Christopher Adam Timms and Nationwide Mutual Fire Insurance Company that the amount of coverage ultimately determined by the declaratory action will be binding upon both parties,

NOW, FOR AND IN CONSIDERATION OF the payment of the sum of Twenty Thousand (\$20,000.00) Dollars to Wendy Timms as Personal Representative of the Estate of Christopher Adam Timms, and for the benefit of the statutory beneficiaries of Christopher Adam Timms,

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deceased, by Nationwide Mutual Fire Insurance Company on behalf of Sharmin Walls and Korey Mayfield, the sufficiency and receipt of which is hereby acknowledged, the parties hereby agree as follows:

1. It is the express intent of the parties that Sharmin Walls and Korey Mayfield, their heirs and assigns shall never at any time be liable to Wendy Timms as Personal Representative of the Estate of Christopher Adam Timms, their subrogees, heirs or assigns, beyond the amount of liability insurance coverage determined by the court in a final judgment in the declaratory action referenced above, by reason of any damage, injury or wrongful death of Christopher Adam Timms, under said Nationwide Mutual Fire Insurance Company policy issued to Sharmin Walls, policy number 61 39 M 424728. Furthermore, Wendy Timms as Personal Representative of the Estate Christopher Adam Timms, their heirs and assigns, shall not at any time, nor shall anyone for her or on her behalf, enforce against Sharmin Walls and Korey Mayfield, by execution or otherwise, any judgment that may be rendered in the above-mentioned lawsuit except as herein stated. Further, Wendy Timms as Personal Representative of the Estate of Christopher Adam Timms, is dismissing the crossclaims currently asserted against Sharmin Walls and Korey Mayfield in civil action number 2009-CP-04-0907 without prejudice, subject, however, to the entitlement of Wendy Timms to collect the amount of such liability insurance under the Nationwide policy in excess of the \$20,000.00 paid contemporaneously with the execution of this document up to the amount of One Hundred Thousand and 00/1000 (\$100,000.00) Dollars to be determined in the pending declaratory judgment action referenced above.

2. In the event that it is determined in the above-referenced declaratory action that liability coverage is provided in the amount of One Hundred Thousand and 00/100 (\$100,000.00) Dollars, per person, Wendy Timms, as Personal Representative of the Estate of Christopher Adam Timms hereby acknowledges that she is waiving any claim in excess of the potential coverage of One Hundred Thousand and 00/100 (\$100,000.00) Dollars, whether by execution against Nationwide Mutual Fire Insurance Company, Sharmin Walls or Korey Mayfield, their heirs, successors and assigns.

3. In the event that it is determined in the above-referenced declaratory action that coverage is not provided in any amount greater than the Twenty Thousand and no/100 (\$20,000.00) Dollars paid contemporaneously with the execution of this Settlement Agreement, then Wendy Timms as Personal Representative of the Estate of Christopher Adam Timms acknowledges she can collect no other or further damages or benefits, whether alleged due in tort, contract or otherwise, from Nationwide Mutual Fire Insurance Company, Sharmin Walls or Korey Mayfield, under such policy as may be applicable through Nationwide Mutual Fire Insurance Company.

4. If the court declares in a final judgment, after appeal, if any, that the policy issued by Nationwide Mutual Fire Insurance Company to Sharmin Walls does not provide coverage above the mandatory policy limits of Twenty Five Thousand and 00/100 (\$25,000.00) Dollars per person, then Nationwide Mutual Fire Insurance Company will have fully discharged its obligation to provide coverage benefits under Sharmin Walls' policy to Wendy Timms, as Personal Representative of the Estate of Christopher Adam Walls, by payment of the Twenty Thousand and 00/100 (\$20,000.00) Dollars pursuant to this Agreement and no further payment will be required. Furthermore, Wendy Timms, as Personal Representative of the Estate of

W-4
Christopher Adam Timms, is dismissing without prejudice the crossclaims for wrongful death and survival actions filed against Sharmin Walls and Korey Mayfield, civil action number 200-CP-04-0907.

5. That this Settlement Agreement is not intended to affect or release any claim that Wendy Timms, as Personal Representative of the Estate of Christopher Adam Timms, may have to any other insurance benefits provided by any other insurance company other than Nationwide Mutual Fire Insurance Company, including but not limited to any UIM benefits available to Wendy Timms as Personal Representative of the Estate of Christopher Adam Timms.

6. That this Settlement Agreement is not intended to affect or release any claim that Wendy Timms, as Personal Representative of the Estate of Christopher Adam Timms, may have against any other third parties that may possess liability for the automobile accident that occurred on or about July 11, 2008 including any and all County and/or State agencies that may possess liability pursuant to the South Carolina Tort Claims Act.

7. The pending declaratory judgment action filed by Nationwide Mutual Fire Insurance Company will determine whether Wendy Timms as Personal Representative of the Estate of Christopher Adam Timms is entitled to benefits under the policy issued by Nationwide Mutual Fire Insurance Company to Sharmin Walls greater than Twenty Five Thousand and 00/100 (\$25,000.00) dollars per person, but not exceeding One Hundred Thousand and 00/100 (\$100,000.00) dollars per person, inclusive of attorney's fees and interest. However, nothing in this paragraph will prevent Wendy Timms, as Personal Representative of the Estate of Christopher Adam Timms, from obtaining the costs of litigation pursuant to the South Carolina Rules of Civil Procedure or any appellate rule if applicable.

8. Wendy Timms as Personal Representative of the Estate of Christopher Adam Timms expressly reserve all rights of action, claims, demands or other legal remedies against all firms and persons except as modified by the terms of this Agreement.

9. Wendy Timms, as Personal Representative of the Estate of Christopher Adam Timms, expressly represents that she have been fully advised of all facts and all claims arising out of or in relation thereto, and is aware and fully advised that the execution of this instrument will fully and forever prevent and bar the collection of any additional payments of any kind, nature or description from Nationwide Mutual Fire Insurance Company, Sharmin Walls and Korey Mayfield, their personal representatives, successors, assigns, heirs, officers, employees, agents, servants or attorneys, other than as set forth in this Agreement, as may be applicable under Nationwide Mutual Fire Insurance Company policy issued to Sharmin Walls, policy number 61 39 M 424728.

10. In executing this agreement, Wendy Timms, as Personal Representative of the Estate of Christopher Adam Timms, represents and warrants that she has relied on her investigation and has not relied on any statement, representation, or commitment of any kind made by Nationwide Mutual Fire Insurance Company, Sharmin Walls and Korey Mayfield, their personal representatives, successors, assigns, heirs, officers, employees, agents, servants or attorneys.

11. All provisions and recitals in this Agreement are intended to be and are covenants of the parties and are a material part of this agreement and binding on the parties hereto, their personal representatives, successors, assigns, heirs, officers, employees, agents, servants or attorneys.

12. Wendy Timms, as Personal Representative of the Estate of Christopher Adam Timms, agrees that if there exists any subrogation, assignment, lien, or interest, whether created by contract, statute or otherwise, that she will obtain a release from the person or entity holding such interest and that Wendy Timms, as Personal Representative of the Estate of Christopher Adam Timms, will protect, save, defend, hold harmless the Nationwide Mutual Fire Insurance Company, Sharmin Walls and Korey Mayfield from any such subrogation, assignment, claims, or interests. By entering this agreement Nationwide Mutual Fire Insurance Company and Sharmin Walls do not make any representation as to the effect of this agreement on any claim for other insurance benefits and Wendy Timms, as Personal Representative of the Estate of Christopher Adam Timms, expressly acknowledges this disclaimer.

13. The parties expressly recognize that the payment made herein in this agreement is in partial settlement and satisfaction of a disputed claim, that Nationwide Mutual Fire Insurance Company, Sharmin Walls and Korey Mayfield expressly deny any liability to Wendy Timms as Personal Representative of the Estate of Christopher Adam Timms and that this agreement and payment is not intended as, nor should it be construed as, an admission of liability for either the July 11, 2008 accident or for any coverage that is disputed as noted above.

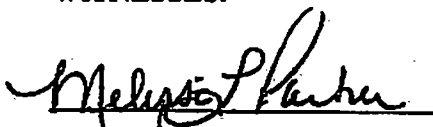
14. All parties agree that this Agreement is a product of negotiation and agreement among the parties.

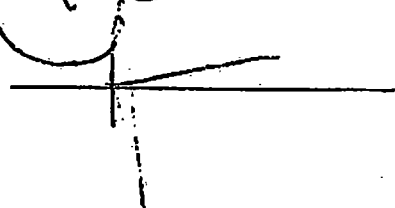
15. The provisions and stipulations hereof shall inure to the benefit of, and shall be binding upon, the heirs, executors, administrators, assigns and successors in interest of the parties hereto.

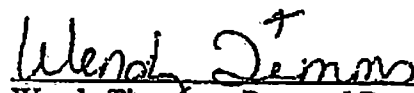
16. The execution of the Settlement Agreement is acknowledged to have taken place in the State of South Carolina. Further, that such Agreement shall be construed pursuant to South Carolina law.

IN WITNESS WHEREOF, the parties have executed this agreement on the day, month and year first above written.

WITNESSES:





 (SEAL)
Wendy Timms, as Personal Representative of the
Estate of Christopher Adam Timms

[Signature]
Cheryl Ann

NATIONWIDE MUTUAL FIRE INSURANCE
COMPANY

BY: *[Signature]* Julie Howe

ITS: Claims Representative

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STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT is made on this the 20 day of JULY, 2011, by and between Randi Harper and Nationwide Mutual Fire Insurance Company,

WHEREAS, Randi Harper was injured in an automobile accident that occurred on or about July 11, 2008, when she was a passenger in a vehicle being operated by Korey Mayfield that was involved in an accident in Anderson County, South Carolina, and

WHEREAS, the vehicle being driven by Korey Mayfield was owned by Sharmin Walls and insured by Nationwide Mutual Fire Insurance Company, and

WHEREAS, Nationwide Mutual Fire Insurance Company issued policy 61 39 M 424728 to Sharmin Walls with effective coverage dates of June 17, 2008 to December 17, 2008, containing liability limits of \$100,000 00, and

WHEREAS, Nationwide Mutual Fire Insurance Company filed a declaratory judgment action against Randi Harper and others in the Court of Common Pleas for Anderson County, civil action number 2009-CP-04 0907 involving the applicability of several exclusions contained in the policy issued by Nationwide Mutual Fire Insurance Company to Sharmin Walls, policy number 61 39 M 424728 and whether the policy issued to Sharmin Walls should be reduced to the statutory minimum coverage of Twenty Five Thousand and 00/100 (\$25,000 00) Dollars per person/Fifty Thousand and 00/100 (\$50,000 00) Dollars per occurrence by virtue of the exclusions contained therein, and

WHEREAS, Randi Harper and Nationwide Mutual Fire Insurance Company are desirous of determining the amount of liability coverage payable under the policy issued by Nationwide Mutual Fire Insurance Company to Sharmin Walls and resolving the issue via the declaratory judgment action filed by Nationwide Mutual Fire Insurance Company, with a stipulation between Randi Harper and Nationwide Mutual Fire Insurance Company that the amount of coverage ultimately determined by the declaratory action will be binding upon both parties,

NOW, FOR AND IN CONSIDERATION OF the payment of the sum of Ten Thousand (\$10,000 00) Dollars to Randi Harper by Nationwide Mutual Fire Insurance Company on behalf of Sharmin Walls and Korey Mayfield, the sufficiency and receipt of which is hereby acknowledged, the parties hereby agree as follows

1 It is the express intent of the parties that Sharmin Walls and Korey Mayfield, their heirs and assigns shall never at any time be liable to Randi Harper, their subrogees, heirs or assigns, beyond the amount of liability insurance coverage determined by the court in a final judgment in the declaratory action referenced above, by reason of any damage, injury to Randi Harper Furthermore, Randi Harper, their heirs and assigns, shall not at any time, nor shall anyone for her or on her behalf, enforce against Sharmin Walls and Korey Mayfield, by execution or otherwise, any judgment that may be rendered in the above mentioned lawsuit except as herein stated Further,

litigation pursuant to the South Carolina Rules of Civil Procedure or any appellate rule if applicable

8 Randi Harper expressly reserve all rights of action, claims, demands or other legal remedies against all firms and persons except as modified by the terms of this Agreement

9 Randi Harper, expressly represents that she have been fully advised of all facts and all claims arising out of or in relation thereto, and is aware and fully advised that the execution of this instrument will fully and forever prevent and bar the collection of any additional payments of any kind, nature or description from Nationwide Mutual Fire Insurance Company, Sharmin Walls and Korey Mayfield, their personal representatives, successors, assigns, heirs, officers, employees, agents, servants or attorneys, other than as set forth in this Agreement

10 In executing this agreement, Randi Harper, represents and warrants that she has relied on her investigation and has not relied on any statement, representation, or commitment of any kind made by Nationwide Mutual Fire Insurance Company, Sharmin Walls and Korey Mayfield, their personal representatives, successors, assigns, heirs, officers, employees, agents, servants or attorneys

11 All provisions and recitals in this Agreement are intended to be and are covenants of the parties and are a material part of this agreement and binding on the parties hereto, their personal representatives, successors, assigns, heirs, officers, employees, agents, servants or attorneys

12 Randi Harper, agrees that if there exists any subrogation, assignment, lien, or interest, whether created by contract, statute or otherwise, that she will obtain a release from the person or entity holding such interest and that Randi Harper, will protect, save, defend, hold harmless the Nationwide Mutual Fire Insurance Company, Sharmin Walls and Korey Mayfield from any such subrogation, assignment, claims, or interests. By entering this agreement Nationwide Mutual Fire Insurance Company and Sharmin Walls do not make any representation as to the effect of this agreement on any claim for other insurance benefits and Randi Harper, expressly acknowledges this disclaimer

13 The parties expressly recognize that the payment made herein in this agreement is in partial settlement and satisfaction of a disputed claim, that Nationwide Mutual Fire Insurance Company, Sharmin Walls and Korey Mayfield expressly deny any liability to Randi Harper and that this agreement and payment is not intended as, nor should it be construed as, an admission of liability for either the July 11, 2008 accident or for any coverage that is disputed as noted above

14 All parties agree that this Agreement is a product of negotiation and agreement among the parties

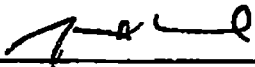
15 The provisions and stipulations hereof shall inure to the benefit of, and shall be binding upon, the heirs, executors, administrators, assigns and successors in interest of the parties hereto

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16 The execution of the Settlement Agreement is acknowledged to have taken place in the State of South Carolina Further, that such Agreement shall be construed pursuant to South Carolina law

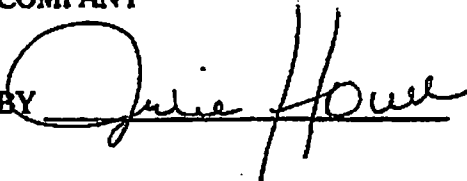
IN WITNESS WHEREOF, the parties have executed this agreement on the day, month and year first above written

WITNESSES



x  (SEAL)
Randi Harper

NATIONWIDE MUTUAL FIRE INSURANCE
COMPANY

BY 

ITS _____

IN THE STATE OF SOUTH CAROLINA

In the South Carolina Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

J. Cordell Maddox, Jr., Circuit Court Judge

Case No. 2016-000679

RECEIVED
DEC 30 2016
SC Court of Appeals

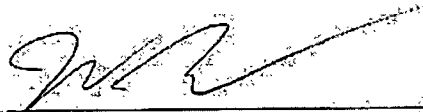
Nationwide Mutual Fire Insurance Company..... Appellant.

v.

Sharmin Christine Walls, Randi Harper, Wendy Timms in her
capacity as Personal Representative of the Estate of Christopher
Adam Timms, Deborah Timms, ... Respondents.

CERTIFICATE OF COUNSEL

Counsel for Appellant certifies that this Record on Appeal contains all material proposed
to be included by any of the parties and not any other material.



J.R. Murphy, Esquire (S.C. Bar No. 7941)
Wesley B. Sawyer, Esquire (S.C. Bar No. 100229)
Murphy & Grantland, P.A.
P.O. Box 6648
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(803) 782-4100
ATTORNEYS FOR APPELLANT

December 30, 2016

IN THE STATE OF SOUTH CAROLINA

In the South Carolina Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

J. Cordell Maddox, Jr., Circuit Court Judge

Case No. 2016-000679

RECEIVED
DEC 30 2016
SC Court of Appeals

Nationwide Mutual Fire Insurance Company..... Appellant.

v.

Sharmin Christine Walls, Randi Harper, Wendy Timms in her
capacity as Personal Representative of the Estate of Christopher
Adam Timms, Deborah Timms,..... Respondents.

PROOF OF SERVICE

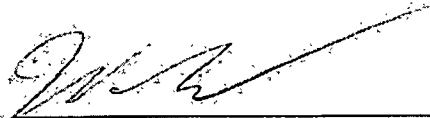
I certify that I have served the Record on Appeal on the following and their
counsel of record as follows:

Milford O. Howard, III, Esquire
Howard Law Firm, P.A.
Post Office Box 9754
Greenville, SC 29604
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Attorney for Sharmin Walls

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Anderson, SC 29621
Attorney for Randi Harper

December 30, 2016


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IN THE STATE OF SOUTH CAROLINA

In the South Carolina Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

J. Cordell Maddox, Jr., Circuit Court Judge

Case No. 2016-000679

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SC Court of Appeals

Nationwide Mutual Fire Insurance Company.....Appellant,

v.

Sharmin Christine Walls, Randi Harper, Wendy Timms in her
capacity as Personal Representative of the Estate of Christopher
Adam Timms, Deborah Timms, ...Defendants,

Of whom,

Sharmin Christine Walls, Randi Harper, and Wendy Timms in her
capacity as Personal Representative of The Estate of Christopher
Adam Timms, ...Respondents.

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

- I. The Circuit Court erred by failing to enforce exclusions in an automobile liability policy that prevent an insured from being indemnified beyond the minimum limits for injuries caused by his decision to flee law enforcement or commit a felony.
- II. If the Circuit Court correctly read the Supreme Court's opinion in *Williams v. GEICO* to preclude exclusions in auto policies that reduce coverage to the minimum limits when an insured is committing a felony or fleeing from law enforcement, then the decision in *Williams* should be overturned.

STATEMENT OF THE CASE

This appeal arises out of a tragic accident that resulted from Korey Mayfield's decision to flee from law enforcement. Mayfield was driving a Chevrolet Lumina insured by Nationwide and owned by Respondent Sharmin Walls. Walls, Christopher Timms, and Randy Harper were passengers in the vehicle when State Trooper Travis Wilson observed Mayfield crossing the yellow line and speeding. Trooper Wilson activated his blue lights. Instead of pulling over, Mayfield led Trooper Wilson on a high-speed chase. Mayfield ultimately lost control of the vehicle and ran off the road in a single-car accident that caused Timms' death and severe injuries to Walls and Harper.

The Nationwide policy insuring the Chevy Lumina provided liability limits of \$100,000 per person and \$300,000 per accident. However, the policy included two exclusions relevant to this appeal: (1) a flight from law enforcement exclusion; and (2) a felony exclusion. The exclusions applied "with regard to any amounts above the minimum limits required by the South Carolina Financial Responsibility Law" (R. pp. 109-110). In addition, although Walls had the option to purchase underinsured motorist coverage, she chose not to. (R. p. 119, lines 21-22). Therefore, the recoveries for her and the other passengers in the Lumina are limited to the applicable liability coverage.

After the accident, Nationwide tendered the minimum limits required by the South Carolina Financial Responsibility Act, \$50,000, to the Respondents here. Nationwide then filed this declaratory action seeking a declaration applying the felony and flight from law enforcement exclusions.¹ The case came before the Honorable J. Cordell Maddox, Jr. for bench trial on September 12, 2013.

At trial, Respondents raised for the first time their contention that Mayfield was a non-permissive user, attempting to trigger the policy's uninsured motorist coverage. Nationwide objected to this contention based on Respondents' failure to plead a claim for uninsured motorist coverage. (R. p. 118, lines 7-12). On August 18, 2014, the Circuit Court entered an Order in favor of Respondents and against Nationwide. (R. p. 11). The August 18 Order found that Mayfield was a non-permissive user of the vehicle and, therefore, Respondents were entitled to uninsured motorist coverage. (R. p. 16).

On August 26, 2014, Nationwide served a Motion to Alter or Amend the August 18 Order. (R. p. 83) (R. p. 85). In particular, Nationwide argued that the Respondents had failed to raise the issue of Mayfield's non-permissive use in their pleadings, and that Respondents were precluded from seeking uninsured motorist coverage because they had recovered liability payments equal to the mandatory minimum limits from two different insurers.² (R. p. 86). Nationwide also argued

¹ Initially, Korey Mayfield contended that Sharmin Walls was actually driving the car at the time of the accident. However, Mayfield pled guilty to reckless homicide as a result of the accident, and the Circuit Court entered summary judgment on August 29, 2011 finding that Mayfield was the driver of Walls' vehicle at the time of the accident. That ruling has not been appealed.

² In addition to recovering \$50,000 from Nationwide as the uncontested portion of Nationwide's liability coverage, Respondents also recovered from State Auto who insured Mayfield for an at-home vehicle. (R. p. 20); (R. p. 23). At trial, Respondents failed to present the Safe Auto policy, and failed to present evidence that the policy did not provide liability coverage to Mayfield for the accident.

that the Order misapplied South Carolina law, failed to make the key factual determinations of whether Mayfield was fleeing from law enforcement at the time of the accident and committing a felony, and made factual determinations that were not supported by the record. (R. p. 88-92; p. 103-104).

The Circuit Court held a hearing on Nationwide's Motion to Alter or Amend on March 6, 2015. At the hearing, Respondents withdrew their contention that the uninsured motorist coverage applied. (R. p. 123, lines 10-23). Furthermore, the Circuit Court found that Mayfield was fleeing from law enforcement at the time of the accident. (R. p. 122, lines 12-17). Subsequently, on February 26, 2016, the Circuit Court entered an Order finding Mayfield was fleeing from law enforcement at the time of the accident and that his conduct constituted a felony. (R. p. 5). Nonetheless, the Circuit Court refused to apply the plain language of the exclusion. Instead, the Circuit Court read the Supreme Court's recent decision in *Williams v. Government Employees Insurance Company*, 409 S.C. 586, 762 S.E.2d 705 (2014), to hold that *any* exclusion in an automobile liability policy issued in South Carolina that reduces the applicable limits of coverage to the minimum amount required by the financial responsibility laws is void and violates public policy pursuant to South Carolina Code Annotated Section 38-77-142(c). (R. p. 6 and pp. 8-9).

The Circuit Court also held Nationwide's exclusion unenforceable because the policy provision was not set out in bold or otherwise brought to the insured's attention in some way other than being plainly written in the policy. (R. pp. 7 & 9). This appeal followed.

SUMMARY OF THE ARGUMENT

The Nationwide policy excludes liability coverage for amounts in excess of the state's minimum required limits of coverage while an insured is committing a felony or fleeing from law enforcement. There is no dispute in this case that Timms was fleeing from law enforcement and

that he pled guilty to a felony as a result of the accident. However, relying on the Supreme Court's holding in *Williams*, the Circuit Court held, in effect, that *any* provision in an automobile liability policy that reduces coverage to the mandatory minimum limits violates public policy and is therefore unenforceable. Nationwide respectfully contends that the Circuit Court misread the *Williams* case, which held that an *arbitrary and capricious* family member exclusion violated public policy. In contrast, the exclusions here – flight from law enforcement and commission of a felony exclusions – merely limit coverage for conduct that the State of South Carolina has already deemed criminal. Rather than arbitrarily or capriciously excluding coverage, these provisions support the State's public policy by preventing an insured from being indemnified in amounts over and above the State's mandatory minimum limits when the insured is committing a crime. Therefore, the exclusions should be enforced as written.

Alternatively, if the Circuit Court read the *Williams* case correctly, then the opinion in *Williams* should be overturned. In reaching its conclusion, the Supreme Court in *Williams* relied upon the phrase "within the coverage," and interpreted that phrase to mean "within the limits" on the face of the policy's declarations page. However, the General Assembly's use of the phrase "within the coverage" in other insurance statutes clearly reveals that "coverage" means the terms and conditions of the policy, not the policy limits. When the General Assembly intends to use the word "limits," it does so. Likewise, a review of the South Carolina Supreme Court's use of the phrase "within the coverage" in numerous insurance cases reveals that "coverage" does not mean "limits."

The Circuit Court also created a new rule that has never been recognized in South Carolina by holding the exclusion should have been set out in bold or otherwise made apparent in the insurance policy. This is not the law. South Carolina has long held to the traditional rule that an

insured is expected to read the insurance policy, and courts will enforce plainly worded exclusions. Because the exclusions in this case are plain and unambiguous, they must be enforced as written.

STATEMENT OF FACTS

The facts of the case were largely stipulated at trial. Walls owned a Chevrolet Lumina insured by Nationwide. (R. p. 2). The policy provided liability limits of \$100,000 per person, \$300,000 per accident. (R. p. 109). However, the policy contained an exclusion that applied to any coverage in excess of the State's mandatory minimum limits if bodily injury occurred while an insured – either the named insured, a resident relative, or a permissive user – was fleeing from law enforcement or committing a felony:

B. This coverage does not apply, with regard to any amounts above the minimum limits required by the South Carolina Financial Responsibility Law as of the date of the loss, to:

6. **Bodily injury or property damage** caused by:

- a) You;
- b) a relative; or
- c) anyone else while operating your auto:
 - (1) while committing a felony; or
 - (2) while fleeing a law enforcement officer.

(R. p. 110).

On July 11, 2008, Walls, Mayfield, Harper, and Timms had been drinking at Walls' residence when they left as a group. (R. p. 244-246). Walls had been drinking wine all morning, so she got in the car and allowed Mayfield to drive her Chevy Lumina without protest. (R. p. 245-246). The group made a number of stops before Trooper Travis Wilson observed the vehicle on South Carolina Highway 81 in Anderson crossing the yellow line and going approximately 12 miles an hour over the speed limit. (R. p. 248); (R. p. 108). Trooper Wilson decided to pull the vehicle over and activated his blue lights. (R. p. 108). Then, the Lumina – operated by Mayfield – went from the far left lane (81 is a four-lane road) to the far right turning lane, disregarded a stop signal, and continued down 81 South. (R. p. 108). While driving down 81

South, Trooper Wilson's vehicle reached speeds of 109 miles per hour in an effort to keep up with the Lumina. (R. p. 108).

Mayfield turned left off 81 South onto Fred Dean Road. (R. p. 109). In order to keep up, Trooper Wilson's vehicle reached speeds exceeding 95 miles per hour. (R. p. 109). Mayfield then turned right onto Flat Rock Road and then left onto Leatherdale Road, disregarding multiple stop signs. (R. p. 109). At that time, Trooper Wilson received instructions to terminate the pursuit, which he did. (R. p. 109). However, by the time Trooper Wilson deactivated his siren and blue lights, the Lumina was out of sight. (R. p. 109).

Knowing that Leatherdale Road was a curvy road, Trooper Wilson proceeded down Leatherdale to ensure that the Lumina made it through several upcoming curves. (R. p. 109). Approximately a mile down the road, Mayfield lost control of the Lumina and ran off the road in a single-vehicle accident. (R. p. 109). Trooper Wilson came upon the scene within a minute-and-a-half of terminating the chase. (R. p. 109). The Greenville County Accident Reconstruction Team investigated and determined that Mayfield was travelling a minimum of 72 miles per hour when he lost control. (R. pp. 109 & 194). The speed limit on that portion of Leatherdale Road was 35 miles per hour. (R. p. 109). Timms died as a result of the accident, and Mayfield, Walls, and Harper each sustained serious injuries.

Mayfield was charged with and ultimately pled guilty pursuant to *North Carolina v. Alford*, 400 U.S. 25, 91 S.Ct. 160 (1970), to reckless homicide – a felony. (R. p. 110). Furthermore, the Circuit Court made a factual determination that Mayfield was fleeing a law enforcement officer at the time of the accident. (R. p. 4). The Circuit Court based its factual determination on damage to the vehicle, the speed of the vehicle at the time of the accident, the dash cam video, witness statements, and the timeline. (R. pp. 4-5). Even though Trooper

Wilson had terminated the chase, the Circuit Court found that Mayfield's unlawful course of conduct and manner of driving continued up until the time of the crash.

Relying on the flight-from-law-enforcement and felony exclusions in the policy, Nationwide agreed to tender its \$50,000 of undisputed liability coverage, which the Respondents accepted. (R. pp. 253, 256 & 261). Furthermore, Mayfield had liability coverage under a policy of insurance issued by State Auto. State Auto also tendered its liability limits of \$50,000. (R. pp. 20 & 26). Then, Nationwide filed this declaratory judgment action seeking application of the felony and flight from law enforcement exclusions. (R. p. 33).

STANDARD OF REVIEW

"A suit for declaratory judgment is neither legal nor equitable, but is determined by the nature of the underlying issue." *Lee v. University of South Carolina*, 407 S.C. 512, 517, 757 S.E.2d 394, 397 (2014) (citation omitted). "Because the construction of a clear and unambiguous contract is a matter of law for the court, [appellate courts] review the trial court's findings of law *de novo*." *Id.* (citing *Watts v. Monarch Builders, Inc.*, 272 S.C. 517, 520, 252 S.E.2d 889, 891 (1979)); see also *Gary v. Askew*, 789 S.E.2d 94, 99 (S.C. Ct. App. June 1, 2016).

ARGUMENT

Nationwide's flight from law enforcement and felony exclusions prevent an insured from receiving excess liability coverage for his commission of a crime. Many states completely preclude coverage for criminal acts. At a minimum, an exclusion that prevents or limits an individual from receiving indemnification for his felonious acts supports, rather than conflicts with, public policy. Therefore, the exclusions should be enforced as written. To the extent that South Carolina has recognized a countervailing interest of protecting the public from injuries caused by the tortious act of a driver, that interest has been stated to be up to the minimum amount

of coverage required by statute, not more. The *Williams* case does not change this outcome, especially for exclusions that promote rather than harm public policy.

Respectfully, if the Supreme Court in *Williams* read § 38-77-142 to preclude *any* exclusion in a policy that reduces the limits of coverage to the mandatory minimum amount based upon the insured's conduct, then the *Williams* decision misreads the phrase "within the coverage" in that statute. If the Court finds that the decision in *Williams* applies only to arbitrary and capricious exclusions that otherwise violate public policy, then the Court need not address this question.

I. The Circuit Court erred by failing to enforce exclusions in an automobile liability policy that prevent an insured from being indemnified beyond the minimum limits for injuries caused by his decision to flee law enforcement or commit a felony.

Nationwide's policy excludes illegal conduct. Logically, an exclusion that discourages illegal conduct promotes public policy. However, because South Carolina's General Assembly has determined that the State also has a public policy of protecting injured members of the public, South Carolina law requires minimum limits of coverage even when an insured's conduct violates the law. *See e.g.*, S.C. Code Ann. § 38-77-140 (providing minimum limits of required liability coverage). The Court of Appeals in *United Services Auto. Ass'n v. Markosky*, 340 S.C. 223, 530 S.E.2d 660, (Ct. App. 2000), recognized that § 38-77-140 defines the extent of the state's public policy as to mandatory liability coverage:

That public policy, however, has been effected by the enactment of the minimal limits coverage statute found in S.C. Code Ann. § 38-77-140. As recognized in *Shores*, "the legislature has determined that for all vehicles registered in South Carolina, at least minimal coverage is necessary to protect the public." To the extent the legislature determines this public policy is not being effected, it has the option of raising the minimum limits. We will not construe the

plain language of the statute to extend the public policy beyond that which was plainly intended.

340 S.C. at 230, 530 S.E.2d at 664. Therefore, exclusions that reduce coverage to the State's mandatory minimum limits are enforceable to the extent that they otherwise comply with South Carolina's public policy. Nationwide's exclusions for criminal conduct do just that.

In *Williams*, the Supreme Court read South Carolina Code § 38-77-142 to hold that "once the face amount of coverage is agreed upon, it may not be arbitrarily reduced or limited by conflicting policy provisions that effectively retract this stated coverage." 409 S.C. at 604, 762 S.E.2d at 715. The Circuit Court interpreted this holding to mean that *any* step down provision violates South Carolina public policy. The Circuit Court read *Williams* too broadly. The Supreme Court in *Williams* merely held that *arbitrary and capricious* step down provisions are unenforceable. Because the flight from law enforcement and felony exclusions are far from arbitrary or capricious, these step down provisions comport with South Carolina public policy and are enforceable.

A. The Nationwide policy plainly and unambiguously excludes liability coverage for amounts exceeding the State's mandatory minimum limits when an insured driver is fleeing from law enforcement or committing a felony.

Nationwide's flight from law enforcement and felony exclusions plainly and unambiguously define what conduct is subject to the exclusions, and to whom the exclusions apply:

B. This coverage does not apply, with regard to any amounts above the minimum limits required by the South Carolina Financial Responsibility Law as of the date of the loss, to:

6. Bodily injury or property damage caused by:

- a) You;
- b) a relative; or
- c) anyone else while operating your auto:
 - (1) while committing a felony; or
 - (2) while fleeing a law enforcement officer.

(R. p. 109-110).

Despite the plain wording and the plain application of the exclusion to Mayfield, the Circuit Court held “the only rational reading of the [sic] this provision of the policy would make it applicable only to the ‘insured purchaser’ being guilty of such conduct.” (R. pp. 7-8). Respectfully, the Circuit Court’s reading completely ignores parts b) and c) of the exclusion stating that it also applies to a “relative” or “anyone else” while driving the vehicle. There is no ambiguity here.

“A contract is ambiguous when it is capable of more than one meaning or when its meaning is unclear.” *Bardsley v. Government Employees Ins. Co.*, 405 S.C. 68, 75, 747 S.E.2d 436, 439-40 (2013) (citation omitted). “Accordingly, when a court makes a finding of ambiguity, *it must set forth either how a provision is capable of more than one meaning or is obscure in meaning.* A simple finding of ambiguity, absent any reasoning, is insufficient.” *Id.* (emphasis added).

The Circuit Court’s Order fails to set forth an alternative reasonable reading of the exclusion that would provide coverage under the facts of this claim. The exclusion is plain. The Circuit Court entered summary judgment, finding that Mayfield was operating the insured automobile. Therefore, he is “anyone else . . . operating your auto” and the exclusion applies if he was fleeing law enforcement or committing a felony. In its February 26, 2016 Order, the Circuit Court found that Mayfield was doing both. He was fleeing law enforcement and committing a felony when the accident occurred. (R. p. 5). Therefore, the exclusion applies by its plain terms. Respondents failed to present any logical alternative reading of the exclusion that would provide coverage in this case. Therefore, the exclusion is unambiguous.

The Circuit Court also found the exclusion unconscionable, but did not expressly state why. It appears that one justification by the Circuit Court was that “it was nowhere made clear in the

policy, that the coverage she purchased and paid for would be reduced in the event of certain circumstances.” (R. p. 7). The Circuit Court further held: “the testimony in evidence shows Such [sic] clause was not set out in bold print or otherwise made apparent to Walls in the insurance policy.” (R. p. 9).

Respectfully, the Stipulation of Facts submitted to the Circuit Court states that the policy contained the exclusion. (R. p. 109-110). Moreover, neither Walls nor any other individual involved in the insurance transaction testified at trial. There was no evidence presented at trial showing that Walls was not aware of the exclusion or that the exclusion was not clearly presented in the policy. Therefore, this factual finding was not supported by the evidence presented at trial. Moreover, the ruling that the exclusion is unconscionable because it was not sufficiently brought to Walls’ attention is based upon a mistake of law.

South Carolina’s appellate courts have never held that a policy exclusion was unenforceable because it was not brought to an insured’s attention. Rather, “[i]nsurance policies are subject to the general rules of contract construction.” *South Carolina Farm Bureau Mut. Ins. Co. v. Dawsey*, 371 S.C. 353, 356, 638 S.E.2d 103, 104 (Ct. App. 2006) (citation omitted). “Although exclusions in a policy are construed against the insurer, insurers have the right to limit their liability and to impose conditions on their obligations provided they are not in contravention of public policy or a statutory prohibition.” *Id.* (citations omitted). “[I]n cases where there is no ambiguity, contracts of insurance, like other contracts, must be construed according to the terms which the parties have used, to be taken and understood in their plain, ordinary and popular sense.” *Precision Walls, Inc. v. Liberty Mut. Fire Ins. Co.*, 410 S.C. 175, 183, 763 S.E.2d 598, 602 (Ct. App. 2014) (citation omitted). “The court cannot torture the meaning of policy language to extend

coverage not intended by the parties.” *Id.* (quoting *Dawsey*, 371 S.C. at 638 S.E.2d at 105 (other citations omitted)).

South Carolina’s appellate courts have never placed the burden of bringing exclusions that are plainly stated in the insurance policy to the insured’s attention. Rather, the plain language of the policy is designed to do just that. Requiring that one exclusion have special print formatting to grab the insured’s attention would – by definition – render another exclusion less noticeable. Moreover, if every exclusion used the same font, then none would stand out against each other. Rather than creating this impossible burden for insurers, South Carolina – like other jurisdictions – adopts the reasonable rule that an insured has the burden and expectation of reading her insurance policy and knowing its contents. *See Doub v. Weathersby-Breeland Ins. Agency*, 268 S.C. 319, 326, 233 S.E.2d 111, 114 (1977) (“One entering into a contract should read it and avail himself of every reasonable opportunity to understand its contents and meaning.”). Therefore, because the exclusion is plain and unambiguous, she would have known about the exclusion if she simply fulfilled her duty of reading the policy.

B. By wording the exclusion as a step-down provision, Nationwide provided more clarity to the insured about how the exclusion applies under South Carolina law.

On the most basic level, the Circuit Court held Nationwide’s flight from law enforcement and felony exclusions violate South Carolina law because they are step-down provisions. (R. p. 6). If anything, the fact that the exclusion is worded as a step-down should confirm that the exclusion is valid and enforceable under South Carolina law. South Carolina Code § 38-77-140 mandates minimum limits of coverage even when an insured is committing illegal or intentional acts. *See* S.C. Code Ann. § 38-77-140; *South Carolina Farm Bureau Mut. Ins. Co. v. Mumford*, 299 S.C. 14, 17, 382 S.E.2d 11, 12-13 (Ct. App. 1989) (holding that the Act mandates minimum limits coverage and “draws no distinction between intentional acts and negligent acts . . .”).

Therefore, Nationwide could not exclude bodily injuries for felonies or flight from law enforcement if the exclusion had the impact of reducing coverage below the minimum limits. The exclusion acknowledges this rule by plainly informing the insured that it applies “with regards to any amounts above the minimum limits required by the South Carolina Financial Responsibility Law” (R. p. 109). The exclusion applies, but only for amounts in excess of the mandatory minimum limits.

By wording this exclusion as a step-down provision, Nationwide accurately conveys the legal effect of the exclusion to the insured. In fact, a provision merely stating that felony or flight-from-law-enforcement is “excluded” would likely lead an insured to the incorrect conclusion that the policy provides no coverage for that conduct. Instead, the Nationwide policy language accurately describes how the exclusion works.

C. The flight from law enforcement and felony exclusions comport with public policy as stated by the Supreme Court in *Williams*.

The felony and flight-from-law-enforcement exclusions plainly and unambiguously exclude conduct that the State of South Carolina has already recognized as being against public policy. The General Assembly has answered the question of whether it is proper to discourage individuals from fleeing from law enforcement or committing felonies. The General Assembly itself has attempted to discourage this conduct by making them crimes. *See* S.C. Code Ann. 56-5-2910 (“A person who is convicted of, pleads guilty to, or pleads nolo contendere to reckless homicide is guilty of a felony”); S.C. Code Ann. § 56-5-750 (“[I]t is unlawful for a motor vehicle driver . . . to fail to stop when signaled by a law enforcement vehicle by means of a siren or flashing light.”). Nationwide’s policy exclusions promote the public policy of these criminal statutes by providing that an insured will not be indemnified for this illegal conduct above the mandatory minimum limits.

Generally, South Carolina has consistently decided that voluntary coverage – i.e., coverage in amounts above the minimum limits – is subject to the general rules of contract construction. Insurance contracts are construed according to traditional contract principles. *Schulmeyer v. State Farm Fire and Cas. Co.*, 353 S.C. 491, 495, 579 S.E.2d 132, 134 (2003). “The cardinal rule of contract interpretation is to ascertain and give legal effect to the parties’ intentions as determined by the contract language.” *Id.* (citation omitted). “Parties to a contract have the right to construct their own contract without interference from courts to rewrite or torture the meaning of the policy to extend coverage.” *Id.* (citing *Gambrell v. Travelers Ins. Co.*, 280 S.C. 69, 310 S.E.2d 814 (1983)). This general rule is the default rule for insurance policies providing optional coverage. Therefore, an insurer may include plainly worded exclusions in voluntary coverage so long as those exclusions do not violate public policy. *See e.g., Mumford*, 299 S.C. at 19, 382 S.E.2d at 13 (“The principle that one should not be permitted to insure against his own intentional wrongdoing applies to voluntary insurance, not compulsory insurance.”); *Cowan v. Allstate Ins. Co.*, 357 S.C. 625, 594 S.E.2d 275 (2004) (reaffirming the holding in *Shores v. Weaver*, 351 S.C. 626, 571 S.E.2d 715 (Ct. App. 2002), that an insured’s failure to cooperate cannot relieve the insurer’s obligations to pay a judgment up to the mandatory minimum limits); *Pennsylvania Nat. Mut. Cas. Ins. Co. v. Parker*, 282 S.C. 546, 320 S.E.2d 458 (Ct. App. 1984) (holding that a business use exclusion “is void to the extent of minimum coverage”); *Universal Underwriters Ins. Co. v. Metropolitan Prop. and Life Ins. Co.*, 298 S.C. 404, 380 S.E.2d 858 (Ct. App. 1989) (approving provision that limited liability coverage to mandatory minimum coverage when vehicle is being operated by a statutory permissive insured); *Potomac Ins. Co. v. Allstate Ins. Co.*, 254 S.C. 107, 173 S.E.2d 653 (1973) (holding that a policy exclusion limiting coverage for certain permissive users was invalid up to the statutory limits); S.C. Code Ann. § 56-9-20(d) (“excess or additional coverage shall not

be subject to the provisions of this chapter” and “the term ‘motor vehicle liability policy’ shall apply only to that part of the coverage which is required by this article.”).

The Court of Appeals in *Universal Underwriters* put the issue succinctly: “It is clear that, while additional coverage is permitted by the Act, only the minimum limit is mandatory. Therefore, the Act provides no basis to hold that the provision of the policy limiting coverage to the statutory minimum is contrary to public policy.” *Id.* at 410, 380 S.E.2d at 862.

In *Williams*, the Supreme Court recognized an exception to this general rule by striking down a family member step-down provision that reduced coverage to the minimum limits when the injured party was a relative of the insured. The Supreme Court relied upon two principles to reach its conclusion. First, the Supreme Court read South Carolina’s Omnibus statute to hold that the policy could not reduce coverage for statutory insureds – which include the named insured and permissive users – below the limits listed on the declarations page. *Williams*, 409 S.C. at 604, 762 S.E.2d at 715. Second, the Supreme Court held that § 38-77-142 precluded a provision that arbitrarily or capriciously reduces coverage: “Therefore, once the face amount of coverage is agreed upon, it may not be *arbitrarily reduced or limited* by conflicting policy provisions that effectively retract this stated coverage.” *Id.* (emphasis added). After reviewing approaches taken by other jurisdictions, the Supreme Court held that the reduction of “coverage based solely on a familial relationship is arbitrary, capricious and injurious to the public good.” *Id.* at 607, 762 S.E.2d at 717. Therefore, the Supreme Court struck down the family member provision as violating South Carolina’s public policy. *Id.* However, this limited exception does not render *all* step-down provisions contrary to public policy. Rather, the Supreme Court in *Williams* limited its holding to a family member step-down provision that the Supreme Court deemed arbitrary and capricious.

The Circuit Court below failed to recognize the two-step analysis applied by the Supreme Court in *Williams*. The Supreme Court held the family member exclusion violated public policy because of § 38-77-142 *and* the conclusion that the exclusion was arbitrary and capricious. The Circuit Court ignored the second prong of the analysis. There is no finding in this case that the flight from law enforcement and felony exclusions are arbitrary and capricious. In fact, they are quite the opposite. These exclusions foster public policy by preventing an individual who chooses to break the law from being indemnified for the consequences of his criminal conduct.

“An exclusion in an automobile policy as to loss while the automobile used is engaged in unlawful flight from the police is not against public policy.” 8A Couch on Ins. § 121:92; *see also* 41 A.L.R.6th 527 (“Efforts to exclude coverage for such behavior are often bolstered by judicial and legislative policies against allowing individuals to insure themselves against the consequences of their own intentional misconduct.”). Unlike the family member provision at issue in *Williams*, an exclusion that merely excludes illegal conduct can no more be arbitrary and capricious than the criminal statutes that make this same conduct illegal. Because the General Assembly has already deemed Mayfield’s conduct reprehensible by making it criminal, Nationwide’s exclusion for the same reprehensible conduct is not at all arbitrary.

The Supreme Court spends a significant portion of its analysis in *Williams* discussing the public policy of the family member step-down provision and whether it is arbitrary and capricious. *Id.* at 604-607, 762 S.E.2d at 715-716. The Supreme Court also discusses the reasoning from a number of courts that have struck down similar family member limitations. In contrast, courts from across the country routinely uphold and enforce felony and flight from law enforcement exclusions. *See Alfa Specialty Ins. Co. v. Jennings*, 906 So. 2d 195 (Ala. Civ. App. 2005) (holding that a criminal acts exclusion in an automobile liability policy did not violate public policy);

Southern Farm Bureau Cas. Ins. Co. v. Easter, 374 Ark. 238, 287 S.W.3d 537 (2008) (holding that eluding-lawful-arrest exclusion did not violate public policy as stated in state's compulsory insurance statute or no-fault statute); *Hix v. Hertz Corp.*, 307 Ga. App. 369, 705 S.E.2d 219 (Ct. App. 2010) (same); *Bohner v. Ace American Ins. Co.*, 359 Ill. App. 3d 621, 834 N.E.2d 635, (App. 2 Dist. 2005) (holding that criminal act exclusion was enforceable and did not violate public policy).

Public policy is always harmed when a policy gives insureds license to engage in criminal conduct. *Bailey v. Lincoln General Ins. Co.*, 255 P.3d 1039, 1048 (Colo. 2011). In fact, public policy strongly *favours* criminal acts exclusions: "Indeed, this public-policy principle is so compelling that, in many jurisdictions, insurers may actually violate public policy if they fail to include criminal-acts or intentional-acts exclusions in their policies." *Id.* at 1048.

A key aspect of the Supreme Court's holding in *Williams* was the arbitrariness of holding that an injured person's recovery could be limited solely because that injured person was related to the tortfeasor. Family members are part of the group specifically defined as "insureds" under the statutory scheme. *See* § 38-77-30(7). "To allow an insurer to determine the extent to which an injured party can recover within the insured's policy coverage based solely on a familial relationship is arbitrary and capricious and violative of public policy." *Williams*, 409 S.C. at 607, 762 S.E.2d at 717. In other words, the limitation applied based upon the identity of the victim, not the nature of the insured's – Mayfield's – conduct.

The flight-from-law-enforcement exclusion operates in a very different manner from the family-member step-down provision. Specifically, coverage is not dependent upon the identity of the *victim*. Instead, coverage is dependent upon the *conduct of the insured*. The exclusion is designed to discourage certain undesirable behavior by limiting the protections afforded by the

policy when the insured undertakes that conduct. Certainly, a flight-from-law-enforcement exclusion comports with and parallels the legislature's stated public policy against fleeing from law enforcement because the legislature has criminalized such conduct. Therefore, rather than violating public policy, the flight-from-law-enforcement exclusion actually *supports* public policy.

In the *Bailey* case, the Supreme Court of Colorado considered the flight from law enforcement exclusion and concluded that the exclusion did not violate public policy. The Supreme Court began by recognizing three competing public policy interests: (1) protecting tort victims; (2) protecting the freedom of contract rights of insurers and insureds; and (3) allowing insurers to shift risk based on their insureds' conduct, especially when that conduct significantly increases the risk of the insurers' liability and may be encouraged by indemnification. 255 P.3d at 1046-47. South Carolina recognizes these same principles. *See Williams*, 409 S.C. at 598, 762 S.E.2d at 712 (recognizing (1) the purpose of the MVFRA of protecting tort victims and (2) the parties' freedom of contract rights); *Columbia Real Estate & Trust Co. v. Royal Exch. Assurance*, 132 S.C. 427, 128 S.E. 865, 867-68 (1925) (recognizing that one purpose of the stated value policy statute is to reduce the moral hazard created by over insuring property).

The Colorado Supreme Court recognized the purpose of the flight from law enforcement exclusion: "Most felonious criminal misconduct, like intentional misconduct, significantly alters the calculus of risk between the insurer and the insured, subjecting the insurer to increased and significantly greater risk of liability." *Bailey*, 255 P.3d at 1047. "If a single insured is allowed, through an intentional act, to consciously control risks covered by the policy, the central concept of insurance is violated." *Bohner*, 359 Ill. App. 3d at 626, 834 N.E.2d at 84 (citation omitted). "[M]ost insureds can keep themselves from engaging in felonious criminal conduct in the same

way that “[m]ost individuals can protect themselves from causing intentional harm.” *Bailey*, 255 P.3d at 1047. Because the exclusions have a clear, intelligible, and logical basis, they are neither arbitrary nor capricious.

The Colorado Supreme Court also held that the flight from law enforcement exclusion supports public policy: “Finally, public policy is also concerned with insurers giving insureds license to engage in intentional misconduct, which may be ‘more likely if . . . insured[s] believe [they] will not have to bear the financial costs of the intentional conduct.” *Id.* at 1047-48. “The concern with giving insureds license to engage in intentional misconduct applies with equal force to most felonious criminal misconduct.” *Id.* This public policy is so important, many jurisdictions hold that an insurer actually violates public policy if it fails to include a criminal-acts or intentional-acts exclusion. *Id.* at 1048 (citing several cases).

Nationwide’s policy discourages insureds from committing illegal acts. The exclusions merely discourage conduct that South Carolina has already deemed criminal. Therefore, the exclusions support public policy. After finding that Mayfield was fleeing from law enforcement and committing a felony at the time of the accident, the Circuit Court should have enforced the exclusions according to their plain terms.

D. Walls and her passengers could have protected themselves by purchasing underinsured motorist coverage.

The Circuit Court made much of the fact that the exclusion should not be applied in such a way that it reduces coverage that Walls purchased. However, this is not a first-party claim. Unlike the exclusion at issue in *Williams*, the felony and flight from law enforcement exclusions do not treat Walls any differently than any other tort claimant. She is not receiving less recovery because she is the named insured, or merely because she was a passenger in the accident vehicle. Respondents would be entitled to the same amount of recovery from Nationwide if they had all

been in a separate vehicle wholly disconnected with Mayfield. The exclusion focuses on the insured's (Mayfield's) conduct, not the identity of the victims.

Walls' recovery – if any – arises out of the tort liability of Mayfield as the driver of the vehicle.³ Claimants such as Walls and the other Respondents have the ability to protect themselves from injuries when an at-fault driver does not have adequate liability insurance by purchasing optional underinsured motorist coverage. Walls rejected that optional coverage when she purchased the Nationwide policy. Therefore, the mere fact that the policy reduces the available liability coverage does not violate public policy because Walls could have protected herself from that result by simply purchasing UIM coverage. Her failure to do so does not justify refusing to apply plainly worded exclusions that do not violate public policy. Walls has already received all the liability coverage under the policy that her policy unambiguously provides.

Nationwide's felony and flight from law enforcement exclusions strongly support South Carolina public policy by preventing an insured driver from receiving excess indemnification for his criminal conduct. Mayfield chose to flee from law enforcement. Nationwide agreed to insure Mayfield – as a driver of the insured vehicle – for civil liability arising out of his negligent acts, but Nationwide did *not* agree to insure Mayfield for liability arising out of his intentional felonious conduct beyond the mandatory minimum. Although Nationwide could not completely exclude coverage for Mayfield's criminal conduct, it had the freedom to apply the exclusion to any limits in excess of the mandatory minimum. Because the exclusion comports with and supports South Carolina's public policy of prohibiting criminal conduct, the exclusion is valid and enforceable as written.

³ Notably, Timms' estate and Harper also asserted claims against Walls for negligent entrustment.

II. If the Circuit Court correctly read the Supreme Court's opinion in *Williams v. GEICO* to preclude exclusions in auto policies that reduce coverage to the minimum limits when an insured is committing a felony or fleeing from law enforcement, then the decision in *Williams* should be overturned.

The Supreme Court in *Williams* did *not* hold that § 38-77-142 prohibits exclusions that reasonably limit coverage when the insured driver is committing illegal acts. However, if this premise is wrong and the Circuit Court correctly read *Williams* as prohibiting *all* exclusions in an automobile liability policy that reduce coverage to the state's mandatory minimum limits, then Nationwide respectfully contends that the opinion in *Williams* misreads § 38-77-142, and Nationwide moves pursuant Rule 217, SCRAP to argue against precedent.

A. The purpose of the omnibus statute is to require coverage for permissive users, not to define the limits of coverage that must apply to all claims regardless of the insured's conduct.

The omnibus statute provides that automobile liability insurance policies must insure permissive users:

No policy or contract of bodily injury or property damage liability insurance covering liability arising from the ownership, maintenance, or use of a motor vehicle may be issued or delivered in this State to the owner of the vehicle . . . unless the policy contains a provision insuring the named insured and any other person using or responsible for the use of the motor vehicle with the express or implied consent of the named insured against liability for death or injury sustained or loss or damage incurred within the coverage of the policy or contract as a result of negligence . . .

S.C. Code Ann. § 38-77-142(A). One phrase from the statute sits at the crux of the Supreme Court's holding in *Williams*: "within the coverage of the policy or contract." The *Williams* Court reasoned, "We think it is significant that section 38-77-142 provides insurers must provide liability coverage to insureds 'within the coverage of the policy'" *Williams*, 409 S.C. at 603, 762 S.E.2d at 714. The Supreme Court in *Williams* interpreted this phrase to mean "within the *limits* of the coverage of the policy or contract," i.e., the limits listed on the policy declarations page. *Id.*

("Thus, it is the face amount of the coverage that is relevant under section 38-77-142, not the statutory minimum of liability coverage set forth in 38-77-140, which are not even mentioned in the statute.").

Contrary to how the Supreme Court used the term, the "coverage" provided by the policy is not the same thing as the "limits" listed on the declarations page. "Coverage" consists of the policy in its entirety, including the provisions in the policy that grant coverage, and the exclusions in the policy that limit coverage. The omnibus statute is not designed to address what dollar limits the policy may or may not provide. The General Assembly already established those limits by enacting Section 38-77-140 and Section 56-10-10 and 20. Instead, the omnibus statute is designed to define *who* must be insured. By requiring the policy to insure a permissive user against liability "within the coverage of the policy," the statute mandates that permissive users be given the same protections as the named insured. However, if liability does not fall "within the coverage," then the statute does not require insurance for the permissive user.

In essence, Section 38-77-142 changed the law on this issue to hold that permissive users must be treated the same as named insureds under the policy for purposes of liability coverage. As such, an exclusion or other provision cannot treat a permissive user differently from the named insured. *See Couch on Ins.* (3d) § 111:1 ("An automobile liability insurance policy will include an 'omnibus' clause that defines the individuals who qualify for coverage under the policy."). An exclusion that applies equally to both a named insured and a permissive user does not violate the omnibus statute. Rather, the exclusion is simply one that causes a loss not to be "within the coverage" of the policy. That is precisely the case here. The felony and flight from law enforcement exclusions treat all insureds, whether a named insured or a permissive driver, the same.

B. When the General Assembly intends for a statute to refer to the “limits” of “coverage,” it makes that intention clear by using the word “limits” in the statute.

If the General Assembly had intended to refer simply to the “limits” of coverage, it could have easily used that word. In fact, several examples show that when the General Assembly wants to state that a loss must be within the “coverage” *and* the “limits” of an insurance policy, it uses specific language to accomplish that task. Courts presume that the General Assembly acts intentionally when it uses a phrase in one statute and omits that phrase in another, related statute. *See Berkeley Cnty. Sch. Dist. v. South Carolina Dep’t of Revenue*, 383 S.C. 334, 357 n.15, 679 S.E.2d 913, 925 (2009) (considering related statutes as relevant because they indicate the “General Assembly knows how to” include a provision when it so desires); *Doe v. Brown*, 331 S.C. 491, 496, 489 S.E.2d 917, 920 (1997) (considering related statutes and concluding that “[t]he clear and unambiguous language of . . . these statutes indicates that when the Legislature intended to exclude ‘criminal parents’ from the adoption process, it did so.”); 82 C.J.S. *Statutes* § 478 (2014) (“[W]here a statute contains a given provision, the omission of such provision from a similar statute concerning a related subject is significant to show that a different intention has existed.”). Therefore, because the General Assembly uses the word “limits” when referring to coverage limits, the use of the phrase “within the *coverage*” does not mean “within the *limits*.”

In the statute addressing the South Carolina Property and Casualty Insurance Guaranty Association, the General Assembly defined the term “covered claim” to mean “an unpaid claim . . . which arises out of and is within the coverage and is subject to the applicable limits of an insurance policy to which this chapter applies” S.C. Code Ann. § 38-31-20(8) (emphasis added). The entire purpose of the Guaranty Association is to step in when an insurer becomes insolvent. *See Builders Transport, Inc. v. South Carolina Prop. and Cas. Ins. Guar. Ass’n*, 307 S.C. 398, 404, 415 S.E.2d 419, 423 (Ct. App. 1992). However, the Guaranty Association would

not step in when an underlying loss would not have been covered by the insolvent insurer's policy in the first place. Therefore, the General Assembly deemed it appropriate to define "covered claim" to include only those claims that are "within the coverage" of the policy. Likewise, the Guarantee Association is not expected to provide coverage with limits that are higher than the underlying insolvent insurer's policy. Therefore, the statute also defines a "covered claim" to be one "subject to the applicable limits" of the underlying insurance policy. Thus, when the General Assembly uses the phrase "within the coverage," it means within the terms and conditions of the policy. If the General Assembly intended to mean "within the limits," it clearly knew how to communicate that meaning in plain and unambiguous terms. Therefore, when the General Assembly uses the phrase "within the *coverage*" in § 38-77-142, it did not mean "within the *limits*."

The General Assembly uses the phrase "within the coverage" again in § 38-31-100. Once again, the context of the statute makes clear that "within the coverage" means within the terms and conditions of the policy, not the limits. "A person who has liquidated by settlement or judgment a claim against an insured under a policy issued by an insolvent insurer, and the claim is a covered claim and is also a claim *within the coverage* of any policy issued by a solvent insurer, must be required first to exhaust all *coverage* and *limits* provided under the policy issued by the solvent insurer before execution, levy, or any other proceedings are begun to enforce any judgment obtained against . . . the insured of the insolvent insurer." S.C. Code Ann. § 38-31-100(5). Furthermore, "[a]ny amount payable on a covered claim under this chapter, . . . must be reduced by the full *limits* of such other *coverage* as set forth on the declarations page of the policy issued by the insolvent insurer." *Id.*

The General Assembly uses the term “within the coverage” three times in the insurance context. Its use in §§ 38-31-20 and 38-31-100 make the conclusion abundantly clear: If the General Assembly meant “within the limits” when it said “within the coverage” in § 38-77-142, it would have used the word “limits.” It did not. Therefore, § 38-77-142 does not preclude a step-down provision, especially in the context of a flight from law enforcement or a felony exclusion.

The General Assembly’s use of the phrase “within the coverage” outside of the insurance context also does not subject itself to a reasonable interpretation that would allow “within the coverage” to mean “within the limits.” Rather, the phrase means within the scope of the statutes, just as the phrase in this context means within the scope of the policy’s terms. *See e.g.*, S.C. Code Ann. § 59-152-25 (D) (Defining “partnership” in the context of First Steps organizations to include certain organizations “formed to further, within the coverage area, the purpose and goals of the First Steps initiative . . .”).

Just as the General Assembly’s use of the word “within the coverage” connotes a specific intent, the General Assembly uses the term “limits” in Chapter 77 of Title 38 when it means limits. *See, e.g.*, S.C. Code Ann. § 38-77-140 (requiring minimum “limits” of coverage, and not using the word “coverage” at all); S.C. Code Ann. § 38-77-141 (requiring a notice that “Your uninsured . . . *coverage* has increased to the *limits* of your liability *coverage* . . .”); S.C. Code Ann. § 38-77-150 (requiring policies to provide coverage “within limits which may be no less than the requirements of Section 38-77-140.”); S.C. Code Ann. § 38-77-160 (“Automobile insurance carriers shall offer . . . uninsured motorist *coverage* up to the *limits* of the insured’s liability coverage . . .”); S.C. Code Ann. § 38-77-250 (requiring insurers of non-fleet private passenger policies to provide certain liability insurance information to claimants, including “the *limits* of *coverage*”); S.C. Code Ann. § 38-77-350(B) (holding that a properly executed UM/UIM Offer

Form precludes any claim against the insurer or agent “for the insured’s failure to purchase optional *coverage* or higher *limits*.”); S.C. Code Ann. § 38-77-30(12) (defining “renewal” to include delivery of a policy “to provide the types and *limits* of *coverage* at least equal to those contained in” the prior policy).

Just as the Guaranty Fund statute’s definition of “covered claim” is intended to provide that the scope of the Guaranty Fund’s coverage must be the same as the coverage provided by the insolvent insurer’s policy, the purpose of the omnibus statute is to require that named insureds and other statutory insureds – particularly, permissive users – receive the same treatment under the policy. The statute focuses on *who* must be insured, not what conduct must be insured. If the policy would otherwise exclude – or in this case, reduce – coverage for the named insured, then the same provision may apply to the permissive user. Section 38-77-142 simply prohibits a provision that targets a permissive user merely due to his or her identity as a permissive user.

In this case, Nationwide’s felony and flight from law enforcement exclusions treat all statutory insureds the same. Whether the driver/defendant is the named insured, a resident relative, or a permissive user, the exclusion applies to the full extent permitted by South Carolina law – that is, it reduces coverage to the minimum amount required by the Financial Responsibility Act. Because the exclusion applies equally to all statutory insureds, the reduction of limits is “within the coverage” of the contract, and the exclusion does not violate § 38-77-142 or any other portion of the applicable insurance statutes.

C. The Supreme Court’s use of the phrase “within the coverage” in numerous cases shows that “within the coverage” does not mean “within the limits.”

Respectfully, just as the General Assembly uses the phrase “within the coverage” to mean within the terms and conditions of a policy, the South Carolina Supreme Court has repeatedly used the phrase “within the coverage” and similar language as one that connotes whether a policy’s

terms provide coverage, not the limits of coverage. *See, e.g. Auto Owners Ins. Co., Inc. v. Newman*, 385 S.C. 187, 190, 684 S.E.2d 541, 542 (2009) (“The trial court determined that the homeowner’s claim fell within the policy’s coverage”); *City of Hartsville v. South Carolina Mun. Ins. & Risk Financing Fund*, 382 S.C. 535, 544, 677 S.E.2d 574, 578 (2009) (“If the facts alleged in a complaint against an insured fail to bring a claim within policy coverage, an insurer has no duty to defend.”); *USAA Prop. and Cas. Ins. Co. v. Clegg*, 377 S.C. 643, 657, 661 S.E.2d 791, 798 (2008) (“whether the allegations in a Complaint are sufficient to bring the claims within the coverage of an insurance policy”); *Firstland Village Associates v. Lawyer’s Title Ins. Co.*, 277 S.C. 184, 187, 284 S.E.2d 582, 584 (1981) (“This theory, if adopted, would not bring the second amendment within policy coverage. The policy expressly excludes coverage for loss of damage by reason of the original restrictions”); *Grantham v. U.S. Fidelity & Guar. Co.*, 245 S.C. 144, 146, 139 S.E.2d 744, 745 (1964) (“[T]he defendant denied liability upon the ground that bodily injury to the insured occurred while she was occupying an automobile ‘furnished for the regular use’ of her husband within the meaning of the foregoing exclusion and was therefore not within the coverage afforded by the policy.”). This string cite is just a small sample of over fifty cases in which the Supreme Court uses “within the coverage” or another similar phrase regarding insurance. In all but one of those cases, the context shows that the Court treats the phrase “coverage” to mean the terms of the policy, not the limits. The sole exception that the undersigned could locate was a case from 1939 in which the Supreme Court stated: “We are not here confronted with a case where a settlement could be had within the coverage, and thus save the appellant harmless” *Cherry v. Shelby Mut. Plate Glass & Cas. Co.*, 191 S.C. 177, 4 S.E.2d 123, 126 (1939). The case is a lone outlier in a sea of examples where the Supreme Court uses the phrase

“within the coverage” to mean within the terms and conditions of the policy, not “within the limits.”

The case of *Charles v. Canal Ins. Co.*, 238 S.C. 600, 121 S.E.2d 200 (1961), provides an apt example of the difference between “coverage” and “limits.” The parties agreed “the loss was within the coverage.” Moreover, the parties did not dispute the amount of the value of the damaged equipment. *Id.* at 602, 121 S.E.2d at 201. However, the entire dispute in the case involved the amount of the limit that applied to the loss. The insurer argued that “the coverage was limited, by a policy endorsement, to \$2,000 less \$250 deductible, on each of two pieces of equipment . . .” *Id.* Therefore, as used in that case, “within the coverage” could not possibly mean “within the limits of coverage.”

When the General Assembly used the phrase “within the coverage,” it did not mean “within the limits.” On its face, the omnibus statute does not reference minimum coverage. That matter is addressed in Section 38-77-140. Rather, the omnibus statute deals with who must be included as an insured and then addresses other insurance matters.⁴ If the General Assembly intended such a drastic sea change in South Carolina’s coverage law by prohibiting *any* exclusion that reduces the policy limits below the amount stated on the policy’s declaration pages, then it would have made that intention much more clear. Also, the statute was enacted in 1997. It is difficult to believe that the provision would have gone unlitigated and unnoticed for nearly seventeen years if

⁴ Subsection (A) states that any contract that provides coverage for use of a nonowner automobile must include a provision requiring permission or consent of the owner of the automobile for the insurance to apply. Subsection (B) states that an insurer who has actual notice of a motion for judgment or complaint having been served on an insured cannot raise the insured’s failure to turn over the motion or complaint as a defense to coverage and provides protections for the insurer that steps in to defend from sanctions for an insured’s failure to comply with discovery.

the General Assembly had really intended to preclude all exclusions that reduce coverage to the minimum limits.

In sum, regardless of who must be insured under the omnibus statute, the Nationwide policy's "coverage" contains an exclusion that applies when that person – whether the named insured or someone else – is committing a felony or fleeing from law enforcement. Because the exclusion does not treat one omnibus insured differently from another and it does not otherwise violate South Carolina's public policy, the exclusion is valid and enforceable for any limits in excess of the mandatory minimum. .

CONCLUSION

For the above-stated reasons, the Circuit Court's holding should be reversed and the exclusions should be applied according to their plain terms. Nationwide's flight from law enforcement and felony exclusions plainly apply under the facts of the case. The Circuit Court found that Mayfield was both fleeing from law enforcement and committing a felony at the time of the accident. Because the exclusions merely limit the amount of coverage for conduct that South Carolina has already deemed criminal, the exclusions promote public policy and should be enforceable. The Supreme Court's holding in *Williams* applies only to arbitrary and capricious exclusions that violate South Carolina public policy. In contrast, Nationwide's flight from law enforcement and felony exclusions are reasonable, logical, and fair exclusions that support South Carolina public policy by dissuading illegal conduct. Section 38-77-142 does not prohibit this type of reasonable exclusion. Therefore, the Circuit Court should be reversed and judgment should be entered in favor of Nationwide.

Respectfully submitted,

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SC Court of Appeals

J. Cordell Maddox, Jr., Circuit Court Judge

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Nationwide Mutual Fire Insurance Company.....Appellant,

v.

Sharmin Christine Walls, Randi Harper, Wendy Timms in her
capacity as Personal Representative of the Estate of Christopher
Adam Timms, Deborah Timms, ...Defendants,

Of whom,

Sharmin Christine Walls, Randi Harper, and Wendy Timms in her
capacity as Personal Representative of The Estate of Christopher
Adam Timms, ...Respondents.

CERTIFICATE

I, Wesley B. Sawyer, Esquire, attorney for Appellant, certify that the Final Brief of Appellant complies with the South Carolina Supreme Court Order of August 13, 2007 and Rule 211(b) of the South Carolina Appellate Court Rules.

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Nationwide Mutual Fire Insurance Company

Appellant

vs.

Sharmin Christine Walls, Randi Harper, Wendy Timms
in her capacity as Personal Representative of the Estate
of Christopher Adam Timms, Deborah Timms, Defendants,
Of whom, Sharmin Christine Walls, Randi Harper, and
Wendy Timms in her capacity as Personal Representative of The
Estate of Christopher Adam Timms, are the Respondents Respondents

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STATEMENT OF ISSUES ON APPEAL

- I. **The Circuit Court Judge was correct when he ruled that Nationwide's "step-down" provisions violated S.C. Code Ann. §38-77-142(c) and were unenforceable and void per Williams v. Government Employees Insurance Company (GEICO 409 S.C. 586, 762 S.E. 2d 705 (2014)).**

STATEMENT OF THE CASE

This appeal arises out of a one vehicle automobile accident involving Korey Mayfield as a driver. Mayfield was driving a Chevrolet Lumina insured by Nationwide and owned by Respondent Sharmin Walls. Walls, Christopher Timms, and Randi Harper were passengers in the vehicle when State Trooper Travis Wilson observed Mayfield crossing the yellow line and speeding. Trooper Wilson activated his blue lights. Mayfield ultimately lost control of the vehicle and ran off the road in a single-car accident that caused Timms' death, and severe injuries to Walls and Harper.

The Nationwide policy insuring the Chevrolet Lumina provided liability limits of \$100,000 per person and \$300,000 per accident. However, the policy included two exclusions relevant to this appeal: (1) a flight from law enforcement exclusion and (2) a felony exclusion. The exclusions applied "with regard to any amounts above the minimum limits required by the South Carolina Financial Responsibility Law..." (R. p. 109, ¶14). There was no underinsured motorist coverage carried for the vehicle. (R. p. 119, lines 21 - 22). Therefore, the recoveries for Walls and the other passengers in the Lumina are limited to the applicable liability coverage.

After the accident, Nationwide tendered the minimum limits required by the South Carolina Financial Responsibility Act, \$50,000 to the Respondents here.

Nationwide then filed this declaratory action seeking a declaration applying the felony and flight from law enforcement exclusions. The case came before the Honorable J. Cordell Maddox, Jr. for a bench trial on September 12, 2013.

On August 18, 2014, the Circuit Court entered an Order in favor of Respondents and against Nationwide (R. pp. 11-17). The August 18 Order found that Mayfield was a non-permissive user of the vehicle and, therefore, Respondents were entitled to uninsured motorist coverage (R. p. 16). On August 26, 2014, Nationwide served a Motion to Alter or Amend the August 18 Order. (R. pp. 83-84, 85-106). In particular, Nationwide argued that the Respondents had failed to raise the issue of Mayfield's non-permissive use in their pleadings, and that Respondents were precluded from seeking uninsured motorist coverage because they had recovered liability payments equal to the mandatory minimum limits from two different insurers. (R. P. 86). Nationwide also argued that the Order misapplied South Carolina law, failed to make the key factual determinations of whether Mayfield was fleeing from law enforcement at the time of the accident and committing a felony, and made factual determinations that were not supported by the record (R. pp. 88-92, 103-104). The Circuit Court held a hearing on Nationwide's Motion to Alter or Amend on March 6 2015. At the hearing Respondents withdrew their contention that the uninsured motorist coverage applied. (R.p. 123, lines 10-23). Furthermore, the Circuit Court found that Mayfield was fleeing from law enforcement at the time of the accident. (R. p. 122, lines 12-17). Subsequently, on February 26, 2016, the Circuit Court entered an Order finding Mayfield was fleeing from law enforcement at the time of the accident and that his conduct constituted a felony. (R. p. 5).

Nonetheless, the Circuit Court ruled in favor of the Respondents, based on the

Supreme Court's recent decision in Williams v. Government Employees Insurance Company 409 S. C. 586, 762 S.E. 2d 705 (2014), which held that any exclusion in an automobile liability policy issued by South Carolina that reduces the applicable limits of coverage to the minimum amount required by the financial responsibility laws is void and violates public policy pursuant to South Carolina Code Ann. §38-77-142(c). (R. pp. 6, 8, 9). This appeal followed.

STATEMENT OF FACTS

The facts of this case were largely stipulated at trial. Walls owned a Chevrolet Lumina insured by Nationwide (R. p. 2). The policy provided liability limits of \$100,000 per person, \$300,000 per accident. (R. p. 109, ¶14). Walls' medical bills exceeded \$200,000.00. However, the policy contained an exclusion that applied to any coverage in excess of the State's mandatory minimum limits if bodily injury occurred while an insured was fleeing from law enforcement or committing a felony;

B. This coverage does not apply, with regard to any amounts above the minimum limits required by the South Carolina Financial Responsibility Law as of the date of the loss, to:

6. Bodily injury or property damage caused by:
 - (a) you;
 - (b) a relative; or
 - (c) anyone else while operating your auto;
 - (1) while committing a felony; or
 - (2) while fleeing a law enforcement officer

(R. pp. 109-110, ¶14).

On July 11, 2008, Walls, Mayfield, Harper and Timms had been at Walls' residence when they left as a group with Mayfield driving Walls' Chevrolet Lumina (R. pp. 246-248). Trooper Travis Wilson observed the vehicle on South Carolina Highway 81 in Anderson, crossing the yellow line and going approximately 12 miles an hour over the speed limit. (R. pp. 108, 248). Trooper Wilson decided to pull the vehicle over and activated his blue lights. (R. p. 108, ¶4). While driving down 81 South, Trooper Wilson's vehicle reached speeds of 109 miles per hour in an effort to keep up with the Lumina (R. p. 108, ¶5).

After several turns on secondary roads, Trooper Wilson received instructions to terminate the pursuit, which he did. (R. p. 109, ¶¶ 6-8). However, by the time Trooper Wilson deactivated his siren and blue lights, the Lumina was out of sight. (R. p. 109, ¶9).

Approximately a mile down the road, Mayfield had lost control of the Lumina and ran off the road in a single vehicle accident. (R. p. 109, ¶11). Trooper Wilson came upon the scene within a minute-and-a-half of terminating the chase. (R. p. 109, ¶12). The Greenville County Accident Reconstruction Team investigated and determined that Mayfield was traveling a minimum of 72 miles per hour when he lost control. (R. p. 109, ¶13 and R. p. 194)

The speed limit on that portion of Leatherdale Road was 35 miles per hour (R. p. 109, ¶13). Timms died as a result of the accident, and Mayfield, Walls and Harper each sustained serious injuries.

Mayfield was charged with and ultimately pled guilty pursuant to North Carolina v. Alford 400 U.S. 25, 91 S.C. 160 (1970), to reckless homicide, a felony. (R. p. 110, ¶15). The Circuit Court made a factual determination that Mayfield was fleeing a

law enforcement officer at the time of the accident (R. p. 4). The Circuit Court based its factual determination on damage to the vehicle, the speed of the vehicle at the time of the accident, the dash cam video, witness statements, and the timeline (R. pp. 4-5). Even though Trooper Wilson had terminated the chase, the Circuit Court found that Mayfield's unlawful course of conduct and manner of driving continued up until the time of the crash.

Nationwide agreed to tender its \$50,000 of undisputed liability coverage, which the Respondents accepted. (R. pp. 253-263); Furthermore, Mayfield had excess liability coverage under a policy of insurance issued by State Auto. State Auto also tendered its liability limits of \$50,000. (R. pp. 20-22, 26-30). Then, Nationwide filed this declaratory judgment action seeking application of the felony and "flight from law enforcement exclusions." (R. pp. 33-40).

The Respondents do not contest that Mayfield was fleeing law enforcement and committing a felony at the time and have not appealed the lower Court's ruling in that regard. They maintain, however, that regardless of the language of the policy limiting coverage when an insured is fleeing law enforcement or committing a felony, the step-down provision is void and violates public policy pursuant to South Carolina Code Ann. §38-77-142(c). (R. p. 6 and pp. 8-9), and Williams.

STANDARD OF REVIEW

"A suit for declaratory judgement is neither legal nor equitable, but is determined by the nature of the underlying issue." Felts v. Richland County 303 S.C. 354, 356, 400 S.E. 2d 781, 782, (1991). "When the purpose of the underlying dispute is to determine

whether coverage exists under an insurance policy, the action is one at law.” S.C. Farm Bureau Mut. Ins. Co. v. Kennedy 398 S.C. 604, 610, 730 S.E. 2d 862, 864 (2012) (citation omitted). “In an action at law tried without a jury, the appellate court will not disturb the trial court’s findings of fact unless there is no evidence to reasonably support them” Crossmann Cmtys. of N.C., Inc. v. Harleysville Mut. Ins. Co., 395 S.C. 40, 46-47, 717 S.E. 2d 589, 592 (2011) (citation omitted); accord Townes Assocs. v. City of Greenville 266 S.C. 81, 86, 221 S.E. 2d 773, 775 (1976). See Williams v. Government Employees Ins. Co. (GEICO) 409 S.C. 586, 762 S.E. 2d 705 (2014).

ARGUMENT

The step-down provision limiting the liability coverage in the Nationwide policy is void and violates public policy as it is in direct contravention of the mandates of South Carolina Code Annotated Section 38-77-142 (c) and Williams v. Government Employees Insurance Company 409 S.C. 586, 762 S.E. 2d 705 (2014).

In violation of S.C. Code Ann. §38-77-142, the Nationwide policy improperly excludes liability coverage in excess of the State’s minimum required limits of coverage while an insured is committing a felony or is fleeing from law enforcement. It is conceded by the Respondents that the step-down provision in the Appellant’s policy unambiguously limits coverage through its provision where the insured driver (1) while committing a felony or (2) while fleeing a law enforcement officer. However, in Williams, it was likewise the case that a step-down provision was found to unambiguously reduce the limits of coverage, but was still void for a violation of public policy. Williams at 711-712, 717.

In Williams the GEICO policy at issue sought to reduce liability coverage available to an injured family member of the insured, commonly known as a “family step-down provision”. The Court addressed three arguments against the family step-down provision by the personal representatives of the deceased family members affected by the provision.

The personal representatives first argued that the provision was ambiguous. The Court declined to adopt that argument, finding that “it is... apparent upon examination that there is an unambiguous limitation in this regard because it may only be understood one way.” Williams at 711. Here, that the provision is unambiguous is conceded by the Respondents.

Next, the personal representatives argued that public policy was violated by the provision in Williams on the basis that (1) the family step-down provision was in contravention of §38-77-142(c); and (2) that the provision is capable of producing harm such that its enforcement would be contrary to the public interest or manifestly injurious to the public welfare.

The Williams Court found that the provision violated public policy on both bases and thus was void. Id. at 717. It should be noted, however, the provision was found to be void on the basis of *either* violation *individually*, and did not require that both bases be present to invalidate the provision.

(a) The Nationwide step-down provision violates S.C. Code Ann. §38-77-142(c) and therefore is void.

While the Appellants have a right to contract with its customers, the right to create a contract to meet their every decision term or condition is not without limits. They are subject to the laws of the State.

"As a general rule, insurers have the right to limit their liability and to impose conditions on their obligations provided they are not in contravention of public policy or some statutory inhibition. *B.L.G. Etners., Inc. v. First Fin. Ins. Co.*, 334 S.C. 529, 535-36, 514 S.E. 2d 327, 330 (1999); *Burns v. State Farm Mut. Auto Ins. Co.* 297 S.C. 520, 523, 377 S.E. 2d 569, 570 (1989); *Cobb v. Benjamin*, 325 S.C. 573, 580-81, 482 S.E. 2d 589, 593 (Ct. App. 1997). While parties are generally permitted to contract as they see fit, freedom of contract is not absolute and coverage that is required by law may not be omitted. *Jordan v. Aetna Cas. & Sur. Co.*, 264 S.C. 294, 214 S.E. 2d 818, 820 (1975). Statutes governing an insurance contract are part of the contract as a matter of law, and to the extent a policy provision conflicts with an applicable statute, the provision is invalid. *Allstate Ins. Co. v. Thatcher*, 283 S.C. 585, 587, 325 S.E. 2d 59, 61 (1985); *Jordan*, 264 S.C. at 297, 214 S.E. 2d at 820; *Boyd v. State Farm Mut. Auto. Ins. Co.*, 260 S.C. 316, 319, 195 S.E. 2d 706, 707 (1973)."

Williams v. Gov't Employees Ins. Co. (GEICO) 409 S. C. 586, 598-99, 762 S.E. 2d 705, 712 (2014).

Here, S. C. Code Ann. §38-77-142(c) limits the Appellant's right to a step-down in coverage.

"(c) Any endorsement, provision, or rider attached to or included in any policy of insurance which purports or seeks to limit or reduce the coverage afforded by the provisions required by this section is void. S.C. Code Ann. §38-77-142(c) (2002)."

The Williams Court found that S.C. Code Ann. §38-77-142(c) prohibits reduction of the liability limits stated in the declarations page of the policy through the use of a policy step-down provision. The language set forth below effectively answers and negates the Appellant's argument as to "within the coverage/within the limits". The

Declaration Page of the Walls policy is essentially the same as that referenced in the Williams case. (Walls Nationwide Policy, p. 1).

"In viewing the plain wording of §38-77-142, we find subsections (A) and (B) require a policy for liability insurance to contain a provision insuring the named insureds and permissive users against liability for damage incurred "within the coverage of the policy". Subsection (B) additionally contains a provision regarding notice that states the mere failure to turn over a motion or complaint will not void coverage. Finally, subsection (c) provides that no policy provision may limit or reduce the coverage required by *this section* which refers to section 38-77-142, or else it is void.

We think it is significant that §38-77-142 provides insurers must provide liability coverage to insureds "within the coverage of the policy" and may not limit or reduce liability coverage in the policy below the amount provided *in this section* meaning §38-77-142. Thus, it is the face amount of the coverage that is relevant under §38-77-142, not the statutory minimum limits of liability coverage set forth in §38-77-140, which are not even mentioned in the statute".

Therefore, once the face amount of coverage is agreed upon, it may not be arbitrarily reduced or limited by conflicting policy provisions that effectively retract this stated coverage (emphasis added). Any other interpretation of §38-77-142(c) would render the section useless, and the General Assembly is presumed not to perform useless acts. See *Denene, Inc v. City of Charleston*, 352 S.C. 208, 212, 574 S.E. 2d 196, 198 (2002). ("The Court must presume the legislature did not intend a futile act, but rather intended its statutes to accomplish something." (Citing *TNS Mills, Inc. v. S.C. Dept. Of Rev* 331 S.C. 611, 503 S.E. 2d 471 (1998)). After agreeing on a policy with \$100,000 in stated liability coverage for the named insureds, GEICO should not be permitted to subsequently reduce it with what it deems an "exclusion" in the policy.

Williams vs. Gov't Employees Ins. Co. (GEICO), 409 S.C. 586, 604 762 S.E. 2d 705, 715 (2014).

The Williams case is directly on point with the case now before the Court.

Nationwide issued a policy to Sharmin Walls providing a face amount of coverage of 100,000/300,000 split limits liability coverage in the declarations page of the policy.

The Appellant's step-down provision conflicts with the liability limits stated in the declarations and purports to effectively retract the stated coverage. This is precisely the actions that the Williams Court found to be prohibited.

The step-down provision in this case violates public policy because it violates the mandates of S.C. Code Ann. §38-77-142(c) as interpreted by the Supreme Court in Williams. The provision is therefore void.

"A provision that is against public policy is void *ab initio* and, because it is deemed legally never to have come into existence, it is incapable of being enforced by courts. 16 Richard A. Lord, *Williston on Contracts* §49:12 (4th Ed. 2000). We see no reason to depart from this procedure here, as suggested in the concurrence/dissent, as it would be a hollow victory indeed for the prevailing parties if we were to enforce the offending provision here and restrict relief to prospective cases only. Where courts have found insurance provisions to be void against public policy, there have, as a matter of course, refused to give any effect to those provisions in the appeals before them. See generally *Lewis v. W. Am. Ins. Co.*, 927 S.W. 2d 829, 836 (Ky. 1996); *Watters v. Dairyland Ins. Co.* 50 Ohio App 2d 106, 361 N.E. 2d 1068 (1976); *Ryan vs. Knoller* 695 A. 2d 990 (R.I. 1997)"

Williams v. Gov't Employees Ins. Co. (GEICO) 409 S.C. 586, 608, 762 S.E. 2d 705, 717 (2014).

The Respondents, therefore, are entitled to have the policy construed in the absence of the step-down provision. Thus the applicable policy limits are \$100,000/\$300,000.

- (b) The Nationwide step-down provision violates public policy of the State in that the provision is capable of producing harm such that its enforcement would be contrary to the public interest or manifestly injurious to the public welfare and therefore is void.**

The step-down provision in the Nationwide policy also has the effect of eliminating coverage to the named insured, Sharmin Walls, who was an innocent passenger, as well as the purchaser of the \$100,000 coverage, in addition to the other innocent passengers. This is similar to the Factory Mutual Liability Insurance Company of America v. Kennedy 256 S.C. 376, 380-81, 182 S.E. 2d 727, 729 (1971) where the

Court stated "Liability insurance not only affords protection to insured motorists, it serves the important public purpose of affording protection to innocent victims of motor vehicle accidents", *Williams* supra, p. 716.

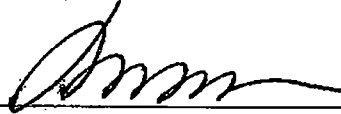
The Circuit Court recognized the inequities of this case as applied to the innocent passengers in its holding as violating the public policy of this State. See Unison Insurance Company vs. Schmidt 339 S.C. 362, 529 S.E. 2d (2000). As stated in the *Williams* case supra, "it [the step-down provisions] even reduces the policy's coverage to the *named insureds*... The legislative purpose of affording protection to the innocent victims of motor vehicle accidents is eviscerated by the GEICO's reduction in coverage ..."

The argument set forth in the Brief of Appellants would require that the Court ignore the plain meaning of S.C. Code Ann. §38-77-142 and the plain meaning and statements of law set forth by the Supreme Court in the *Williams* case.

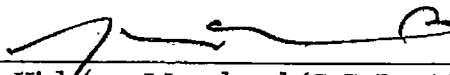
CONCLUSION

For the reasons stated above, the holding by the Honorable Cordell Maddox should be upheld on the basis that the step-down provisions contained in the Nationwide Policy violate S.C. Code §38-77-142 and are unenforceable pursuant to the Supreme Court's holding in Williams v. Government Employees Insurance Company.

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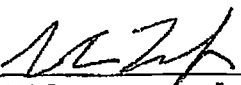
Nationwide Mutual Fire Insurance Company Appellant

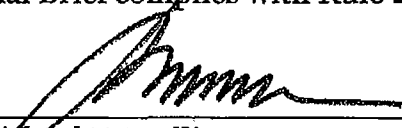
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Estate of Christopher Adam Timms, are the Respondents Respondents

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The undersigned certify that this Final Brief complies with Rule 211(b), SCACR.


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SUMMARY OF THE ARGUMENT

If left unaltered, the Circuit Court's ruling constitutes a major shift in South Carolina insurance law. For more than a century, insurers have used exclusions in insurance policies to dictate which risks they will or will not assume on behalf of an insured. According to the Circuit Court, parties entering a contract providing voluntary insurance no longer have the freedom to choose what the policy will or will not cover. Such a change must come from the legislature, not the courts, and the plain language of South Carolina's omnibus statute in § 38-77-142 gives no indication that the General Assembly intended to upend the basic legal principles for voluntary insurance contracts. Therefore, the Circuit Court's Order should be reversed and judgment should be entered in Nationwide's favor.

This case arises out of Korey Mayfield's unlawful decision to disregard a trooper's blue lights and lead law enforcement on a high-speed chase. He was driving at over twice the posted speed limit when he lost control of the car. There is no doubt that the severity of the accident and the resulting injuries are directly related to the speed at which Mayfield was driving while trying to elude arrest.

The sole question before this Court is whether an exclusion that limits coverage to the minimum amount required by the Financial Responsibility Law when an insured such as Mayfield is committing a felony and fleeing from law enforcement comports with public policy. It is difficult to conceive of an exclusion that more closely comports with public policy. The General Assembly has shown that South Carolina feels so strongly about the act of fleeing from law enforcement that it has deemed the conduct criminal. Nationwide's policy merely excludes coverage – beyond the mandatory minimum – for conduct that the General Assembly deems criminal: “This coverage does not apply, with regard to any amounts above the minimum limits

required by the South Carolina Financial Responsibility Law . . . to: . . . 6. Bodily injury or property damage caused . . . while committing a felony; or while fleeing a law enforcement officer.” (R. p. 109-110). An exclusion that prevents an insured tortfeasor from receiving the benefit of liability coverage while participating in conduct that South Carolina deems criminal does not conflict with public policy.

In their brief to this Court, Respondents concede that Mayfield was fleeing law enforcement and committing a felony. (Brief of Respondents, p. 5). Respondents also argued to the Circuit Court – and the Circuit Court found – that the exclusions were ambiguous. For the first time, Respondents now concede that the policy “unambiguously limits coverage” when Mayfield is committing a felony or fleeing law enforcement. (Brief of Respondents, p. 7). Walls, Harper, and Timms’ injuries resulted from Mayfield’s felonious conduct while he fled from law enforcement. Therefore, the exclusions for flight from law enforcement and commission of a felony apply to preclude liability coverage beyond the statutory minimum limits.

I. The Supreme Court’s holding in *Williams* only applies to exclusions that are arbitrary and capricious.

Respondents rely solely upon the Supreme Court’s holding in *Williams v. Government Employees Ins. Co.*, 409 S.C. 586, 762 S.E.2d 705 (2014). They contend that the Supreme Court in *Williams* broadly held that South Carolina Code § 38-77-142(c) prohibits all step-down provisions in any automobile liability policy. However, the Supreme Court’s holding is not nearly that broad. The Supreme Court explained, “once the face amount of coverage is agreed upon, it may not be *arbitrarily reduced* or limited by conflicting policy provisions that effectively retract this stated coverage.” *Id.* at 604, 762 S.E.2d at 715 (emphasis added). The Supreme Court reviewed case law from multiple jurisdictions and concluded, “coverage based solely on a familial relationship is *arbitrary, capricious and injurious to the public good.*” *Id.* at 607, 762 S.E.2d at

717 (emphasis added). The Supreme Court then went on to hold that the family member exclusion in that case was arbitrary and capricious: “To allow an insurer to determine the extent to which an injured party can recover within the insured’s policy coverage based solely on a familial relationship is arbitrary and capricious and violative of public policy.” *Id.* at 607, 762 S.E.2d at 717. Therefore, the Supreme Court’s holding in *Williams* is limited to those exclusions that are arbitrary, capricious, and injurious to the public good.

Therefore, the question before this Court is whether the policy exclusions for Mayfield’s liability arising out of his decision to flee from law enforcement and his commission of a felony are arbitrary and capricious. To find the answer, this Court needs to look no further than the fact that the South Carolina General Assembly saw fit to deem Mayfield’s conduct a felony under South Carolina’s criminal statutes. Certainly, an insurance policy that excludes liability coverage – which indemnifies a tortfeasor – for the insured-tortfeasor’s felonious conduct does not conflict with the public policy of the State of South Carolina as set forth in the criminal statutes. If conduct is so abhorrent that South Carolina codifies that conduct as a felony, it certainly is abhorrent enough to be excluded under the plain terms of a voluntary contract for insurance.

The flight from law enforcement and felony exclusions are far from arbitrary, capricious, or harmful. As discussed at length in Nationwide’s principal brief, an exclusion that merely prohibits conduct that the South Carolina General Assembly has deemed criminal is not arbitrary or capricious. The Supreme Court in *Williams* discussed what it meant by a provision being arbitrary and capricious:

Public policy considerations include not only what is expressed in state law, such as the constitution and statutes, and decisions of the courts, but also a determination of whether the agreement is capable of producing harm such that its enforcement would be contrary to the public interest or manifestly injurious to the public welfare.

Id. at 599, 762 S.E.2d at 712 (citation omitted). The exclusions here are not manifestly injurious to the public welfare. To the contrary, the exclusions support important public policy principles that prohibit insuring someone for their criminal conduct.

Numerous courts across the country have found that felony or flight from law enforcement exclusions in automobile and other types of insurance policies do not violate public policy. *See e.g., Southern Farm Bureau Cas. Ins. Co. v. Easter*, 374 Ark. 238, 287 S.W.3d 537 (2008) (holding that eluding-lawful-arrest exclusion did not violate public policy as stated in state's compulsory insurance statute or no-fault statute); *Bailey v. Lincoln General Ins. Co.*, 255 P.3d 1039, 1048 n.2 (Colo. 2011) ("Of course, many jurisdictions, although not recognizing a public-policy requirement for insurers to include intentional or criminal-act exclusions, hold that public policy is not violated where insurers include in liability or excess insurance policies criminal-acts or other similar exclusions . . .") (auto policy); *Cotton States Mut. Ins. Co. v. Neese*, 254 Ga. 335, 341-42, 329 S.E.2d 136, 142 (1985) (holding that application of flight from law enforcement exclusion in automobile liability policy to amounts exceeding state's minimum limits did not violate public policy); *Alfa Specialty Ins. Co. v. Jennings*, 906 So. 2d 195 (Ala. Civ. App. 2005) (holding felony exclusion in automobile liability policy did not violate public policy where insured was fleeing law enforcement); *Hix v. Hertz Corp.*, 307 Ga. App. 369, 705 S.E.2d 219 (Ct. App. 2010) (same); *Bohner v. Ace American Ins. Co.*, 359 Ill. App. 3d 621, 834 N.E.2d 635 (App. 2 Dist. 2005) (holding that criminal act exclusion in auto gap policy was enforceable and did not violate public policy); *Slayko v. Security Mut. Ins. Co.*, 98 N.Y.2d 289, 774 N.E.2d 208 (2002) (holding that a criminal activity exclusion in a homeowners policy does not violate public policy); *American Family Mut. Ins. Co. v. Hadley*, 264 Neb. 435, 445-46, 648 N.W.2d 769, 779-80 (2002) ("As a general rule, the majority of courts that have addressed the issue hold that a provision in a

homeowner's policy which excludes coverage for claims arising from criminal acts . . . does not violate public policy."); *Allstate Ins. Co. v. Peasley*, 131 Wash. 2d 420, 932 P.2d 1244 (1997) (holding that criminal acts exclusion in homeowners policy did not violate public policy); *ANPAC v. Clendenen*, 793 S.E.2d 899, 908 (W. Va. 2016) ("Indeed, the majority of jurisdictions to consider the question raised . . . apply intentional acts exclusions similar to the exclusions in [the] policies to preclude coverage to an insured based on the intentional or criminal acts of a co-insured") (homeowners policy); *Pompa v. American Family Mut. Ins. Co.*, 520 F.3d 1139 (10th Cir. 2008) (applying Colorado law and holding that a criminal acts exclusion in a homeowners policy does not violate public policy); *American Family Mut. Ins. Group v. Kostaneski*, 688 N.W.2d 410, 415 (S.D. 2004) ("It is contra bonos mores to allow a man to insure against the consequences of his own . . . criminal conduct.") (homeowners policy); *Auto Club Group Ins. Co. v. Daniel*, 254 Mich. App. 1, 5, 658 N.W.2d 193, 196 (Ct. App. 2002) ("[A]s a matter of public policy, an insurance policy that excludes coverage for a person's criminal acts serves to *deter* crime, while a policy that provides benefits to those who commit crimes would *encourage* it.") (homeowners policy); *Princeton Ins. Co. v. Chunmuang*, 151 N.J. 80, 698 A.2d 9 (1997) (holding that criminal acts exclusions are "valid and do not violate public policy.") (medical malpractice policy); *New Mexico Physicians Mut. Liability Co. v. LaMure*, 116 N.M. 92, 860 P.2d 734 (1993) (holding that a criminal acts exclusion in a physician's professional liability policy did not violate public policy); *Rivera v. Nevada Medical Liability Ins. Co.*, 107 Nev. 450, 455, 814 P.2d 71, 74 (1991) (same); *Barker v. California-Western States Life Ins. Co.*, 252 Cal. App. 2d 768, 776, 61 Cal. Rptr. 595 (1967), *cert. denied*, 390 U.S. 922, 88 S. Ct. 855 (1968) (concluding felony exclusion clause in a life insurance policy is not contrary to public policy); *James v. Louisiana Laborers Health & Welfare Fund*, 29 F.3d 1029 (5th Cir. 1994) (upholding provision in health

insurance plan excluding coverage for expenses incurred in the course or commission of a felony); *Sisters of the Third Order of St. Francis v. Swedish American Group Health Benefit Trust*, 901 F.2d 1369, 1370 (7th Cir. 1990) (holding that because drunk driving is illegal activity under Illinois law, insured was not able to recover from a health plan for the injuries he sustained in a drunk driving accident); *Littlefield v. Acadia Ins. Co.*, 392 F.3d 1, 12 n.12 (1st Cir. 2004) (“We note that numerous state courts have also held that enforcement of similar insurance policy provisions excluding coverage for criminally caused loss or liability does not violate the public policy of those states.”) (boating policy).

“Indeed, this public-policy principle is so compelling that, in many jurisdictions, insurers may actually violate public policy if they fail to include criminal-acts or intentional-acts exclusions in their policies.” *Bailey*, 255 P.3d at 1048; *See also Freightquote.com, Inc. v. Hartford Cas. Ins. Co.*, 397 F.3d 888, 893 (10th Cir. 2005) (applying Kansas law); *St. Paul Fire and Marine Ins. Co. v. Jacobson*, 826 F. Supp. 155, 162 (E.D. Va. 1993), *aff’d*, 48 F.3d 778 (4th Cir. 1995) (“To be sure, public policy generally bars coverage for an insured’s intentional wrongdoing or criminal misconduct.”); *Wilshire Ins. Co. v. S.A.*, 224 Ariz. 97, 101, 227 P.3d 504, 508 (Ct. App. 2010), *review denied* (Sept. 21, 2010) (holding that public policy in favor of protecting rights of victims of criminal wrongdoing to receive compensation for their injuries did not override the “public policy against permitting one to insure himself against civil damages for the consequences of a crime.”); *State Farm Fire and Cas. Co. v. Schwich*, 749 N.W.2d 108 (Minn. Ct. App. 2008) (holding that it violates public policy for an insurer to indemnify an insured for commission of a serious criminal act).

“An exclusion in an automobile policy as to loss while the automobile is used . . . while engaged in unlawful flight from police is not against public policy.” *Couch on Ins.* (3d) § 121:92.

"The reason for the exclusion is to relieve the insurer from the tremendously increased risks attendant to racing vehicles." *Id.* Courts cite various public policy considerations in holding that a criminal acts exclusion is valid and enforceable. These considerations range from discouraging insureds from committing criminal conduct to enabling carriers to better predict risk. *See e.g., Jacobson*, 826 F. Supp. at 163 ("Barring coverage in these circumstances discourages insureds from intentionally harming others, as intentional wrongdoers cannot then rely on the availability of insurance to shield them from the civil consequences of their misconduct."); *Landry v. Leonard*, 720 A.2d 907 (Me. 1998) ("People who purchase homeowners' policies do not intend that victims' injuries caused by convicted robbers during armed robbery be covered by the robber's insurance nor do they expect to pay premiums to share in the coverage of such risks."). The Supreme Court of Colorado in *Bailey* recognized the public policy concerns of protecting the right to freedom of contract and allowing insurers to shift risk based on the insured's conduct, especially when that conduct significantly increases the risk of the insurer's liability and may be encouraged by indemnification. 255 P.3d at 1046-47. "Most felonious criminal misconduct, like intentional misconduct, significantly alters the calculus of risk between the insurer and the insured, subjecting the insurer to increased and significantly greater risk." *Id.* Moreover, insureds "can keep themselves from engaging in felonious conduct" *Id.*

The South Carolina General Assembly established its public policy with respect to the conduct that is excluded in this case when it criminalized the activity. If Mayfield's conduct subjects him to serious criminal prosecution, then it certainly does not violate public policy for a voluntary contract of insurance to exclude coverage for that conduct. Moreover, the overwhelming majority of courts across the country confirms that flight from law enforcement and felony exclusions do not conflict with public policy.

An exclusion based upon felonious conduct has a clear, intelligible, and logical basis, and is neither arbitrary nor capricious. In addition, application of the flight from law enforcement and felony exclusions do not harm the public welfare. Rather, the exclusion bolsters South Carolina public policy of prohibiting illegal conduct by making sure that – just as there are criminal consequences for Mayfield's conduct – there are civil consequences for his illegal, felonious conduct.

II. Walls' argument that applying the exclusion in this case is unjust because it reduces the coverage available to her as a victim ignores the simple fact that she could have protected herself by purchasing underinsured motorist coverage.

Respondents contend the exclusions produce a harmful effect because they reduce coverage to Sharmin Walls, the named insured, "who was an innocent passenger, as well as the purchaser of the \$100,000 coverage." (Brief of Respondents, p. 11). Respectfully, Walls purchased \$100,000 in *liability* coverage. Walls concedes that she rejected *optional underinsured motorist* (UIM) coverage. (Brief of Respondents, p. 1). Had she purchased optional UIM coverage, she and her passengers would have been protected.

Respondents' argument confuses the nature of liability coverage and first-party UIM coverage. Liability coverage focuses on the identity and conduct of the tortfeasor, not the victim. When a carrier issues liability coverage, the insurer agrees to defend and indemnify the insured tortfeasor for his or her liability to third parties, subject to the terms and conditions of the policy. The insurer is not contracting with the injured parties. Therefore, the test of coverage focuses on the identity of the tortfeasor – i.e., does the tortfeasor qualify as an insured – and the conduct of the insured – does the conduct of the tortfeasor fall within the coverage of the policy. The conduct

of the tort victims has no bearing on whether the terms and conditions of the policy provide coverage.¹

In contrast, UIM coverage focuses on the identity of the victim. When an insured purchases UIM coverage, the insurer agrees to pay an insured victim for injuries caused by the torts of an underinsured motorist. Typically, the identity of the underinsured motorist tortfeasor is not at issue. In fact, an insured can recover first-party uninsured benefits even in situations where the at-fault motorist cannot be identified. *See* S.C. Code Ann. § 38-77-170. Moreover, the conduct of the underinsured motorist will not affect the insurer's obligations to its insured so long as the injuries result from the underinsured motorist's ownership, maintenance or use of a motor vehicle. Rather, the question in a UIM case is whether the victim qualifies as an insured.

Walls did not purchase UIM coverage. She only purchased liability coverage. Therefore, whether the exclusion applies is determined by the conduct of the tortfeasor – Mayfield. As with the vast majority of torts, the Respondents may be innocent, but their innocence does not change the insurer's responsibilities under a liability policy. The question is whether the conduct of the insured party – Mayfield – falls within a policy exclusion. The Circuit Court determined that Mayfield was fleeing law enforcement and committing a felony at the time of the collision. Therefore, Mayfield's conduct falls within two exclusions, and liability coverage for this accident is limited to the minimum amounts required by the Financial Responsibility Act. If this Court refused to apply the exclusion merely because one of the tort victims is the named insured, it would

¹ In fact, the Supreme Court's holding in *Williams* is an example where a provision limiting coverage based on the identity of the victim was considered arbitrary and capricious. However, the exclusion in this case focuses on the conduct of the insured, not the identity of the victim. The Supreme Court in *Williams* expressed concern that members of the insured's household would be treated differently from the public at large. 409 S.C. at 606, 762 S.E.2d at 716. Here, the exclusion treats all injured parties the same. Instead, the focus of the felony and flight from law enforcement exclusions is on the wrongful conduct of the insured who caused the injuries.

in effect be converting the policy from one of liability – which she purchased – to UIM coverage – which she rejected. From that perspective, giving Walls coverage that she rejected and never paid for violates public policy.

III. If the *Williams* Court construed § 38-77-142 to prohibit any policy provision that excludes voluntary coverage – regardless of the merits of the exclusion – then the decision in *Williams* should be overturned.

Nationwide believes the Supreme Court in *Williams* meant what it said: a family member exclusion is unenforceable because allowing “an insurer to determine the extent to which an injured party can recover within the insured’s policy coverage based solely on a familial relationship is arbitrary and capricious and violative of public policy.” *Id.* at 605-06, 762 S.E.2d at 716. If the Supreme Court deemed all exclusions to be violative of public policy, then the Supreme Court would not have addressed whether it believed the family member exclusion was arbitrary and capricious. However, if Respondents are correct, and the *Williams* case actually says that all exclusions in automobile insurance policies are prohibited by § 38-77-142(C), then *Williams* should be overturned.

A. The purpose of the omnibus statute is to define who must be insured, not what conduct must be insured.

Section 38-77-142 is South Carolina’s “omnibus” statute. *See* Couch on Ins. (3d) § 111:29, n.1 (listing S.C. Code § 38-77-142 as an omnibus statute); *See also St. Paul Fire & Marine Ins. Co. v. American Ins. Co.*, 251 S.C. 56, 60, 159 S.E.2d 921, 923 (1968) (“The legislature has by statute required that liability insurance policies contain coverage while a vehicle is operated with the consent of the named insured. Such provision is referred to as the omnibus clause.”). The omnibus statute “defines the individuals who qualify for coverage under the policy.” *Id.* These clauses “ordinarily define the term ‘insured’ to include not only the named insured but also any

other person using a covered automobile with the expressed or implied permission of the named insured." *Id.*

Pursuant to § 38-77-142, a policy cannot contain an exclusion or other provision that reduces the *coverage* based on the fact that a driver is a permissive user. However, a policy that provides the same coverage to a permissive user and a named insured is valid and enforceable. The statute requires coverage for permissive users and states that no provision in the policy can attempt to avoid coverage based upon the fact that someone is a permissive user. However, the statute says nothing about *conduct* that is not "within the coverage" of a policy. Here, the Nationwide policy does not exclude coverage based on the identity of the driver or victim. Rather, the exclusion applies equally to *all* insureds and depends upon the insured's conduct while operating the vehicle. Because the exclusion treats every "insured" the same, the exclusion is valid and enforceable.

Under the Circuit Court's interpretation of the *Williams* case, § 38-77-142 has a far more reaching and disruptive effect on the insurance laws of South Carolina. Instead of merely requiring that the policy treat a permissive user in the same way that it would treat a named insured, the Circuit Court's interpretation of *Williams* removes every exclusion from every automobile insurance policy issued in the State of South Carolina. If the General Assembly intended such a drastic change that would prevent insurers from limiting their risk for voluntary coverage, then it would have done so in much clearer language. Moreover, the Supreme Court would have had to overrule a long line of cases acknowledging the distinction between mandatory and voluntary automobile coverage for such things as intentional acts, use of a vehicle in the automobile business and other recognized exclusions for coverage above the minimum limits required.

B. The Supreme Court incorrectly interpreted "within the coverage" to mean "within the limits."

The Supreme Court's decision in *Williams* was a split 3-2 decision. The majority relied heavily upon language in §38-77-142(A) and (B) stating that no automobile insurance policy may be issued "unless the policy contains a provision insuring the named insured and any other person using or responsible for the use of the motor vehicle with the express or implied consent of the named insured . . . *within the coverage of the policy or contract* as a result of negligence" S.C. Code Ann. § 38-77-142(A) (emphasis added). The statute uses the phrase "within the *coverage*," not "within the *limits*." To the extent the Supreme Court read § 38-77-142(C) to prohibit all step-down provisions as illegally reducing the "coverage" because they reduce the limits under the policy, then that interpretation ignores the fact that the General Assembly uses the word "limits" when it means "limits."

The General Assembly has shown that it knows the difference between the word "limits" and the word "coverage." For example, in South Carolina Code § 38-31-20(8), the General Assembly defined the term "covered claim" to mean "an unpaid claim . . . which arises out of and is within the *coverage* and is subject to the applicable *limits* of an insurance policy" (emphasis added). Likewise, in South Carolina Code § 38-31-100, the General Assembly provides:

A person who has liquidated by settlement or judgment a claim against an insured under a policy issued by an insolvent insurer, and the claim is a covered claim and is also a claim *within the coverage* of any policy issued by a solvent insurer, must be required first to exhaust all *coverage and limits* provided under the policy issued by the insolvent insurer before execution, levy, or any other proceedings are begun to enforce any judgment obtained against . . . the insured of the insolvent insurer.

S.C. Code Ann. § 38-31-100(5) (emphasis added). Moreover, “[a]ny amount payable on a covered claim under this chapter, . . . must be reduced by the full *limits* of such other *coverage* as set forth on the declarations page of the policy issued by the insolvent insurer.” *Id.* (emphasis added).

The General Assembly uses the term “within the coverage” three times in the insurance context. Its uses in §§ 38-31-20 and 38-31-100 both reveal that the General Assembly knows how to use the term “within the limits” when it wants to. In § 38-77-142, the General Assembly instead chose to use the term “within the *coverage*,” and its intention is manifest. Therefore, § 38-77-142 does not prohibit a step-down provision for a tortfeasor’s liability arising out of his decision to flee from law enforcement and commit a felony.

In contrast, the General Assembly plainly states what limits are required for certain types of coverage. Section 38-77-140 requires minimum “limits” of liability coverage for bodily injury and property damage. Section 38-77-160 requires an offer of optional UM coverage “up to the limits of the insured’s liability coverage” Section 38-77-160 goes on to require an offer of UIM coverage “in the event that damages are sustained in excess of the liability limits carried by the at-fault insured” *Id.* If the General Assembly intended § 38-77-142 to require that all policies provide “limits” of coverage at the face amount listed on the policy declarations under all circumstances, then it would have used the word “limits.” It did not.

If the Supreme Court’s holding in *Williams* accurately reads § 38-77-142, then the General Assembly would have repealed § 38-77-220 when it enacted § 38-77-142. Section 38-77-220 provides that automobile policies “need not insure any liability under the Workers’ Compensation Law nor any liability . . . while engaged in the operation, maintenance, or repair of the motor vehicle nor any liability for damage to property owned by, rented to, in charge of, or transported by the insured.” However, § 38-77-142(C) prohibits any “endorsement, provision, or rider . . . in

any policy of insurance which purports or seeks to limit or reduce the coverage afforded by the provisions required by this *section*.” (emphasis added). Thus, if *section* 38-77-142 prohibits any provision in a policy that would reduce the limit of coverage listed on the policy declarations page, then no policy can exclude coverage when workers’ compensation coverage is triggered as allowed by § 38-77-220. Section 38-77-220 has no purpose if § 38-77-142 broadly prevents exclusions in insurance policies even for optional coverage.

The Circuit Court’s reading of the *Williams* case fundamentally changes the basic structure of insurance policies as they have been in existence for more than a century. See e.g., *Home Ben. Ass’n v. Sargent*, 142 U.S. 691, 12 S. Ct. 332 (1892) (addressing a life insurance policy that included an exclusion for death of the insured by suicide). Liability insurance policies begin with a broad grant of coverage, and then list exclusions that carve out those risks that the insurance company is not willing to bear. If the Supreme Court in *Williams* read § 38-77-142 to preclude this standard practice for voluntary contracts of insurance, then § 38-77-142 constitutes a monumental shift in insurance law. Put simply, any exclusions for coverage limits in excess of the statutory minimum would be eliminated. Insurers would not be able to assess and control risk and consumers of insurance would see a dramatic increase in premiums.

Certainly, in the nearly 15 years since the enactment of § 38-77-142 leading up to the Supreme Court’s decision in *Williams*, the insurance industry, the General Assembly, the courts, or the Department of Insurance would have mentioned such a monumental change in South Carolina’s insurance laws. The total silence on the issue until the Supreme Court’s holding in *Williams* demonstrates that the General Assembly never intended § 38-77-142 to effect such a broad-reaching change.

CONCLUSION

For the above-stated reasons, the Circuit Court's holding should be reversed and the exclusions should be applied according to their plain terms. Respondents now concede that Mayfield's conduct falls squarely within the language of the flight from law enforcement and felony exclusions. Moreover, the exclusions do not violate the public policy of the State of South Carolina and are consistent with the rationale in *Williams*. Far from being arbitrary or capricious, the exclusions prohibit conduct that the South Carolina General Assembly has already deemed criminal. Therefore, the exclusions promote public policy and should be enforced as written. To the extent the Supreme Court's holding in *Williams* states otherwise and casts such a broad net as to prohibit any exclusion in any automobile insurance policy, *Williams* should be overturned. Therefore, the Circuit Court's judgment should be reversed and judgment should be entered in favor of Nationwide.

Respectfully submitted,

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January 19, 2017

IN THE STATE OF SOUTH CAROLINA

In the South Carolina Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

J. Cordell Maddox, Jr., Circuit Court Judge

Case No. 2016-000679

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JAN 19 2017

SC Court of Appeals

Nationwide Mutual Fire Insurance Company.....Appellant,

v.

Sharmin Christine Walls, Randi Harper, Wendy Timms in her
capacity as Personal Representative of the Estate of Christopher
Adam Timms, Deborah Timms, ...Defendants,

Of whom,

Sharmin Christine Walls, Randi Harper, and Wendy Timms in her
capacity as Personal Representative of The Estate of Christopher
Adam Timms, ...Respondents.

CERTIFICATE

I, Wesley B. Sawyer, Esquire, attorney for Appellant, certify that the Final Reply of Appellant complies with the South Carolina Supreme Court Order of August 13, 2007 and Rule 211(b) of the South Carolina Court Rules.

January 19, 2017



J.R. Murphy, Esquire
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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Nationwide Mutual Fire Insurance Company, Appellant,

v.

Sharmin Christine Walls, Randi Harper, Wendy Timms
in her capacity as Personal Representative of The Estate
of Christopher Adam Timms, Deborah Timms,
Defendants,

Of whom, Sharmin Christine Walls, Randi Harper, and
Wendy Timms in her capacity as Personal Representative
of The Estate of Christopher Adam Timms, are the
Respondents.

Appellate Case No. 2016-000679

Appeal From Anderson County
J. Cordell Maddox, Jr., Circuit Court Judge

Opinion No. 5653
Heard October 3, 2018 – Filed June 5, 2019

REVERSED

John Robert Murphy and Wesley Brian Sawyer, both of
Murphy & Grantland, PA, of Columbia, for Appellant.

John Kirkman Moorhead, of Krause Moorhead &
Draisen, PA, of Anderson, for Respondent Randi Harper.

Milford Oliver Howard, III, of Howard Law Firm, P.A.
of Greenville, for Respondent Wendy Timms.

Michael F. Mullinax, of Mullinax Law Firm, P.A., of
Anderson, for Respondent Sharmin Christine Walls.

LOCKEMY, C.J.: Following a police chase that ended in a deadly single-car accident, Nationwide Mutual Fire Insurance Company brought a declaratory judgment action against Sharmin Walls, Randi Harper, and the estate of Christopher Timms (collectively, Respondents) to determine the amount due under an automobile liability policy. The trial court found Nationwide must provide the policy's maximum coverage of \$300,000, despite policy exclusions that reduced coverage to the statutory minimum limit of \$50,000 per occurrence when an accident occurred while committing a felony or fleeing law enforcement. On appeal, Nationwide argues the trial court erred in finding the exclusions violated public policy and were therefore unenforceable. We reverse.

FACTS

The facts of this case are not in dispute. On July 11, 2008, Respondents were passengers in a vehicle owned by Walls and being driven by Korey Mayfield. When a state highway patrol officer attempted to stop the vehicle for speeding, Mayfield ignored the passengers' request to pull over and instead accelerated down the highway. Mayfield led the officer on a high-speed chase—at one point reaching a speed of 109 miles per hour—before exiting the highway and speeding down a residential road. The officer then terminated his pursuit. Approximately one mile from where the chase ended, however, Mayfield lost control of the vehicle and crashed into a group of trees.¹ Timms was killed in the collision, while Mayfield, Harper, and Walls suffered catastrophic injuries. Mayfield was ultimately charged with and pled guilty to reckless homicide, a felony.

At the time of the crash, Walls was a named insured on a Nationwide insurance policy with liability coverage of \$100,000 per person and \$300,000 per accident. With respect to the liability coverage, the policy contained the following provision:

This coverage does not apply, with regard to any amount
above the minimum limits required by the South Carolina

¹ An accident reconstruction team determined Mayfield was travelling at least seventy-two miles per hour at the time of the crash, nearly forty miles per hour above the legal speed.

Financial Responsibility Law [(MVFRA)]² as of the date of the loss, to:

...

6. Bodily injury or property damage caused by:

- a) you;
- b) a relative; or
- c) anyone else while operating your auto;

(1) while committing a felony; or

(2) while fleeing a law enforcement officer.

Relying on the above provision, Nationwide tendered the undisputed minimum cover of \$50,000 to Respondents for their injuries. Respondents received an additional \$50,000 from Mayfield's liability insurer. Walls's policy did not include underinsured motorist coverage.

Nationwide subsequently instituted a declaratory judgment action against Respondents, contending the exclusions prevented them from receiving coverage in excess of \$50,000 because their injuries occurred while Mayfield was fleeing law enforcement. Respondents filed an answer, asserting the exclusions were unenforceable, ambiguous, and/or violated public policy.

The matter proceeded to a bench trial, during which Nationwide presented evidence establishing Mayfield was fleeing law enforcement at the time of the accident and had pled guilty to a felony as a result. At the trial's conclusion, the trial court agreed Mayfield's conduct fell within the ambit of the policy exclusions but nevertheless concluded Respondents were entitled to the full coverage of \$100,000 per person as stated on the policy's declarations page. In a written order, the trial court reasoned the provisions at issue were unenforceable because (1) Nationwide failed to inform Walls of the exclusions or otherwise place them conspicuously on the insurance policy; (2) the exclusions were ambiguous³; and (3) the exclusions violated the state's public policy of protecting innocent insureds, namely the three passengers who were deemed not at fault in causing the collision.

² S.C. Code Ann. §§ 56-9-10 through -410 (2018).

³ Respondents concede on appeal that the exclusions are unambiguous.

Soon after the trial court issued its order, our supreme court decided *Williams v. Gov't Emp. Ins. Co. (GEICO)*, 409 S.C. 586, 762 S.E.2d 705 (2014), holding that a family "step-down" provision violated section 38-77-142 of the South Carolina Code (2015) because it reduced the insured's coverage from the amount stated on the policy's declaration page to the statutory minimum limit. Nationwide filed a motion to reconsider, arguing the trial court made multiple findings of fact unsupported by the evidence and asserting the policy exclusions were reasonable because they only applied to criminal conduct. Furthermore, Nationwide argued *Williams* was factually distinct from the case at hand because it addressed an arbitrary and capricious family member exclusion, not a criminal conduct exclusion such as those in Nationwide's policy. The trial court denied the motion. Relying on *Williams*, the trial court found Nationwide's exclusions were unenforceable because they similarly reduced coverage from the amount stated on the face of the policy to the minimum amount required by law. Nationwide appealed.

STANDARD OF REVIEW

"A suit for declaratory judgment is neither legal nor equitable, but is determined by the nature of the underlying issue." *Felts v. Richland Cty.*, 303 S.C. 354, 356, 400 S.E.2d 781, 782 (1991). "When the purpose of the underlying dispute is to determine whether coverage exists under an insurance policy, the action is one at law." *S.C. Farm Bureau Mut. Ins. Co. v. Kennedy*, 398 S.C. 604, 610, 730 S.E.2d 862, 864 (2012) (citation omitted).

"In an action at law tried without a jury, the appellate court will not disturb the trial court's findings of fact unless there is no evidence to reasonably support them." *Crossmann Cmtys. of N.C., Inc. v. Harleysville Mut. Ins. Co.*, 395 S.C. 40, 46-47, 717 S.E.2d 589, 592 (2011) (citation omitted). "However, an appellate court may make its own determination on questions of law and need not defer to the trial court's rulings in this regard." *Kennedy*, 398 S.C. at 610, 730 S.E.2d at 864. "When an appeal involves stipulated or undisputed facts, an appellate court is free to review whether the trial court properly applied the law to those facts." *WDW Props. v. City of Sumter*, 342 S.C. 6, 10, 535 S.E.2d 631, 632 (2000).

LAW/ANALYSIS

In declining to enforce the policy exclusions, the trial court read our supreme court's decision in *Williams* to hold that *any* policy exclusion that reduced the

coverage stated on the policy's declarations page to the statutory minimum limit violated section 38-77-142 and was therefore unenforceable. Nationwide contends the circuit court's reading of *Williams* is overly broad and a criminal conduct exclusion supports, rather than violates, public policy.

"As a general rule, insurers have the right to limit their liability and to impose conditions on their obligations provided they are not in contravention of public policy or some statutory inhibition." *Williams*, 409 S.C. at 598, 762 S.E.2d at 712. "While parties are generally permitted to contract as they see fit, freedom of contract is not absolute and coverage that is required by law may not be omitted." *Id.* "[S]tatutory provisions relating to insurance contracts become part of the insuring agreement. Where there is a conflict between the statute and the terms of the policy, the statutory provisions prevail." *Allstate Ins. Co. v. Thatcher*, 283 S.C. 585, 587, 325 S.E.2d 59, 61 (1985) (citation omitted).

Section 38-77-140(A) of the South Carolina Code (2015) requires every automobile insurance policy issued in this state to provide a minimum of \$25,000 per person and \$50,000 per accident in liability coverage. However, an insurer may still contract to provide voluntary coverage in excess of the minimum amounts. *Id.* Section 38-77-142 provides in part:

(A) No policy or contract of bodily injury or property damage liability insurance covering liability arising from the ownership, maintenance, or use of a motor vehicle may be issued or delivered in this State to the owner of the vehicle . . . unless the policy contains a provision insuring the named insured and any other person using or responsible for the use of the motor vehicle with the expressed or implied consent of the named insured against liability for death or injury sustained or loss or damage incurred within the coverage of the policy or contract as a result of negligence in the operation or use of the vehicle by the named insured or by any such person. . . .

(B) No policy or contract of bodily injury or property damage liability insurance relating to the ownership, maintenance, or use of a motor vehicle may be issued or delivered in this State to the owner of a . . . without an endorsement or provision insuring the named insured,

and any other person using or responsible for the use of the motor vehicle with the expressed or implied consent of the named insured, against liability for death or injury sustained, or loss or damage incurred within the coverage of the policy or contract as a result of negligence in the operation or use of the motor vehicle by the named insured or by any other person. . . .

(C) Any endorsement, provision, or rider attached to or included in any policy of insurance which purports or seeks to limit or reduce the coverage afforded by the provisions required by this section is void.

"The purpose of the MVFRA is to give greater protection to those injured through the negligent operation of automobiles." *Lincoln Gen. Ins. Co. v. Progressive N. Ins. Co.*, 406 S.C. 534, 539, 753 S.E.2d 437, 440 (Ct. App. 2013). "The legislation requires insurance for the benefit of the public, and an insurer may not 'nullify its purposes through engrafting exceptions from liability as to uses which it was the evident purpose of the statute to cover.'" *Id.* at 539-40, 753 S.E.2d at 440 (citing *Penn. Nat'l Mut. Cas. Ins. Co. v. Parker*, 282 S.C. 546, 551, 320 S.E.2d 458, 461 (Ct. App. 1984)). "Similarly, the stated purpose of the chapter on automobile insurance in Title 38 was to implement a complete reform of automobile insurance in order to, among other things, make sure every risk meeting certain criteria was entitled to automobile insurance and prevent the evasion of coverage provided for by that chapter." *Williams*, 409 S.C. at 599, 762 S.E.2d at 712. "Therefore, our courts will strike down policy provisions that have 'the effect of limiting the coverage requirements of the statute[s].'" *Lincoln Gen. Ins.*, 406 S.C. at 540, 753 S.E.2d at 440. However, "[r]easonable exclusionary clauses which do not conflict with the legislative expression of the public policy of the State as revealed in the various motor vehicle insurance statutes are permitted." *Penn. Nat'l. Mut. Cas. Ins. Co. v. Parker*, 282 S.C. at 551, 320 S.E.2d at 461.

In *Williams*, a husband and wife suffered a fatal accident while riding together in a car insured under both their names. 409 S.C. at 591, 762 S.E.2d at 708. Afterwards, a dispute arose concerning the amount GEICO owed under the deceased insureds' liability policy. *Id.* The estates argued the proper coverage was \$100,000, as stated on the policy's declarations page. *Id.* GEICO asserted it owed only \$15,000 based on a family step-down provision that operated to "step down," or reduce, coverage to the statutory minimum limit when the injured party was a

family member of the insured.⁴ *Id.* The trial court ruled in favor of GEICO, finding the step-down provision was enforceable because it provided at least the minimum liability coverage mandated by law. *Id.* at 592, 762 S.E.2d at 708. The estates appealed, and the case was certified to the South Carolina Supreme Court.

On appeal, a three-two majority reversed. The court noted sections 38-77-142(A) and (B) require "a policy for liability insurance to contain a provision insuring the named insureds and permissive users against liability for negligence incurred 'within the coverage of the policy'" —a phrase the majority interpreted as meaning "the face amount of coverage" on the policy, not the minimum amount of coverage required by section 38-77-140. *Id.* at 603, 762 S.E.2d at 713. The court further noted that the following subsection, section 38-77-142(C), states that any policy that "seeks to limit or reduce the coverage afforded by the provisions required by this section is void." *Id.* GEICO's policy, however, did precisely that; while appearing on its face to provide \$100,000 in liability coverage to a certain class of insureds—defined in the policy, and by statute, to include the named insured and their family members—the policy actually reduced that coverage to the minimum limit by means of the family step-down provision. *Id.* at 604, 762 S.E.2d at 715. In short, because the family step-down provision directly conflicted with the policy's declarations page that purported to provide a certain amount of coverage to the named insureds and their relatives, the provision was deemed invalid.

After acknowledging a divergence in other jurisdictions as to the validity of family step-down provisions, the majority in *Williams* focused its discussion on the practical effect of the provision at issue:

The policy provision here has far-reaching effects that can impact a substantial segment of the population, as it serves not only to markedly reduce coverage to family members, but it even reduces the policy's coverage to the *named insureds*, as happened with the Murrys. The legislative purpose of affording protection to the innocent victims of motor vehicle accidents is eviscerated by GEICO's reduction in coverage to injured family members, who are no less innocent victims in accidents solely because they are injured by the negligence of a family member. It would indeed be an unusual public

⁴ At the time the policy was issued, section 38-77-140(A) provided for liability coverage with a minimum limit of \$15,000 per person.

policy that would condone denying coverage to a child where he or she is catastrophically injured while being driven by a parent to school, but would allow recovery where the parent injures a stranger while on the way to work.

Id. at 606-07, 762 S.E.2d at 716. Accordingly, the majority held the step-down provision violated public policy because it conflicted with the plain language of section 38-77-142 and was injurious to the public welfare. *Id.* at 604, 762 S.E.2d at 715.

Turning to the instant case, we do not believe Nationwide's flight-from-law enforcement and felony exclusions conflict with a statutory scheme or public policy. Sections 38-77-142(A) and (B) are concerned with the persons who must be afforded coverage under a particular policy. The majority in *Williams* read section 38-77-142(C) as prohibiting policy provisions that reduce the stated liability coverage to the minimum limit when the policy's declaration page purports to provide a higher amount of coverage to a certain class of insureds. *Id.* at 603, 762 S.E.2d at 713. Therefore, once the insured agrees to a certain amount of coverage for a class of persons, the insurer may not render that coverage illusory with a contradicting exclusion. *See id.* at 604, 762 S.E.2d at 715 ("After agreeing on a policy with \$100,000 in stated liability coverage for the named insureds, GEICO should not be permitted to subsequently reduce it with what it deems an 'exclusion' in the policy.").

Unlike the step-down provision at issue in *Williams*, however, Nationwide's policy exclusions do not simultaneously reduce the insured's voluntary coverage. Instead, the exclusions are only triggered in the event an insured seeks coverage for injuries sustained while engaging in certain acts. The exclusion is based not on the injured party's relationship to the insured, but on the conduct of the driver. The policy's coverage remains intact, so long as the injury is not the result of foreseeably dangerous conduct that the insured can reasonably avoid. To that end, we note sections 38-77-142(A) and (B) only require insurers to insure against liability that arises "as a result of *negligence* in the operation or use of the motor vehicle." (emphasis added). If we were to read *Williams* as Respondents suggest, any policy provision that excludes voluntary coverage for intentional acts would also violate section 38-77-142. Such an interpretation would essentially eliminate an insurer's ability to limit exposure against avoidable hazards and is not supported by the plain language of the statute. *See id.* at 598, 762 S.E.2d at 712 ("As a general rule, insurers have the right to limit their liability and to impose conditions on their

obligations provided they are not in contravention of public policy or some statutory inhibition."); *S.C. Farm Bureau Mut. Ins. Co. v. Mumford*, 299 S.C. 14, 20, 382 S.E.2d 11, 14 (Ct. App. 1989) ("The principle that one should not be permitted to insure against his own intentional wrongdoing applies to voluntary insurance, not compulsory insurance.").

Furthermore, in enacting section 56-9-20 of the South Carolina Code (2018), the Legislature has permitted insurers to provide different terms to coverage amounts above the minimum limit. That section provides:

Any policy which grants the coverage required for a motor vehicle liability policy may also grant any lawful coverage in excess of or in addition to the coverage specified for a motor vehicle liability policy and the excess or additional coverage shall not be subject to the provisions of this chapter. With respect to a policy which grants this excess or additional coverage, the term "motor vehicle liability policy" shall apply only to that part of the coverage which is required by this article.

Thus, so long as the mandatory minimum coverage limits are met, an insurer may provide reasonable limitations on optional coverage. It follows then that an insurer may choose not to insure above the minimum limit against conduct that is inherently more dangerous than what is attendant to the regular operation of a vehicle.

Finally, there is no basis for a finding that the flight-from-law enforcement and felony exclusions are arbitrary and capricious. *See Williams*, 409 S.C. at 605-06, 762 S.Ed.2d at 716. As discussed above, the exclusions are based not on the identity of the victim, but on the conduct of the driver. To the extent there is a countervailing interest in protecting innocent passengers of a vehicle evading law enforcement, the appropriate balance is struck by the compulsory insurance mandate. Accordingly, because the exclusions discourage certain undesirable behavior while at the same time preserving coverage for innocent victims in the amount deemed appropriate by the General Assembly, we find they do not violate public policy.⁵

⁵ We note a number of jurisdictions have reached similar conclusions regarding the applicability of criminal conduct-based exclusions. *See S. Farm Bureau Cas. Ins. Co. v. Easter*, 287 S.W.3d 537, 541 (Ark. 2008) (holding eluding-lawful-arrest

CONCLUSION

We conclude therefore that nothing in Nationwide's exclusions violate the statutory schemes of Titles 38 and 56 or offends public policy. The provisions unambiguously limit coverage to the statutory minimum limit when an injury occurs during the commission of a felony or flight from law enforcement. Accordingly, the decision of the trial court is

REVERSED.

THOMAS and GEATHERS, JJ., concur.

exclusion did not violate public policy as stated in state's compulsory insurance statute); *Thomas v. Benchmark Ins. Co.*, 179 P.3d 421, 432 (Kan. 2008) (upholding an intentional act exclusion as applied to a police chase); *Hix v. Hertz Corp.*, 705 S.E.2d 219, 220 (Ga. App. 2010) (upholding a felony based exclusion in a rental car policy); *Bohner v. Ace Am. Ins. Co.*, 834 N.E.2d 635, 640 (Ill. App. 2005) (holding criminal act exclusion did not violate public policy); *See Bailey v. Lincoln General Ins. Co.*, 255 P.3d 1039, 1048 (Colo. 2011) ("Of course, many jurisdictions, although not recognizing a public-policy requirement for insurers to include intentional or criminal-act exclusions, hold that public policy is not violated where insurers include in liability or excess insurance policies criminal acts or other similar exclusions. . . ."); *Home Ins. Co. v. Neilsen*, 332 N.E.2d 240, 244 (Ind. App. 1975) ("[A] person should not be permitted to insure against harms he may intentionally and unlawfully cause others, and thereby acquire a license to engage in such activity."); *see also* 8 Lee R. Russ & Thomas F. Segalla, *Couch on Ins.* 3d § 121:92 (1997) ("An exclusion in an automobile policy as to loss while the automobile is used . . . while engaged in unlawful flight from police is not against public policy.").

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Nationwide Mutual Fire Insurance Company, Appellant

v.

Sharmin Christine Walls, Randi Harper, Wendy Timms in
her capacity as Personal Representative of the Estate of
Christopher Adam Timms, Deborah Timms, Defendants

RECEIVED

JUN 17 2019

Of whom, Sharmin Christine Walls, Randi Harper, and
Wendy Timms in her capacity as Personal Representative of
the Estate of Christopher Adam Timms, are the Respondents.

SC Court of Appeals

Appellate Case No.: 2016-000679

Appeal From Anderson County
J. Cordell Maddox, Jr., Circuit Court Judge

PETITION FOR REHEARING

The Respondents, Sharmin Walls and Randi Harper respectfully move and petition, pursuant to Rules 219 and 221(a) SCACR, as well as all other applicable law, for an Order granting rehearing in this case as to certain issues and submits the below memorandum in support of the same. In an opinion filed June 5, 2019, this Court may have overlooked or misapprehended certain points of law affecting the disposition of this case, as the following shows:

The Court of Appeals, in its June 5, 2019 opinion, found that the conduct of the insured in fleeing law enforcement and/or committing a felony allowed Nationwide to reduce the automobile liability limits from 100,000/300,000 to the statutory minimum limits, based upon an unambiguous clause in the policy.

The Court distinguished this case from Williams v GEICO, saying that in Williams the clause in the policy reducing coverage to a class of persons reduced coverage at the time of the issuance of the policy, while in the instant case coverage was reduced as a result of conduct of the insured at a later time. However, the Supreme Court's finding in Williams, citing South Carolina Code §38-77-142(c), makes clear that "any endorsement, provision, or rider attached to or included in any policy of insurance which purports or seeks to limit or reduce the coverage afforded by the provisions required by this section is void." There is no temporal distinction as to when the limitation or reduction occurs. South Carolina Code §38-77-142(c) and the Supreme Court case of Williams v. Gov't Emp. Ins. Co.(GEICO), 409 S.C. 586, 762 S.E. 2nd 705 (2014) control the disposition of the "step-down" provision in issue in the case before the Court, and invalidate and make void that step-down provision. Therefore, Nationwide should be required to provide the \$100,000/\$300,000.00 coverage set forth in the declarations page of the policy.

I. Nationwide's "step-down" provision violated S.C. Code Ann. §38-77-142(c) and was unenforceable per Williams v. Gov't Emp. Ins. Co. (GEICO), 409 S.C. 586, 762 S.E. 2nd 705 (2014).

It is respectfully submitted that the Court of Appeals overlooked the specific holdings in the Williams case which exhaustively reviewed the law of this state and other states, and concluded that the statutory provision as set forth in

S.C. Code Ann. §38-77-142(c) mandatorily voided any provision seeking to limit or reduce coverage to the named insured (Walls). The Court in Williams made two specific rulings.

First, it ruled that the clear terms of §38-77-142 (c) were controlling of this state's public policy and that the step-down provision conflicted with §38-77-142(c) and was therefore invalid and void, and that no policy may limit or reduce the coverage required by this section and if any attempt was made to do so, it was void... Williams at page 714.

"The cardinal rule of statutory construction is for a court to ascertain the intent of the legislature and to give it effect. *Charleston County Sch. Dist. v. State Budget and Control Bd.*, 313 S.C. 1, 437 S.E.2d 6 (1993). "What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will." Norman J. Singer, *Sutherland Statutory Construction* § 46.03 at 94 (5th ed.1992). If a statute's language is plain, unambiguous, and conveys a clear meaning "the rules of statutory interpretation are not needed and the court has no right to impose another meaning." *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). This plain meaning rule ensures a court will not change the meaning of an unambiguous statute. *Id.*" *Knotts v. S.C. Dep't of Nat. Res.*, 348 S.C. 1, 10, 558 S.E.2d 511, 516 (2002).

Second, the Court ruled that in addition to the above, the provision in Williams as to family members was arbitrary, capricious and injurious to the public good; the Court stating " **that in addition** [emphasis added] to allow an insurer to determine the extent to which an injured party can recover within the insured's policy coverage, based solely on a familial relationship, is arbitrary, capricious and injurious to the public good".... See Williams at page 717.

The opinion issued June 5, 2019 focused solely on the Second basis for the ruling and ignored the plain meaning of the statute and Williams.

The Court of Appeals, in its opinion, further attempted to buttress its

decision based upon S.C. Code §56-9-20. This view is similar to the dissenting opinion in Williams which was expressly rejected by the Supreme Court, and the Supreme Court by its majority decision in Williams, in footnote 8 made clear that §56-9-20, “ had no bearing on the application of other [emphasis added] motor vehicle laws, such as §38-77-142, or the related consideration of our state’s public policy”. Williams at page 717

We contend that the public policy of this state expressed by the Legislature, in §38-77-142 (c) prevents the insurer from reducing the coverage from the amount stated in the policy, which in this case was \$300,000.00, to the statutory minimum limit required by §38-77-142(a), which was \$25,000.00 per person for bodily injury the policy period at issue.

In Williams, the Supreme Court stated as follows:

“The PR’s contend the public policy of this state, as evidenced in §38-77-142, prevents an insurer from reducing the amount stated in the policy, which here was \$100,000, to the statutory minimum limit required by the §38-77-140 (A), which was 15,000 per person for bodily injury during the policy period at issue. **We Agree.** [emphasis added] See Williams at page 712.

The Williams Court further specifically found and concluded as a matter of law as follows:

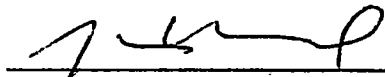
“Finally, Subsection (c) provides that no policy provision may limit or reduce the coverage required by this section, which refers to §38-77-142, or it is void”. See Williams at page 714.

The Supreme Court further stated that insurance companies could not limit or reduce liability coverages below the amount provided in §38-77-142(c) and held that the face amount of the coverage was relevant, not the statutory minimum limits as set forth in §38-77-140. Williams, at page 714

The Supreme Court was particularly focused on the manner in which automobile insurance was marketed, and recognized that the General Assembly in its specific language contained in §38-77-142(c) specifically included language to prevent step-down provisions such as appears in the Nationwide policy. The Court of Appeals has failed to recognize this distinction and has failed to follow the precedent of the Williams case, *supra*.

S.C. Code §38-77-142(c) is an unambiguous statement by the General Assembly of this state and the plain meaning of this statute must be enforced as was done in the Williams case. Walls, the named insured, purchased the 100,000/300,000 limits. The Petitioners were essentially innocent victims of a “car-jacking”. If the law is to be changed, that is for the Legislature, not this Court. If the precedent set by Williams is to be overruled, it is the province of the Supreme Court of this State, not this Court.

Respectfully submitted,



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June 14, 2019

THE STATE OF SOUTH CAROLINA

In the South Carolina Court of Appeals

APPEAL FROM ANDERSON COUNTY

Court of Common Pleas

Trial Case No.: 2009-CP-04-00907

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J. Cordell Maddox, Jr., Circuit Court Judge

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SC Court of Appeals

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Of whom, Sharmin Christine Walls Randi Harper, and
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PROOF OF SERVICE

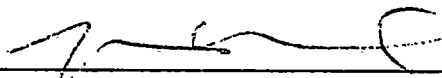
I certify that I have served the Petition for Rehearing on behalf of the Respondents, Sharmin Christine Walls and Randi Harper (submitted jointly by Michael F. Mullinax and J. Kirkman Moorhead) on the Appellant, Nationwide Mutual Fire Insurance Company, and all counsel of record, by depositing copies of the Petition for Rehearing in the United States Mail, postage prepaid, on June 14, 2019, addressed as follows:

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June 14, 2019

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Case No. 2016-000679

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RETURN TO PETITION FOR REHEARING

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IN THE STATE OF SOUTH CAROLINA

In the South Carolina Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

J. Cordell Maddox, Jr., Circuit Court Judge

Case No. 2016-000679

Nationwide Mutual Fire Insurance Company.....Appellant,

v.

Sharmin Christine Walls, Randi Harper, Wendy Timms in her
capacity as Personal Representative of the Estate of Christopher
Adam Timms, and Deborah Timms, ...Defendants,

Of whom,

Sharmin Christine Walls, Randi Harper, and Wendy Timms in her
capacity as Personal Representative of The Estate of Christopher
Adam Timms, ...Respondents.

RETURN TO PETITION FOR REHEARING

Appellant Nationwide Mutual Fire Insurance Company respectfully submits this Return to the Petition for Rehearing filed by Petitioners Sharmin Christine Walls, Randi Harper, and Wendy Timms in her capacity as Personal Representative of the Estate of Christopher Adam Timms:

SUMMARY

On June 5, 2019, this Court entered a unanimous opinion finding that flight-from-law-enforcement and felony exclusions in an automobile liability policy that reduce voluntary liability insurance to the state's mandatory minimum limits comport with South Carolina's public policy.

In doing so, this Court adopted a rule that has been reached by nearly every court in the country to address this question. South Carolina has long held that “[r]easonable exclusionary clauses which do not conflict with the legislative expression of the public policy of the State as revealed in the various motor vehicle insurance statutes are permitted.” *Pennsylvania Nat’l. Mut. Cas. Ins. Co. v. Parker*, 282 S.C. 546, 551, 320 S.E.2d 458, 461 (Ct. App. 1984). Because the flight-from-law-enforcement and felony exclusions do not conflict with South Carolina public policy, this Court’s Opinion was correct and should be left undisturbed.

- I. **This Court correctly held that an insurer may provide reasonable limitations on optional coverage, including limitations against voluntary conduct that is inherently more dangerous than what is attendant to the regular operation of a vehicle.**

Petitioners ask this Court for rehearing, claiming the Opinion is inconsistent with the Supreme Court’s decision in *Williams v. Government Employees Insurance Company (GEICO)*, 409 S.C. 586, 762 S.E.2d 705 (2014). However, this Court’s Opinion addresses the *Williams* decision at great length and correctly reads the holding in *Williams*: “Accordingly, the majority [in *Williams*] held the step-down provision violated public policy because it conflicted with the plain language of section 38-77-142 and was injurious to the public welfare.” (Opinion dated June 5, 2019 (Shearouse Adv. Sheet No. 23, p. 22)). Respectfully, this Court correctly read and applied the *Williams* decision. The exclusions at issue here do not conflict with the statutory language and are not injurious to the public welfare.

Petitioners contend this Court misreads *Williams* because – in Petitioners’ view – the Supreme Court reached two, independent conclusions, finding that a provision in a policy may be struck down either if the provision is arbitrary or capricious or if it violates § 38-77-142. However, a close reading of *Williams* – a 3-2 decision – disproves Petitioners’ contention.

After finding the family-member exclusion was unambiguous, the *Williams* Court spends several pages of its opinion discussing South Carolina Code § 38-77-142 and its meaning. *See Williams*, 409 S.C. at 598-603, 762 S.E.2d at 712-715. Importantly, at the end of its extensive discussion of § 38-77-142, the Supreme Court concludes its discussion with a conclusion paragraph beginning with the word “Therefore” and holding:

Therefore, once the face amount of coverage is agreed upon, it may not be arbitrarily reduced or limited by conflicting policy provisions that effectively retract this stated coverage. Any other interpretation of section 38-77-142(C) would render the section useless, and the General assembly is presumed not to perform useless acts.

Williams, 409 S.C. at 604, 762 S.E.2d at 714 (emphasis added). Thus, the Supreme Court concluded that § 38-77-142 prohibits an arbitrary policy exclusion. In other words, a contractual step-down provision is only void under § 38-77-142 if it is arbitrary.

The Supreme Court then proceeds in the *Williams* opinion to evaluate whether the family-member step-down provision was, in fact, arbitrary. *Id.* at 604-607, 762 S.E.2d at 715-717. After evaluating the family-member exclusion, the Supreme Court held: “To allow an insurer to determine the extent to which an injured party can recover within the insured’s policy coverage based solely on a familial relationship is arbitrary and capricious and violative of public policy.” *Id.* at 605-606, 762 S.E.2d at 716 (emphasis added). Thus, the Supreme Court held that § 38-77-142 prevents an insurer from arbitrarily reducing the limits of liability coverage, and then found that the family-member exclusion violated that public policy because it was arbitrary and capricious.

As this Court held in the June 5, 2019 Opinion, the felony and flight-from-law-enforcement exclusions are far from arbitrary. Rather, these exclusions support important public policy by discouraging volitional, illegal conduct and preventing a criminal actor from shifting the cost of his criminal conduct to others. As such, this Court’s holding comports with the strong majority

view of similar exclusions.¹ “Indeed, this public-policy principle is so compelling that in many jurisdictions, insurers may actually violate public policy if they fail to include criminal-acts or

¹ Numerous courts across the country have found that felony or flight-from-law-enforcement exclusions in automobile and other types of insurance policies do not violate public policy. *Alfa Specialty Ins. Co. v. Jennings*, 906 So. 2d 195 (Ala. Civ. App. 2005) (holding felony exclusion in automobile liability policy did not violate public policy where insured was fleeing law enforcement); *Hix v. Hertz Corp.*, 307 Ga. App. 369, 705 S.E.2d 219 (Ct. App. 2010) (same); *Southern Farm Bureau Cas. Ins. Co. v. Easter*, 374 Ark. 238, 287 S.W.3d 537 (2008) (holding that eluding-lawful-arrest exclusion did not violate public policy as stated in state’s compulsory insurance statute or no-fault statute); *Hix v. Hertz Corp.*, 307 Ga. App. 369, 705 S.E.2d 219 (Ct. App. 2010) (same); *Bailey v. Lincoln General Ins. Co.*, 255 P.3d 1039, 1048 n.2 (Colo. 2011) (“Of course, many jurisdictions, although not recognizing a public-policy requirement for insurers to include intentional or criminal-act exclusions, hold that public policy is not violated where insurers include in liability or excess insurance policies criminal-acts or other similar exclusions . . .”) (auto policy); *Cotton States Mut. Ins. Co. v. Neese*, 254 Ga. 335, 341-42, 329 S.E.2d 136, 142 (1985) (holding that application of flight-from-law-enforcement exclusion in automobile liability policy to amounts exceeding state’s minimum limits did not violate public policy); *Bohner v. Ace American Ins. Co.*, 359 Ill. App. 3d 621, 834 N.E.2d 635 (App. 2 Dist. 2005) (holding that criminal act exclusion in auto gap policy was enforceable and did not violate public policy); *Slayko v. Security Mut. Ins. Co.*, 98 N.Y.2d 289, 774 N.E.2d 208 (2002) (holding that a criminal activity exclusion in a homeowners policy does not violate public policy); *American Family Mut. Ins. Co. v. Hadley*, 264 Neb. 435, 445-46, 648 N.W.2d 769, 779-80 (2002) (“As a general rule, the majority of courts that have addressed the issue hold that a provision in a homeowner’s policy which excludes coverage for claims arising from criminal acts . . . does not violate public policy.”); *Allstate Ins. Co. v. Peasley*, 131 Wash. 2d 420, 932 P.2d 1244 (1997) (holding that criminal acts exclusion in homeowners policy did not violate public policy); *ANPAC v. Clendenen*, 793 S.E.2d 899, 908 (W. Va. 2016) (“Indeed, the majority of jurisdictions to consider the question raised . . . apply intentional acts exclusions similar to the exclusions in [the] policies to preclude coverage to an insured based on the intentional or criminal acts of a co-insured”) (homeowners policy); *Pompa v. American Family Mut. Ins. Co.*, 520 F.3d 1139 (10th Cir. 2008) (applying Colorado law and holding that a criminal acts exclusion in a homeowners policy does not violate public policy); *American Family Mut. Ins. Group v. Kostaneski*, 688 N.W.2d 410, 415 (S.D. 2004) (“It is contra bonos mores to allow a man to insure against the consequences of his own . . . criminal conduct.”) (homeowners policy); *Auto Club Group Ins. Co. v. Daniel*, 254 Mich. App. 1, 5, 658 N.W.2d 193, 196 (Ct. App. 2002) (“[A]s a matter of public policy, an insurance policy that excludes coverage for a person’s criminal acts serves to *deter* crime, while a policy that provides benefits to those who commit crimes would *encourage* it.”) (homeowners policy); *Princeton Ins. Co. v. Chunmuang*, 151 N.J. 80, 698 A.2d 9 (1997) (holding that criminal acts exclusions are “valid and do not violate public policy.”) (medical malpractice policy); *New Mexico Physicians Mut. Liability Co. v. LaMure*, 116 N.M. 92, 860 P.2d 734 (1993) (holding that a criminal acts exclusion in a physician’s professional liability policy did not violate public policy); *Rivera v. Nevada Medical Liability Ins. Co.*, 107 Nev. 450, 455, 814 P.2d 71, 74 (1991) (same); *Barker v. California-Western States Life Ins. Co.*, 252 Cal. App. 2d 768, 776, 61 Cal. Rptr. 595 (1967), *cert. denied*, 390 U.S.

intentional-acts exclusions in their policies.” *Bailey*, 225 P.3d at 1048. “To be sure, public policy generally bars coverage for an insured’s intentional wrongdoing or criminal misconduct.” *St. Paul Fire and Marine Ins. Co. v. Jacobson*, 826 F. Supp. 155, 162 (E.D. Va. 1993), *aff’d* 483 F.3d 778 (4th Cir. 1995). Therefore, the exclusions – rather than being arbitrary or capricious – actually support important public policy goals by preventing a criminal actor from shifting the cost of damages he causes to others.

II. This Court correctly found that the flight-from-law-enforcement and felony exclusions do not simultaneously reduce or limit coverage appearing on the face of the policy to a certain class of insureds.

The Supreme Court in *Williams* was concerned with an identity-based policy exclusion. The family-member exclusion in that case determined how much liability coverage was available for an accident based solely on the happenstance identity of the victim. The Supreme Court found that such an exclusion was arbitrary and capricious. The exclusion violated public policy because it singled out family members “who are no less innocent victims in accidents solely because they are injured by the negligence of a family member.” *Id.* at 606-607, 762 S.E.2d at 716.

As this Court aptly recognized in its June 5, 2019 Opinion, the flight-from-law-enforcement and felony exclusions at issue here are quite different from the family member exclusion at issue in *Williams*. The family-member exclusion focuses on the identity of the victim

922, 88 S. Ct. 855 (1968) (concluding felony exclusion clause in a life insurance policy is not contrary to public policy); *James v. Louisiana Laborers Health & Welfare Fund*, 29 F.3d 1029 (5th Cir. 1994) (upholding provision in health insurance plan excluding coverage for expenses incurred in the course or commission of a felony); *Sisters of the Third Order of St. Francis v. Swedish American Group Health Benefit Trust*, 901 F.2d 1369, 1370 (7th Cir. 1990) (holding that because drunk driving is illegal activity under Illinois law, insured was not able to recover from a health plan for the injuries he sustained in a drunk driving accident); *Littlefield v. Acadia Ins. Co.*, 392 F.3d 1, 12 n.12 (1st Cir. 2004) (“We note that numerous state courts have also held that enforcement of similar insurance policy provisions excluding coverage for criminally caused loss or liability does not violate the public policy of those states.”) (boating policy).

of a tort – a factor that the Supreme Court in *Williams* deemed arbitrary. In stark contrast, the felony and flight-from-law-enforcement exclusions in this case focus on the volitional and criminal conduct of the insured.

The Supreme Court in *Williams* reasoned that, in the context of identity-based exclusions such as the family member exclusion, the policy provides reduced coverage for injuries to certain victims the moment the policy is issued. Although the face limit of liability coverage on the declarations page says one amount, the policy actually only provides a fraction of that amount if the victim is a family member, regardless of the conduct that gave rise to the injury. On the other hand, conduct-based exclusions such as the flight-from-law-enforcement and felony exclusions are not automatic. The insured driver enjoys the full limits of liability coverage stated on the declarations page from the moment the policy is issued until the moment when the insured driver begins to flee from law enforcement or use the vehicle in the commission of a felonious act. The step-down provision only applies while the insured driver participates in conduct which is wholly volitional and significantly increases the risk beyond normal driving conditions. As this Court cogently stated in its Opinion:

The policy's coverage remains intact, so long as the injury is not the result of foreseeably dangerous conduct that the insured can reasonably avoid. To that end, we note sections 38-77-142(A) and (B) only require insurers to insure against liability that arises "as a result of *negligence* in the operation or use of the motor vehicle." (emphasis added). If we were to read *Williams* as Respondents suggest, any policy provision that excludes voluntary coverage for intentional acts would also violate section 38-77-142. Such an interpretation would essentially eliminate an insurer's ability to limit exposure against avoidable hazards and is not supported by the plain language of the statute.

(Opinion dated June 5, 2019 (Shearouse Adv. Sheet No. 23, p. 23)).

Simply put, there is no basis to find that the flight-from-law-enforcement or felony exclusions are arbitrary or capricious or violate the public policy of the State

of South Carolina. In fact, Petitioners do not even argue in their Petition that the provisions are arbitrary or capricious.

By enforcing the step-down provisions, this Court adopted a rule that has been applied by nearly every jurisdiction to consider the applicability of these exclusions.² Unlike the family-member step-down in *Williams*, which focused on the identity of the victim and always precluded coverage for those victims regardless of the insured driver's conduct, the exclusions at issue here only apply when the insured driver elects to participate in highly dangerous or felonious conduct. The South Carolina General Assembly has already deemed such conduct violative of public policy by attaching criminal penalties to that conduct. Therefore, provisions in an insurance contract reducing coverage to the minimum limits when the insured driver chooses to participate in such criminal conduct do not violate any public policy of this State. Instead, the exclusions support South Carolina's public policy. Therefore, this Court's unanimous Opinion is correct, and should be left undisturbed.³

² The undersigned is unaware of any case finding that flight-from-law-enforcement or felony exclusions in this context are wholly unenforceable even for amounts above a state's stated minimum limits of liability coverage.

³ At the end of their Petition for Rehearing, Petitioners argue that they "were essentially innocent victims of a 'car-jacking.'" (Pet. for Rehearing, p. 5). This argument focuses again on the identity of the victim, not the conduct of the insured driver. The argument suggests that there should be different treatment for the Petitioners than a person who was unrelated to the accident vehicle. However, liability insurance insures against the liability of the insured driver. It is paid on the insured driver's behalf to indemnify the driver for his legal liabilities to third parties. The exclusion here does not focus on the identity of the victim, it focuses solely on the conduct of the insured driver.

In contrast, a purchaser of an insurance policy has the statutorily-protected option to purchase uninsured and underinsured motorist coverage, which insures the named insured and certain others for their personal injuries regardless of whether the tortfeasor's conduct was felonious or merely negligent. Uninsured/underinsured motorist benefits are paid directly to the insured and not paid on behalf of the tortfeasor driver. Had the named insured in this case elected to purchase underinsured motorist coverage, then there would be no step down for that coverage. However, the named insured in this case chose to reject optional underinsured motorist coverage.

III. Neither Section 38-77-142 nor the Supreme Court's holding in *Williams* can be read to invalidate all exclusions in automobile insurance policies.

Petitioners ask this Court to read the *Williams* decision as making a sweeping holding that would place South Carolina alone in the county in its position. Even though the numerous jurisdictions that have addressed felony and flight-from-law-enforcement exclusions overwhelmingly hold that such exclusions are enforceable and, in some instances mandatory, Petitioners ask this Court to read the *Williams* decision and section 38-77-142 to invalidate all policy exclusions regardless of whether they involve coverage above the statutorily mandated minimums and regardless of the conduct the exclusion is designed to dissuade. Petitioners have cited no cases from anywhere in the country holding similar provisions invalid.

The South Carolina General Assembly adopted section 38-77-142 from Virginia's statute, as evidenced by a typographical error in South Carolina's statute that was copied from Virginia's statute. South Carolina's statute applies only to motor vehicles, but Virginia's statute applies to both vehicles and boats. However, the South Carolina statute includes typographical errors referencing vehicles "docked" in this State. See S.C. Code § 38-77-142(A) ("No policy . . . covering liability arising from the . . . use of a motor vehicle may be issued . . . upon a motor vehicle that is principally garaged, docked, or used in this State . . . Each policy or contract of liability insurance . . . insuring private passenger automobiles principally garaged, docked, or used in this State . . ."). Obviously, motor vehicles are not "docked." Unlike South Carolina's statute, the Virginia statute applies to motor vehicles and watercraft. See Va. Code § 38.2-2204(A). This typographical error in the South Carolina statute makes it obvious that South Carolina adopted this omnibus statute from Virginia.

Applying the Virginia statute, the United States District Court for the Eastern District of Virginia held that an illegal acts exclusion is valid and enforceable. In *Standard Fire Ins. Co. v.*

Armstrong, 2013 WL 1933828 (E.D. Va. May 8, 2013), the District Court enforced an “illegal act” exclusion to the operation of a watercraft. In that case, the insured operated the boat while intoxicated, and the District Court held the illegal acts exclusion applied. *Id.* at *3. The District Court specifically reviewed section 38.2-2204 and held it could find nothing in the statute “forbidding an exclusion of coverage for dishonest and illegal actions where an intoxicated boater causes property damage.” *Id.* Thus, whereas Petitioners fail to cite any case holding a similar statute prohibits a felony or flight-from-law-enforcement exclusion, at least one other court applying a nearly identically-worded statute has held that statute does not invalidate an illegal acts exclusion.

The Supreme Court’s 3-2 decision in *Williams* addressed a very specific, identity-based exclusion, and found that exclusion violated section 38-77-142 because it arbitrarily and capriciously reduced the limits of available insurance coverage based on the identity of a victim. The case was narrowly decided, and it cannot be reasonably read as broadly as the Petitioners contend. If followed to its logical end, the Petitioners’ argument would invalidate every exclusion in every automobile insurance policy in the State of South Carolina regardless of the exclusion’s reasonableness. Instead, the *Williams* holding was limited to a particular exclusion, deemed to be arbitrary and capricious, and should be read as applying only to that particular exclusion. Petitioners’ request for a broader reading is inconsistent with the plain reading of the statute, with the rationale of the *Williams* opinion, and with how other courts across the nation have interpreted similar statutes and exclusions. For all of these reasons, this Court should deny the Petition for Rehearing.

CONCLUSION

For the above-stated reasons, Petitioners' request for a rehearing should be denied, and this Court's well-reasoned June 5, 2019 Opinion should stand. This Court's written Opinion evidences a thorough analysis of the *Williams* decision, section 38-77-142, and the public policy of this State. In sum, the Opinion reaches the correct conclusion. The flight-from-law-enforcement and felony exclusions strike the correct balance of South Carolina's competing public policy interests by providing the mandatory minimum limits of liability coverage to protect the innocent public while not insuring insured drivers beyond those minimum limits for their volitional, criminal conduct.

Because the exclusions promote public policy, the Opinion should be left undisturbed.

Respectfully submitted,

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In the South Carolina Court of Appeals

APPEAL FROM ANDERSON COUNTY
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J. Cordell Maddox, Jr., Circuit Court Judge

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CERTIFICATE

I, J.R. Murphy, Esquire, attorney for Appellant, certify that the Final Brief of Appellant complies with the South Carolina Supreme Court Order of August 13, 2007 and Rule 211(b) of the South Carolina Appellate Court Rules.

July 15, 2019



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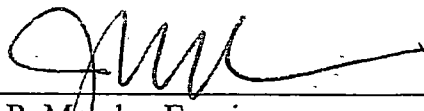
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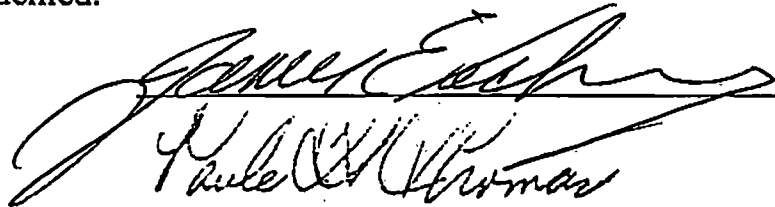
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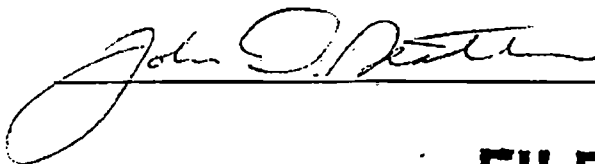
Appellate Case No. 2016-000679

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

 C. J.

 J.

 J.

Columbia, South Carolina

FILED

August 22, 2019

cc:

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