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The State of South Carolina
In The Supreme Court

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S.C. SUPREME COURT

APPEAL FROM GREENVILLE COUNTY

Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge

Case No. 2020-000026

NATIONWIDE INSURANCE COMPANY
OF AMERICA,

Respondent,

v.

KRISTINA KNIGHT, Individually and as
Personal Representative of
THE ESTATE OF DANIEL KNIGHT,

Petitioners.

Appendix

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**The State of South Carolina
In The Court of Appeals**

APPEAL FROM GREENVILLE COUNTY

Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge

Case No. 2017-001348

RECEIVED
OCT 12 2017
SC Court of Appeals

**NATIONWIDE INSURANCE COMPANY
OF AMERICA,**

Respondent,

v.

**KRISTINA KNIGHT, Individually and as
Personal Representative of
THE ESTATE OF DANIEL KNIGHT,**

Appellants.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE

CIVIL ACTION NO: 2016-CP-23-04327

Nationwide Insurance Company of America,

Plaintiff,

v.

Kristina Knight, Individually and as Personal
Representative of the Estate of Daniel P.
Knight,

Defendant.

**ORDER GRANTING PLAINTIFF'S MOTION
FOR SUMMARY JUDGMENT**

This matter came before the Court for a hearing on Monday, May 22, 2017. Present at the hearing was Adam J. Neil of Murphy & Grantland, P.A. representing Nationwide Insurance Company of America ("Nationwide") and Edwin L. Turnage of Harris & Graves, P.A. representing Kristina Knight and the Estate of Daniel P. Knight (collectively "Knight"). Under consideration by the Court were the parties' cross-motions for summary judgment. Having reviewed the submissions of the parties, considered the arguments of counsel, and studied the law of this state, the Court grants Nationwide's motion for summary judgment and denies the cross-motion filed by Knight.

This declaratory judgment action arises from an automobile accident that occurred on February 2, 2016. Daniel P. Knight died as a result of injuries he sustained in the accident. Daniel was driving a motorcycle in the accident, which was insured by a policy of insurance issued by a company that is not a party to this case. Nationwide provided automobile insurance coverage to Knight's wife (who was then his fiancée) for a 1996 Ford Ranger that was not involved in the accident. Kristi and Daniel were married at the time of his death. Knight's Estate collected underinsured motorist ("UIM") benefits from other sources and then made a claim for underinsured motorist benefits from Nationwide. Nationwide denied the claim for UIM benefits because Daniel Knight was specifically excluded from coverage under the Nationwide policy at Kristi's written request.

When she applied for the policy, Kristi signed Nationwide's Excluded Driver Form, which is entitled "Voiding Auto Insurance While Named Person Is Operating Car." The endorsement states, "With this endorsement, all coverages in your policy are not in effect while Danny Knight is operating any motor vehicle." When she executed the endorsement, Kristi represented that Daniel had "obtained insurance or other security to operate motor vehicles."

There are no disputed issues of material fact in this case. Kristi signed the Excluded Driver Form, and Daniel Knight was listed as an excluded driver on the policy at the time of the February 2, 2016 accident. The parties do not dispute the terms of the Excluded Driver Form, only its legal effect.

The General Assembly expressly permits policyholders to exclude specific individuals from coverage provided by automobile insurance policies issued in the State of South Carolina. *See* S.C. Code Ann. § 38-77-340. South Carolina's excluded driver statute provides in pertinent part:

Notwithstanding the definition of "insured" in Section 38-77-30, the insurer and any named insured must, by the terms of a written amendatory endorsement, the form of which has been approved by the director or his designee, agree that coverage under such a policy of liability insurance shall not apply while the motor vehicle is being operated by a natural person designated by name. The agreement, when signed by the named insured, is binding upon every insured to whom the policy applies and any substitution or renewal of it. However, no natural person may be excluded unless the named insured declares in the agreement that (1) the driver's license of the excluded person has been turned in to the Department of Motor Vehicles or (2) an appropriate policy of liability insurance or other security as may be authorized by law has been properly executed in the name of the person to be excluded.

S.C. Code Ann. § 38-77-340.

Under the terms of the statute, an excluded driver endorsement is valid and enforceable where the form has been approved by the South Carolina Department of Insurance, the endorsement names the excluded driver, and the named insured declares either that the excluded driver has turned in his license to the DMV or has an appropriate policy of insurance from another source. Each of these elements is satisfied by Nationwide's form. Nevertheless, Knight contended that Nationwide incorrectly denied the claim for UIM benefits.

Knight first argued that the Excluded Driver Form did not apply to this UIM claim because Daniel Knight was a statutory insured. Knight asserted that the Excluded Driver Form cannot apply to coverage required by statute. However, the South Carolina Court of Appeals addressed this question in *Lincoln General Ins. Co. v. Progressive Northern Ins. Co.*, 406 S.C. 534, 753 S.E.2d 437 (Ct. App. 2013), and held the exclusion applies to the coverage provided by the policy even when the excluded driver is a statutory insured. Moreover, UIM coverage is not mandatory coverage in South Carolina.

Second, Knight argued that despite the endorsement, the Nationwide policy cannot exclude UIM coverage because the language of §38-77-340 only applies to liability coverage. Knight's position is unsupported by the language in Nationwide's endorsement and by the statutory language. The plain language in the endorsement shows that the excluded driver endorsement applies to all coverage provided under the policy issued to Kristi. Since the endorsement applies to all coverages, the only question is whether an exclusion that is so broad is allowed by the statute. The statute provides that the named driver endorsement is applicable to "a policy of liability insurance." In this context, a policy of liability insurance must encompass all coverages provided to the policyholder because UIM coverage cannot be sold as a stand-alone policy. See §38-77-160. In South Carolina there is no policy of Underinsured Motorist Insurance or a policy of Personal Injury Protection Insurance. All of those types of coverage are attached to the policy of liability insurance. See § 56-9-20(5) (defining "Motor Vehicle Liability Policy" to include a policy including the coverages described within §§38-77-140–38-77-230, which includes underinsured motorist coverage).

Lastly, Knight argued that applying the endorsement to a claim for UIM benefits is contrary to the public policy of South Carolina because it limits the portability of the UIM coverage. The Court disagrees. Nationwide does not dispute that Daniel might have collected UIM benefits were it not for Kristi's execution of the excluded driver endorsement. In other words, Nationwide does not contend

that Daniel cannot collect UIM coverage because he was not operating the truck insured by Nationwide. Rather, the coverage is not available because Kristi chose to exclude it when Daniel was operating a vehicle.

The public policy of South Carolina actually supports Nationwide's application of the excluded driver endorsement to UIM coverage. In South Carolina an insured can only purchase UIM and UM coverage with limits up to the amount of the liability coverage limits. Thus, an individual is not allowed to protect himself from injury in an amount greater than that which he protects the public. Allowing an excluded driver to collect UIM coverage when he is explicitly and purposefully excluded from coverage for his liability to others undercuts that legitimate public policy objective.

In sum, there is no dispute as to any material fact in this case. All of the statutory requirements of § 38-77-340 have been satisfied. Therefore, the Court declares that "all coverages" in the Nationwide policy were "not in effect" at the time of the accident and Knight was specifically excluded and is not entitled to collect UIM coverage from Nationwide.

Nationwide's motion for summary judgment is hereby **GRANTED**.

HONORABLE WILLIAM H. SEALS, JR.
Presiding Judge



Greenville Common Pleas

Case Caption: Nationwide Insurance Company Of America vs. Kristina Knight ,
defendant, et al
Case Number: 2016CP2304327
Type: Order/Summary Judgment

IT IS SO ORDERED

s/ The Honorable William H. Seals Jr. #2157

Electronically signed on 2017-05-26 10:43:16 page 5 of 5

ELECTRONICALLY FILED - 2017 May 26 11:37 AM - GREENVILLE - COMMON PLEAS - CASE#2016CP2304327

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge

RECEIVED

JUN 15 2017

SC Court of Appeals

Case No.: 2016-CP-23-04327

NATIONWIDE INSURANCE COMPANY OF AMERICA Respondent,

v.

KRISTINA KNIGHT, individually and as Personal Representative of
THE ESTATE OF DANIEL P. KNIGHT, ... Appellants.

NOTICE OF APPEAL

Kristina Knight and The Estate of Daniel P. Knight appeal the Order of The
Honorable William H. Seals, Jr., dated May 26, 2017. Appellants received written notice
of this order on May 26, 2017.

HARRIS AND GRAVES, P.A.

/s/ Edwin L. Turnage

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Dated: June 12, 2017

Other Counsel of Record:
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STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE

CIVIL ACTION NO:

Nationwide Insurance Company of America,

Plaintiff,

v.

**COMPLAINT
(Declaratory Judgment)**

Kristina Knight, Individually and as Personal
Representative of the Estate of Daniel P.
Knight,

Defendant.

The Plaintiff, Nationwide Insurance Company of America (hereinafter "Plaintiff" or "Nationwide"), complaining of the Defendant herein, would respectfully show as follows:

PARTIES AND JURISDICTION

1. Plaintiff is an insurance company organized and existing pursuant to the laws of a state other than South Carolina with its principal place of business in a state other than South Carolina. Plaintiff is authorized to conduct business in the State of South Carolina and it does conduct business in the State of South Carolina.

2. Upon information and belief, Kristina Knight, individually and as Personal Representative of the Estate of Daniel P. Knight, is a citizen and resident of the county of Anderson, State of South Carolina.

4. This action is brought under the South Carolina Declaratory Judgment Act, South Carolina Code Ann. §§ 15-53-10 et seq., and under Rule 57 S.C.R.C.P.

5. This Court has jurisdiction over the parties and the dispute pursuant to South Carolina Code Section 15-7-30(C).

FACTUAL ALLEGATIONS

6. On or about December 4, 2015, Nationwide Insurance Company of America issued a South Carolina automobile liability insurance policy to Kristi Call¹ as the named insured. The policy was designated by policy number 6139D 065876.

7. The policy was to be in effect for a period of six months from December 4, 2015 to June 4, 2016. The policy provided liability coverage in the amount of \$50,000 per person/\$100,000 per accident and uninsured and underinsured motorist coverage in the amount of \$50,000 per person/\$100,000 per accident. The policy insured one vehicle, a 1996 Ford Ranger.

8. Kristi Call executed a Policy Endorsement, Endorsement 3109A, titled "Voiding Auto Insurance While Named Person is Operating Car," (hereinafter "the Excluded Driver Endorsement"). This Excluded Driver Endorsement listed "Danny Knight" as an excluded driver under the policy. A true and accurate copy of the executed Excluded Driver Endorsement is attached hereto as Exhibit A.

9. Kristi Call declared on the Excluded Driver Endorsement that Daniel P. Knight had obtained insurance or other security to operate motor vehicles. Plaintiff is informed and believes that Daniel P. Knight had two separate policies of automobile insurance in effect at the time of the accident, policy 268853071 issued by Progressive covering the motorcycle Daniel P. Knight was operating at the time of the accident and policy SCE0091929-0 issued by ACCC Insurance Company covering a separate at home vehicle owned and insured by Daniel P. Knight. The Progressive policy issued to Daniel P. Knight provided \$25,000.00 of underinsured motorist coverage as did the stackable coverage under the policy issued by ACCC. Therefore, if the Nationwide policy provides underinsured motorist coverage, which Nationwide denies, then such

¹ Upon information and belief, Kristi Call married Daniel P. Knight subsequent to the issuance of the policy and is now named Kristina Knight.

coverage would be limited to \$25,000.00 per person for the claims of Defendant arising out of the accident.

10. The "Excluded Driver Endorsement" form was approved by the Director of the Department of Insurance or his designee.

11. Upon information and belief, on February 2, 2016, Defendant Daniel P. Knight was involved in an accident while operating a motorcycle he owned and subsequently died from his injuries.

12. Upon information and belief, the Estate of Daniel P. Knight has made a claim for underinsured motorist benefits against the policy issued by Nationwide Insurance Company of America to Kristi Call.

13. Upon information and belief, the motorcycle being operated by Daniel P. Knight at the time of the accident carried \$25,000.00 in underinsured motorist coverage. Thus, the maximum amount of underinsured motorist benefits available under the Nationwide Policy is \$25,000.00.

FOR A FIRST DECLARATION

14. Nationwide repeats and re-alleges each and every one of the proceeding paragraphs as if set forth verbatim herein.

15. The terms of the Excluded Driver Endorsement provide that "all coverages in your policy are not in effect while Daniel P. Knight is operating any motor vehicle." On the Excluded Driver Endorsement, Kristi Call executed her signature on the line stating "As indicated by my signature, I accept this endorsement."

16. Upon information and belief, execution of the form satisfied all requirements of South Carolina Code § 38-77-340.

17. Pursuant to South Carolina Code § 38-77-340, "A policy of liability insurance shall not apply while the motor vehicle is being operated by a natural person designated by name" who is listed as excluded by the "Excluded Driver Endorsement."

18. At the time of the accident, Daniel P. Knight was designated by name as an excluded driver on the Excluded Driver Endorsement executed by Kristi Call and on the policy declarations.

19. At the time of the accident, Daniel P. Knight was operating a motorcycle he owned but which was not listed or insured on the Nationwide policy.

20. Therefore, Nationwide Insurance Company of America is entitled to a declaration that the "Named Driver Exclusion" applies and the policy does not provide any coverage under any portion of the policy—including but not limited to underinsured motorist coverage—for claims arising out of the February 2, 2016 accident in which the excluded driver, Daniel P. Knight, was operating a motorcycle not listed on the policy.

WHEREFORE, Nationwide seeks a declaration that it is not required to provide any coverage, including but not limited to underinsured motorist coverage, to the Defendant or the Estate of Daniel P. Knight for any claim made on account of the February 2, 2016 accident. Nationwide further prays that the cost of this action and for such other and further relief as the court deems just and proper.

MURPHY & GRANTLAND, P.A.

s/J.R. Murphy, Esquire
J.R. Murphy, Esquire
Murphy & Grantland, PA
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(803) 782-4100

Attorney for Plaintiff Nationwide Insurance
Company of America

Columbia, South Carolina
June 27, 2016

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

NATIONWIDE INSURANCE COMPANY OF
AMERICA,

Civil Action No. 2016-CP-23-04327

Plaintiff,

**ANSWER AND COUNTERCLAIM OF THE
ESTATE OF DANIEL P. KNIGHT**

vs.

KRISTINA KNIGHT, individually and as
Personal Representative of THE ESTATE OF
DANIEL P. KNIGHT,

Defendants.

TO: J.R. MURPHY, ESQ., ATTORNEY FOR PLAINTIFF:

Defendants, answering the Complaint of Plaintiff, would respectfully show unto the
Court as follows:

FOR A FIRST DEFENSE

1. Defendants admit the allegations of paragraph 1, 2, 4, and 5.
2. Answering Paragraph 6, Defendant's admit Plaintiff issued an automobile insurance policy, policy number 6139D 065876, on a 1996 Ford Ranger owned by Kristina Knight (hereinafter Kristina) and that said policy was in good standing and effect on February 2, 2016. The policy provided underinsured motorist coverage to Kristina and all resident relatives (i.e., statutory insureds) as required by the South Carolina automobile insurance statute. Defendants admit the policy excluded liability coverage for Kristina's husband Daniel Knight. The remaining allegations of paragraph 6 are denied.
3. Defendants admit the allegations of paragraph 7.
4. Defendants admit the allegations of paragraph 8.

5. Defendants admit the allegations of paragraph 9.
6. Defendants lack sufficient knowledge or information to answer the allegations of paragraph 10, and therefore, deny them.
7. Answering paragraph 11, Defendants admit that on or about February 2, 2016, Randy M. Mincey was driving a 2007 Saturn east on Monroe Street. At that time and place, a 1998 Honda motorcycle was traveling north on Market Street. Mincey, inattentive, failed to yield and drove the Saturn onto Market Street and into the path of the motorcycle. The motorcycle rider was ejected by the collision impact. He flew through the air until his body impacted the road surface. The road surface impact caused a severe head injury and killed the rider. The rider and owner of the motorcycle was Daniel Knight, Kristi Knight's husband.
8. Defendants admit the allegations of paragraph 12.
9. Defendants admit the allegations of paragraph 13.
10. Answering paragraph 14, Defendants incorporate by reference the answers set forth in paragraphs 1 through 9.
11. Defendants deny the allegations of paragraph 15 because under South Carolina public policy an automobile insurance company such as Plaintiff cannot exclude coverage by policy language or endorsement when the coverage is mandated by statute. Defendants admit that Kristi did sign the form attached as Exhibit A in or about May 2014; however to the extent it allegedly purports to exclude underinsured motorist coverage to the spouse of a named insured, it is void.
12. Defendants deny the allegations of paragraph 16.

13. Answering paragraph 17, Defendants admit that Plaintiff excluded liability coverage under policy number 6139D 065876 for Daniel Knight when driving the Ford Ranger. The remaining allegations of paragraph 17 are denied.
14. Defendants admit the allegations of paragraph 18.
15. Defendants admit the allegations of paragraph 19.
16. Defendants deny the allegations of paragraph 20.
17. Defendants deny all allegations in the Complaint not admitted above.

**FOR A SECOND DEFENSE AND COUNTER CLAIM
(Breach of Contract)**

18. Defendant Kristi Knight entered a contract of insurance with Plaintiff.
19. Some of the terms of the insurance contract between Plaintiff and Defendant Kristi Knight are governed by South Carolina statute regulating the automobile insurance industry and the policies they issue to South Carolina citizens.
20. Some of the conduct between Plaintiff's agent and Defendant Kristi Knight are governed by South Carolina statute regulating the automobile insurance industry and the policies they issue to South Carolina citizens. Specifically, Plaintiff, by law, is compelled to offer each person who buys an automobile insurance policy the opportunity to purchase underinsured motorist coverage of the named insured and her resident relatives.
21. Additionally, Plaintiff is compelled by law to include uninsured motorist coverage on the policy vehicle and for the benefit of the named insured, and her resident relatives, whether they are occupying the insured vehicle or are in or on another vehicle.
22. When Kristi Knight bought policy number 6139D 065876, Plaintiff offered Kristi Knight underinsured motorist coverage for herself and her resident relatives.

23. Kristi Knight accepted Plaintiff's offer to sell her underinsured motorist coverage for herself, as named insured, and her resident relatives.
24. South Carolina statute requires each automobile policy issued in South Carolina to provide a minimum of \$25,000 of uninsured motorist coverage, per person, \$50,000 per accident.
25. Plaintiff cannot exclude coverages mandated by South Carolina statute.
26. Any provisions in Defendant's policy that conflict with South Carolina public policy are void as a matter of law and are not part of the insurance contract.
27. In December 2015, Kristi Knight married Daniel Knight. She remained married to Daniel on the day of his fatal accident, February 2, 2016.
28. On February 2, 2016, Daniel Knight was a resident relative of Kristi Knight within the meaning of the South Carolina automobile insurance statute.
29. It is an improper automobile insurance practice to attempt to exclude uninsured motorist coverage to statutory insureds that is mandated by the South Carolina automobile insurance statute.
30. It is an improper automobile insurance practice to attempt to exclude underinsured motorist coverage to statutory insureds that is mandated by the South Carolina automobile insurance statute.
31. Under the circumstances described in Paragraph 7, the harms and losses sustained by Defendants exceed the total amount of all insurance coverage potentially available under policy number 6139D 065876, \$25,000.
32. Defendants made a claim for the \$25,000 policy limits of Plaintiff's underinsured motorist coverage under policy number 6139D 065876.

33. Plaintiff denied Defendants' claim.

34. Plaintiff breached its insurance contract with Defendant Kristi Knight.

35. As a direct result of Plaintiff's breach of contract, Defendants were damaged in the liquidated sum of \$25,000.

WHEREFORE, Defendants seeks a judgment against Plaintiff and a declaration that they are entitled to recovery from Plaintiff the liquidated sum of \$25,000, pre-judgment interest on the liquidated sum from the date her wrongful death settlement with the other insurance companies involved is approved, costs, and attorneys' fees pursuant to S.C. Code Ann. §§ 38-59-20 and -40, and for such other and further relief as the court deems just and proper.

BY: s/Edwin L. Turnage

Edwin L. Turnage (SC Bar No. 12842)

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elt@harrisgraves.com

Attorney for Defendants

Greenville, South Carolina

Dated: September 27, 2016

¹ The Complaint did not include Paragraph 3.

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE

CIVIL ACTION NO: 2016-CP-23-04327

Nationwide Insurance Company of America,

Plaintiff,

v.

Kristina Knight, Individually and as Personal
Representative of the Estate of Daniel P.
Knight,

Defendant.

**PLAINTIFF'S REPLY TO DEFENDANT'S
COUNTERCLAIM**

The Plaintiff, answering Defendant Estate of Daniel P. Knight's Counterclaim herein, would respectfully show unto the Court that:

FOR A FIRST DEFENSE

1. The Plaintiff denies each and every allegation of the Defendant's Counterclaim not hereinafter specifically admitted.
2. Paragraphs 1-17 of the Defendant's Answer and Counterclaim appear to constitute only the Defendant's Answer to the Plaintiff's Complaint. To the extent that any statement or allegation made in Paragraphs 1-17 of the Defendant's Counterclaim could be construed to allege any claim, complaint or cause of action against the Plaintiff, those allegations are denied.
3. Paragraph 18 is admitted. Further responding to Paragraph 18, Plaintiff incorporate herein all of the terms, conditions, exclusions, definitions and other policy provisions of the Contract of Insurance between the Plaintiff and Defendant.
4. Paragraph 19 states a conclusion of law to which no response is required.
5. Paragraph 20 states a conclusion of law to which no response is required. Further responding to Paragraph 20, to the extent that Paragraph 20 could be construed to allege that the

Plaintiff failed to offer the opportunity to purchase underinsured motorist coverage on the subject policy of insurance, Paragraph 20 is denied.

6. Paragraph 21 states a conclusion of law to which no response is required. To the extent that Paragraph 21 could be construed to allege that the Plaintiff has failed to provide any coverage required by the laws of the state of South Carolina to its insured, and the policy that is the subject of this action, Paragraph 21 is denied.

7. Paragraph 22 is admitted.

8. Paragraph 23 is admitted.

9. Paragraph 24 states a conclusion of law to which no response is required. However, to the extent that the allegations of Paragraph 24 could be construed to allege that the Plaintiff has in anyway failed to comply with the laws of the state of South Carolinas they apply to the subject policy of insurance, it is denied.

10. Paragraph 25 states a conclusion of law to which on response is required.

11. Paragraph 26 states a conclusion of law to which on response is required

12. Paragraphs 27 and 28 are admitted upon information and belief.

13. Paragraph 29 states a conclusion of law to which on response is required.

However, to the extent that Paragraph 29 could be construed to allege that the Plaintiff has failed to comply with the laws of the state of South Carolina as it relates to the subject insurance policy, it is denied.

14. Paragraph 30 states a conclusion of law to which on response is required.

However, to the extent that Paragraph 30 could be construed to allege that the Plaintiff has failed to comply with the laws of the state of South Carolina as it relates to the subject insurance policy, it is denied.

15. In response to Paragraph 31, the Plaintiff and Defendant have entered into a Stipulation in which the Plaintiff has stipulated that the damages sustained by the Defendant as a result of the February 2, 2016 accident exceed \$25,000.

16. Paragraphs 32 and 33 are admitted.

17. Paragraphs 34 and 35 are denied.

18. Plaintiff's "Wherefore" Paragraph is denied.

WHEREFORE, Plaintiff prays that the Court enter a judgment against the Defendants declaring that the Defendants are not entitled to collect any underinsured motorist coverage for the reasons set forth in the Plaintiff's Complaint and for such other and further relief as the Court deems just and proper.

MURPHY & GRANTLAND, P.A.

s/Adam J. Neil, Esquire

J.R. Murphy, Esquire

Adam J. Neil, Esquire

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Attorney for Plaintiff Nationwide Insurance

Company of America

Columbia, South Carolina
October 7, 2016

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
COUNTY OF GREENVILLE) C/A #: 2016-CP-23-04327

Nationwide Insurance Company of
America,

Plaintiff,

v.

Kristina Knight, Individually
and as Personal Representative of
the Estate of Daniel P. Knight,

Defendants.

DEPOSITION OF
DARIEN PORTER

COPY

Tuesday, May 17, 2017
10:08 a.m. - 10:31 a.m.

The deposition of DARIEN PORTER, taken on behalf of the Defendants at the offices of South Carolina Insurance Department, 1201 Main Street, Suite 1000, Columbia, South Carolina, on the 17th day of May, 2017, before Cortney N. Glover, Court Reporter and Notary Public in and for the State of South Carolina, pursuant to Notice of Deposition and/or agreement of counsel.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

APPEARANCES

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 Columbia, South Carolina 29206
 Attorney for the Plaintiff

Edwin L. Turnage, Esquire
 Harris and Graves, P.A.
 812 Laurens Road
 Greenville, South Carolina 29606
 Attorney for the Defendants

Also present:

David E. Belton, Esquire, State of South Carolina
 Department of Insurance

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EXHIBITS

(DEFENDANTS' EXHIBIT NUMBERS 1-4 WERE MARKED PRIOR TO THE DEPOSITION.)

Defendants' Exhibit Number 1	5
(Amended Notice of Deposition)	
Defendants' Exhibit Number 2	5
(Endorsement 3109A)	
Defendants' Exhibit Number 3	10
(Section 38-77-340)	
Defendants' Exhibit Number 4	6
(Explanatory Memorandum)	
Defendants' Exhibit Number 5	19
(Section 38-77-30)	
Plaintiff's Exhibit Number 1	15
(Bulletin Number 2004-10)	



CREEL COURT REPORTING, INC.
 1230 Richland Street / Columbia, SC 29201
 (803) 252-3445 / (800) 822-0896

STIPULATIONS

It is stipulated and agreed that this deposition is being taken pursuant to the South Carolina Rules of Civil Procedure.

It is stipulated by and between counsel and the witness that the reading and signing of the following deposition be, and the same are, hereby not waived. Signature sheet is attached at page 23.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 (DEFENDANTS' EXHIBITS 1 THROUGH 4 WERE MARKED PRIOR
2 TO THE DEPOSITION.)

3 DARIEN PORTER, having been duly sworn, deposes and
4 testifies as follows:

5 MR. PORTER - EXAMINATION BY MR. TURNAGE:

6 Q: Good morning, Mr. Porter. I'm Edwin Turnage.
7 I represent the defendants in this case,
8 Kristina Knight, Individually and as PR of the
9 estate of Daniel Knight. This is a case that
10 arises out of a motor vehicle collision where
11 Mr. Knight was fatally injured in the
12 collision. We collected the liability coverage
13 and his underinsured motorist coverage in the
14 case, but when we attempted to collect the
15 underinsured motorist coverage on the
16 Nationwide policy, it was denied based on a --
17 an endorsement that the company had placed on
18 the insurance policy before she was married to
19 Daniel Knight.

20 A: Okay.

21 Q: So that's -- and I understand y'all have -- the
22 Insurance Commission has designated you to
23 testify about the matters that were listed in
24 our amended notice of deposition, which is
25 marked as Exhibit 1 for identification.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 (Defendants' Exhibit Number 1 was introduced into the
2 record at this time.)

3 A: Yes, sir.

4 (Defendants' Exhibit Number 2 was introduced into the
5 record at this time.)

6 Q: Okay. What's marked as identification as --
7 Exhibit 2 is Endorsement 3109Alpha, which is
8 the Nationwide endorsement form that was
9 submitted to the Insurance Commission, I guess,
10 sometime before the collision here. And I
11 wanted to ask you: Does the Commission, by
12 approving this form, take any position on
13 public policy coverage of portability issues
14 related to underinsured motorists and uninsured
15 motorists?

16 A: When we review the form, we just review it for
17 compliance with statutes. As far as the public
18 policy part, we don't review it for that.

19 Q: And it's any understanding, correct, that you
20 receive hundreds, maybe even thousands, of
21 these types of forms that come through your
22 office on a routine basis?

23 A: Yes, sir.

24 Q: And this is just another one that came through?

25 A: Yes, sir.



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1 (Defendants' Exhibit Number 4 was introduced into the
2 record at this time.)

3 Q: It looks like there was a Explanatory
4 Memorandum, which is marked as Exhibit 4. I'll
5 represent to you that Nationwide's produced
6 this document to us as -- and has represented
7 that this memorandum was submitted to the
8 Commission at the time they presented
9 Endorsement 3109Alpha to the Commission for
10 approval.

11 A: Okay.

12 Q: Did you review this for -- did you actually do
13 the review for this particular form, or was it
14 someone else in the Commission?

15 A: No, sir. It was someone else.

16 Q: Okay. Are you familiar with the process that
17 the Commission uses to review forms such as
18 Endorsement 3109Alpha ---

19 A: Yes, sir.

20 Q: --- when they're submitted by insurance
21 companies?

22 A: Yes, sir.

23 Q: In the --- and are you also familiar and are the
24 people who review these forms generally
25 familiar with the concept of portability, the



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1 portability of uninsured and underinsured
2 motorist coverages?

3 A: From the standpoint of our review, like I said,
4 we just look for the compliance with the
5 statutes.

6 Q: Are the people that do the review of the
7 compliant -- for the compliance of the
8 statutes, are they -- do they understand what
9 portability coverage means, if you know?

10 A: I'm not sure ---

11 Q: Okay.

12 A: --- sir.

13 Q: And my understanding, from speaking to
14 Mr. Belton before the deposition, is this
15 matter has been reviewed in preparation for
16 today's deposition, and the Commission
17 recognizes this issue that's in our case with
18 Mr. Neil and his client and my client as a
19 novel issue?

20 A: I'm not sure I understand what the question is,
21 sir.

22 Q: Okay. Does the Commission -- as far as you
23 know, is the Commission planning to vet further
24 the issues that were raised in this case
25 associated with the deposition notice we



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1 submitted and our communications with the
2 Commission?

3 A: Yes, sir. That is correct.

4 Q: And that vetting process is gonna involve a
5 team of attorneys that are gonna review all the
6 statutes, the books, and the regulations and
7 everything involved in Title 38 to determine
8 whether this Commission -- or this endorsement
9 ought to be continued to be approved?

10 A: It's my understanding that it's being discussed
11 internally. I'm not on the legal side, so I'm
12 not sure of the exact process that they'll have
13 to go through. But it is being discussed to
14 figure out.

15 Q: Okay. And so for purposes of our case, it's
16 fair to say that the South Carolina Insurance
17 Commission is not endorsing my side or
18 Nationwide's side in this dispute in any way
19 whatsoever?

20 A: I would think so. Yes, sir.

21 Q: Okay. Now, when the process occurred, is it
22 the Commission's policy to request or ask
23 insurance companies that submit endorsements to
24 provide to the Commission more detailed
25 explanation of -- about like a memorandum of



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1 law or something explaining an endorsement that
2 they're proposing? Is that something the
3 Commission wants to see from insurance
4 companies?

5 A: In regards to my review for the form or ...

6 Q: No. In the process. When a company goes to
7 submit a form, would the Commission like to see
8 a supporting memorandum of law to explain the
9 validity in the compliance of the form when
10 it's submitted by an insurance company?

11 A: Normally, once we get a form in, if it's pretty
12 straightforward and I can apply a statute to it
13 in my review process, then no further questions
14 are usually asked. But if there's any -- if
15 there isn't a statute that's applicable to or
16 if there's some ambiguity to it or something
17 that may -- what's the word I'm looking for? --
18 not seem clear to a policy holder once reading
19 for them to understand, then we do ask further
20 questions.

21 Q: Okay. And in -- when this form, if you look at
22 Exhibit 4 for identification, it looks like the
23 only explanation that was provided to the
24 Commission from Nationwide when they submitted
25 this form is what's written next to item 539,



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1 paragraph labeled 539; is that correct?

2 MR. NEIL: Object to the form.

3 A: Yes, sir.

4 Q: Well, Mr. Neil's objected. Do you know -- have
5 y'all -- have -- did y'all receive anything
6 else from Nationwide as -- by a way of
7 explanation about this endorsement?

8 A: To my knowledge, no, sir.

9 (Defendants' Exhibit Number 3 was introduced into the
10 record at this time.)

11 Q: Okay. And I don't know if you'll be able to
12 address the issues with these questions, but if
13 you would look at what we marked as
14 identification as Exhibit 3, which is right
15 here over here?

16 A: Thank you.

17 Q: Which is a copy of the part of Title 38,
18 related to exclusion of persons from coverage.
19 When this form was approved, was it your
20 understanding that it was designed to be -- was
21 your understanding or the person who reviewed
22 its understanding, as far as the Commission's
23 concerned, it was being approved under this
24 particular statute, this that allows this sort
25 of exclusion?



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1 A: Yes, sir.

2 Q: And does the Commission have any view on the
3 language that the legislature put in this
4 statute that indicates that coverage under such
5 a policy of liability insurance shall not apply
6 while the motor vehicle is being operated by a
7 natural person? Do you have any stand, one way
8 or another, on that particular language at the
9 Commission? Or you can say I don't know.

10 A: I am not sure. I'm the -- yeah, I'm not sure.

11 Q: Okay. The -- you mentioned -- Title 38 is the
12 statute that is used to review and insure these
13 forms are compliant, correct?

14 A: Yes, sir, that's correct.

15 Q: Does the Commission use any other statutes when
16 it looks at compliance of a form that's being
17 submitted?

18 A: No, sir, not to my knowledge. Title 38 governs
19 the statutes for insurance.

20 Q: All right. And Title 38 has a definition
21 section under -- that the legislature put out,
22 which is 38-77-20. Is that the part of the
23 statute that the Commission relies on for
24 defining terms?

25 A: Within the statute. Yes, sir.



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1 Q: Okay. So that would apply to defining terms
2 within this particular statutory Section
3 38-77-340?

4 A: I would assume so. Yes, sir.

5 Q: Okay. I think I'm pretty much done. And I
6 just want to make -- be clear. I think I
7 understood your testimony. But Number 3 on
8 Exhibit 1, for identification, was: Does the
9 South Carolina Department of Insurance
10 interpret the scope of Section 38-77-340 to
11 authorize insurance companies to exclude UM or
12 UIM coverage in addition to liability insurance
13 coverage? Your -- the answer to that is: The
14 Commission doesn't have a position at this
15 point?

16 A: That is correct. It's being looked at
17 internally.

18 Q: And it's also true, isn't it, that when this
19 form was approved sometime ago, it had no
20 position on this issue?

21 A: That is correct. The question was never raised
22 from this point of view. Yes, sir.

23 Q: And as far as -- and I think that answer covers
24 Number 4, so I don't believe I have any further
25 questions. Thank you, sir.



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MR. PORTER - EXAMINATION BY MR. NEIL:

Q: Mr. Porter, I think I'll be quick, but I do have a couple of questions. First, did I understand your testimony correctly to be that the Department of Insurance or the folks who are tasked with reviewing submitted forms do review those forms to confirm that they comply with the statutes that are applicable; is that right?

A: That is correct. Yes, sir.

Q: And so you would not approve a form -- and by "you," I mean the Department of Insurance. You're speaking on their behalf. So if I mix those terms, I apologize. But I'm talking about the Department of Insurance.

A: Yes, sir.

Q: The Department would not approve a form regardless of form or content that there is some analysis as to whether that form a valid and allowable form, according to the law of South Carolina; is that right?

A: Yes, sir.

Q: Okay. And maybe, for example, the Department would not approve a form that allowed an insurance company to sell limits below the



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1 statutory minimums, would it?

2 A: No, sir. They wouldn't allow it.

3 Q: And the Department would not allow an insurance
4 company to submit a form that provided for some
5 type of discriminatory rate factors where,
6 maybe for example, women paid a higher premium
7 than men or it was discriminatory based on
8 race. They wouldn't allow something like that
9 to happen, would they?

10 A: No, sir.

11 Q: And that's because those forms wouldn't comply
12 with the laws of the State of South Carolina,
13 right?

14 A: That's correct.

15 Q: Is there anything else that the approval
16 process entails besides just comparing the form
17 to the statute?

18 A: If there is any public policy that has been
19 made, we do review it with that or any
20 bulletins or rates that are out there that
21 coincide with the statutes. We do review those
22 as well to make sure that they're in
23 compliance.

24 Q: Okay. I'll show you ---

25 MR. NEIL: Give you a copy and you a copy.



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1 If you could, mark that for me.
2 (Plaintiff's Exhibit Number 1 was marked for
3 identification purposes.)

4 Q: Mr. Porter, what I've showed -- what I've had
5 the court reporter hand to you, and she's
6 marked as an exhibit to your deposition, is
7 Bulletin 2004-10, which is a bulletin that was
8 issued by the Department of Insurance on
9 August 18th, 2004; is that right?

10 A: Yes, sir.

11 Q: Okay. And I'll give you all the time you need
12 to read it, but the gist of that bulletin is
13 that it is advising insurance companies that
14 there's been a change in the law in 38-77-340
15 and that there are certain things that they
16 must do to comply with the amended statute; is
17 that right?

18 A: That's correct.

19 Q: Okay. To your knowledge, is this the only
20 bulletin that was ever issued that deals with
21 38-77-340?

22 A: I am not sure.

23 Q: Okay. If somebody had -- if somebody -- if an
24 insurance company had submitted a -- an
25 excluded driver endorsement form that didn't



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1 comply with the requirements that are
2 identified in the last paragraph of this
3 bulletin, would that form have been approved?

4 A: No, sir.

5 Q: In South Carolina would you agree that
6 underinsured motorist coverage is always issued
7 as a part of an automobile liability policy?

8 MR. TURNAGE: Object to the form.

9 Q: Is that true?

10 A: (No response.)

11 Q: He's making an objection to the form of my
12 question. You still have to answer the
13 question, if you understand it ---

14 A: If you -- I'm sorry.

15 Q: You need me to repeat the question or rephrase
16 it, I'm happy to do that.

17 A: Yeah. If you could, repeat it for me.

18 Q: Okay. In South Carolina, is underinsured
19 coverage always sold as a part of the liability
20 policy?

21 MR. TURNAGE: Object to the form.

22 A: I'm not sure. And maybe the -- could you
23 reword it for me?

24 Q: Sure. Is there such a thing in South Carolina
25 as a stand-alone underinsured motorist policy?



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1 A: No, sir.

2 Q: When underinsured motorist coverage is sold, it
3 is sold as a coverage that is attached to a
4 liability policy that would be issued by a
5 particular insurance company, correct?

6 MR. TURNAGE: Object to the form.

7 A: That's correct.

8 Q: And we know that, and I'll just -- I'll ask you
9 if you know the answer to this question. We
10 know that because the law requires that a
11 person purchasing underinsured coverage to be
12 offered that coverage up to the limits of their
13 liability coverage; correct?

14 A: That's correct.

15 Q: So if they don't have liability coverage, they
16 could not receive an offer of underinsured
17 coverage that would comply with the law, would
18 they?

19 A: No, sir.

20 Q: And underinsured motorist coverage is not
21 mandatory coverage in South Carolina, is it?

22 A: No, sir.

23 Q: All right. Mr. Porter, I think that's all I
24 got. Thank you.

25 MR. PORTER - RE-EXAMINATION BY MR. TURNAGE:



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1 Q: Of the -- Mr. Porter, I forgot to ask you: Are
2 you an attorney?

3 A: No, sir.

4 Q: Is -- are the people that reviewed the forms
5 that the insurance companies submit, such as
6 the endorsement form we've looked at, are they
7 lawyers?

8 A: No, sir.

9 Q: As far as you know, has anybody that is an
10 attorney reviewed, or did any attorneys review
11 the Nationwide endorsement 3109Alpha when it
12 was initially approved by the Commission?

13 A: Not to my knowledge. No, sir.

14 Q: All right. And Mr. Neil has asked you about
15 liability policy and underinsured motorist
16 policy. Those are different types of coverages
17 under an automobile insurance policy, correct?

18 A: Could you repeat that?

19 Q: Liability insurance coverage ---

20 A: Uh-huh.

21 Q: --- and underinsured motorist coverage, aren't
22 those different types of coverages under an
23 automobile insurance policy?

24 A: Yes, sir.

25 Q: And the regulation -- we're talking about here,



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1 Title 38 -- or the statute, it actually has
2 terms that define automobile insurance and
3 policy of automobile insurance, correct?

4 A: Are you referring to the definitions, sir?

5 Q: Yes, sir. It's under Exhibit 4, for
6 identification, if you'll look at Number 1 and
7 Number 10.5.

8 MR. NEIL: Number 4?

9 MR. TURNAGE: Exhibit 4.

10 MR. NEIL: This is Exhibit 4.

11 MR. TURNAGE: Oh, I'm sorry. Let me mark this.

12 Make it Exhibit 5.

13 (Defendants' Exhibit Number 5 was marked for
14 identification purposes.)

15 MR. TURNAGE: My numbers got mixed up. I apologize.

16 Q: So I meant to say Exhibit 5, for
17 identification.

18 A: Could you repeat the question, please?

19 Q: Exhibit 5, for identification, that's the
20 definition section of Title 38, correct, sir?

21 A: Yes, sir.

22 Q: And Title 38 has definitions for automobile
23 insurance under Number 1, correct?

24 A: Yes, sir.

25 Q: And it has definitions for, under 10.5, Policy



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1 of Automobile Insurance?

2 A: Yes, sir.

3 Q: And those are for purposes of interpreting
4 Title 38, correct?

5 A: Yes, sir.

6 Q: Okay. Thank you.

7 MR. PORTER - RE-EXAMINATION BY MR. NEIL:

8 Q: Mr. Porter, I do have one follow-up. And I
9 think this is self-evident, but possibly
10 Mr. Turnage's questions may have implied a
11 different conclusion. Did you review the
12 entire submission that Nationwide provided in
13 January of 2010 that dealt with the Endorsement
14 3109A?

15 A: Not me personally. But, yes, someone in this
16 agency did.

17 Q: Okay. And that was a bad question. As -- for
18 purposes of preparing for your deposition
19 today, did you review that form?

20 A: Yes, sir.

21 Q: Okay. So you reviewed the entire submission,
22 not just the part of the submission that
23 relates to 3109A; is that correct?

24 A: No, sir.

25 Q: That's not correct?



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1 A: That's not correct.

2 Q: So only the part of the submission that you
3 looked at was the part dealing with 3109A?

4 A: Yes. sir. The only thing I have is the form.

5 Q: Okay.

6 A: I have not gone back and looked at the file.

7 Q: Mr. Turnage showed you two exhibits that I want
8 to ask you questions about. One is Exhibit 2,
9 and one is Exhibit 4. And it was my
10 understanding, based on his questioning, that
11 it was -- that your testimony was that only
12 Exhibit 4 was submitted for the Department to
13 review back in 2010. Is that what you
14 testified to?

15 A: No, sir. If I did, then I need to clarify
16 that.

17 Q: Okay. Help me out then. What would you
18 have -- or what would the reviewer have looked
19 at as it relates to the request for approval of
20 3109A?

21 A: Just for 34 -- I mean, 3109A.

22 Q: Okay. So they would have looked at the actual
23 document itself, not the explanatory
24 information that's provided in Exhibit 4?

25 A: That is correct. The typical format is



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1 explanatory memorandum tries to give us some
2 basis of what the company's proposing, but we
3 would look at the form for compliance and not
4 necessarily the explanatory memorandum in order
5 of whether or not the form is approved or
6 disapproved.

7 Q: Okay. Wonderful. Thank you for that
8 clarification.

9 MR. NEIL: That's all I have.

10 MR. TURNAGE: Thank you. That's all we have.

11 (There being no further questions, the deposition
12 concluded at 10:31 a.m.)



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CERTIFICATE

This is to certify that the deposition of Darien Porter was taken before me on May 17, 2017. A transcript of Mr. Porter's testimony has been forwarded to him for his review and signature, along with a letter requesting that the signature sheet be returned as soon as possible for filing.

Said case having been called to trial prior to the expiration of the allowed time, I am submitting the original of this deposition without the signature sheet attached.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on May 18, 2017.


Cortney N. Glover
Court Reporter

Notary Public for South Carolina
My Commission Expires: December 1, 2025



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CERTIFICATE

This is to certify that the deposition of DARIEN PORTER, consisting of twenty two (22) pages, is a true and correct transcript of the testimony given by said deponent after being duly sworn; said deposition was reported by the method of Stenomask with Backup.

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal on May 18, 2017.


Cortney N. Glover
Court Reporter

Notary Public for South Carolina
My Commission Expires: December 1, 2025



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SIGNATURE

I have read the foregoing deposition and confirm that it is a true and accurate transcript of my testimony. Any errors I may have noticed have been listed below and returned to the court reporter for checking against the tapes.



DARIEN PORTER

Date: 5/25/17

<u>Page</u>	<u>Line</u>	<u>Correction</u>	<u>Reason for Change</u>
14	20	change word "rates" to "regs."	typed wrong word

All corrections are acknowledged and accepted as errors in the transcript.
Cortney Glover, Court Reporter

Re: Nationwide Insurance Company of America v.
Kristina Knight, Individually and as Personal
Representative of the estate of Daniel P.
Knight
5.17.17

cg



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STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE

CIVIL ACTION NO: 2016-CP-23-04327

Nationwide Insurance Company of America,

Plaintiff,

v.

Kristina Knight, Individually and as Personal
Representative of the Estate of Daniel P. Knight,

Defendant.

**PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT**

**TO: EDWIN L. TURNAGE, ESQUIRE, ATTORNEY FOR THE DEFENDANT AND TO THE
DEFENDANT ABOVE-NAMED:**

YOU WILL PLEASE TAKE NOTICE that the undersigned, as attorneys for the Plaintiff, Nationwide Insurance Company of America ("Nationwide"), will move before the presiding judge of the Greenville County Court of Common Pleas at the Greenville 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 granting summary judgment in favor of the Plaintiff on the grounds that there is no genuine issue as to any material fact and Nationwide is entitled to judgment as a matter of law.

This case involves a dispute over whether there is underinsured motorist ("UIM") coverage available to the Estate of Daniel P. Knight on account of his death as a result of a motor vehicle accident. Mr. Knight was driving a motorcycle at the time of the accident and that motorcycle was insured by another insurance company. Nationwide provided automobile insurance coverage to Kristi Call (now Kristina Knight) according to the terms of a policy of insurance identified by policy number 6139D065876.¹ The policy was in effect from December 4, 2015 until June 4, 2016. One term of that policy was that Daniel P. Knight was excluded from coverage.²

¹ A certified copy of the Nationwide policy is attached hereto as Exhibit A.

² "Danny Knight" is shown on the policy declarations page as an "Excluded Driver(s)" and the declarations page further notes above Mr. Knight's name, "The following driver(s) are excluded from all coverages and all vehicles on the policy."

Mr. Knight was excluded from coverage at the written request of Kristi Call. Endorsement 3109A³, which is entitled "Voiding Auto Insurance While Named Person Is Operating Car," was executed by Kristi Call on May 22, 2014. The endorsement states, "With this endorsement, all coverages in your policy are not in effect while Danny Knight is operating any motor vehicle." When she executed the endorsement, Call represented that Mr. Knight had "obtained insurance or other security to operate motor vehicles." There is no dispute that Ms. Call executed the Endorsement nor is there any dispute that Mr. Knight had other insurance coverage at the time of the execution of the endorsement. Accordingly, the endorsement is valid according to the provisions of S.C. Code Ann. §38-77-340, which allows that "A policy of liability insurance shall not apply while the motor vehicle is being operated by a natural person designated by name" who is listed as excluded by the "Excluded Driver Endorsement." Therefore, Nationwide is entitled to summary judgment and a declaration from this Court that Mr. Knight's estate is not entitled to collect UIM coverage from the Nationwide policy.

This Motion is made pursuant to Rule 56 of the South Carolina Rules of Civil Procedure and will be supplemented and supported by such affidavits, depositions, discovery responses, memoranda of law, and such other documents as appropriate.

MURPHY & GRANTLAND, P.A.

s/Adam J. Neil, Esquire

J.R. Murphy, Esquire

Adam J. Neil, Esquire

Murphy & Grantland, PA

P.O. Box 6648

Columbia, South Carolina 29260

(803) 782-4100

Attorney for Plaintiff Nationwide Insurance Company of America

Columbia, South Carolina
March 9, 2017

³ A copy of the endorsement is attached hereto as Exhibit B.

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

NATIONWIDE INSURANCE COMPANY
OF AMERICA,

Civil Action No. 2016-CP-23-04327

Plaintiff,

vs.

**MEMORANDUM IN OPPOSITION
TO PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

KRISTINA KNIGHT, INDIVIDUALLY
and as PERSONAL REPRESENTATIVE of
the ESTATE OF DANIEL P. KNIGHT,

Defendants.

TO: ADAM NEIL, ESQ., ATTORNEY FOR PLAINTIFF:

Defendant opposes Plaintiff's Motion for Summary Judgment on the grounds that 1) discovery is still ongoing; 2) genuine issues of material fact are in dispute; and 3) assuming *in arguendo* that the court disagrees with Defendants' position on points 1 and 2, then South Carolina public policy compels summary judgment for Defendants not Plaintiff.

FACTS

Plaintiff issued an automobile insurance policy, policy number 6139D 065876, on a 1996 Ford Ranger owned by Kristina Knight (hereinafter Kristina) and that said policy was in good standing and effect on February 2, 2016. The policy provided underinsured motorist coverage to Kristina and all resident relatives (i.e., statutory insureds) as required by the South Carolina automobile insurance statute. When Kristi Knight bought policy number 6139D 065876, Plaintiff offered Kristi Knight underinsured motorist coverage for herself and her resident relatives and she accepted. By endorsement, the policy excluded liability coverage to Daniel Knight when driving the Ford Ranger. In December 2015, Kristi Knight married Daniel Knight. She remained

married to Daniel until his death. His violent death by way of a motor vehicle collision occurred during the policy period.

On or about February 2, 2016, Randy M. Mincey was driving a 2007 Saturn east on Monroe Street. At that time and place, a 1998 Honda motorcycle was traveling north on Market Street. Mincey, inattentive, failed to yield and drove the Saturn onto Market Street and into the path of the motorcycle. The motorcycle rider was ejected by the collision impact. He flew through the air until his body impacted the road surface. The road surface impact caused a severe head injury and killed the rider. The rider and owner of the motorcycle was Daniel Knight, Kristi Knight's husband. It is undisputed that damages exceed the coverage of the policy.

Daniel, as Kristi Knight's husband at the time of the fatal automobile collision, was a resident relative under the Nationwide insurance policy. Under South Carolina public policy an automobile insurance company such as Plaintiff cannot exclude coverage by policy language or endorsement when the coverage is mandated by statute. To the extent it allegedly purports to exclude underinsured motorist coverage to the spouse of a named insured, it is void.

Attached as Exhibit 1 is an Affidavit from counsel for Defendants establishing that discovery is ongoing. Deposition Notices were served in this matter and the depositions remain untaken. Exhibit 2 confirms that counsel for Defendants have been attempting to set depositions with counsel for Plaintiffs for weeks. Potential relevant facts for trial are likely to be discovered in the depositions. Plaintiff's corporate representative may admit that it does not use the endorsement at issue here to exclude underinsured motorist coverage for resident relatives because of the South Carolina public policy. Or, Defendant's agent, Ms. Ellett, may admit she knew Danny and Kristi

were married in December 2015. Or, other unanticipated facts may be discovered that could create genuine issues of material fact that must be decided by trial.

ANALYSIS

Under Rule 56(f), "the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such order as is just." S.C. Rules of Civ. P. 56 Here, Defendants request that the Court continue the Plaintiff's motion for summary judgment until after the depositions sought by Defendants are completed and transcripts prepared. This continuance will permit the Court to compile a complete record in this matter. Moreover, Defendants anticipate making their own motion for summary judgment once the depositions are finished and will file additional material to make a complete record. It is respectfully suggested that this hearing must be delayed until discovery is completed under Rule 56(f).

Plaintiff did not file any memorandum of law accompanying its motion for summary judgment. This is a public policy case involving the portability of underinsured motorist coverage. There are numerous appellate court cases about stacking and portability and which relate to the public policy statutory requirements of underinsured motorist coverage obligations of insurance companies. It is unclear if Plaintiff will attempt to mischaracterize this matter as a stacking case in its memorandum, or if Plaintiff they will approach it honestly as a portability case. In any case, no authorities have been cited and it is unclear what argument Plaintiff will pursue. This is a case where it would be most helpful if this Court would compel the attorney for Plaintiff to timely file a memorandum of law. This requirement would preclude a tactic of hearing by ambush and would provide counsel for Defendants time to read and confirm Plaintiff's alleged authority or research and find additional conflicting and more recent authority. Granting this suggestion means that it is more likely that this court will have

to make a just and complete determination in accordance with South Carolina public policy.

CONCLUSION

For the forgoing reasons, Plaintiff's motion for summary judgment must be denied or its motion for summary judgment must be continued.

BY: s/Edwin L. Turnage

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Dated: April 13, 2017

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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

NATIONWIDE INSURANCE COMPANY OF
AMERICA,

Civil Action No. 2016-CP-23-04327

Plaintiff,

vs.

**MOTION FOR
SUMMARY JUDGMENT**

KRISTINA KNIGHT, INDIVIDUALLY and as
PERSONAL REPRESENTATIVE of the
ESTATE OF DANIEL P. KNIGHT,

Defendants.

TO: ADAM NEIL, ESQ., ATTORNEY FOR PLAINTIFF:

Please take notice that the Defendants, by undersigned attorney, will move before the Presiding Judge for the Court of Common Pleas for Greenville County, in the Judicial Circuit, at 10:00 a.m. on the tenth (10th) day after service hereof, or at such other time and place as is convenient to the Court and counsel, as follows: That the Plaintiff be granted summary judgment on the issue of liability in this action pursuant to Rule 56 of the South Carolina Rules of Civil Procedure on the grounds that there is no genuine issue of material fact in favor of Plaintiff and that Plaintiff's insurance policy and endorsement violate the public policy of the State of South Carolina.

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Greenville, South Carolina
Dated: April 13, 2017

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

NATIONWIDE INSURANCE COMPANY
OF AMERICA,

Civil Action No. 2016-CP-23-04327

Plaintiff,

vs.

**MEMORANDUM IN SUPPORT OF
A SUMMARY JUDGMENT IN
FAVOR OF DEFENDANTS**

KRISTINA KNIGHT, INDIVIDUALLY
and as PERSONAL REPRESENTATIVE of
the ESTATE OF DANIEL P. KNIGHT,

Defendants.

ISSUE

Does Respondent's automobile insurance policy, which seeks to exclude portable UIM coverage to a statutory insured (a spouse) by policy endorsement, violate South Carolina public policy?

FACTS

On February 2, 2016, Randy M. Mincey was driving a 2007 Saturn east on Monroe Street. At that time and place, a 1998 Honda motorcycle was traveling north on Market Street. Mincey, inattentive, failed to yield and drove the Saturn onto Market Street and into the path of the motorcycle. The motorcycle rider was ejected by the collision impact. He flew through the air until his body impacted the road surface. The road surface impact caused a severe head injury and killed the rider. The rider and owner of the motorcycle was Daniel Knight, Kristi Knight's husband. Plaintiff stipulates that the damages here exceed the coverage amount of the Nationwide policy and any other policies.

Well before the collision, Nationwide issued an automobile insurance policy, policy number 6139D 065876, on a 1996 Ford Ranger owned by Kristina Knight (hereinafter Kristina) and that said policy was in good standing and effect on February 2, 2016. The policy provided underinsured motorist coverage to Kristina and all resident relatives (i.e., statutory insureds) as required by the South Carolina automobile insurance statute. By endorsement, Nationwide's policy sought to exclude all coverage for Kristina's husband Daniel Knight.

ARGUMENT

1. A Policy provision that attempts to eliminate UIM coverage to a statutory insured is void because it violates South Carolina public policy.

Nationwide v. Knight is an important public policy case because an order granting Plaintiff summary judgment will potentially eliminate UIM coverage for thousands of South Carolina families.

The statutory purpose of the automobile insurance statute is to provide that, "every automobile insurance risk which is insurable on the basis of the criteria established in this chapter is entitled to automobile insurance." S.C. Code Ann. § 38-77-10. The statute directs the trial courts to "liberally construe[]" the statutory language "in order to achieve its purposes." S.C. Code Ann. § 38-77-20.

This is a case about underinsured motorist insurance "portability." "[P]ortability refers to a person's ability to use his coverage on a vehicle not involved in an accident as a basis for recovery of damages sustained in the accident." *Nakatsu v. Encompass Indemnity Co.*, 390 S.C. 172, 181, 178, 700 S.E.2d 283 (2010). The UIM statute is clear.

The South Carolina UIM statute states as follows:

Automobile insurance carriers shall offer, at the option of the insured, uninsured motorist coverage up to the limits of the insured's liability coverage in addition to the mandatory coverage prescribed by Section 38-77-150. Such carriers shall also offer, at the option of the insured, underinsured motorist coverage up to the limits of the insured liability coverage to provide coverage in the event that damages are sustained in excess of the liability limits carried by an at-fault insured or underinsured motorist or in excess of any damages cap or limitation imposed by statute. If, however, *an insured or named insured* is protected by uninsured or underinsured motorist coverage in excess of the basic limits, the policy shall provide *that the insured or named insured* is protected only to the extent of the coverage he has on the vehicle involved in the accident. If none of the insured's or named insured's vehicles is involved in the accident, coverage is available only to the extent of coverage on any one of the vehicles with the excess or underinsured coverage.

See S.C. Code Ann. § 38-77-160 (emphasis added). It is important to observe that the Legislature included language to confirm that the insurance policy must include the "named insured" as well as "insured." The Legislature defined the term in the definitions section of the automobile insurance statute.

The South Carolina automobile insurance statute defines "insured" to include the insured person (or persons named in a policy) and "[w]hile resident of the same household, the spouse of any named insured and relatives of either." S.C. Code Ann. § 38-77-30 (definitions). It is undisputed that Danny Knight was Kristina Knight's spouse. The couple was married in Anderson on December 2, 2015, after the policy was issued and about two months before the fatal motor vehicle collision. It is undisputed Danny and Kristina Knight were living in the same residence on the date of the fatal collision.

Nationwide cannot alter coverage of insureds that is mandated by statute. "[A]ny limiting language in an insurance contract which has the effect of providing less protection than made obligatory by the statute is contrary to public policy and is of no force and effect." See *Ferguson v. State Farm Mut. Ins. Co.*, 261 S.C. 96, 100, 198 S.E.2d 522 (1973); see also *Nationwide Mut. Ins. v. Howard*, 288 S.C. 5, 339 S.E.2d 501 (1985). Any such policy provision in Respondent's policy must be declared void. "A policy of automobile insurance must provide at least the minimum amount of coverage outlined in the statute, and 'a policy issued pursuant to the law which gives less protection will be interpreted by the court as supplying the protection which the legislature intended.'" *Carter v. Standard Fire Ins. Co.*, 406 S.C. 609 (2013) (quoting *Kay v. State Farm Mut. Auto. Ins. Co.*, 349 S.C. 446, 450, 562 S.E.2d 676, 678 (Ct. App. 2002)); *Jackson v. State Farm Mutual Auto. Ins. Co.*, 288 S.C. 335, 342 S.E.2d 603 (1986); and *Giles v. Whitaker*, 297 S.C. 267, 376 S.E.2d 278 (1989); see also *Burgess v. Nationwide Mut. Ins. Co.*, 361 S.C. 196, 202, 603 S.E.2d 861 (Ct. App. 2004) ("UIM statute is also remedial in nature and enacted for the benefit of injured persons. It should be construed liberally to effect the purpose intended by the legislature.")

2. Section 38-77-340 does not authorize Defendant to exclude UM or UIM coverages. By its face, it is limited to liability insurance.

The Legislature does permit an insurance company and a named insured to exclude liability insurance by endorsement. The limitation allowed was limited to only liability insurance.

Notwithstanding the definition of "insured" in Section 38-77-30, the insurer and any named insured must, by the terms of a written amendatory endorsement, the form of which has been approved by the director or his designee, agree that coverage under such a policy of liability insurance shall not apply while the motor vehicle is being operated by a natural person designated by name.

A limitation on *liability* coverage but not UM or UIM coverages does make sense from a public policy perspective. Otherwise, a bad driving family member would potential make it impossible for any resident relatives to insure themselves without excessive premiums for the liability associated with a poor driver in the household. On the other hand, UM and UIM coverage only apply when a collision is caused by another driver. Thus, there is little increased risk associated with issuing UM and UIM coverage to all resident relatives.

CONCLUSION

For the foregoing reasons, the Court must deny Plaintiff's Motion for Summary Judgment and grant Summary Judgment to Defendants.

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Dated: April 13, 2017

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Nationwide Insurance Company of America,

Plaintiff,

v.

Kristina Knight, Individually and as Personal
Representative of the Estate of Daniel P.
Knight,

Defendant.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO: 2016-CP-23-04327

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

**TO: EDWIN L. TURNAGE, ESQUIRE, ATTORNEY FOR THE DEFENDANT AND
TO THE DEFENDANT ABOVE-NAMED:**

Plaintiff Nationwide Insurance Company of America ("Nationwide") submits this
Memorandum of Law in support of its Motion for Summary Judgment:

FACTS

This declaratory judgment action arises from an automobile accident that occurred on February 2, 2016. Decedent Daniel P. Knight was operating a motorcycle insured by another insurer when he was involved in a collision with a vehicle operated by Randy Minley. Knight subsequently died as a result of injuries he sustained in the accident.

Knight was driving a motorcycle at the time of the accident and that motorcycle was insured by another insurance company. Nationwide provided automobile insurance coverage to Knight's wife, Kristi Knight for a different vehicle – a 1996 Ford Ranger – that was not involved in the accident. (Ex. A, Nationwide Policy).¹ When Kristi Knight purchased the Nationwide policy, she and Daniel were not yet married. They were married at the time of his death.

¹ Nationwide attached a certified copy of the complete policy to its Motion for Summary Judgment. For the Court's ease of reference, only relevant portions of the policy are attached here as Exhibit A.

Knight was excluded from coverage at Call's written request. (Ex. B, Endorsement 3109A (hereinafter "Excluded Driver Form")). At the time she applied for the policy, Call signed the Excluded Driver Form, which is entitled "Voiding Auto Insurance While Named Person Is Operating Car," on May 22, 2014. (Ex. B, Excluded Driver Form). The endorsement states, "With this endorsement, *all* coverages in your policy are not in effect while Danny Knight is operating any motor vehicle (emphasis added)." When she executed the endorsement, Call represented that Knight had "obtained insurance or other security to operate motor vehicles." (Ex. B).

There is no dispute that Call executed the Excluded Driver Form and that she represented to Nationwide that Knight had obtained other insurance. (Ex. B) (Answer to Request to Admit) (Answer and Counterclaim of the Estate of Daniel P. Knight, ¶11). Nor is there any dispute that Knight had other insurance coverage at the time of the execution of the endorsement. (Complaint, ¶ 9) (Answer and Counterclaim of the Estate of Daniel P. Knight, ¶ 5). Therefore, there are no disputed issues of material fact in this case. Call signed the Excluded Driver Form, and Knight was listed as an excluded driver on the policy at the time of the February 2, 2016 accident.

ARGUMENT

The General Assembly expressly permits excluded driver forms in insurance policies issued in the State of South Carolina. See S.C. Code Ann. § 38-77-340. Nationwide's Excluded Driver Form states in plain and unambiguous terms that "all coverage" in the policy is not in effect while "Danny Knight is operating any motor vehicle." (Ex. B). The policy defines "motor vehicle" to include land motor vehicles "designed primarily to be driven on public roads." (Ex. A, Policy, p. D1). The motorcycle was a land motor vehicle "designed primarily to be driven on public roads." Therefore, the exclusion applies and the Nationwide policy does not extend any coverage for injuries Knight sustained while operating a motor vehicle.

I. The Excluded Driver Form complies with every requirement of South Carolina Code § 38-77-30.

South Carolina's excluded driver statute provides in pertinent part:

Notwithstanding the definition of "insured" in Section 38-77-30, the insurer and any named insured must, by the terms of a written amendatory endorsement, the form of which has been approved by the director or his designee, agree that coverage under such a [policy of liability insurance] shall not apply while the motor vehicle is being operated by a natural person designated by name. The agreement, when signed by the named insured, is binding upon every insured to whom the policy applies and any substitution or renewal of it. However, no natural person may be excluded unless the *named insured declares* in the agreement that (1) the driver's license of the excluded person has been turned in to the Department of Motor Vehicles or (2) an appropriate policy of liability insurance or other security as may be authorized by law has been properly executed in the name of the person to be excluded.

S.C. Code Ann. § 38-77-340 (emphasis added). Under the terms of the statute, an excluded driver form is valid and enforceable where the form has been approved by the South Carolina Department of Insurance, the endorsement names the excluded driver, and the named insured declares that either the named excluded driver has turned in his license to the DMV or the named excluded driver has an appropriate policy of liability insurance. Each of these elements has been satisfied here.

A. The South Carolina Department of Insurance approved Nationwide's Excluded Driver Form endorsement.

The first element required for application of § 38-77-340 is that the form must be approved by the South Carolina Department of Insurance. The South Carolina Department of Insurance approved Nationwide's use of the Excluded Driver Form (Form V-3109-A) on January 28, 2010, with an effective date of January 22, 2010. (Ex. C, SERFF Document Filing Information for Filing

NWPP-126471069).² Therefore, Nationwide's Excluded Driver Form satisfies the first requirement of § 38-77-340.

B. The Excluded Driver Form names Knight as the excluded driver, and Call represented on the form that Knight had an appropriate policy of liability insurance.

The second requirement under § 38-77-340 is that the Excluded Driver Form name the person to be excluded. "Danny Knight" is clearly named as the "excluded person" on the Excluded Driver Form. (Ex. B, Named Driver Exclusion). Lastly, § 38-77-340 requires the named insured – Call – to represent on the form that the excluded driver had turned in his license to the State Highway Department *or* obtained other appropriate insurance. Here, Call marked the space indicating that Knight had obtained insurance or other security to operate motor vehicles. (Ex. B, Named Driver Exclusion). Although the statute no longer requires the insurer to confirm the veracity of this representation³, it is undisputed here that Knight did have other applicable insurance. (Complaint, ¶ 9) (Answer and Counterclaim of the Estate of Daniel P. Knight, ¶ 5). Therefore, Nationwide's Excluded Driver Form satisfies each of the elements of § 38-77-340.⁴

² The System for Electronic Rate and Form Filing (SERFF) is managed by the National Association of Insurance Commissioners as a method for facilitating the submission, review and approval of product filings between regulators – such as the South Carolina Department of Insurance – and insurance companies.

³ Under a prior version of the statute, the insurer was required to verify that the license had been turned in to the DMV or the named excluded driver had other insurance. *See e.g., South Carolina Ins. Co. v. Barlow*, 301 S.C. 502, 392 S.E.2d 795 (Ct. App. 1990).

⁴ Section 38-77-340 provides that the excluded driver form applies to renewal and substitute policies. Therefore, once the endorsement is signed, it remains part of the policy until removed. Because the exclusion was never removed from the Nationwide policy, it was in full force and effect on the date of the accident.

II. The Excluded Driver Form applies to all coverage under the policy, including coverage required by statute.

In her counterclaim, Call alleges the Excluded Driver Form does not apply because Knight was a statutory insured. Call essentially claims the Excluded Driver Form cannot apply to coverage required by statute. However, the South Carolina Court of Appeals has addressed this precise question in *Lincoln General Ins. Co. v. Progressive Northern Ins. Co.*, 406 S.C. 534, 753 S.E.2d 437 (Ct. App. 2013), and held the exclusion applies to all coverage under the policy, regardless of whether that coverage is mandated by statute.

The named insured in *Lincoln General* – like Call here – identified her husband as an excluded driver under the policy and executed an excluded driver endorsement. *Id.* at 537, 753 S.E.2d at 438-39. Later, the husband was driving an insured vehicle when he caused an accident. *Id.* Progressive relied on the excluded driver form and denied liability coverage to the husband. The plaintiff⁵ claimed the excluded driver form could not apply to exclude statutorily required minimum limits of liability coverage. *Id.* at 538, 753 S.E.2d at 439. The trial court agreed, and granted Lincoln General's motion for summary judgment. *Id.*

The Court of Appeals reversed and rejected the argument that an excluded driver form could not exclude statutorily required coverage: "Here, Progressive is not required to provide minimum limits. The named driver endorsement statute says that, '[n]otwithstanding the definition of 'insured' in Section 38-77-30, ... a policy of liability insurance shall not apply' when the named driver is operating the vehicle." *Id.* at 541, 753 S.E.2d at 441 (emphasis in original).

Therefore, "an insurer's obligation to provide minimum limits for 'insureds' is inapplicable when

⁵ In that case the plaintiff, Lincoln General, was the uninsured motorist coverage provider of the people injured in the accident. Lincoln General sued Progressive claiming subrogation rights and asserted that the excluded driver endorsement was invalid for mandatory, minimum limits liability coverage.

the person named in the endorsement is driving and the statute's remaining requirements are satisfied." *Id.* (emphasis added).

Just like Progressive's exclusion, Nationwide's Excluded Driver endorsement follows the language of the statute. "[A]ll coverages in your policy are not in effect while Danny Knight is operating any motor vehicle" (Ex. B). Because Knight was operating a motor vehicle at the time of the accident, the policy was not in effect when the accident occurred. Knight's estate cannot collect UIM benefits from a policy that was not in effect at the time of the accident. Therefore, Nationwide is entitled to judgment in its favor as a matter of law.

III. Knight's contention that the exclusion does not apply to underinsured motorist coverage is incorrect.

Knight further argues that the Nationwide policy does not and cannot exclude UIM coverage because the language of § 38-77-340 only applies to liability coverage. Knight's position is unsupported by the language in Nationwide's endorsement and even by the statutory language.

First, as noted above, the plain language in the endorsement shows that the policy applies to all coverage provided under the policy issued to Mrs. Knight. "With this endorsement, *all* coverages in your policy are *not* in effect while Danny Knight is operating *any* motor vehicle." (emphasis added.)

Since the endorsement clearly applies to all coverages, the only question is whether an exclusion that is so broad is allowed by the statute. The statute applies to "a policy of liability insurance." Upon a cursory review one might conclude, as Knight suggests, that only liability coverage can be the subject of an excluded driver endorsement. But the statute does not refer to liability coverage; it refers to a policy of liability insurance. A policy of liability insurance must encompass all coverages provided to the policyholder because UIM coverage (which is of course not mandatory) cannot be sold as a stand-alone coverage. *See* §38-77-160.

The legislature knows how to reference liability "coverage", which is only a subset of the whole "policy of insurance" to which the UIM coverage is attached. This is made clear by § 56-9-20(5) which defines "Motor Vehicle Liability Policy" to include any coverages required within §§38-77-140 – 38-77-230. Underinsured Motorist coverage is dealt with in § 38-77-160, which necessarily includes that type of coverage within the scope of a "Motor Vehicle Liability Policy."⁶ Thus, the legislature has shown that "liability policy" refers to the whole policy regardless of which types of coverage are included.

IV. Allowing Knight's estate to collect UIM coverage from a policy in which he is excluded from liability coverage violates the public policy of South Carolina.

In the event that the Court allows the Knight Estate to collect UIM coverage in this situation, the Court would sanction an inequity that South Carolina insurance law cannot support. South Carolina adopted a Motor Vehicle Financial Responsibility Act for the expressed purpose of affording "protection to insured motorists, [and] it serves the public purpose of affording protection to innocent victims of motor vehicle accidents. In recognition of this important public purpose, the legislatures of some states have enacted compulsory liability insurance laws. Others, including our General Assembly, have sought protection for highway victims, short of compulsory insurance, by the enactment of financial responsibility and uninsured motorist statutes." *Factory Mut. Liability Ins. Co. of America v. Kennedy*, 182 S.E.2d 727, 729, 256 S.C. 376, 380 (1971). If Knight is allowed to collect underinsured motorist coverage from a policy where he is not afforded liability coverage, the important public policy is thwarted because Knight can protect himself from accidental injuries but is not required to protect the public to the same extent – or even at all.

⁶ For the Court's reference, Personal Injury Protection coverage is dealt with in § 38-77-144 and Uninsured Motorist coverage is dealt with in §38-77-150. Of course, neither of those coverages are liability coverage, but they too fall within the ambit of a "Motor Vehicle Liability Policy" according to the

In fact, the Supreme Court has already opined that allowing the excluded driver endorsement is to "alleviate the problem often faced by the owner of a family policy, who ... has a relatively safe driving record but is forced to pay higher premiums because another member of the family ... is by definition also included in the policy coverage." *Lovette v. U.S. Fid. & Guar. Co.*, 274 S.C. 597, 600, 266 S.E.2d 782, 783 (1980) (internal quotation marks omitted) (discussing predecessor statute). Allowing that excluded family member to insure himself for UIM coverage when he is unwilling to insure the public against his bad driving is certainly not what the Supreme Court or the legislature envisioned. Following the position endorsed by Knight would lead to absurd results when compared to the goal of the MVFRA. For example, a father can insure himself for liability coverage, but exclude the remainder of his family for liability coverage while still having coverage for his own resident family members via first-party uninsured or underinsured coverage. That is not a legal position that protects the public, it actually harms the public by incentivizing the exclusion of drivers to create lower premiums.

CONCLUSION

For the above-stated reasons, Nationwide's Motion for Summary Judgment should be granted. There is no dispute in this case that Call signed the Excluded Driver Form naming Knight as an excluded driver. All of the statutory requirements of § 38-77-340 have been satisfied. Moreover, it is undisputed Knight was operating a motor vehicle at the time of the accident. Therefore, "all coverages" in the Nationwide policy were "not in effect" at the time of the accident, and Nationwide is entitled to a declaratory judgment that it does not owe any benefits under the policy for any claims arising out of the February 2, 2016 accident.

[Signature on following page]

MURPHY & GRANTLAND, P.A.

s/Adam J. Neil, Esquire

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May 15, 2017

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

NATIONWIDE INSURANCE COMPANY
OF AMERICA,

Plaintiff,

vs.

KRISTINA KNIGHT, INDIVIDUALLY
and as PERSONAL REPRESENTATIVE of
the ESTATE OF DANIEL P. KNIGHT,

Defendants.

Civil Action No. 2016-CP-23-04327

**REPLY
MEMORANDUM IN OPPOSITION
TO PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

ISSUE

Does Nationwide's automobile insurance policy, which seeks to exclude portable UIM coverage to a statutory insured (a spouse) by policy endorsement, violate South Carolina public policy?

ARGUMENT

2. Section 38-77-340 does not authorize Defendant to exclude portable UM or UIM coverages. By its face, Section 38-77-340 is limited to liability coverage.

When construing a statute, courts must determine the intent of the legislature. *See Horn v. Davis Elec. Constructors, Inc.*, 307 S.C. 559, 563, 416 S.E.2d 634, 636 (1992). The words of a statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand its operation. *See First Baptist Church of Mauldin v. City of Mauldin*, 308 S.C. 226, 229, 417 S.E.2d 592, 593 (1992). One principle of statutory construction is that a court must assume the legislature intended to accomplish

something through an enacted statute and did not engage in futile action. See *Purvis v. State Farm Mut. Auto. Ins. Co.*, 304 S.C. 283, 288, 403 S.E.2d 662, 666 (Ct. App. 1991). A statute ought to be read so that, "no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous, for the General Assembly obviously intended the statute to have some efficacy, or the legislature would not have enacted it into law." *CFRE, LLC v. Greenville Cnty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011)

Plaintiff argues that Section 38-77-340 permits it to exclude all coverages of an "excluded driver" including liability and portable uninsured and underinsured coverages. Plaintiff claims the Legislature used "policy of liability insurance" to include all coverages of an automobile insurance policy. However, the clear language of Section 38-77-340 eviscerates Plaintiff's argument. The Legislature obviously intended for this exclusion to be limited to just the *liability* insurance coverage of the potentially excluded person.

The relevant portion of Section 38-77-340 states as follows:

Notwithstanding the definition of "insured" in Section 38-77-30, the insurer and any named insured must, by the terms of a written amendatory endorsement, the form of which has been approved by the director or his designee, agree that coverage *under such a policy of liability insurance shall not apply while the motor vehicle is being operated* by a natural person designated by name.

S.C. Code Ann. § 38-77-340 (emphasis added).

The italicized phrase shows that Legislature limited the exclusion to liability coverage. First, the Section uses the terms "*policy of liability insurance*." Title 38 definitions do define the term "policy." See S.C. Code Ann. § 38-77-30(10.5). The Title 38 definition of "policy" is broad. It includes all forms of

automobile insurance coverage. The term, "liability insurance" is not specifically defined under Title 38. However, the location of those words after the defined term "policy," suggest they are intended to narrow the intended scope of what "coverage" an insurance company may lawfully exclude.¹ If Plaintiff's broad interpretation of Section 38-77-340 were what was really intended, the Legislature could have written Section 38-77-340 in a much simpler way. It could have said:

Notwithstanding the definition of "insured" in Section 38-77-30, the insurer and any named insured must, by the terms of a written amendatory endorsement . . . agree that coverage under such a policy [STOP] shall not apply [to the] person designated by name.

Instead, the limiting words "liability insurance" that the Legislature included after "policy" suggest the coverage exclusion allowed by Section 38-77-340 was intended to apply only to a policy's liability insurance coverage. Otherwise, the words "liability insurance" serve no purpose and are superfluous.

Second, the Legislative intent to limit the allowed exclusion of Section 38-77-340 to liability insurance coverage was made manifest by including a phrase referencing insured vehicles. That phrase follows and modifies the word "coverage" as follows: "coverage under such a policy of liability insurance shall not apply *while the motor vehicle is being operated . . .*" (emphasis added)

¹ Plaintiff's memorandum of law cites definitions of the Motor Vehicle Financial Responsibility Act, a law that established the implied consent law, and rules for issuing drivers' licenses and vehicle license plates. The definitions in Title 56 are not really relevant to interpreting the language of Title 38.

In the case of *Burgess v. Nationwide Mut. Ins. Co.*, 361 S.C. 196, 201, 603 S.E.2d 861 (S.C. App., 2004), the Court discussed a critical distinction between liability coverage and UM and UIM coverages under a policy of automobile insurance. Liability insurance coverage follows the vehicle. UIM (and UM) coverage follows the person.

UIM coverage follows the person; in others it follows the vehicle. We believe that South Carolina falls in the category where UIM coverage follows the person, as is the case with uninsured motorist ("UM") coverage.

Id. Liability insurance is the only automobile insurance coverage that is always implicated by careless operation of a motor vehicle (using the words the Legislature included in Section 38-77-340). Liability coverage follows the vehicle. Thus, by limiting the "coverage" exclusion allowed to persons operating a vehicle, the Legislature confirmed its intent to limit the allowed exclusion to liability insurance coverage of prescribed individuals using the vehicle. We agree that the exclusion of liability coverage for prescribed persons can legally be applied even to resident relative drivers who live with the named insured.

It is important to review the public policy for mandatory minimum portable UM or UIM coverages²:

Our supreme court has previously explained, "uninsured motorist coverage is not to provide coverage for the uninsured vehicle but to afford additional protection to the insured." *Nationwide Mut. Ins.*

² In interrogatory answers Nationwide admitted it executes Endorsement 3109A to intentionally exclude mandatory minimum portable UM and UIM coverages to resident relatives of all Nationwide's policy holders across South Carolina regardless of the statutory insureds' status as a husband, wife, or child of its insureds.

Co. v. Howard, 288 S.C. 5, 12, 339 S.E.2d 501, 504 (citing *Hogan v. Home Ins. Co.*, 260 S.C. 157, 162, 194 S.E.2d 890, 892 (1973)). The court further clarified in *Hogan* that "unlike the provisions relative to liability coverage, the statute plainly affords uninsured motorist coverage to the named insured and resident relatives of his or her household at all times and without regard to the activity in which they were engaged at the time. Such coverage is nowhere limited in the statute to the use of the insured vehicle." *Hogan*, 260 S.C. at 162, 194 S.E.2d at 892. Similarly, the statutory purpose of UIM coverage is to provide coverage in the event damages are sustained in excess of the liability limits carried by an at-fault insured or underinsured. S.C. Code Ann. § 38-77-160. Thus, our UIM statute is also remedial in nature and enacted for the benefit of injured persons. It should be construed liberally to effect the purpose intended by the legislature. See *Sloan v. Greenville County*, 356 S.C. 531, 564, 590 S.E.2d 338, 356 (Ct.App.2003) (reasoning that the provisions of a code should be construed liberally if the code is remedial in nature).

Understanding that UIM coverage is a variation of UM coverage, we believe that *Hogan* indicates the legislative intent behind our UIM statute and is applicable here. In other words, under insurance, like UM insurance, is personal and portable. "In jurisdictions where the coverage follows the person any person who enjoys the status of an insured under a motor vehicle policy of insurance which includes uninsured/underinsured coverage enjoys coverage protection simply by reason of having been injured by an uninsured/underinsured motorist." 9 Couch on Ins.3d § 123:3.

Id. In view of the obvious importance attached to portable UIM (and UM) coverage, the Legislature would not have referenced the insured *vehicle* in Section 38-77-340 if it intended to allow insurance companies to exclude it. UIM (and UM) coverage follow the person and not the insured vehicle.

Finally, the *Lincoln General v. Progressive* case cited by Plaintiff confirms the Legislative purpose behind Section 38-77-340. The purpose is to allow an insured and an insurance company to exclude a bad driving resident relative from the liability insurance coverage on an insured vehicle allowing the parties to set an affordable premium on the car insurance.

The purpose of this section is to "alleviate the problem often faced by the owner of a family policy, who . . . has a relatively safe driving record but is forced to pay higher premiums because another member of the family . . . is by definition also included in the policy coverage."

Lincoln General v. Progressive, 406 S.C. 534, 753 S.E.2d 437, 441 (S.C. Ct. App. 2013) (citation omitted). The articulated public policy set forth above also supports the narrower interpretation of Section 38-77-340 such as is advocated here by Defendants. This is because unlike the risk of liability arising from a bad driving resident relative, there is little increased risk in insuring the same bad driving resident relative under the portable UIM and UM coverage of a policy. That is because UM and UIM coverage is implicated only when a third party is liable for the automobile collision.

3. The South Carolina Insurance Commission Did Not Endorse Plaintiff's Broad Interpretation of Section 38-77-340 by Approving Endorsement 3109A

Plaintiff references the fact that Endorsement 3109A was approved by the South Carolina Insurance Commission. However, at a deposition taken on May 17, 2017,³ a Commission spokesperson confirmed that the approval of Nationwide form Endorsement 3109A by non lawyers working at the Commission did not constitute an endorsement of Nationwide's position in this litigation. In fact, because of the issues raised in the Deposition Notice that we served on the Commission (Exhibit 15), it indicated it intends to subject Endorsement 3109A to further vetting to analyze the potential negative impact

³ The deposition transcript is currently being prepared. It will be introduced into the record at the hearing.

Endorsement 3109A on Nationwide's insureds' portable UM and UIM coverage. The Commission representative stated that the Commission takes no position on this case either way.

CONCLUSION

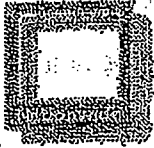
For the foregoing reasons, the Court must deny Plaintiff's Motion for Summary Judgment and grant Summary Judgment to Defendants.

BY: s/Edwin L. Turnage

Edwin L. Turnage (SC Bar No. 12842)
HARRIS AND GRAVES, P.A.
P.O. Box 6263
Greenville, SC 29606
(864) 235-1331
elt@harrisgraves.com

Attorney for Defendants

Greenville, South Carolina
Dated: May 18, 2017



Endorsement 3109A

**Voiding Auto Insurance While Named
Person Is Operating Car**
(South Carolina)

Please attach this important addition to your auto policy.

With this endorsement, all coverages in your policy are not in effect while
Danny Knight is operating any motor vehicle.
excluded person

The policy remains unchanged in all other respects.

As indicated by my signature, I Kristina Call
accept this endorsement. signature of policyholder(s)

Check one:

- () The excluded person's driver's license has been surrendered to the State Highway Department.
- ☒ The excluded person has obtained insurance or other security to operate motor vehicles.

This endorsement applies as stated in the policy Declarations.

This endorsement is issued by the company shown in the Declarations as the issuing company.

Attached to and forming a part of policy number: 61D065876	Effective at 12:01 A.M. on policy effective date or on <u>06/22/2014</u> whichever is later
--	--

NATIONWIDE INSURANCE COMPANIES
Home Office: Columbus, Ohio 43215-2220

Issued to:

Kristi Call
967 Lewis St
Anderson, SC 29624-

Countersigned at: ANDERSON, SC 29621

Authorized Representative:
Deborah Ellett 2014359

V-3109-A



Certification

I, Brett Sutton, as a duly authorized Nationwide Insurance associate entrusted with oversight of the system of record from which this copy was produced, based upon information and belief, certify under the penalty of perjury that this attached copy of policy 61 39 D 065876, was made at or near the time of certification, as part of regularly conducted business activities, and is a true and accurate copy of the official record kept as part of regular business activities.

Brett Sutton

Date: June 8, 2016

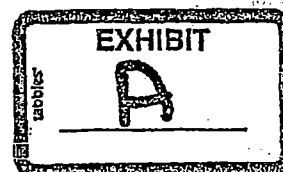
Signature

Brett Sutton

Print Name

Processor, Imaging

Title





Nationwide®
On Your Side

Prepared on November 3, 2015

Page 1 of 1

Your Policy Declarations

Auto Policy

Policy Period: Dec 4, 2015 - Jun 4, 2016

Policy Number: 6139D 065876

Policyholder (Named Insured):

Kristi Call
967 Lewis St
Anderson, SC
29624-1156

Keep these Declarations for your records.

General Policy Information

Issued: November 3, 2015

These Declarations are a part of the policy named above and identified by the policy number above. 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 Period: December 4, 2015 - June 4, 2016 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 expires at 12:01 a.m. at the address of the named insured stated herein.

Your carrier is Nationwide Insurance Company Of America, NAIC #25453.

IMPORTANT MESSAGES:

Nationwide Insurance Company Of America
4401 Creedmoor Road
Raleigh, NC 27612-3814
919.781.3322

Premium Summary and Other Charges

1996 Ford Ranger	\$	318.80
Total For Policy Coverages	\$	20.00
Total Policy Premium	\$	338.80

How You Saved on this Policy with Nationwide

- Passive Restraint
- Homeowner
- Select

Thank you for being a long-term customer.

Insured Driver(s)

Name	Date of Birth	Marital Status
Kristi Call	09/23/75	Single

Excluded Driver(s)

The following driver(s) are excluded from all coverages and all vehicles on the policy:

Danny Knight



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Prepared on November 3, 2015 Page 2 of 2

Important Reminders from Nationwide

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NOTES:

Your premium for this renewal is \$ 336.60. To maintain uninterrupted coverage, please pay your premium by the due date on the bill. This includes any change you may have made to your policy.

Your credit report will only be ordered at the start of your policy with Nationwide unless you request an update. You may request a new credit-based insurance score once each year to be used to rate your policy. To request an updated insurance score, please contact us at 1-877-302-1833.

Great news! You have earned features that have been automatically added to this policy. We also want to tell you about a different Nationwide rating plan available in your state. This plan could possibly save you money and may or may not include the loyalty features that are included in this policy. Ask your agent for a free *On Your Side* Review.

Sign up for convenient, automatic bill payment with Nationwide Easy Pay. To learn more, ask your agent or log in to nationwide.com/easypay.

Manage your account, make a payment, check the status of a claim and receive your bill by email with online Account Access. Visit nationwide.com/manage - see how easy it can be.

Easy Pay Sign-up Discount can save you \$30 by having your payments automatically withdrawn monthly from your checking or savings account. For more information, contact your agent.

Nationwide thanks you for your business. Our first priority is to serve you, our Customer.

Whether you have a claim, a question, a concern, or just need a convenient service, our *On Your Side* promise means we'll be there to serve your needs.

Your Insurance Identification Card

Prepared on November 3, 2015



Nationwide®
On Your Side

- Detach your identification cards along the perforated lines
- Keep this card in your vehicle.
- See section following ID Cards for **What's enclosed.**

IMPORTANT NOTICE about your Insurance ID Card

This Insurance Identification (ID) card shows that a liability insurance policy has been issued which satisfies the financial responsibility requirements of the law.

Your ID card may be shown if requested to provide proof of insurance. In the event of an accident your card may be used to exchange information with other drivers.

Kristi Call
967 Lewis St
Anderson, SC
29624-1156

Things in your life change. Make sure your insurance keeps up. Ask your agent for a free *On Your Side* Review.

Manage your account, make a payment, check the status of a claim and receive your bill by email with online Account Access. Visit nationwide.com/manage - see how easy it can be.

Sign up for convenient, automatic bill payment with Nationwide Easy Pay. To learn more, ask your agent or log in to nationwide.com/easypay.

South Carolina Insurance Identification Card

Policy Number	Effective Date	Expiration Date
8138D 085876	Dec 4, 2015	Jun 4, 2018
Year	Make/Model	Vehicle Identification Number
1998	Ford/Ranger	1FTCR14U3TFB53648

24 Hour Claims 1.800.421.3535

See the reverse side for more information.

Kristi Call
967 Lewis St
Anderson, SC
29624-1156

Nationwide Insurance Company Of America
PO Box 30000
Raleigh NC 27612-0000

NAIC Company Number: 25453

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0890700020680



Nationwide's On Your Side® Claims Guarantee
means fast and fair handling of your claim.

If you lose your card, contact your Nationwide agent.

Manage your account, make a payment,
check the status of a claim and receive
your bill by email with online Account
Access. Visit nationwide.com/manage - see
how easy it can be.

Things in your life change. Make sure your
insurance keeps up. Ask your agent for a
free On Your Side Review.

☐ **Nationwide's On Your Side® Claims**
Guarantee means fast and fair handling
of your claim.

24 Hour Claims 1.800.421.3535

Report Claims anytime, anywhere in the U.S.A.

COVERAGE PROVIDED UNDER THIS INSURANCE
POLICY MEETS THE MINIMUM FINANCIAL
REQUIREMENTS OF THE STATE OF SOUTH
CAROLINA.

When calling, please give these details:

1. Policy number and zip code
2. Make and model year
3. Location of accident, injuries and damages
4. Other vehicle and persons involved

For Billing Questions:
1.877.262.0247 or your
Nationwide Agent,
Deborah A Ellett at
864.225.8865.

Sign up for convenient, automatic bill
payment with Nationwide Easy Pay. To
learn more, ask your agent or log in to
nationwide.com/easypay.



Nationwide®
On Your Side

Deborah A Ellett
2712 N Main St
Anderson, SC 29621

Prepared on November 3, 2015

Page 1 of 1

Your Policy Renewal

Your bill is sent separately.

Auto Policy

Policy Period: Dec 4, 2015 - Jun 4, 2016

Policy Number: 6139D 065876

Sign up for convenient,
automatic bill payment
with Nationwide Easy Pay.
To learn more, ask your
agent or log in to
nationwide.com/easypay.

Kristi Call
967 Lewis St
Anderson, SC
29624-1156

What's enclosed

- ✓ **Insurance Identification Cards** - Your ID cards are enclosed in this packet.
- ✓ **Declarations** - These pages show your coverages under this policy. Carefully review these details and call Deborah A Ellett at 864.225.8865 if you have questions or want to make changes.
 - General Information
 - Coverage Details
 - Your Total Policy Premium
- ✓ **Insurance Documents** - Please keep these documents for future reference.

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08907000686021



How to Contact Us
Your Nationwide Agent
Customer Service
Internet
24-Hour Claims Reporting
Hearing Impaired (TTY)

Deborah A Ellett 864.225.8865
1.877.669.6877
Nationwide.com
1.800.421.3535
1.800.622.2421



Nationwide®
On Your Side

For coverage definitions and descriptions,
visit Nationwide.com

Prepared on November 3, 2015

Page 2 of 2

Your Policy Declarations

Auto Policy

Policy Period: Dec 4, 2015 - Jun 4, 2016

Policy Number: 6139D 065876

Insured Vehicle(s) and Schedule of Coverages

1996 Ford Ranger

VIN 1FTCR14U3TPB53649

Coverages	Limits of Liability	Premium
Property Damage Liability	\$ 50,000 Each Occurrence	\$ 98.60
Bodily Injury Liability	\$ 50,000 Each Person	
	\$ 100,000 Each Occurrence	121.30
Medical Payments	\$ 1,000 Endorsement 3490	16.50
Uninsured Motorists		
-Bodily Injury	\$ 50,000 Each Person	
	\$ 100,000 Each Occurrence	17.10
-Property Damage	\$ 50,000 Each Occurrence	4.70
Underinsured Motorists		
-Bodily Injury	\$ 50,000 Each Person	
	\$ 100,000 Each Occurrence	58.20
-Property Damage	\$ 50,000 Each Occurrence	2.40
Total for this Vehicle		\$ 318.80

Policy Level Schedule of Coverages

Coverages	Limits of Liability	Premium
Roadside Assistance	Plus - Covers Disablement Up To 100 Miles/\$100 Lockout/ \$ 500 Trip Interruption Endorsement 3436	\$ 20.00
Total for Policy Coverages		\$ 20.00

Policy Form and Endorsements

Z-039	Nationwide Auto Policy
V-3436	Roadside Assistance Coverage
V-3398	Automobile Insurance Guarantee
V-3581	Amendatory Endorsement
V-3109A	Voiding Auto Insurance While Named Person is Operating Car (South Carolina)
CAS6814	Amendatory Endorsement - Benefits
V-3490	Medical Payments (Medical Expenses Payable Regardless of Fault) (South Carolina)

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Continued on the next page



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Page 3 of 3

Your Policy Declarations

Auto Policy

Policy Period: Dec 4, 2015 - Jun 4, 2016

Policy Number: 6139D 065876

For Office Use Only:

07/22/15 \$ 0.00 Terr: 050 County: Anderson

Issued By: Nationwide Insurance Company Of America
Home Office: Columbus, Ohio 43215-2220
PO Box 30000
Raleigh, NC 27612-0000
877.669.6877

Countersigned At: Columbus, Ohio

By: Kenneth A Rhodes, Jr Na

How to Contact Us

Your Nationwide Agent

Customer Service

Internet

24-Hour Claims Reporting

Hearing Impaired (TTY)

Deborah A Ellett 864.225.8865

1.877.669.6877

Nationwide.com

1.800.421.3535

1.800.622.2421

0890700068045



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Prepared on: November 3, 2015

Page 4 of 4

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FILED



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Is on your side

Endorsement 3109A — Voiding Auto Insurance While Named Person Is Operating Car (South Carolina)

Please attach this important addition to your auto policy.

With this endorsement, all coverages in your policy are not in effect while _____ is operating any motor vehicle.

The policy remains unchanged in all other respects.

As indicated by my signature, I _____ accept this endorsement.

Check one:

☐ The excluded person's driver's license has been surrendered to the State Highway Department.

☐ The excluded person has obtained insurance or other security to operate motor vehicles.

This endorsement applies as stated in the policy Declarations.

This endorsement is issued by the company shown in the Declarations as the issuing company.

Attached to and forming a part of policy number:	Effective at 12:01 a.m. on policy effective date or on _____ whichever is later
---	--

Issued to:

Countersigned at:

Authorized Representative:

V-3109-A

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Nationwide®
Is on your side

Thank you for choosing Nationwide® to help you protect what's important to you. We value your business and want to update you on a change effective with the renewal of your policy.

What's changing

Amendatory Endorsement Cas. 6814 is added to your policy:

- Nationwide may provide members the opportunity to obtain benefits such as coupons, points, vouchers, gift cards or other things - subject to eligibility rules

What you need to do

There's no action or steps for you to complete, however, we do suggest you:

- Review the Amendatory Endorsement
- Keep this notice with your Insurance policy

For help when you need it

We appreciate your business and look forward to continuing to serve you. If you have any questions please contact your Agent or the Nationwide Service Center at 877-ON YOUR SIDE® (877-669-6877).

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Nationwide®
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Amendatory Endorsement — Benefits (South Carolina)

Please attach this important addition to your policy.

The Policy is amended to include the following language:

Coverage is subject to all terms and conditions of the policy, except as changed by this endorsement.

The following terms, as defined, apply to this endorsement:

"Participants" means the individual natural person named in the Declarations and their spouse, or others related by blood, marriage or other legally recognized familial relationship living in the participant's household.

"Nationwide" means the company issuing this policy as listed in the Declarations and all affiliated companies.

Nationwide, or an organization which **Nationwide** has contracted with for this purpose, may provide **participants** the opportunity to obtain benefits, such as memberships, merchandise, services, seminars, coupons, points, vouchers, gift cards or other things, subject to applicable eligibility rules. Benefits provided pursuant to this Endorsement will not exceed \$25.00 in value, per policy, per year.

Benefits such as those described above may be modified or discontinued at any time without notice.

This endorsement applies as stated in the policy Declarations.

Cas. 6814-1

08907000686052

This endorsement is issued by the company shown in the Declarations as the issuing company.

Cas. 6814-1

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**Endorsement 3490****Medical Payments**

*(Medical Expenses Payable Regardless of Fault)
(South Carolina)*

Please attach this important addition to your auto policy.

With this endorsement, your policy is amended to provide Medical Payments Coverage if that coverage is indicated on the Declarations page. Coverage is subject to all terms and conditions of the policy, except as changed by this endorsement.

ADDITIONAL DEFINITIONS APPLICABLE TO THIS COVERAGE

For purposes of this coverage only:

1. "EXPERIMENTAL TREATMENT" means medical treatment that is experimental in nature which is not accepted as effective therapy by:
 - a) the state medical association or board;
 - b) an appropriate medical specialty board;
 - c) the American Medical Association;
 - d) the Surgeon General; or
 - e) the Federal Food and Drug Administration.
2. "USUAL, CUSTOMARY AND REASONABLE CHARGES" means charges for services or supplies covered under this policy, which are:
 - a) usual and customary in the place where provided; and
 - b) not more than what would have been charged if the injured person had no insurance; and
 - c) not for Experimental Treatment.
3. "MEDICALLY NECESSARY" means a service or procedure which is necessary, appropriate and consistent for the symptoms, diagnosis or treatment of a condition of injury or sickness within generally accepted current standards of good medical practice. The fact that any particular doctor may prescribe, order, recommend or approve a service or procedure does not, in itself, make the service or procedure medically necessary.
4. "UTILIZATION MANAGEMENT OR REVIEW" means cost and utilization containment activities designed to determine usual, customary and reasonable charges for medically necessary services provided to an insured. These activities include, but are not limited to, medical bill auditing.

COVERAGE AGREEMENT

We will pay usual, customary and reasonable charges:

1. for expenses incurred for:
 - a) medically necessary services; or
 - b) funeral costs;
 due to accidental bodily injury suffered by you or a relative while occupying your auto.
2. Incurred within two years following the accident.
3. up to the limit stated in the policy Declarations.

4. regardless of who is at fault in the accident.

We may apply utilization management or review to determine:

1. usual, customary and reasonable charges; and/or
2. medically necessary services.

COVERAGE EXTENSIONS

YOU AND A RELATIVE

In addition, you and a relative are covered:

1. While occupying a private passenger auto 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. While occupying a private passenger auto newly acquired by you. The 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.
3. As pedestrians, if struck by any motor vehicle or trailer, which is not owned by or furnished or available for the regular use of you or a relative other than your auto.
4. While occupying any other motor vehicle not owned by you or a relative. This protection does not apply to:
 - a) use of any vehicle in any business or any occupation of you or a relative, except a private passenger auto (this does not include a motorcycle) used by:
 - (1) you;
 - (2) your chauffeur; or
 - (3) your household employee.
 - b) use of a motor vehicle furnished to you or a relative for regular use.

OTHER PERSONS

Persons other than you and a relative are protected under this coverage while occupying:

1. Your auto when it is being used by:
 - a) you;
 - b) a relative; or
 - c) anyone else with your permission.
2. A private passenger auto 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.
3. A private passenger auto newly acquired by you. The 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.

4. A motor vehicle that belongs to someone who is not a member of your household.
 - a) This protection applies only when the vehicle is operated by you or a relative.
 - b) This protection does not apply to:
 - (1) use of any vehicle in the business or occupation of you or a relative, except a private passenger auto (this does not include a motorcycle) used by:
 - (a) you;
 - (b) your chauffeur; or
 - (c) your household employee.
 - (2) use of a motor vehicle furnished to you or a relative for regular use.

USE OF TRAILERS

1. This coverage applies to the use of a trailer by:
 - a) you;
 - b) a relative; or
 - c) someone else with your permission;
 regardless of who owns it.
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 is not a private passenger auto.
4. A motor vehicle and attached trailer are one vehicle as respects limits.

COVERAGE EXCLUSIONS

This coverage does not apply to:

1. Any motor vehicle while used:
 - a) to carry persons or property for a fee or compensation; or
 - b) on a regular basis for retail or wholesale delivery, including but not limited to pizza, magazine, newspaper and mail delivery.

Exclusion 1.a) does not apply to motor vehicles used in shared-expense car pools.

2. a) Any person for any occurrence arising out of the operation of an auto:
 - (1) repair shop;
 - (2) public garage or parking place;
 - (3) sales agency; or
 - (4) service or maintenance facility.
 b) However, this exclusion does not apply to:
 - (1) you;
 - (2) a relative; or
 - (3) a partner or employee of you or a relative;
 with regard to the use of your auto.
3. Use of any motor vehicle while rented or leased to others by an insured.
4. Any motor vehicle:
 - a) While used in an organized competitive event, including but not limited to:
 - (1) racing contest or event; or
 - (2) speed contest or event; or
 - (3) in practice or preparation for any prearranged, or organized racing or speed contest or event.
 - b) While used in Performance Testing that is done on a closed road, or a race track, or a testing facility environment where the insured is not competing.

Performance Testing is when an insured uses any motor vehicle to:

- a) test its performance in speed, handling; or
- b) test or practice driver skills.

Performance Testing does not apply to student-driver training activities an insured participates in to obtain that person's state issued learner's permit or drivers license. Performance Testing also does not apply to driver training activities an insured participates in to complete that person's state sanctioned courses in motor vehicle accident prevention, defensive driving, driver improvement, or similarly designed courses.

5. Use of any motor vehicle while located for use as a residence or premises.
6. Any person occupying, maintaining, or struck by:
 - a) any vehicle or trailer designed mainly for use off public roads while off public roads;
 - b) any vehicle or trailer located for use as a residence or premises;
 - c) any vehicle or trailer that runs on rails or crawler treads; or
 - d) any motorcycle, moped or other 2- or 3-wheeled motorized vehicle not listed on the Declarations page.
7. Any expenses incurred for:
 - a) the use of thermography or other related procedures of a similar nature;
 - b) the use of acupuncture or other related procedures of a similar nature; or
 - c) the purchase or rental of equipment not primarily designed to serve a medical purpose.
8. Use of any motor vehicle while rented, leased or sold to others by an 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.
9. Bodily injury to any person eligible to receive any benefits required to be provided or voluntarily provided by any insured under a:
 - a) workers' compensation;
 - b) unemployment compensation;
 - c) non-occupational or occupational disease;
 - d) disability benefits;
 or any similar law.
10. Bodily injury caused by an act of war, including insurrection, rebellion, or revolution.
11. Bodily injury caused by or resulting from:
 - a) nuclear hazard, meaning any:
 - 1) nuclear reaction;
 - 2) nuclear discharge;
 - 3) radiation; or
 - 4) radioactive contamination; or
 - b) discharge of a biological weapon resulting in biological contamination;
 whether controlled or uncontrolled or however caused, or as a consequence of any of these.

12. Expenses, charges or costs arising directly or indirectly from bodily injury caused by or resulting 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, smuts or fleshy fungi such as mushrooms, puffballs and coral fungi.
13. Bodily injury 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.
14. Any motor vehicle which you or a relative:
 - a) uses without a reasonable belief of being entitled to do so;
 - b) has stolen; or
 - c) knows to have been stolen.

You or a relative shall not be held to have a reasonable belief of being entitled to operate a motor vehicle if that person's license has been suspended, revoked, or never issued.

This exclusion does not apply to the use of your auto by:

- a) you;
- b) a relative; or
- c) a partner, employee, or agent of you or a relative.

ARBITRATION

If we and the Insured do not agree about the amount due and upon written demand of either party, the dispute will be settled by binding arbitration as follows:

1. Each will select a competent arbitrator. The two so selected will select a third.
2. If the third arbitrator is not agreed upon within 30 days, the Insured or we may request a judge of a court of record to name one. The court must be in the county and state in which arbitration is pending.
3. Each party will pay its chosen arbitrator. Each will pay half of the expenses of the third, and half of all other expenses of arbitration. Any fees of expert witnesses or attorneys will be paid by the party who hires them.
4. A written decision on which two arbitrators agree shall be binding on us, the Insured, any assignee of the Insured and any person or organization with whom the Insured expressly or impliedly contracts for the rendition of medically necessary services.
5. The arbitrators' decision shall be limited to whether or not the medical expenses were usual, customary and reasonable charges and/or medically necessary. The arbitrators may not award punitive or other noncompensatory damages.
6. Unless it is agreed otherwise, arbitration will take place in the county and state in which the Insured lives at the time of the accident. Arbitration will be subject to the usual rules of procedure and evidence in such county and state.

LIMITS AND CONDITIONS OF PAYMENT

BENEFITS PAYABLE

1. The amount payable under this coverage to or for one person in one accident is limited as stated in the policy Declarations. The limit selected for your auto is as stated in the Declarations. The stated limit is not increased by the insuring of more than one person or vehicle under this policy or any other policy issued by us.
2. In any loss covered under "COVERAGE EXTENSIONS" and not involving your auto, the highest liability limit applicable to any one vehicle in this policy will apply.

OTHER INSURANCE

We will pay only the insured benefit over and above the amount of other collectible auto Medical Payments or similar coverage in any loss involving:

1. Use of a motor vehicle you do not own; or
2. Being hit as a pedestrian by any motor vehicle or trailer.

DUPLICATE PAYMENT

We will make no duplicate payment to or for any insured for the same element of loss.

OTHER CLAIMS AND JUDGMENTS

Any loss payment under this coverage will apply toward payment of any claim or judgment relating to the same loss under the Bodily Injury Liability coverage of this policy. The company will require written agreement to this condition before payment of a Medical Payments loss.

ADDITIONAL DUTIES

In addition to the Insured Persons' Duties listed in the policy for submitting proof of loss, the Insured will provide us with original documents, bills and reports to verify any medical expense claimed.

TERRITORY

The Territory provisions of the policy apply to this coverage.

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 Mutual Insurance Company and Affiliated Companies
One Nationwide Plaza Columbus, OH 43215-2220
Hearing or Voice Impaired: 1-800-622-2421 (TTY only)
nationwide.com

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Endorsement 3436 — Roadside assistance coverage

Please attach this important addition to your auto policy.

The policy is amended to provide Roadside assistance coverage.

Coverage is subject to all terms and conditions of the policy, except as changed by this endorsement.

The following term, as defined, applies as used in this coverage:

"ROADSIDE ASSISTANCE REPRESENTATIVE" means our contracted vendor that will provide roadside assistance of a disabled vehicle for you or a relative.

Coverage agreement

Roadside assistance

In the event your auto or any private passenger auto you or a relative are occupying becomes disabled:

1. Our roadside assistance representative, will provide towing service; or
2. We will reimburse you for towing service;

to a location of your choice from the location of disablement subject to the mileage limit shown in the Declarations.

In addition, the following emergency roadside services are covered:

1. Extraction if stuck on or immediately next to a public road;
2. Delivery of supplies, including oil, water, other fluids and fuel;
3. Service to the battery;
4. Changing or inflating of flat tires; and
5. Lockout service, up to \$100.

If any covered services are not performed by our roadside assistance representative, we will only reimburse for reasonable and customary charges, as determined by us. Receipts for any of these services must be provided to us for consideration of payment.

This endorsement does not cover the cost of supplies, replacement parts, fluids other than two gallons of fuel, or any labor performed at a service or repair facility. A subsequent tow for the same disablement (including from a service station, garage, repair shop, or any other location) is also not covered.

Trip Interruption

If you have Roadside assistance plus, as shown on the Declarations, we will repay you certain personal trip interruption expenses. Coverage will apply in the event a private passenger auto you or a relative are occupying becomes disabled at least 100 miles from your home residence. The expenses covered are:

1. Meals (excluding alcohol) and lodging needed when the disablement causes a delay en route; and
2. Commercial transportation fares for you or a relative to continue to the intended destination or home residence.

These expenses must be incurred between the time of disablement and arrival at your residence or destination or within 72 hours, whichever comes first. We will pay up to a

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maximum of \$500 for covered trip Interruption expenses, based on **your** submitted receipts, not to exceed \$100 per day for dining and lodging.

Limits and conditions of payment

Loss settlement

1. If **your auto** is covered by **us** for Physical damage (Comprehensive and Collision coverages), and is disabled as a result of a covered loss, payment will be made under the Physical damage coverages. In the event the cost of damages and the tow of **your auto** are below **your deductible**, payment for the tow will be made under this endorsement.
2. No **deductible** applies to Roadside assistance coverage.

Other Insurance

Any coverage provided under this endorsement will be excess over any other insurance or other sources of recovery. However, if **we** provide coverage under any other endorsements attached to **your policy**, the coverage provided by this endorsement will be primary.

Duplicate payment

We will make no duplicate payment to or for any **insured** for the same element of loss.

This endorsement applies as stated in the policy Declarations.

This endorsement is issued by the company shown in the Declarations as the Issuing company.

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Endorsement 3398

Automobile Insurance Guarantee

Please attach this important addition to your auto policy.

In recognition of your loyalty to Nationwide, we are pleased to provide the Automobile Insurance Guarantee.

It is agreed that the policy is amended as follows:

GENERAL POLICY CONDITIONS

The following General Policy Condition is added:

AUTOMOBILE INSURANCE GUARANTEE

The company guarantees to continue offering automobile insurance coverage. Renewal will be in accordance with the policy forms, rules and rating plan in use by us at each six-month term. The premium for the coverage provided by this policy and attached endorsements is based on information in our possession. Any change or correction in this information will allow us to make an adjustment of the premium.

To enable us to continuously insure you at each renewal, we may offer different terms and conditions, as well as issue a new policy in another company under the same ownership or management as our company.

Any decision regarding the nonrenewal or cancellation of your policy will be in accordance with the insurance laws, rules and regulations in the state in which this policy is issued. Our right to cancel this Guarantee shall be governed by the reasons and method of mailing set forth under the General Policy Conditions for cancellation of the policy, and cancellation of the policy pursuant to the General Policy Conditions shall cancel this Guarantee.

All other provisions of this policy apply.

The endorsement is issued by the company shown in the Declarations as the issuing company.

Nationwide Mutual Insurance Company and Affiliated Companies

One Nationwide Plaza Columbus, Ohio 43215-2220

Hearing or Voice Impaired: 1-800-622-2421 (TTY Only)

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Endorsement 3581 — Amendatory endorsement (South Carolina)

Please attach this Important addition to your auto policy.

It is agreed this policy is amended as follows:

Under **Physical damage (Damage to your auto)**, **Loss payable clause**, the following paragraph is deleted:

We will protect the lienholder's interest for 10 days from the date we notify them that the policy has terminated, for any reason. If we pay the lienholder for any loss or damage suffered during that 10-day period, we have the right to recover the amount of any such payment from you.

Under **Auto liability, Coverage exclusions**, the following exclusions are deleted from section A., and added to section B.:

4. 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.
5. Any person protected under nuclear energy liability insurance. This exclusion applies even if that insurance has been exhausted.
6. **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.

7. Any person's liability resulting from the:
 - a) Handling of property:
 - (1) before it is moved from the place where it is accepted by an **Insured** for movement into or onto **your auto**; or
 - (2) after it is moved from **your auto** to the place where it is finally delivered by an **Insured**.
 - b) Movement of property by a mechanical device (other than a hand truck) not attached to **your auto**.

This endorsement applies as stated in the policy Declarations.

This endorsement is issued by the company shown in the Declarations as the issuing company.

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Amendatory Endorsement — Benefits (South Carolina)

Please attach this important addition to your policy.

The Policy is amended to include the following language:

Coverage is subject to all terms and conditions of the policy, except as changed by this endorsement.

The following terms, as defined, apply to this endorsement:

"Participants" means the individual natural person named in the Declarations and their spouse, or others related by blood, marriage or other legally recognized familial relationship living in the participant's household.

"Nationwide" means the company issuing this policy as listed in the Declarations and all affiliated companies.

Nationwide, or an organization which **Nationwide** has contracted with for this purpose, may provide **participants** the opportunity to obtain benefits, such as memberships, merchandise, services, seminars, coupons, points, vouchers, gift cards or other things, subject to applicable eligibility rules. Benefits provided pursuant to this Endorsement will not exceed \$25.00 in value, per policy, per year.

Benefits such as those described above may be modified or discontinued at any time without notice.

This endorsement applies as stated in the policy Declarations.

This endorsement is issued by the company shown in the Declarations as the issuing company.

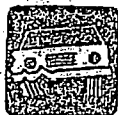
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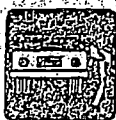
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Nationwide Mutual Insurance Company	
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Insuring Agreement

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 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 a resident of the policyholder's household, when the policyholder is a person; or
 - b) the sole proprietor, majority shareholder or majority member of an organization, or general partner of a family limited partnership, as shown in the Declarations, and spouse, if a resident of the household of the sole proprietor, majority shareholder or majority member, or general partner shown in the Declarations, when the policyholder is an organization.

If the spouse ceases to be a resident of the policyholder's household or household of the sole proprietor, majority shareholder or majority member, or general partner during the policy period or prior to the inception of this policy, the spouse will be considered you and your under this policy but only until the earlier of:

- a) The end of 90 days following the spouse ceasing to be a resident of the policyholder's household or household of the sole proprietor, majority shareholder or majority member, or general partner;
 - b) The effective date of another policy listing the spouse as the named insured; or
 - c) The end of the policy period.
3. "RELATIVE" means one who regularly resides 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 as shown on the Declarations.
 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) pick-up 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) physical sickness;
- c) physical 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

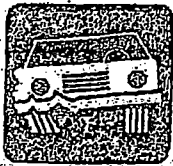
The Insured will:

- 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 separate examinations 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. if injured, submit to examinations by company-selected physicians as often as the company reasonably requires. The injured person must grant us authority, at our request, to obtain copies of all wage and medical, dental or other health care provider records.
- 7. protect damaged property insured under this policy and make it available to us for inspection before its repair or disposal.
- 8. 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.
- 9. preserve any tangible property, or evidence, as long as we reasonably request.
- 10. take reasonable steps to mitigate the loss and expenses associated with the loss.

Territory

The policy applies in Canada, the United States of America and its territories or possessions, or between their ports. All coverages except Uninsured 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, physical 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. Equipment does not include customization or any type of trailer.
3. "CUSTOMIZATION" means accessories, cosmetic enhancements, and related changes, other than those offered by the manufacturer of the motor vehicle specifically for that model, which alter the appearance or function of a motor vehicle. This includes, but is not limited to, custom refinish, decals, and graphics. This does not include any device which records, emits, amplifies, receives and/or transmits sound, pictures, or data, whether permanently installed or not.
4. "BETTERMENT" is the increase in value of:
 - a) a vehicle; or
 - b) property; or
 - c) any parts of a vehicle or property;
 as a result of repairing or replacing certain parts damaged in a loss.

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) wild or domestic 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.

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, we will repay your reasonable travel costs as determined by us after your auto is stolen. Maximum payment is \$20 per day not to exceed \$600 per occurrence. These costs must be incurred within a certain time. It starts 48 hours after the theft. It ends when your auto is returned to you or we offer to pay for its loss.

COLLISION COVERAGE

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.

TOWING AND LABOR COSTS COVERAGE

We will pay reasonable towing and labor costs as determined by us if your auto or a motor vehicle covered under USE OF OTHER MOTOR VEHICLES is disabled. We will pay only for labor costs at the place the vehicle 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 \$1,500.

USE OF OTHER MOTOR VEHICLES

The insurance on your auto also covers:

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. You must report the acquisition of it to us during the first 30 days you own the vehicle. Coverage applies only during the first 30 days you own the vehicle, unless it replaces your auto. However, if your auto does not have Comprehensive or Collision coverage, we will provide these coverages for the newly acquired vehicle for a four-day period after the date you become the owner of it, provided, you ask us to insure it within this four-day period. If a Comprehensive or Collision loss occurs during this period and before you asked us to provide this coverage, we will apply a deductible of \$500 to the loss.
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 operated by you or a relative
 - b) We will not pay for 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 or available 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) We will not pay for loss involving a private passenger auto rented or leased by anyone for or on behalf of the employer of an insured or 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 considered 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; or
 - d) road damage to tires.
 This exclusion (6.) does not apply if the damage results from the total theft of your auto or any other motor vehicle.
7. To any motor vehicle while used:
 - a) to carry persons or property for a fee or compensation; or
 - b) on a regular basis 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; or
 - b) due to confiscation of your auto by any law enforcement agency because of your auto's use in such activities.
10. 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.
11. To any motor vehicle:
 - a) While used in an organized competitive event, including but not limited to:
 - (1) racing contest or event; or
 - (2) speed contest or event; or
 - (3) in practice or preparation for any prearranged, or organized racing or speed contest or event.
 - b) While used in Performance Testing that is done on a closed road, or a race track, or a testing facility environment where the insured is not competing.
 Performance Testing is when an insured uses any motor vehicle to:
 - a) test its performance in speed, handling; or
 - b) test or practice driver skills.

Performance Testing does not apply to student-driver training activities an insured participates in to obtain that person's state issued learner's permit or drivers license. Performance Testing also does not apply to driver training activities an insured participates in to complete that person's state sanctioned courses in motor vehicle accident prevention, defensive driving, driver improvement, or similarly designed courses.

12. 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.
13. To any motor vehicle for diminution in value or depreciation.
14. 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.
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 while it is being used in the commission of a felony or while fleeing from a law enforcement officer by:
 - a) you;
 - b) a relative; or
 - c) anyone else with your knowledge or permission.
17. 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.
18. To any motor vehicle which you or a relative:
 - a) uses without a reasonable belief of being entitled to do so;
 - b) has stolen; or
 - c) knows to have been stolen.
 You or a relative shall not be held to have a reasonable belief of being entitled to operate a motor vehicle if that person's license has been suspended, revoked, or never issued. This exclusion does not apply to the use of your auto by:
 - a) you;
 - b) a relative; or
 - c) a partner, employee, or agent of you or a relative.

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;
3. condition of the property; and
4. betterment;

at the time of loss. If a repair or replacement results in betterment, we will not pay for the amount of betterment. In addition to our payment of the loss, necessary and reasonable towing and storage will be paid to protect the auto from further damage. Covered storage costs are not to exceed four days of storage charges incurred prior to the date you report the loss to us.

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.

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 parts made by or for the original equipment manufacturers or parts made by non-original equipment manufacturers with like kind and quality parts including but not limited to salvage and refurbished parts;
3. return stolen property at our expense and pay for any damage.

If there was a prior loss to your auto that we paid, we will deduct an appropriate amount from our payment of any subsequent loss to that same auto unless you provide proof that the prior damage was repaired.

AMOUNTS PAYABLE FOR TOWING AND LABOR COSTS

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 you have 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 or self-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 to keep it safe.

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 a 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.

We will protect the lienholder's interest for 10 days from the date we notify them that the policy has terminated, for any reason. If we pay the lienholder for any loss or damage suffered during that 10-day period, we have the right to recover the amount of any such payment from you.

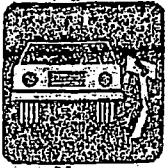
The company will not notify the lienholder each time you renew this policy, and we may cancel this policy according to the terms. The company will also notify the lienholder if coverage under the policy is excluded for any named driver.

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.

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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, including prejudgment interest on that portion of the award which does not exceed the limits of this coverage;

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 were liable under this policy.

- e) pay expenses incurred by an insured for emergency medical aid to others at the time of accident.

- f) upon submission for reimbursement, pay reasonable expenses incurred by an insured at our request, but not more than \$200 per day for loss of earnings.

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Coverage Extensions

USE OF TRAILERS

1. This coverage applies to the use of a trailer by:
 - a) you;
 - 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 is not a private passenger auto.

USE OF OTHER MOTOR VEHICLES

The insurance on your auto also covers:

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 only while the vehicle is being operated 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 the business or occupation of you or a relative. However, it does apply to a private passenger auto 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 the 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. 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:
 - (1) rented home; or
 - (2) rented private garage.

2. 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.

3. Bodily injury to an employee of any insured while engaged in employment. However, it does cover an employee of your home who is not, or is not required to be, covered by any workers' compensation benefits, disability benefits, or benefits under similar laws.

4. 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.

5. Any person protected under nuclear energy liability insurance. This exclusion applies even if that insurance has been exhausted.

6. 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.

7. Any person's liability resulting from the:

a) Handling of property:

- (1) before it is moved from the place where it is accepted by an insured for movement into or onto your auto; or
- (2) after it is moved from your auto to the place where it is finally delivered by an insured.

b) Movement of property by a mechanical device (other than a hand truck) not attached to your auto.

8. Any motor vehicle which you or a relative:

- a) uses without a reasonable belief of being entitled to do so;
- b) has stolen; or
- c) knows to have been stolen.

You or a relative shall not be held to have a reasonable belief of being entitled to operate a motor vehicle if that person's license has been suspended, revoked, or never issued.

This exclusion does not apply to the use of your auto by:

- a) you;
- b) a relative; or
- c) a partner, employee, or agent of you or a relative.

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. Any person for any occurrence arising out of the operation of an auto:
 - a) repair shop;
 - b) public garage or parking place;
 - c) sales agency; or
 - d) service or maintenance facility.

However, this exclusion does not apply to the use of your auto by:

- a) you;
 - b) a relative; or
 - c) 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, operation, maintenance, or use of any motor vehicle:

- a) While used in an organized competitive event, including but not limited to:
 - (1) racing contest or event; or
 - (2) speed contest or event; or
 - (3) in practice or preparation for any prearranged, or organized racing or speed contest or event.

b) While used in Performance Testing that is done on a closed road, or a race track, or a testing facility environment where the insured is not competing.

Performance Testing is when an insured uses any motor vehicle to;

- a) test its performance in speed, handling; or
- b) test or practice driver skills.

Performance Testing does not apply to student-driver training activities an insured participates in to obtain that person's state issued learner's permit or driver's license. Performance Testing also does not apply to driver training activities an insured participates in to complete that person's state sanctioned courses in motor vehicle accident prevention, defensive driving, driver improvement, or similarly designed courses.

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 you, a relative or anyone else while operating your auto;

- a) while committing a felony; or
- b) while fleeing a law enforcement officer.

7. Any motor vehicle while used:

- a) to carry persons or property for a fee or compensation; or
- b) on a regular basis 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.

8. 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.

9. 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, smuts or fleshy fungi such as mushrooms, puffballs and coral fungi.

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.



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 as a temporary substitute for 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.

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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 any motor vehicle while used:
 - a) to carry persons or property for a fee; or
 - b) on a regular basis 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.

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.

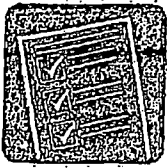
Subject to the above, if other policies apply as excess, we are liable only for our share. Our share is that percent of the damages that the coverage applicable from this policy bears to the total of all like coverage (Uninsured Motorists coverage or Underinsured Motorists coverage) which is applicable 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);
 - (4) desired coverages, deductibles, or limits; or
 - (5) ownership.

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 the period of time shown on the Declarations. We will renew it for successive policy periods, subject to the following conditions:

- a) Renewal will be in accordance with policy forms, rules, rates, fees, 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.
- d) 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 policy period after the effective date of the 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 non-payment 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) Any named insured may cancel this policy or any of its coverages orally or by written notice to us of the future date of cancellation desired. However, if an organization is listed exclusively as the named insured, as shown in the Declarations for this policy, the sole proprietor, majority shareholder or majority member of an organization, or general partner of a family limited partnership may cancel this policy or any of its coverages. Such action will be binding on any insured. 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 may cancel for any reason allowed by law. We may cancel by mailing notice to the policyholder 15 days prior to the effective date of cancellation. While the date we mail this notice must be within 90 days, the effective 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 for any of the following reasons:
- (a) If all premiums, premium installment payments, fees, and forms 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. ASSIGNABILITY

No interest in this policy can be transferred without our written consent. However, if the policyholder dies, coverage will stay in force for the rest of the policy period for:

1. Anyone having proper temporary custody of your auto; and
2. The appointed legal representative of the policyholder.

7. DIVIDENDS

The policyholder is entitled to any dividends which are declared by the Board of Directors and are applicable to coverages in this policy.

8. IF YOU BECOME BANKRUPT

Bankruptcy or insolvency of any insured will not relieve us of any obligation under the terms of this policy.

9. 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 UNKNOWNLY 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 UNKNOWNLY 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.

10. 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 the 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.

11. 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 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:

- 1) 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.

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.

13. JOINT AND INDIVIDUAL INTERESTS

If there is more than one person who is a named insured as shown in the Declarations for this policy, any such person may cancel or change this policy. However, if an organization is listed exclusively as the named insured, as shown in the Declarations for this policy, the sole proprietor, majority shareholder or majority member of an organization, or general partner of a family limited partnership may cancel or change this policy. Such action will be binding on any insured.

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 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 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, Nationwide Insurance Company of America, Nationwide Affinity Insurance Company of America, Nationwide Assurance Company, Nationwide Agribusiness Insurance Company, AMCO Insurance Company, Allied Property and Casualty Insurance Company, or Depositors Insurance 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.

Robert W. Thomas

Secretary

Nationwide Mutual Insurance Company
Nationwide Mutual Fire Insurance Company
Nationwide General Insurance Company
Nationwide Insurance Company of America
Nationwide Affinity Insurance Company of America
Nationwide Assurance Company
Allied Property and Casualty Insurance Company
AMCO Insurance Company
Depositors Insurance Company

Mark A. Goff

President

Nationwide Mutual Insurance Company
Nationwide Affinity Insurance Company of America
Nationwide Property & Casualty Insurance Company
Nationwide Mutual Fire Insurance Company

W. L. A. [Signature]

President

Nationwide Insurance Company of America
Allied Property and Casualty Insurance Company
AMCO Insurance Company
Depositors Insurance Company

Carmel A. Hall

Secretary

Nationwide Property & Casualty Insurance Company

Linda Walker

President

Nationwide General Insurance Company

W. H. [Signature]

Secretary

Nationwide Agribusiness Insurance Company

[Signature]

President

Nationwide Agribusiness Insurance Company

[Signature]

President

Nationwide Assurance Company

SERFF Tracking Number: NWPP-126471069 State: South Carolina
 Filing Company: Nationwide Insurance Company Of America State Tracking Number: 230766
 Company Tracking Number: SC-NGA JAN2010
 TOI: 19.0 Personal Auto Sub-TOI: 19.0001 Private Passenger Auto (PPA)
 Product Name: SC-NGA
 Project Name/Number: /

Filing at a Glance

Company: Nationwide Insurance Company Of America

Product Name: SC - NGA

TOI: 19.0 Personal Auto

Sub-TOI: 19.0001 Private Passenger Auto (PPA)

Filing Type: Form

SERFF Tr Num: NWPP-126471069 State: South Carolina

SERFF Status: Closed-Approved State Tr Num: 230766

Co Tr Num: SC-NGA JAN2010 State Status: Approved

Co Status: MP

Author: Marc Pagan

Date Submitted: 01/25/2010

Reviewer(s): Michael Wise

Disposition Date: 01/28/2010

Disposition Status: Approved

Effective Date (New): 01/22/2010

Effective Date (Renewal):

01/22/2010

Effective Date Requested (New): 01/22/2010

Effective Date Requested (Renewal): 01/22/2010

General Information

Project Name:

Project Number:

Reference Organization:

Reference Title:

Filing Status Changed: 01/28/2010

State Status Changed: 01/28/2010

Created By: Marc Pagan

Corresponding Filing Tracking Number:

Filing Description:

Status of Filing In Domicile: Not Filed

Domicile Status Comments:

Reference Number:

Advisory Org. Circular:

Company Status Changed: 01/25/2010

Deemer Date:

Submitted By: Marc Pagan

We are filing for review and approval forms to be used in the Nationwide Insurance Company of America (NICOA). The policy and related forms were approved for use on December 3, 2009 (SERFF tracking # NWPP-126353144). Details regarding this filing are in the Explanatory Memorandum contained in this filing submission.

A separate filing was made October 8, 2009, for the associated rates and rules in SERFF Filing NWPP-126317279, approved 11/20/2009.

Your early and favorable consideration will be appreciated. If you have any questions, please feel free to call collect at (614) 677-4840 or by e-mail at paganm@nationwide.com

Company and Contact

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NW000001

SERFF Tracking Number: NWPP-126471069 State: South Carolina
 Filing Company: Nationwide Insurance Company Of America State Tracking Number: 230766
 Company Tracking Number: SC-NGA JAN2010
 TOI: 19.0 Personal Auto Sub-TOI: 19.0001 Private Passenger Auto (PPA)
 Product Name: SC - NGA
 Project Name/Number: /

Filing Contact Information

Marc Pagan, Manager, Product Compliance paganm@nationwide.com
 One Nationwide Plaza, 01-03-32 614-677-4840 [Phone]
 Columbus, OH 43215 614-249-1628 [FAX]

Filing Company Information

Nationwide Insurance Company Of America CoCode: 25453 State of Domicile: Iowa
 One Nationwide Plaza 1-19-10 Group Code: 140 Company Type: P&C
 Columbus, OH 43215-2220 Group Name: State ID Number:
 (614) 249-4600 ext. [Phone] FEIN Number: 95-2130882

Filing Fees

Fee Required? No
 Retallatory? No
 Fee Explanation:
 Per Company: Yes

COMPANY	AMOUNT	DATE PROCESSED	TRANSACTION #
Nationwide Insurance Company Of America	\$0.00	01/25/2010	

State Specific

SC Major Line # (see attachment to General Instructions): 58

SC Detail Line # (see attachment to General Instructions): None

SC Company Code Number: 100099

Loss Costs Utilized: None

Rating Organization Company Code Number: None

% Premium Change: n/a

Recent Earned Premium for Line of Business: None

Hearing Type: n/a

% Market Share in SC for Line of Business: None

SERFF Tracking Number: NWPP-126471069
 Filing Company: Nationwide Insurance Company Of America
 Company Tracking Number: SC-NGA JAN2010
 TOI: 19.0 Personal Auto
 Product Name: SC-NGA
 Project Name/Number: /

State: South Carolina
 State Tracking Number: 230766
 Sub-TOI: 19.0001 Private Passenger Auto (PPA)

Correspondence Summary

Dispositions

Status	Created By	Created On	Date Submitted
Approved	Michael.Wise	01/28/2010	01/28/2010

SERFF Tracking Number: NWPP-126471069 State: South Carolina
Filing Company: Nationwide Insurance Company Of America State Tracking Number: 230766
Company Tracking Number: SC-NGA JAN2010
TOI: 19.0 Personal Auto Sub-TOI: 19.0001 Private Passenger Auto (PPA)
Product Name: SC-NGA
Project Name/Number: /

Disposition

Disposition Date: 01/28/2010
Effective Date (New): 01/22/2010
Effective Date (Renewal): 01/22/2010
Status: Approved
Comment:

Rate data does NOT apply to filing.

SERFF Tracking Number: NWPP-126471069 State: South Carolina
 Filing Company: Nationwide Insurance Company Of America State Tracking Number: 230766
 Company Tracking Number: SC-NGA JAN2010
 TOI: 19.0 Personal Auto Sub-TOI: 19.0001 Private Passenger Auto (PPA)
 Product Name: SC-NGA
 Project Name/Number: /

Schedule	Schedule Item	Schedule Item Status	Public Access
Supporting Document	PC Cover Letter		Yes
Supporting Document	Form 2004		Yes
Supporting Document	PC Third Party Authorization		Yes
Supporting Document	Explanatory Memorandum		Yes
Supporting Document	"John Doe" sample Declarations		Yes
Supporting Document	Sample "Insurance ID Card"		Yes
Supporting Document	Sample Tier Authorization Letter		Yes
Supporting Document	sample New Policy Notice		Yes
Form	Declarations		Yes
Form	Noni-Owner Policy.		Yes
Form	Leased Auto Endorsement		Yes
Form	Loss Payable Endorsement		Yes
Form	Additional Interest		Yes
Form	Voiding Auto Insurance		Yes
Form	Roadside Assistance		Yes
Form	Diminishing Deductible		Yes
Form	Total Loss Deductible Waiver		Yes

SERFF Tracking Number: NWPP-126471069 State: South Carolina
 Filing Company: Nationwide Insurance Company Of America State Tracking Number: 230766
 Company Tracking Number: SC- NGA JAN2010
 TOI: 19.0 Personal Auto Sub-TOI: 19.0001 Private Passenger Auto (PPA)
 Product Name: SC- NGA
 Project Name/Number: /

Form Schedule

Schedule Item Status	Form Name	Form #	Edition Date	Form Type Action	Action Specific Data	Readability Attachment
	Declarations	V-0100-A		Declaration New s/Schedule		V100A.pdf
	Non-Owner Policy	V-3009		Endorsement/Amendment/Conditions		V3009.pdf
	Leased Auto Endorsement	V-3316		Endorsement/Amendment/Conditions		V3316.pdf
	Loss Payable Endorsement	V-3315		Endorsement/Amendment/Conditions		V3315.pdf
	Additional Interest	V-3020		Endorsement/Amendment/Conditions		V3020.pdf
	Voiding Auto Insurance	V-3109-A		Endorsement/Amendment/Conditions		V3109A.pdf
	Roadside Assistance	V-3436		Endorsement/Amendment/Conditions		V3436.pdf
	Diminishing Deductible	V-3416		Endorsement/Amendment/Conditions		V3416.pdf
	Total Loss Deductible	V-3417		Endorsement/Amendment		V3417.pdf

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NW000006

SERFF Tracking Number: NWPP-126471069 State: South Carolina
Filing Company: Nationwide Insurance Company Of America State Tracking Number: 230766
Company Tracking Number: SC-NGA JAN2010
TOI: 19.0 Personal Auto Sub-TOI: 19.0001 Private Passenger Auto (PPA)
Product Name: SC-NGA
Project Name/Number: /
Waiver ent/Condi
ons



NATIONWIDE AUTO POLICY DECLARATIONS

Page 1 of

These Declarations are a part of the policy named above and identified by the 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 to which Property Damage and Bodily Injury Liability coverages are provided.

Policy Number:

Policyholder:
(Named Insured)

Issued:

Policy Period From:

to but only if the required premium for this period has been paid and only for month renewal periods if renewal premiums are paid as required. This policy is initially effective at (1) the time the application for insurance is completed, or (2) 12:01 AM 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 AM at the address of the named insured stated herein.

Large empty rectangular box for policy details or signature.

Issued by:
Countersigned At:

By:

Home Office - Columbus, Ohio

V-0100-A

NW000008

ELECTRONICALLY FILED - 2017 May 15 11:28 AM - GREENVILLE - COMMON PLEAS - CASE#2016CP2304327



Endorsement 3009

Non-Owner Policy

Please attach this important addition to your auto policy.

This endorsement extends the coverages shown on the Declarations to your use of any motor vehicle. However, such vehicle must not be owned by you or any member of your household except a personal chauffeur or domestic servant.

Coverage is provided according to the terms of the policy, but with the following modifying conditions:

1. The Auto Liability coverage protects any person or organization legally responsible for your use of a motor vehicle. However, such vehicle must not be owned or hired by such person or organization.
2. This endorsement applies to a motor vehicle used in your business or occupation only while it is operated or occupied by:
 - a) you;
 - b) your personal chauffeur; or
 - c) your domestic servant.
3. The endorsement applies to a motor vehicle newly acquired by you for the first 30 days you own it. Coverage applies, however, only if you do not have other collectible insurance.
4. Coverage for:
 - a) Auto Liability (for Bodily Injury and Property Damage);
 - b) Medical Payments;
 - c) Family Compensation; or
 - d) Uninsured Motorists and/or Underinsured Motorists;under this endorsement will be excess to any other collectible insurance.

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
Home Office: Columbus, Ohio 43215-2220

V-3009

NW000009



Endorsement 3316

Leased Auto - Additional Interest and Loss Payable Provisions

(South Carolina)

Please attach this important addition to your auto policy.

This endorsement extends the coverages shown below to the interest of the person or organization named. It applies while the described auto is under lease, rental or similar agreement. It expires when the lease, rental, or similar agreement is terminated, or when the bailor or his agent takes possession of the auto.

DESCRIPTION OF AUTOMOBILE INSURED
PHYSICAL DAMAGE COVERAGE
COMPREHENSIVE
COLLISION
LIMITS OF LIABILITY

Policy Number:

Effective Date:

 Additional Interest/
Loss Payee Name and Address:

Policyholder Name and Address:

With respect to the Comprehensive and Collision coverages provided by this policy, payment for loss will be made according to the interest of the policyholder and loss payee, but will not exceed the actual cash value of the vehicle. Payment may be made to both jointly, or to either separately. Either way, the company will protect the interests of both.

Protection of the loss payee's financial interest in the physical condition of the vehicle will not be affected by any act or omission of 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 notify the loss payee if coverage under the policy is excluded for any named driver.

The loss payee shall notify the company of any change in ownership of the vehicle.

To the extent of payment to the loss payee, the company will be entitled to the loss payee's rights of recovery. The company will do nothing to impair the right of the loss payee to recover the full amount of its claim.

All other provisions of the policy remain unchanged. The naming of this additional interest does not increase the policy limits.

Authorized Representative:

This endorsement is issued by the company shown in the Declarations as the issuing company.

NATIONWIDE INSURANCE COMPANIES
Home Office: Columbus, Ohio 43215-2220



Endorsement 3315

Loss Payable Endorsement

(South Carolina)

Please attach this important addition to your auto policy.

Policy Number: **Effective Date:**

Policyholder Name and Address:

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.

This endorsement applies as stated in the policy Declarations.

The endorsement is issued by the company shown in the Declarations as the issuing company.

NATIONWIDE INSURANCE COMPANIES
Home Office: Columbus, Ohio 43215-2220



Endorsement 3020

Additional Interest - Employer

Please attach this Important addition to your auto policy.

This endorsement extends the coverages stated below to the interest of the named employer. We will mail notice to the employer at least 10 days before any material policy change or cancelling this endorsement or the policy. We will mail this notice to the address shown below.

All other provisions of the policy remain unchanged. The naming of this additional interest does not increase the policy limits.

DESCRIPTION OF AUTOMOBILE INSURED
LIMITS OF LIABILITY

Policy Number:

Effective Date:

Additional Interest - Name and Address:

Policyholder:

This endorsement is issued by the company shown in the Declarations as the issuing company.

NATIONWIDE INSURANCE COMPANIES
Home Office: Columbus, Ohio 43215-2220

V-3020

NW000014



Endorsement 3109A

**Voiding Auto Insurance While Named
Person Is Operating Car**
(South Carolina)

Please attach this Important addition to your auto policy.

With this endorsement, all coverages in your policy are not in effect while
_____ is operating any motor vehicle.
excluded person

The policy remains unchanged in all other respects.

As indicated by my signature, I _____ accept this
endorsement. signature of policyholder(s)

Check one:

- () The excluded person's driver's license has been surrendered to the State Highway Department.
- () The excluded person has obtained insurance or other security to operate motor vehicles.

This endorsement applies as stated in the policy Declarations.

This endorsement is issued by the company shown in the Declarations as the issuing company.

Attached to and forming a part of policy number:	Effective at 12:01 a.m. on policy effective date or on _____ whichever is later
---	--

NATIONWIDE INSURANCE COMPANIES
Home Office: Columbus, Ohio 43215-2220

Issued to:

Countersigned at:

Authorized Representative:

V-3109-A

NW0000015



Endorsement 3436

Roadside Assistance Coverage

Please attach this important addition to your auto policy.

The policy is amended to provide Roadside Assistance Coverage.

Coverage is subject to all terms and conditions of the policy, except as changed by this endorsement.

The following term, as defined, applies as used in this coverage.

"ROADSIDE ASSISTANCE REPRESENTATIVE" means our contracted vendor that will provide roadside assistance of a disabled vehicle for you or a relative.

Coverage Agreement

ROADSIDE ASSISTANCE

In the event your auto or any private passenger auto you or a relative are occupying becomes disabled:

1. Our roadside assistance representative, will provide towing service; or
2. We will reimburse you for towing service;

to a location of your choice from the location of disablement subject to the mileage limit shown in the Declarations.

In addition, the following emergency roadside services are covered:

1. Extraction if stuck on or immediately next to a public road;
2. Delivery of supplies, including oil, water, other fluids and fuel;
3. Service to the battery;
4. Changing or inflating of flat tires; and
5. Lockout service, up to \$100.

If any covered services are not performed by our roadside assistance representative, we will only reimburse for reasonable and customary charges, as determined by us. Receipts for any of these services must be provided to us for consideration of payment.

This endorsement does not cover the cost of supplies, replacement parts, fluids other than two gallons of fuel, or any labor performed at a service or repair facility. A subsequent tow for the same disablement (including from a service station, garage, repair shop, or any other location) is also not covered.

TRIP INTERRUPTION

If you have Roadside Assistance Plus, as shown on the Declarations, we will repay you certain personal trip interruption expenses. Coverage will apply in the event a private passenger auto you or a relative are occupying becomes disabled at least 100 miles from your home residence. The expenses covered are:

1. Meals (excluding alcohol) and lodging needed when the disablement causes a delay en route; and
2. Commercial transportation fares for you or a relative to continue to the intended destination or home residence.

These expenses must be incurred between the time of disablement and arrival at your residence or destination or within 72 hours, whichever comes first. We will pay up to a maximum of \$500 for covered trip interruption expenses, based on your submitted receipts, not to exceed \$100 per day for dining and lodging.

Limits and Conditions of Payment

LOSS SETTLEMENT

1. If your auto is covered by us for Physical Damage (Comprehensive and Collision Coverages), and is disabled as a result of a covered loss, payment will be made under the Physical Damage coverages. In the event the cost of damages and the tow of your auto are below your deductible, payment for the tow will be made under this endorsement.
2. No deductible applies to Roadside Assistance Coverage.

OTHER INSURANCE

Any coverage provided under this endorsement will be excess over any other insurance or other sources of recovery. However, if we provide coverage under any other endorsements attached to your policy, the coverage provided by this endorsement will be primary.

DUPLICATE PAYMENT

We will make no duplicate payment to or for any insured for the same element of loss.

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 Mutual Insurance Company and Affiliated Companies

One Nationwide Plaza Columbus, OH 43215-2220

Hearing or Voice Impaired: 1-800-822-2421 (TTY only)

nationwide.com

Nationwide, the Nationwide framework are federally registered service marks of Nationwide Mutual Insurance Company.



Endorsement 3416

Diminishing Deductible

Please attach this important addition to your auto policy.

Coverage is subject to all terms and conditions of the policy, except as changed by this endorsement. With this endorsement, your policy's Physical Damage (Comprehensive and Collision Coverages) is amended as follows:

ADDITIONAL DEFINITIONS APPLICABLE TO THESE COVERAGES

"DIMINISHING DEDUCTIBLE" means a dollar amount that serves to reduce the Physical Damage deductibles on this policy.

Diminishing Deductible

In the event of a covered loss, we will reduce any Physical Damage coverage deductible by the diminishing deductible credit amount as shown on the Declarations.

The diminishing deductible credit amount applied will not be greater than the applicable Physical Damage coverage deductible. There is no cash value earned.

Your diminishing deductible cannot be applied to any other policy issued by us.

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 Mutual Insurance Company and Affiliated Companies
One Nationwide Plaza Columbus, OH 43215-2220
Hearing or Voice Impaired: 1-800-822-2421 (TTY only)
nationwide.com

Nationwide, the Nationwide framework are federally registered service marks of Nationwide Mutual Insurance Company.

V-3416

NW000018



Endorsement 3417

Total Loss Deductible Waiver Endorsement

Please attach this important addition to your auto policy.

Coverage is subject to all terms and conditions of the policy, except as changed by this endorsement.
With this endorsement, Physical Damage (Comprehensive and Collision Coverages) is amended to provide a total loss deductible waiver.

Total Loss Deductible Waiver

In the event of a total loss to your auto, our payment will not be reduced by the deductible amount as shown in the Declarations.

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 Mutual Insurance Company and Affiliated Companies
One Nationwide Plaza Columbus, OH 43215-2220
Hearing or Voice Impaired: 1-800-622-2421 (TTY only)
nationwide.com

Nationwide, the Nationwide framework are federally registered service marks of Nationwide Mutual Insurance Company.

V-3417

NW000019

SERFF Tracking Number: NWPP-126471069 State: South Carolina
 Filing Company: Nationwide Insurance Company Of America State Tracking Number: 230766
 Company Tracking Number: SC-NGA JAN2010
 TOI: 19.0 Personal Auto Sub-TOI: 19.0001 Private Passenger Auto (PPA)
 Product Name: SC-NGA
 Project Name/Number: /

Supporting Document Schedules

Item Status: Status
 Date:
 Satisfied - Item: PC Cover Letter
 Comments:
 Cover letter attached.
 Attachment:
 Cover letter_012510.pdf

Item Status: Status
 Date:
 Satisfied - Item: Form 2004
 Comments:
 See attached file.
 Attachment:
 viewScheduleItemAttachment.pdf

Item Status: Status
 Date:
 Bypassed - Item: PC Third Party Authorization
 Bypass Reason: n/a
 Comments:

Item Status: Status
 Date:
 Satisfied - Item: Explanatory Memorandum
 Comments:
 Explanatory memo attached.
 Attachment:
 Explan Memo_012510_filed.pdf

Item Status: Status
 Date:

PDF Pipeline for SERFF Tracking Number NWPP-126471069 Generated 02/02/2010 09:09 AM

NW000020

SERFF Tracking Number: NYPP-126471069

State: South Carolina

Filing Company: Nationwide Insurance Company Of America

State Tracking Number: 230766

Company Tracking Number: SC-NGA JAN2010

TOI: 19.0 Personal Auto

Sub-TOI: 19.0001 Private Passenger Auto (PPA)

Product Name: SC - NGA

Project Name/Number: /

Satisfied - Item: "John Doe" sample Declarations

Comments:

sample Declarations displays company name, address, phone number.

Attachment:

Sample Dec_012510.PDF

Item Status:

Status

Date:

Satisfied - Item: Sample "Insurance ID Card"

Comments:

sample ID card attached.

Attachment:

sample ID card_012510.PDF

Item Status:

Status

Date:

Satisfied - Item: Sample Tier Authorization Letter

Comments:

sample Tier Authorization Letter attached.

Attachment:

Tier Notification_012510.PDF

Item Status:

Status

Date:

Satisfied - Item: sample New Policy Notice

Comments:

sample New Policy Notice sent with policy package is attached.

Attachment:

New Policy Notice_012510.PDF

January 25, 2010

Hon. Scott Richardson, Director
South Carolina Insurance Department
Capitol Center
1201 Main Street, Suite 1000
Columbia, SC 29201

Attn: Property and Casualty Rating

RE: Nationwide Insurance Company of America NAIC No.: 25453

Company Tracking No. SC-AUTO-NICOA-NGA- 01-10

SERFF Tracking No.: NWPP-126471069

We are filing for review and approval forms to be used in the Nationwide Insurance Company of America (NICOA). The policy and related forms were approved for use on December 3, 2009 (SERFF tracking # NWPP-126353144). Details regarding this filing are in the Explanatory Memorandum contained in this filing submission.

A separate filing was made October 8, 2009, for the associated rates and rules in SERFF Filing NWPC-126317279, approved 11/20/2009.

We are requesting an effective date for new business on or after January 22, 2010.

Your early and favorable consideration will be appreciated. If you have any questions, please feel free to call collect at (614) 677-4840 or by e-mail at paganm@nationwide.com

Sincerely,

Marc A. Pagan
Manager, Product Compliance

NW000022

PROPERTY AND CASUALTY FILING SUMMARY

ELECTRONICALLY FILED 2012 MAY 15 11:28 AM - GREENVILLE - COMMON PLEAS - CASE#2016CP2304327

COMPANY NAME Nationwide Insurance Company of America		SC COMPANY CODE NUMBER 100099
1. Enter Line of Insurance (See Insurance Line Code List Below) 51-Fire & Allied Lines 54-Marine 58-Auto (All Lines) 62-Res. Casualty 65-Financial Guaranty 52-Home, Farm & Mobile Owner 56-Workers' Compensation 60-Aircraft 63-Mortgage Guaranty 66-All Other Lines 53-Commercial MP 57-All Liability (Non-Auto) 61-Fidelity & Surety 64-TiAs		INSURANCE LINE NUMBER 58
2. Enter Type Filing (Place "X" in proper boxes) If Automobile Filing, provide changes by coverage on separate page. If Private Passenger Auto Rate Filing, completed Form S must be included for proposed rates		FORMS ☒ RULES ☐ RATES ☐
3. Will any S.C. Policyholder receive a premium increase as a result of this Filing? (Place "X" in proper box and enter overall +/- Percent of Change.)		1-Yes ☐ 2-No ☒ OVERALL PERCENT CHANGE 0.0%
4. Does this Filing utilize a Rating Organization's Rates or Loss Costs? (Place "X" in proper box. If answer is "NO" continue with Item #5.) NICOA is being implemented at an overall rate level that is on average 8.7 percent lower than the inforce Nationwide Mutual Fire Insurance Company's current rate level.		1-Yes ☐ 2-No ☒ FILING DESIGNATION NUMBER N/A
RATING ORG. NAME N/A		SC RATING ORG. CODE # N/A
4a. Does this Filing modify Rates or Loss Costs as submitted by Rating Organization? (Place "X" in proper box.)		1-Yes ☐ 2-No ☒
5. Enter the most recent available calendar year's Written and Earned Premiums in South Carolina, for this Line of Insurance. * Note - This is a new company implementation, effective January 22, 2010.		Written Premium \$0 Earned Premium \$0 Year Written 2010
6. Enter the approximate percent of market share in S. C. for this type of insurance.		% MARKET SHARE 0.0%
7. Enter the Date and Percent of Change for each of the last two rate revisions for this Line of Insurance. * Note - This is a new company implementation, effective January 22, 2010.		FILING DATE M O D Y R % RATE FILING = 1 FILING = 2
8. Briefly describe this Filing, reason for filing, its effects, the Lines of Insurance affected and other information needed to describe the Filing. We are filing for review and approval "Your Auto Policy" and related coverage forms to be offered in the Nationwide Insurance Company of America (NICOA). Details regarding this filing are in the Explanatory Memorandum contained in this filing submission. Non-coverage forms will be submitted in a separate filing. A separate filing was made October 8, 2009, for the associated rates and rules in SERFF Filing NWPC-126317279. We are requesting an effective date for new business on or after January 22, 2010.		
9. Provide the following information for the Filing's contact person:		
NAME	Marc A. Pagan	DEPT. USE
TITLE	Manager, Product Compliance	
ADDRESS	One Nationwide Plaza, 01-03-47	
CITY/ST/ZIP	Columbus, OH 43215	
TEL NO.	(800) 882-2822 x74840	

THIS FORM MUST BE COMPLETED IN FULL AND SUBMITTED IN DUPLICATE; OTHERWISE, FILING WILL BE DELAYED.

EXPLANATORY MEMORANDUM**Nationwide Insurance Company of America (NICOA)**

The following forms are included in this filing submission for approval in the Nationwide Insurance Company of America:

FORM NUMBER	TITLE
V-0100-A	Declarations
V-3009	Non-Owner Policy
V-3316	Leased Auto Endorsement
V-3315	Loss Payable Endorsement
V-3020	Additional Interest
V-3109-A	Voiding Auto Insurance
V-3436	Roadside Assistance
V-3416	Diminishing Deductible
V-3417	Total Loss Deductible Waiver

The forms listed above are in addition to the forms that have already been approved for use as part of these other NICOA filings:

NWPP-126353144, approved 12/3/2009 (Policy and forms)

NWPP-126354541, approved 12/22/2009 (Cancellations notices)

Additionally, we offer comment on the following items found in the SC DOI Property and Casualty check list:

501. UM Offer: Form V-8066E UM/UIM Selection/Rejection form was filed and approved 12/3/2009; NWPP-126353144.

502. UM One Dollar: NICOA will report electronically on a quarterly basis using the ALIR system in compliance with Bulletin 2004-08.

515. Renewals Cancellation: Cancellation letters to be used in NICOA were filed and approved 12/22/2009; NWPP 126354541.

521. Adult Driver Training Credit: NICOA "Defensive Driver Discount" premium credits for adult drivers were filed in the rate filing and approved 11/20/2009; NWPC 126317279.

522. Driver Training: "Driver Training Discount" to be used in NICOA were filed in the rate filing and provides premium credits for drivers under 25; approved 11/20/2009; NWPC 126317279.

NW000024

523. Credit Reports: Credit Reports are retained for policies written in NICOA as prescribed in Section 38-73-740.

524. Required Names: The name of the company issuing the policy, its address and telephone number are displayed on the Declarations page V-0100-A. See attachment of sample in this submission.

525. Tier Disclosure: A Tier Disclosure letter is provided to NICOA policyholders when warranted. See attachment of sample in this submission.

529. New Policy Notice: A policyholder Important Notice is included in the policy package. See attachment of sample in this filing submission. The required information is also contained in Form V-8066E which was approved 12/3/2009; NWPP-126353144.

537. Glass Deductible: The required language is in Policy Z-039, Page P-1, approved for use in NICOA 12/3/2009; NWPP-126353144.

539. Exclusion of Operator: "Voiding Auto Insurance", form V-3109-A is included in this filing submission. Previously approved on 1/5/2005 St Track# 147028&9.

546. ID Cards: Contents as described in Bulletin 97-2 are contained in the ID card issued to NICOA policyholders. See attached sample included in this submission.

553. Policy Fixed/Extra Fees: NICOA fees were filed in the rate/rule filing and approved 11/20/2009; NWPC 126317279.

563. Waiver of Premium Refund: NICOA waiver of premium refund rules were filed in the rate/rule filing and approved 11/20/2009; NWPC 126317279.

NW000025

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 213039

Issued:
JAN 15, 2010

Policyholder:
(Named Insured)
BRENT SMITH
66 WATERVIEW RD
SAINT MATTHEWS, SC
29135

Policy Period From:

JAN 22, 2010 to JUL 22, 2010 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 INSURANCE COMPANY OF AMERICA
4401 CREEDMOOR ROAD
RALEIGH NC 27612-3814
919-781-3322

INSURED VEHICLE(S) & SCHEDULE OF COVERAGES

1. 1996 MITS GALANT S

ID #4A3AJ46GXTE343464

Coverages	Limits Of Liability	Six Month Premium
COMPREHENSIVE AND \$ 1,500 WITH FULL GLASS	ACTUAL CASH VALUE LESS \$ 250	\$ 91.60
IN CUSTOMIZATION		
COLLISION AND \$ 1,500	ACTUAL CASH VALUE LESS \$ 500	\$ 100.50
IN CUSTOMIZATION		
PROPERTY DAMAGE LIABILITY	\$ 25,000 EACH OCCURRENCE	\$ 63.70
BODILY INJURY LIABILITY	\$ 100,000 EACH PERSON	\$ 105.80
MEDICAL PAYMENTS	\$ 300,000 EACH OCCURRENCE	\$ 23.20
UNINSURED MOTORISTS	\$ 2,000 ENDORSEMENT 3490	\$ 15.10
-BODILY INJURY	\$ 100,000 EACH PERSON	\$ 3.20
-PROPERTY DAMAGE	\$ 300,000 EACH OCCURRENCE	\$ 403.10
	\$ 25,000 EACH OCCURRENCE	
	TOTAL	

2. 2006 DODG MAGNUM S

ID #2D4FV47V16H446735

Coverages	Limits Of Liability	Six Month Premium
COMPREHENSIVE AND \$ 1,500 WITH FULL GLASS	ACTUAL CASH VALUE LESS \$ 250	\$ 113.10
IN CUSTOMIZATION		
COLLISION AND \$ 1,500	ACTUAL CASH VALUE LESS \$ 500	\$ 156.40
IN CUSTOMIZATION		
PROPERTY DAMAGE LIABILITY	\$ 25,000 EACH OCCURRENCE	\$ 68.30
BODILY INJURY LIABILITY	\$ 100,000 EACH PERSON	\$ 114.00
MEDICAL PAYMENTS	\$ 300,000 EACH OCCURRENCE	\$ 22.30
UNINSURED MOTORISTS	\$ 2,000 ENDORSEMENT 3490	\$ 15.10
-BODILY INJURY	\$ 100,000 EACH PERSON	\$ 3.20
-PROPERTY DAMAGE	\$ 300,000 EACH OCCURRENCE	\$ 492.40
	\$ 25,000 EACH OCCURRENCE	
	TOTAL	

V-0100-A

NW000026

ELECTRONICALLY FILED - 2017 May 15 11:28 AM - GREENVILLE - COMMON PLEAS - CASE#2016CP2304327 -

3. 1998 CHEV C1500

ID #2GCEC19R6W1114036

Coverages
 COMPREHENSIVE AND \$ 1,500
 WITH FULL GLASS
 IN CUSTOMIZATION
 COLLISION AND \$ 1,500
 IN CUSTOMIZATION
 PROPERTY DAMAGE LIABILITY
 BODILY INJURY LIABILITY

Limits Of Liability
 ACTUAL CASH VALUE LESS \$ 250Six Month
 Premium
 \$ 86.70

ACTUAL CASH VALUE LESS \$ 500

\$ 107.20

25,000 EACH OCCURRENCE
 100,000 EACH PERSON
 300,000 EACH OCCURRENCE
 2,000 ENDORSEMENT 3490

\$ 68.80

\$ 108.00

\$ 22.40

MEDICAL PAYMENTS
 UNINSURED MOTORISTS
 BODILY INJURY
 PROPERTY DAMAGE

100,000 EACH PERSON
 300,000 EACH OCCURRENCE
 25,000 EACH OCCURRENCE

\$ 15.10

\$ 3.20

TOTAL \$ 411.40

INSURED DRIVERS:

#	Driver Name	Birth Date	Marital Status
01	M M P DR33YRS	11/04/77	MARRIED
02	M M P DR39YRS	09/02/71	MARRIED
03	F S P DR65YRS	08/13/45	SINGLE
04	F S P DR28YRS	12/28/82	SINGLE
05	KELLY SMITH	03/21/86	SINGLE

APPLIED DISCOUNTS:

PASSIVE RESTRAINT ACCIDENT FREE TRAINED DRIVER MULTI CAR
 MULTI LINE ASSOCIATE NEW VEHICLE

Policy Form & Endorsements: Z039 3329

Office Use:

TERR: 084 CNTY: SALUDA

\$ 0.00

Issued By: NATIONWIDE INSURANCE COMPANY OF AMERICA 25453

HOME OFFICE: COLUMBUS, OHIO 43215-2220

PO BOX 30000
 RALEIGH NC 27612-0000
 PHONE (877) 669-6877

CounterSigned At: COLUMBUS, OHIO

By: CUSTOMER SERVICE

IMPORTANT PHONE NUMBERS

Nationwide 24-Hour Claims Number: 1-800-421-3535

For QUESTIONS About Your Policy, Call Your NATIONWIDE AGENT: NATIONWIDE INS
 877-669-6877

For Hearing Impaired: TTY 1-800-622-2421

Nationwide Regional Office: 877-669-6877

00281007013035

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**SOUTH CAROLINA
INSURANCE IDENTIFICATION CARD**

Company
Number
25453

NATIONWIDE INSURANCE
COMPANY OF AMERICA
PO BOX 30000
RALEIGH NC 27612-0000

Policy Number	Effective Date	Expiration Date
6139 213039	JAN 22, 2010	JUL 22, 2010

BRENT SMITH
68 WATERVIEW RD
SAINT MATTHEWS, SC
29136

Year	Make/Model	Vehicle Identification Number
2005	DODG MAGNUM S	2D4FV47V1B4448735

For questions about your Insurance, call your Nationwide agent, NATIONWIDE INS 877-669-6877
To report a claim, from anywhere in the country, just call TOLL FREE 1-800-421-3535

A black and white image featuring a dense, overlapping pattern of the words "BLANK" and "BLANKBLANK". The text is arranged in a way that creates a complex, textured visual effect, with some words appearing larger and more prominent than others. The overall composition is abstract and visually busy.

Policy Number	Effective Date	Expiration Date
6139 213039	JAN 22, 2010	JUL 22, 2010

BRENT SMITH
68 WATERVIEW RD
SAINT MATTHEWS, SC
29136

Year	Make/Model	Vehicle Identification Number
1998	CHEV C1500	2GCEC19PWW1114033

For questions about your insurance, call your Nationwide
agent, NATIONWIDE INS 877-689-6977
To report a claim, from anywhere in the country, just call
TOLL FREE 1-800-421-3535

This Insurance Identification (ID) Card shows that a liability insurance policy has been issued which satisfies the financial responsibility requirements of the law.

Your ID card may be shown if requested to provide proof of insurance. In the event of an accident your card may be used to exchange information with other drivers.

NW000028

Nationwide's Blue Ribbon Claims Guarantee means fast and fair handling of your claim.

PLEASE KEEP THIS ID CARD IN THE
VEHICLE AT ALL TIMES

COVERAGE PROVIDED UNDER THIS INSURANCE
POLICY MEETS THE MINIMUM FINANCIAL
REQUIREMENTS OF THE STATE OF SOUTH
CAROLINA

**Report claims anytime, anywhere in USA Toll Free
1-800-421-3535**

Please give these details:

- 1 Policy number and zip code
- 2 Make and model year
- 3 Location of accident; injuries; damages
- 4 Other vehicles and persons involved

PLEASE KEEP THIS ID CARD IN THE
VEHICLE AT ALL TIMES

COVERAGE PROVIDED UNDER THIS INSURANCE
POLICY MEETS THE MINIMUM FINANCIAL
REQUIREMENTS OF THE STATE OF SOUTH
CAROLINA

**Report claims anytime, anywhere in USA Toll Free
1-800-421-3535.**

Please give these details:

- 1 Policy number and zip code
- 2 Make and model year
- 3 Location of accident; injuries; damages
- 4 Other vehicle and persons involved

PLEASE KEEP THIS ID CARD IN THE
VEHICLE AT ALL TIMES

COVERAGE PROVIDED UNDER THIS INSURANCE
POLICY MEETS THE MINIMUM FINANCIAL
REQUIREMENTS OF THE STATE OF SOUTH
CAROLINA

**Report claims anytime, anywhere in USA Toll Free
1-800-421-3535**

Please give these details:

- 1 Policy number and zip code
- 2 Make and model year
- 3 Location of accident; injuries; damages
- 4 Other vehicle and persons involved

TIER NOTIFICATION LETTER

01/25/10

TEST SAMPLEAPP
ONE ROAD
TEST, SC 13451

POLICY NUMBER: 618683870

I want to thank you for allowing my agency and Nationwide Insurance the opportunity to serve your automobile insurance needs. As you may know, Nationwide has many decades of service in South Carolina. We are a financially strong company with a good reputation for quality customer service. We look forward to servicing your automobile account well into the future.

I am pleased to issue your automobile policy in the Nationwide Insurance Company of America. We at Nationwide Insurance are proud to provide automobile protection for most licensed drivers. Although your account is currently not in our lowest priced tier, you may become eligible for this tier in the future.

Please feel free to contact anyone in my office if you would like to schedule an appointment to review all of your insurance needs, including life insurance and retirement programs.

The following factors have influenced your tier placement with Nationwide:
- Violation(s): 070 MOVING VIOLATION NOT DESCRIBED ELSEWHERE

Sincerely,

Russell E. Geiger
AGENT NUMBER 53444

ELECTRONICALLY FILED - 2017 May 15 11:28 AM - GREENVILLE - COMMON PLEAS - CASE#2016CP2304327

NW000030



Policyholder Information

IMPORTANT NOTICE

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

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

NATIONWIDE INSURANCE COMPANIES
Home Office: Columbus, Ohio 43215-2220

For the Hearing and Voice Impaired: 1-800-622-2421 (TTY only)

Auto 9087

NW0000031

STATE OF SOUTH CAROLINA
CERTIFICATION OF VITAL RECORD

DEATH CERTIFICATION

STATE FILE NUMBER: 139-10004599

DECEDENT'S NAME: DANIEL PHILIP KNIGHT

AKA: NA

ARMED FORCES: YES

DATE OF BIRTH: [REDACTED]

TYPE OF PLACE OF DEATH: HOSPITAL INPATIENT

NAME AND ADDRESS OF PLACE OF DEATH: ARMED HEALTH MEDICAL CENTER, ANDERSON, SC 29621

PLACE OF DISPOSITION: SOSEBEE CREMATION SERVICES

DISPOSITION LOCATION: ANDERSON, SOUTH CAROLINA

METHOD OF DISPOSITION: CREMATION

DECEDENT'S RESIDENCE: [REDACTED] ANDERSON COUNTY, SC, 29624

PLACE OF BIRTH: IOWA

SURVIVING SPOUSE'S NAME: KRISTINA GRACE COOK

FATHER'S NAME: JAMES FORREST KNIGHT

MOTHER'S NAME PRIOR TO FIRST MARRIAGE: WENDY JEAN EVERTT

INFORMANT'S NAME: KRISTINA G. KNIGHT

MAILING ADDRESS: [REDACTED]

FUNERAL HOME: SOSEBEE MORTUARY AND CREMATORY - SOUTH MAIN CHAPEL, 3219 S. MAIN ST., ANDERSON, SC, 29624

FUNERAL DIRECTOR: JIM D SOSEBEE

EMBALMER'S NAME: NA

ACTUAL OR PRESUMED DATE OF DEATH: FEBRUARY 03, 2016

ACTUAL OR PRESUMED TIME OF DEATH: 1240

CAUSE OF DEATH - PART I

BRAIN DEATH

CEREBRAL EDEMA WITH TRANSTENTORIAL HERNIATION SYNDROME

SEVERE HEAD INJURY WITH SKULL FRACTURE AND SUBDURAL HEMATOMA

NONE

OTHER SIGNIFICANT CONDITIONS - PART II

NONE

CORONER CONTACTED? YES

DATE OF INJURY: FEBRUARY 02, 2016

PLACE OF INJURY: MARKET STREET ANDERSON SC

LOCATION OF INJURY: 0000 MARKET STREET STREET, ANDERSON, ANDERSON COUNTY, SC, 29624

HOW THE INJURY OCCURRED?

MOTOR CYCLE ACCIDENT WITHOUT HELMET

CERTIFIER NAME AND TITLE: DR. AARON C. MACDONALD

CERTIFIER'S ADDRESS: 109 MONTGOMERY DR., ANDERSON, SC, 29621

DATE FILED: FEBRUARY 05, 2016

DATE OF ISSUANCE: FEBRUARY 05, 2016

SPECIAL INSTRUCTIONS:

NA

SEX: MALE

SOCIAL SECURITY NUMBER: [REDACTED]

AGE: [REDACTED] YEARS

COUNTY OF DEATH: ANDERSON

MARITAL STATUS: MARRIED

RELATIONSHIP: FAMILY MEMBER

LICENSE NUMBER: 3159

LICENSE NUMBER: NA

MANNER OF DEATH: ACCIDENT

AUTOPSY PERFORMED? NO

AUTOPSY AVAILABLE? NA

TIME OF INJURY: 1830

INJURY AT WORK? NO

ELECTRONICALLY FILED - 2017 Apr 13 4:16 PM - GREENVILLE - COMMON PLEAS - CASE#2016CP2304327

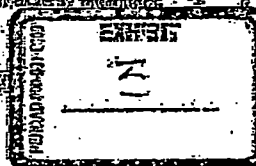
SC04984469

This is a true certification of the facts on file in the Division of Vital Records, SC Department of Health and Environmental Control.

Catherine E. Hight
Catherine E. Hight
Deputy and State Registrar

Shae R. Sutton
Shae R. Sutton
Assistant State Registrar

This is watermark paper. Do not accept without noting watermark. Rite in light on the watermark.
Resist water with 1015



**STATE OF SOUTH CAROLINA
LICENSE AND CERTIFICATE OF MARRIAGE**

201501140

ANDERSON

LICENSE NUMBER

COUNTY

A BRIDE GROOM ☒	NAME (First) (Middle) (Last) (Suffix) (1) DANIEL PHILLIP KNIGHT				LAST NAME ON BIRTH CERTIFICATE (if different) (2)	
	BIRTHPLACE (State or Foreign Country) (3) TOWA				SEX (5) MALE	
	RACE (4) WHITE					
	BIRTHDATE (Month, Day, Year) (6)				AGE (7)	
B GROOM SPOUSE ☒	RESIDENCE (Street and Number) (8a)				NO. OF THIS MARRIAGE (1st, 2nd, etc.) (8) 2	
	CITY (8b)				STATE OR FOREIGN COUNTRY (9d) SC	
	COUNTY (8c) ANDERSON					
	NAME (First) (Middle) (Last) (Suffix) (10) KRISTINA GRACE CALL				LAST NAME ON BIRTH CERTIFICATE (if different) (11) COOK	
C BRIDE SPOUSE ☒	BIRTHPLACE (State or Foreign Country) (12) SC				SEX (14) FEMALE	
	RACE (13) WHITE					
	BIRTHDATE (15)				AGE (16)	
	RESIDENCE (Street and Number) (17a)				NO. OF THIS MARRIAGE (1st, 2nd, etc.) (17) 2	
D GROOM SPOUSE ☒	CITY (17b)				STATE OR FOREIGN COUNTRY (18d) SC	
	COUNTY (17c) ANDERSON					

I CERTIFY THAT THE COUPLE HAS SUCCESSFULLY COMPLETED A PREMARITAL PREPARATION COURSE THAT SATISFIES THE QUALIFICATIONS SET FORTH IN S.C. CODE SECTION 20-1-230
(19) ☐ Yes ☐ No

Application for a license was filed with this court at 9:39 AM (time), on the 02 day of DECEMBER, 2015.

This is, therefore, to authorize any person qualified to perform marriage ceremonies to perform the marriage ceremony for the persons above named and for the so doing this shall be sufficient warrant. Given under my hand and seal

at 9:39 AM (time), this the 03RD day of DECEMBER, 2015

Martha D. Newton

PROBATE JUDGE

SIGNATURE OF ISSUING OFFICER

TITLE OF ISSUING OFFICER

SIGNATURE OF PARTY A

(20)

SIGNATURE OF PARTY B

(21)

I CERTIFY THAT THE ABOVE NAMED PERSONS WERE MARRIED ON:

PLACE OF MARRIAGE

(22) (Month) December (Day) 19 (Year) 2015

(23) (City) Star (County) Anderson SOUTH CAROLINA

OFFICIANT SIGNATURE

OFFICIANT PRINT NAME

(24a) *William T. Hudgens*

(24b) William T. Hudgens

OFFICIANT TITLE

(24c) Minister

OFFICIANT MAILING ADDRESS

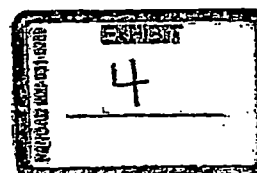
(24d) 3705 Key's St Anderson SC 29624

DHEC-1747 (11/20)*4

BRIDE/GROOM/SPOUSE COPY

ELECTRONICALLY FILED - 2017 Apr 13 4:02 PM - GREENVILLE - COMMON PLEAS - CASE#2016CP2304327

HGI



STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Nationwide Insurance Company of America,

Plaintiff,

v.

Kristina Knight, Individually and as Personal
Representative of the Estate of Daniel P.
Knight,

Defendant.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO: 2016-CP-23-04327

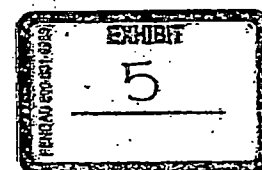
STIPULATION AND AGREEMENT

The undersigned as counsel for the Plaintiff and Defendant above-named, hereby stipulate and agree as follows:

The damages sustained by the Defendant arising out of the accident that occurred on February 2, 2016 in Greenville County, South Carolina when Defendant's decedent, Daniel P. Knight, was injured while operating a vehicle he owned and insured with Progressive that was struck by a vehicle being operated by Randy M. Mincey, exceed the total amount of all insurance coverage potentially available under Nationwide's policy number 61 39 D 065876 issued to Kristi Call n/k/a Kristina Knight. Accordingly, a trial for the sole purpose of establishing the exact amount of the Defendant's damages is unnecessary.

In the event it is ultimately determined by judicial determination that the policy issued by Nationwide to Kristi Call, policy number 61 39 D 065876 provides underinsured coverage to Defendant, including by way of exhaustion of any appeals, Nationwide will tender to the Defendant and the Estate of Daniel P. Knight the total sum of Twenty Five Thousand and 00/100 (\$25,000.00) dollars, which represents the available underinsured motorist coverage for the single vehicle listed on the Nationwide policy, as and for, exclusively, any and all recoverable compensatory or punitive damages asserted or in any way arising from any of Defendant's

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claims for underinsured motorist benefits under the Nationwide's policy and arising out of the accident that occurred on February 2, 2016 referenced above. This Stipulation is without prejudice to Defendant's right to move for reimbursement of her attorney's fees and taxable costs at the conclusion of the litigation. Plaintiff does not concede that the Defendant is entitled to attorney's fees and this agreement should not be construed otherwise. In the event it is ultimately determined that the policy of insurance issued by Nationwide to Kristi Call, policy number 61 39 D 065876, does not provide underinsured motorist coverage for Defendant's claims, as aforesaid, including by way of exhaustion of any appeals, Nationwide will not pay Defendant or the Estate of Daniel P. Knight any sum whatsoever.

The parties further agree that in consideration of the above stipulation, Defendant will forego any action which could be or has been filed against the alleged at fault motorist, Randy M. Mincey.

The parties hereby SO STIPULATE AND AGREE.

I SO STIPULATE:

s/Edwin L. Turnage, Esquire
Edwin L. Turnage, Esquire
Harris and Graves, P.A.
Post Office Box 6263
Greenville, SC 29606
864-235-1331
Attorney for Defendant

I SO STIPULATE:

s/Adam J. Neil, Esquire
J.R. Murphy, Esquire
Adam J. Neil, Esquire
Murphy & Grantland, P.A.
P.O. Box 6648
Columbia, SC 29260
803-782-4100
Attorney for Plaintiff Nationwide Insurance
Company of America

October 17, 2016

OFFER OF ADDITIONAL UNINSURED MOTORIST COVERAGE AND OPTIONAL UNDERINSURED MOTORIST COVERAGE

I. EXPLANATION OF COVERAGES

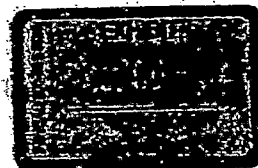
- Automobile liability insurance coverage pays other motor vehicle drivers and their passengers whom you damage for the damages which you cause and for which you are legally responsible. There are two types of automobile liability insurance coverage, bodily injury - a coverage which pays people upon whom your motor vehicle inflicts bodily injury - and property damage - a coverage which pays people for damages your automobile causes to their motor vehicles or property.

You must be provided with at least \$25,000.00 of bodily injury insurance for each person whom you may injure and \$50,000.00 of bodily injury insurance for two or more people whom you may injure in any single accident. You must also be provided with at least \$25,000.00 in property damage insurance for each accident which you may cause. You may have seen these limits described as \$25,000/\$50,000/\$25,000. However, you have the right to purchase additional limits of automobile liability insurance. You must naturally, pay an increased automobile insurance premium for these increased limits of protection.

In addition, this State's laws require that you must be offered, at your option, two additional automobile insurance coverages which will protect you in the event you are damaged in an automobile accident by an at-fault automobile driver who either has no automobile insurance or whose automobile insurance liability limits are less than the damages which you suffer in that accident. These coverages are legally termed "additional uninsured motorist coverage" and "optional underinsured motorist coverage". You may also see them referred to within your automobile insurance policy as "UM" and "UIM". You must, once again, pay an increased automobile insurance premium for each of these additional coverages.

- Uninsured motorist coverage compensates you, or other persons insured under your automobile insurance policy, for amounts that you may be legally entitled to collect as damages from an owner or operator of an uninsured motor vehicle. An uninsured motor vehicle is a motor vehicle which either has no liability insurance coverage or is operated by a hit-and-run driver. By law, your automobile insurance policy must automatically provide uninsured motorist coverage of \$25,000/\$50,000/\$25,000. All uninsured motorist coverages provide for a \$200 deductible for property damage claims.

You also have the right to buy additional uninsured motorist coverage, in various limits, up to the limits of liability coverage you will carry under your automobile insurance policy. Some of the more commonly sold limits of additional uninsured motorist coverage, together with the additional premiums which you will be charged, are shown upon this Form. If there are other limits in which you are interested, but which are not shown upon this Form, then fill-in those limits. If your insurance company is allowed to market those limits within this State, your insurance agent will fill-in the amount of increased premium.



Underinsured motorist coverage compensates you, for amounts that you, or your passengers, may be legally entitled to collect as damages from an owner or operator of an at-fault underinsured motor vehicle. An underinsured motor vehicle is a motor vehicle that is covered by some form of liability insurance, but that liability insurance coverage is not sufficient to fully compensate you for your damages.

Your automobile insurance policy does not automatically provide any underinsured motorist coverage. You have, however, a right to buy optional underinsured motorist coverage in limits up to the limits of liability coverage you will carry under your automobile insurance policy. Some of the more commonly sold limits of optional underinsured motorist coverage, together with the additional premiums you will be charged, are shown upon this Form. If there are other limits in which you are interested, but which are not shown upon this Form, then fill-in those limits. If your insurance company is allowed to market those limits within this State, your insurance agent will fill-in their amount of premium.

It is important for you to understand that if you reject either one of these coverages upon this Form and if you are involved in an automobile accident, this Form then may be used by your insurance company as evidence against you if it denies your claim for additional uninsured motorist coverage or optional underinsured motorist coverage.

If you do not complete this Form and return it to your insurance company or to your insurance agent within 30 days from your receipt of this Form, the law requires that additional uninsured motorist coverage and optional underinsured motorist coverage, at the same limits as the automobile liability insurance which you purchase, must be automatically added on to your automobile insurance policy. You will be required to pay an additional premium for each of these two coverages. If you do not pay that additional premium, your automobile insurance policy may then be cancelled.

In the future, if you wish to increase or decrease your limits of additional uninsured or optional underinsured coverage, you must then contact either your insurance agent or your insurance company. You will not be presented with another copy of this Form by your insurance agent or by your insurance company upon renewal of your automobile liability insurance policy.

Please read this Form carefully. If you have any questions you should contact the State of South Carolina Department of Insurance. Its address and telephone number are:

OFFICE OF CONSUMER SERVICES
STATE OF SOUTH CAROLINA DEPARTMENT OF INSURANCE
1201 MAIN STREET, SUITE 1000
POST OFFICE BOX 100105
COLUMBIA, SOUTH CAROLINA 29202-3105
(803)737-6180 or toll free (800)768-3467

E-MAIL ADDRESS: consumers@doi.sc.gov

Your insurance agent must also answer any questions which you may have.

Source: SC Code Ann. Sections 38-77-350 and 38-73-470

V-8066-E

II. OFFER OF ADDITIONAL UNINSURED MOTORIST COVERAGE

Required minimum limit of \$25,000/\$50,000/\$25,000 - see rate below. (1)

Limits of CoverageBase Premium Rates (semi-annual)
RATES EFFECTIVE AS OF 06/04/2012Bodily Injury Per Person/
Bodily Injury Per Accident/
Property Damage*

\$25,000/\$50,000/\$25,000 (1)	\$	14.10
\$50,000/\$100,000/\$25,000	\$	15.80
\$100,000/\$300,000/\$25,000	\$	17.70
\$100,000/\$300,000/\$100,000	\$	18.20
\$250,000/\$500,000/\$25,000	\$	18.90

*For \$50,000 property damage limits and above, add the premium shown below to the appropriate bodily injury and \$25,000 property damage limit premiums above.

For limits not shown, the base premium rate is the same as the next higher limit.

Limits
Property DamageAdditional Base Rates (semi-annual-all territories)
Additional Uninsured Motorist Coverage
RATES EFFECTIVE AS OF 06/04/2012

\$50,000 \$ 0.40

Do you wish to purchase additional uninsured motorists coverage? Yes ☒ No ☐If your answer is 'No,' you must sign here. X Justin Call

If your answer is 'yes,' then specify the limits which you desire. These limits cannot exceed your automobile insurance liability limits.

I select : Bodily Injury :
Property Damage:100 / 300
100

V-8066-E

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III. OFFER OF OPTIONAL UNDERINSURED MOTORIST COVERAGE

Limits of CoverageBase Premium Rates (semi-annual)

RATES EFFECTIVE AS OF 06/04/2012

Bodily Injury Per Person/
 Bodily Injury Per Accident/
 Property Damage*

\$25,000/\$50,000/\$25,000	\$	34.60
\$50,000/\$100,000/\$25,000	\$	49.90
\$100,000/\$300,000/\$25,000	\$	74.90
\$250,000/\$500,000/\$25,000	\$	90.70

*For \$50,000 property damage limits and above, add the premium shown below to the appropriate bodily injury and \$25,000 property damage limit premiums above.

For limits not shown, the base premium rate is the same as the next higher limit.

Limits
Property Damage

Additional Base Rates (semi-annual-all territories)
Optional Underinsured Motorist Coverage
 RATES EFFECTIVE AS OF 06/04/2012

\$50,000 \$ 0.20

Do you wish to purchase optional underinsured motorists coverage? Yes ☒ No ☐

If your answer is 'no,' you must sign here. X Kristina Call

If your answer is 'yes,' then specify the limits which you desire. These limits cannot exceed your automobile insurance liability limits.

I select : Bodily Injury :
 Property Damage:

25 / 50
25

IV. APPLICANT'S ACKNOWLEDGEMENT

I hereby acknowledge that I have read, or have had read to me, the above explanations and offers of additional uninsured motorist coverage and optional underinsured motorist coverage. I have indicated whether or not I wish to purchase each coverage in the spaces provided. I further understand that the above explanation of these coverages are intended only to be brief description of additional uninsured motorist coverage and optional underinsured motorist coverage, and that payment of benefits under any of these coverages is subject both to the terms and conditions of my automobile insurance policy and to the State of South Carolina's laws.

Policy Number (if available): _____ Today's Date: 06/04/12
Type or Print Your Name: _____
Your Signature: *Kristine Hall* _____
Your Address: _____
00000
Your Zip Code

Death Case

ELECTRONICALLY FILED - 2017 Apr 13 4:02 PM - GREENVILLE - COMMON PLEAS - CASE#2016CP2304327

South Carolina Department of Insurance

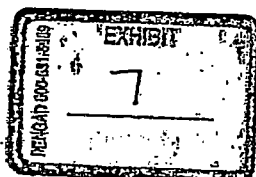
YEAR: 2012

PRIVATE PASSENGER AUTO INSURERS

Detail Business Desired: All Statements

Rank	Company Code	Company Name	Premiums Written	Percent
1	100369	STATE FARM MUTUAL AUTOMOBILE INS CO	567,368,786.00	21.04367
2	100631	GOVERNMENT EMPLOYEES INSURANCE COMPANY	163,312,203.00	6.05724
3	100087	ALLSTATE FIRE AND CASUALTY INSURANCE COMPANY	150,131,143.00	5.56835
4	100367	ALLSTATE INS CO	124,986,119.00	4.63573
5	101289	SOUTH CAROLINA FARM BUREAU MUTUAL INS CO	110,881,891.00	4.11260
6	100372	STATE FARM FIRE AND CASUALTY CO	97,509,182.00	3.61661
7	101505	PROGRESSIVE NORTHERN INSURANCE COMPANY	97,393,504.00	3.61232
8	100639	GEICO INDEMNITY COMPANY	91,258,642.00	3.38478
9	101353	UNITED SERVICES AUTOMOBILE ASSOCIATION	88,968,340.00	3.29983
10	101093	NATIONWIDE MUTUAL INS CO	81,617,726.00	3.02720
11	100099	NATIONWIDE INSURANCE COMPANY OF AMERICA	66,485,639.00	2.48595
12	101092	NATIONWIDE MUTUAL FIRE INS CO	65,394,434.00	2.42548
13	164396	TRAVELERS HOME AND MARINE INSURANCE COMPANY, THE	60,622,408.00	2.24848
14	100311	USAA CASUALTY INSURANCE COMPANY	52,900,274.00	1.96207
15	100426	NORTHBROOK INDEMNITY CO	49,409,272.00	1.83259
16	101460	FIRST NATIONAL INS CO OF AMERICA	48,531,356.00	1.80002
17	153063	ALLSTATE PROPERTY AND CASUALTY INSURANCE COMPANY	42,319,892.00	1.56964
18	141185	PROGRESSIVE DIRECT INSURANCE COMPANY	40,210,128.00	1.49139
19	101132	OWNERS INSURANCE CO	35,048,497.00	1.29995
20	101369	USAA GENERAL INDEMNITY CO	30,463,932.00	1.12991
21	100667	LIBERTY MUTUAL FIRE INS CO	30,242,537.00	1.12169
22	101167	PROGRESSIVE MAX INSURANCE COMPANY	29,797,805.00	1.10520
23	101488	DAIRYLAND INS CO	22,452,107.00	0.83275
24	100273	LM GENERAL INSURANCE COMPANY	21,668,813.00	0.80369
25	163487	GARRISON PROPERTY AND CASUALTY INSURANCE CO.	19,994,232.00	0.74158
26	142236	UNITED AUTOMOBILE INSURANCE COMPANY	18,781,632.00	0.69661
27	101182	ESURANCE INSURANCE COMPANY	18,012,607.00	0.66809
28	100158	STANDARD FIRE INS CO	16,627,079.00	0.61670
29	100204	TRUMBULL INSURANCE COMPANY	15,564,959.00	0.57730
30	100703	BRISTOL WEST INSURANCE COMPANY	14,949,453.00	0.55447
31	100397	ALLSTATE INDEMNITY CO	14,700,933.00	0.54526
32	100312	DIRECT GENERAL INSURANCE COMPANY	14,200,000.00	0.52668
33	101379	ACCESS INSURANCE COMPANY	13,668,114.00	0.50695
34	146746	FIRST ACCEPTANCE INSURANCE COMPANY, INC.	13,375,712.00	0.49610
35	101166	SAFE AUTO INSURANCE COMPANY	12,466,811.00	0.46239
36	101088	STATE AUTOMOBILE MUTUAL INS CO	12,280,733.00	0.45549
37	100801	AMERICAN NATIONAL PROPERTY AND CASUALTY CO	11,217,704.00	0.41606
38	184499	VICTORIA AUTOMOBILE INSURANCE COMPANY	10,910,867.00	0.40468
39	101157	VICTORIA FIRE & CASUALTY COMPANY	10,661,714.00	0.39544
40	100698	AUTO-OWNERS INSURANCE COMPANY	10,283,775.00	0.38142
41	143115	OMNI INDEMNITY COMPANY	10,076,032.00	0.37372
42	100171	AUTOMOBILE INS CO OF HARTFORD CONN	9,613,657.00	0.35657
43	101394	MGA INSURANCE COMPANY, INC.	9,217,087.00	0.34186
44	100195	TRAVELERS COMMERCIAL INSURANCE COMPANY	9,193,466.00	0.34099
45	101258	METROPOLITAN DIRECT PROPERTY AND CASUALTY INS. CO.	8,756,806.00	0.32479
46	101077	INTEGONI PREFERRED INSURANCE COMPANY	8,606,711.00	0.31922
47	154838	PERMANENT GENERAL ASSURANCE CORPORATION OF OHIO	8,000,812.00	0.29675
48	101241	HARLEYVILLE PREFERRED INSURANCE COMPANY	7,843,451.00	0.29091
49	100535	PROPERTY AND CASUALTY INSURANCE CO. OF HARTFORD	7,717,058.00	0.28623
50	101231	21ST CENTURY CENTENNIAL INSURANCE COMPANY	7,544,529.00	0.27983
			2,483,240,564.00	92.10323

Total Premiums written in South Carolina 2,696,149,394.00



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South Carolina Department of Insurance

YEAR: 2012

PRIVATE PASSENGER AUTO INSURERS

Detail Business Desired: All Statements

Rank	Company Code	Company Name	Premiums Written	Percent
51	100320	OLD DOMINION INSURANCE COMPANY	7,486,493.00	0.27767
52	165956	AMCO INSURANCE COMPANY	7,097,103.00	0.26323
53	100909	SELECTIVE INSURANCE COMPANY OF AMERICA	7,086,808.00	0.26285
54	100978	21ST CENTURY NORTH AMERICA INSURANCE COMPANY	6,944,315.00	0.25756
55	100091	HORACE MANN PROPERTY & CASUALTY INSURANCE CO.	6,852,333.00	0.25415
56	101261	AMICA MUTUAL INS CO	6,834,616.00	0.25350
57	101054	PEAK PROPERTY AND CASUALTY INS CORP	6,815,777.00	0.25280
58	156454	ASSURANCEAMERICA INSURANCE COMPANY	6,779,718.00	0.25146
59	101283	STATE AUTO PROPERTY AND CASUALTY INS. CO.	6,704,254.00	0.24866
60	101397	TITAN INDEMNITY COMPANY	6,476,102.00	0.24020
61	100391	HORACE MANN INSURANCE COMPANY	6,354,406.00	0.23568
62	100790	NATIONAL GENERAL INS CO	6,350,389.00	0.23554
63	100646	UNITRIN AUTO AND HOME INSURANCE COMPANY	6,173,121.00	0.22896
64	100412	TEACHERS INSURANCE COMPANY	6,122,740.00	0.22709
65	174316	COMMERCIAL ALLIANCE INSURANCE COMPANY	5,467,953.00	0.20281
66	101162	NATIONWIDE ASSURANCE COMPANY	4,685,990.00	0.17380
67	101086	CENTRAL MUTUAL INS CO	4,638,480.00	0.17204
68	148199	GREENVILLE CASUALTY INSURANCE COMPANY, INC.	4,407,408.00	0.16347
69	101133	NATIONWIDE PROPERTY AND CASUALTY INSURANCE COMPANY	4,367,276.00	0.16198
70	101108	CINCINNATI INS CO	3,819,483.00	0.14166
71	100278	AMERICAN BANKERS INS CO OF FLORIDA	3,719,037.00	0.13790
72	100516	HARTFORD INS CO OF THE MIDWEST	3,483,204.00	0.12919
73	164751	TRUSTGARD INSURANCE COMPANY	3,350,103.00	0.12426
74	153011	ENCOMPASS INSURANCE COMPANY OF AMERICA	2,996,534.00	0.11114
75	163032	IDS PROPERTY CASUALTY INSURANCE COMPANY	2,894,384.00	0.10735
76	100577	LM INSURANCE CORPORATION	2,822,027.00	0.10467
77	100764	SOUTHERN FARM BUREAU CASUALTY INS CO	2,808,001.00	0.10415
78	102226	GRANGE MUTUAL CASUALTY CO	2,636,919.00	0.09780
79	100036	EVEREST NATIONAL INSURANCE COMPANY	2,579,507.00	0.09567
80	100345	OMNI INSURANCE COMPANY	2,567,667.00	0.09523
81	101349	PERMANENT GENERAL ASSURANCE CORPORATION	2,548,896.00	0.09454
82	101195	CHARTIS PROPERTY CASUALTY COMPANY	2,534,573.00	0.09401
83	154835	ACCC INSURANCE COMPANY	2,534,519.00	0.09401
84	100159	HARTFORD ACCIDENT AND INDEMNITY CO	2,495,850.00	0.09257
85	151253	ENCOMPASS INDEMNITY COMPANY	2,445,248.00	0.09069
86	100697	FOREMOST INSURANCE COMPANY GRAND RAPIDS, MICHIGAN	2,323,501.00	0.08618
87	100875	PEERLESS INS CO	2,197,078.00	0.08149
88	100530	WEST AMERICAN INSURANCE COMPANY	2,183,489.00	0.08099
89	100816	ESSENTIA INSURANCE COMPANY	2,141,775.00	0.07944
90	160944	AFFIRMATIVE INSURANCE COMPANY	2,126,930.00	0.07889
91	101156	INFINITY AUTO INSURANCE COMPANY	1,977,473.00	0.07334
92	170943	PRIVILEGE UNDERWRITERS RECIPROCAL EXCHANGE	1,792,029.00	0.06647
93	100862	GEICO CASUALTY COMPANY	1,743,709.00	0.06467
94	166079	INSUREMAX INSURANCE COMPANY	1,641,796.00	0.06089
95	743808	SENTINEL INSURANCE COMPANY, LTD.	1,621,654.00	0.06015
96	100537	INFINITY INDEMNITY INSURANCE COMPANY	1,447,568.00	0.05369
97	100190	HARTFORD UNDERWRITERS INSURANCE COMPANY	1,442,706.00	0.05351
98	101332	MERASTAR INSURANCE COMPANY	1,390,473.00	0.05157
99	100322	TRAVELERS INDEMNITY COMPANY OF AMERICA	1,332,805.00	0.04943
100	100198	TRAVELERS CASUALTY COMPANY OF CONNECTICUT	1,279,719.00	0.04746

South Carolina Department of Insurance

YEAR: 2013

PRIVATE PASSENGER AUTO LIABILITY PREMIUMS

Detail Business Desired: Yellow Statements

Rank	Company Code	Company Name	Premiums Written	Percent
1	100369	STATE FARM MUTUAL AUTOMOBILE INS CO	374,510,606.00	21.18344
2	100631	GOVERNMENT EMPLOYEES INSURANCE COMPANY	109,664,837.00	6.20297
3	100087	ALLSTATE FIRE AND CASUALTY INSURANCE COMPANY	101,439,735.00	5.73774
4	101505	PROGRESSIVE NORTHERN INSURANCE COMPANY	73,090,534.00	4.13422
5	101289	SOUTH CAROLINA FARM BUREAU MUTUAL INS CO	70,469,970.00	3.98599
6	100372	STATE FARM FIRE AND CASUALTY CO	68,434,615.00	3.87087
7	100639	GEICO INDEMNITY COMPANY	62,790,149.00	3.55160
8	100367	ALLSTATE INS CO	60,943,718.00	3.42453
9	101353	UNITED SERVICES AUTOMOBILE ASSOCIATION	51,317,992.00	2.90270
10	100099	NATIONWIDE INSURANCE COMPANY OF AMERICA	47,001,736.00	2.65856
11	101093	NATIONWIDE MUTUAL INS CO	45,304,852.00	2.56258
12	141185	PROGRESSIVE DIRECT INSURANCE COMPANY	37,775,774.00	2.13671
13	164396	TRAVELERS HOME AND MARINE INSURANCE COMPANY, THE	37,485,589.00	2.12030
14	101460	FIRST NATIONAL INS CO OF AMERICA	36,031,149.00	2.03803
15	101092	NATIONWIDE MUTUAL FIRE INS CO	34,731,611.00	1.96452
16	100311	USAA CASUALTY INSURANCE COMPANY	32,340,721.00	1.82929
17	100426	NORTHBROOK INDEMNITY CO	30,404,757.00	1.71978
18	101132	OWNERS INSURANCE CO	23,550,553.00	1.33209
19	101369	USAA GENERAL INDEMNITY CO	22,433,830.00	1.26892
20	153063	ALLSTATE PROPERTY AND CASUALTY INSURANCE COMPANY	20,606,328.00	1.16556
21	100273	LM GENERAL INSURANCE COMPANY	19,409,585.00	1.09786
22	101488	DAIRYLAND INS CO	18,243,660.00	1.03192
23	101182	ESURANCE INSURANCE COMPANY	16,477,996.00	0.93204
24	100312	DIRECT GENERAL INSURANCE COMPANY	15,708,915.00	0.88854
25	101167	PROGRESSIVE MAX INSURANCE COMPANY	15,691,119.00	0.88754
26	100667	LIBERTY MUTUAL FIRE INS CO	15,529,468.00	0.87839
27	154498	VICTORIA AUTOMOBILE INSURANCE COMPANY	15,268,068.00	0.86361
28	142236	UNITED AUTOMOBILE INSURANCE COMPANY	14,390,650.00	0.81398
29	100204	TRUMBULL INSURANCE COMPANY	12,146,129.00	0.68702
30	146746	FIRST ACCEPTANCE INSURANCE COMPANY, INC.	10,307,296.00	0.58301
31	148199	GREENVILLE CASUALTY INSURANCE COMPANY, INC.	10,286,428.00	0.58183
32	163487	GARRISON PROPERTY AND CASUALTY INSURANCE CO.	10,214,600.00	0.57777
33	101394	MGA INSURANCE COMPANY, INC.	9,358,590.00	0.52935
34	100158	STANDARD FIRE INS CO	8,935,222.00	0.50540
35	101166	SAFE AUTO INSURANCE COMPANY	8,506,574.00	0.48116
36	101088	STATE AUTOMOBILE MUTUAL INS CO	8,074,766.00	0.45673
37	100703	BRISTOL WEST INSURANCE COMPANY	7,661,437.00	0.43335
38	101231	21ST CENTURY CENTENNIAL INSURANCE COMPANY	7,650,142.00	0.43271
39	100801	AMERICAN NATIONAL PROPERTY AND CASUALTY CO	7,552,833.00	0.42721
40	143115	OMNI INDEMNITY COMPANY	7,435,942.00	0.42060
41	154838	PERMANENT GENERAL ASSURANCE CORPORATION OF OHIO	6,871,287.00	0.38866
42	100397	ALLSTATE INDEMNITY CO	6,675,408.00	0.37758
43	154835	ACCC INSURANCE COMPANY	6,575,328.00	0.37192
44	100698	AUTO-OWNERS INSURANCE COMPANY	6,526,147.00	0.36914
45	101258	METROPOLITAN DIRECT PROPERTY AND CASUALTY INS CO	5,802,088.00	0.32818
46	100195	TRAVELERS COMMERCIAL INSURANCE COMPANY	5,752,832.00	0.32540
47	165956	AMCO INSURANCE COMPANY	5,702,162.00	0.32253
48	100091	HORACE MANN PROPERTY & CASUALTY INSURANCE CO.	5,531,597.00	0.31288
49	101379	ACCESS INSURANCE COMPANY	5,513,383.00	0.31185
50	100171	AUTOMOBILE INS CO OF HARTFORD CONN	5,390,107.00	0.30488
			1,639,118,815.00	92.71347

Total Premiums written in South Carolina: 1,767,940,356.00

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

NATIONWIDE INSURANCE COMPANY
OF AMERICA,

Plaintiff,

vs.

KRISTINA KNIGHT, INDIVIDUALLY
and as PERSONAL REPRESENTATIVE of
the ESTATE OF DANIEL P. KNIGHT,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2016-CP-23-04327

AFFIDAVIT OF KRISTINA KNIGHT

PERSONALLY APPEARED BEFORE ME, Kristina Knight, Individually and as
Personal Representative of the Estate of Daniel P. Knight, who first being duly sworn
says she

1. My family and Debra Ellet's family have been friends for more than twenty years. We regularly attend events together at the Moose Lodge, where both of our families are regular members. We have been in Debra's home and she has been in my Mom's home. We consider Debra a friend.
2. Just before my marriage in early December I recall talking to Debra about my upcoming marriage. I told her I was marrying Danny Knight and told her we were going on a honeymoon to Florida. That was not the first time I told Debra that Danny and I were getting married. I talked to her about my marriage plans every time I visited her agency. She was my friend.
3. Attached are two images of Danny's memorials. I miss my late husband, Danny.
4. Further affiant sayeth not.

Kristina Knight
Kristina Knight, Individually and as
Personal Representative of the Estate of
Daniel P. Knight

Greenville, South Carolina

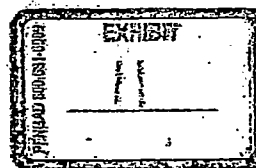
Dated: May 4, 2017

Sworn To Before me this 4 day of May, 2017

Kathleen
Notary Public for South Carolina

My Commission Expires: 4/9/2024

HG18





ELECTRONICALLY FILED - 2017 May 11 10:51 AM - GREENVILLE - COMMON PLEAS - CASE#2016CP2304327

HG19

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ELECTRONICALLY FILED - 2017 May 11 10:51 AM - GREENVILLE - COMMON PLEAS - CASE#2016CP2304327



STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

NATIONWIDE INSURANCE COMPANY
OF AMERICA,

Plaintiff,

vs.

KRISTINA KNIGHT, INDIVIDUALLY
and as PERSONAL REPRESENTATIVE of
the ESTATE OF DANIEL P. KNIGHT,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2016-CP-23-04327

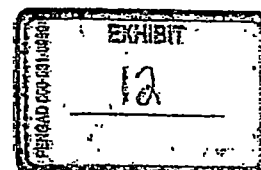
AFFIDAVIT OF OPAL COOK

PERSONALLY APPEARED BEFORE ME, Opal Cook, who first being duly sworn
says as follows:

1. I am the mother of Kristina Knight. Our family has had a close relationship with the family of Debra Ellett for more than thirty years. Both of our families are members of the Moose Lodge. Our family has been to Debra's home and her family has been to our home.
2. On or about January 25, 2016, I contacted the Nationwide insurance agency where Debra worked in Anderson to pay the insurance premium. The agency incorrectly listed my daughter in their system as Kristi Call. I informed agency personnel, possibly Debra, that Kristi Call was recently married to Daniel Knight and legally changed her name to Kristi Knight. They said, "ok" and promised to fix the database.

CC Initials

HG21



171

3. Further, Affiant sayeth not.

Opal Cook
Opal Cook

Greenville, South Carolina

Dated: May 4, 2017

Sworn To Before me this 4 day of May, 2017

K. ANHALL
Notary Public for South Carolina

My Commission Expires: 4/9/2024

HG22



South Carolina Department of Motor Vehicles
Application for Name and/or Address Change,
Date of Birth and/or Social Security Correction, or Special Mailing

4057
(Rev. 8/15)

SC Code of Laws § 53-1-230 Notification of change of address or name. Whenever any person after applying for or receiving a driver's license shall move permanently from the address named in such application or in the license issued to him or when the name of a license is changed by marriage or otherwise, such person shall within ten days thereafter notify the Department in writing of his old and new address or of such former and new name and of the number of any license then held by him.

Please check and complete all sections that apply in black ink.

MY NAME ON RECORD WITH THE DEPARTMENT OF MOTOR VEHICLES IS:

Name: Call Kristina Grace Date of Birth: _____
Last First Middle Suffix

TITLE AND REGISTRATION INFORMATION

(Please place additional vehicle information on the back of this form.)

Customer No. _____ Vehicle Identification No. _____
License Plate No. _____ Make of Vehicle _____

DRIVER RECORD INFORMATION

Customer No. _____ Driver's License No. _____
Identification Card No. _____ Beginner Permit No. _____

☐ NAME CHANGE (A court order or marriage license must accompany this form.)
Name changes cannot be done through the mail or online.

I hereby request that my name in the SCDMV records be changed to:

Knight Kristina Grace
Last First Middle Suffix

☐ RESIDENCE ADDRESS CHANGE - Address where you reside or the address where the company is located. Cannot be a PO Box. My residence address is:

Street _____
City _____ State _____ Zip Code _____ County _____

☐ HOUSED ADDRESS CHANGE - Address used for a vehicle that is primarily at an address different from the residence/company address. Example: company vehicle. My housed address is:

Street _____
City _____ State _____ Zip Code _____ County _____

☐ MAILING ADDRESS CHANGE - Address where you want SCDMV to send you mail. My mailing address is:

Street _____
City _____ State _____ Zip Code _____ County _____

☐ TEMPORARY ADDRESS CHANGE - Address where you will receive your mail on a temporary basis. Temp. Expiration Date _____
My temporary address is:

Street _____
City _____ State _____ Zip Code _____ County _____

☐ DATE OF BIRTH CORRECTION

Date of Birth Shown on Department Records

Month _____ Day _____ Year _____

Correct Date of Birth

Month _____ Day _____ Year _____

Supporting documentation is required. Please see form MV-93 and MV-94 for a list of acceptable documents to justify the correction.

☐ SOCIAL SECURITY NUMBER CORRECTION

Social Security Number Shown on Department Records

_____-_____-_____-

Correct Social Security Number

_____-_____-_____-

Supporting documentation is required. Please see form MV-93 and MV-94 for a list of acceptable documents to justify the correction.

VOTER REGISTRATION

NOTE: You must be physically present in a DMV office to update voter registration information. Customers not transacting business in a DMV office should contact their County Board of Voter Registration to update voter registration information.

☐ Yes, I wish to update my voter registration address (customer must be physically present in DMV field office).
☐ No, I do not wish to update my voter registration address.

I hereby state that all information given and statements made herein are true and correct, and these changes are being made without fraudulent purpose or intent.

Applicant's Signature

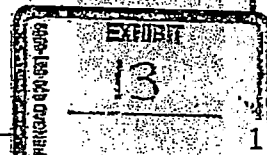
Signature of DMV Customer Service Representative

Branch Office Name and Number

NOTE: Applications, with all needed supporting documents, may be mailed to:

S.C. Department of Motor Vehicles
Alternative Media
PO Box 1498
Blythewood, SC 29015-0035

HG23



ELECTRONICALLY FILED - 2017 May 11 10:51 AM - GREENVILLE - COMMON PLEAS - CASE#2016CP2304327

Search Help

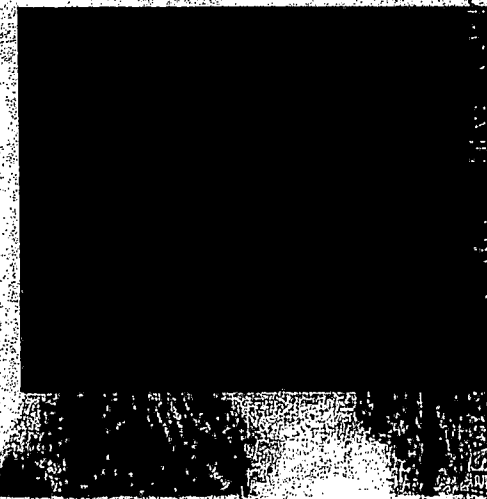
Search for Driver Print Document Issue Dup Exit Help



Driver

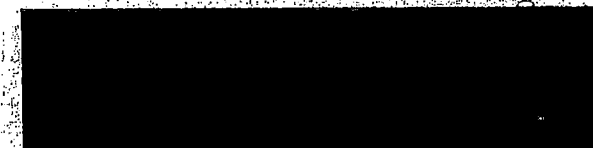
DL Number:	004436481	Gender:	F
Name:	KNIGHT, KRISTINA GRACE		
Height:			
Weight:			
Street:			
City:			
State:			

Photo/Signature



Credential Information

Exp Date:	09-23-2016	Office:	004
DOI:	09-22-2006	Funct Code:	M
Trans Code:	DA	County:	04
DL Class:	D	DL Funct Code:	5
Trans Date:	2015 Day 363	Issuer ID:	
Endorsements:	None	Type Code:	D
Restrictions:	None		



QUESTIONS 1 through 12 MUST BE ANSWERED FOR PERMITS AND LICENSES (Only questions 2-4 for an Identification Card)

1. Are you a resident of South Carolina? ☒ Yes ☐ No
2. Are you a citizen of the United States? ☒ Yes ☐ No
3. Do you now have or have you ever had a South Carolina Identification card, beginner's permit, driver's license, or moped license? If yes, give the number and name if different from number and name given on this application ☒ Yes ☐ No
4. Do you now have or have you ever had an Identification card, beginner's permit, driver's license, or moped license from another state or country? If yes, list information from last time issued. State/Country ☐ Yes ☒ No
License Number _____ and Issue Date _____

Do not answer the following questions if you are only applying for an Identification Card

5. Is your beginner's permit, driver's license, moped license, or privilege to drive suspended, cancelled, revoked or disqualified in any state? If yes, where? _____ when last? ☐ Yes ☒ No
6. Have you recently surrendered your beginner's permit, driver's license, or moped license in court or to a law enforcement officer? If yes, when? _____ Reason _____ ☐ Yes ☒ No
7. In the past 12 months, have you experienced a loss of consciousness, muscular control or seizure? ☐ Yes ☒ No
8. a) In the past six months, have you experienced a heart attack or heart surgery? ☐ Yes ☒ No
b) Has your doctor recommended you not drive or placed restrictions on your driving at this time? ☐ Yes ☒ No
If the answer to "b" is yes, what are the restrictions? _____
9. Have you had a stroke and not recovered sufficiently to safely operate a motor vehicle at this time? ☐ Yes ☒ No
10. Are you a habitual user of alcohol or any other drug to a degree which prevents you from safely operating a motor vehicle at this time? ☐ Yes ☒ No
11. Do you have any mental or physical condition preventing you from safely operating a motor vehicle at this time? ☐ Yes ☒ No
If yes, please list condition(s): _____
12. Has your doctor recommended you not drive or placed restrictions on your driving at this time? ☐ Yes ☒ No
If yes, what are the restrictions? _____

INSURANCE INFORMATION (Check and complete the statement that applies to you)

- ☒ Under penalties of perjury, I declare that I am insured with the following insurance company and will maintain liability insurance throughout the issuance period. COMPANY NAME: Nationwide
- ☐ No motor vehicle required to be registered in South Carolina is owned by me or any relative residing in my household.

CONSENT FOR MINOR - Must be completed for all unemancipated applicants under the age of 18. I am a parent or guardian of the unemancipated minor applicant. (1) If guardian, please provide documentation. (2) Responsible adult must complete Form 447-CM.
(3) Emancipated minors must submit one of the following as proof of emancipation (Only the original or certified copies will be accepted):

☐ Court Order ☐ Certificate of Marriage ☐ Active Military Orders

I consent to the issuance of a beginner's permit and/or driver's license. I accept responsibility for the actions of the minor applicant as outlined in Section 56-1-110 of the South Carolina Code of Laws. To be released from this responsibility before the applicant reaches age 18, I understand that I must submit a written request for release to the Department of Motor Vehicles to have this application and the applicant's beginner's permit or driver's license cancelled.

RELATIONSHIP TO MINOR APPLICANT	PRINTED NAME	SIGNATURE	DATE
---------------------------------	--------------	-----------	------

FATHER'S NAME (PRINT)	ADDRESS	ID/DL#	PHONE #
-----------------------	---------	--------	---------

MOTHER'S NAME (PRINT)	ADDRESS	ID/DL#	PHONE #
-----------------------	---------	--------	---------

I CERTIFY under penalty of perjury that all information and statements made in this application are true and correct as of the date of this application. I also CERTIFY that I do not have a valid driver's license other than the one(s) reported in questions #3 and #4 above and that my privilege to operate a motor vehicle is not now or subject to be suspended, cancelled, revoked or disqualified at the time of this application. I understand that I am receiving a S.C. credential based on the information provided on this application, and that SCDMV will verify all information. I also understand that if my privilege to drive is ever suspended, cancelled or revoked in South Carolina or any other state, my S.C. license will be revoked until I have met all reinstatement requirements in South Carolina and any other states.

PRINTED NAME	SIGNATURE	DATE
Kristina Knight	Kristina Knight	12-29-15

FOR DMV OFFICE USE ONLY

☐ Exchanging Out-of-State Permit for a SC Permit or License / STATE: _____ DOCS BP/DL NO.: _____

TYPE: ☐ Duplicate ☒ Modified ☐ Original ☐ Provisional ☐ Re-exam ☐ Reissue ☐ Renewal ☐ Route Restricted ☐ Temporary Alcohol

CLASS: ☐ D ☒ E ☐ F ☐ G (Moped) ☐ M (Motorcycle) RESTRICTIONS: _____

IDENTIFICATION SUBMITTED: ☐ Birth Certificate ☐ Passport/Visa ☐ SSN ☐ Proof of Residency

Knowledge Test

Date: _____ ☐ Passed ☐ Failed Comments: _____

Date: _____ ☐ Passed ☐ Failed Comments: _____

Date: _____ ☐ Passed ☐ Failed Comments: _____

Skills Test

Date: _____ ☐ Passed ☐ Failed Comments: _____

Date: _____ ☐ Passed ☐ Failed Comments: _____

Date: _____ ☐ Passed ☐ Failed Comments: _____

Hearing Impaired: ☐ Deaf ☐ Poor ☐ Good

Missing Extremities: ☐ No ☐ Yes

Vision

	Right	Left	Both
With corrective lens	20/	20/	20/
Without corrective lens	20/	20/	20/

Office Number _____

Employee Signature: _____

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE

CIVIL ACTION NO: 2016-CP-23-04327

Nationwide Insurance Company of America,

Plaintiff,

v.

**PLAINTIFF'S ANSWERS TO DEFENDANTS'
SECOND SUPPLEMENTAL DISCOVERY
REQUESTS**

Kristina Knight, Individually and as Personal
Representative of the Estate of Daniel P.
Knight,

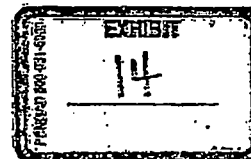
Defendant.

**TO: EDWIN L. TURNAGE, ESQUIRE, ATTORNEY FOR DEFENDANT, AND TO
THE DEFENDANT ABOVE NAMED:**

GENERAL OBJECTIONS

1. Nationwide Insurance Company of America incorporates each of the general objections set forth below in each of its answers to Defendants' Supplemental Discovery Requests.
2. Nationwide Insurance Company of America objects to the Defendants' Supplemental Discovery Requests to the extent they call for information that is protected from disclosure by the attorney/client privilege, the work product doctrine or the extent such materials were prepared in anticipation of litigation.
3. Nationwide Insurance Company of America objects to the Defendants' Supplemental Discovery Requests to the extent they are irrelevant and are not reasonably calculated to lead to discovery of admissible evidence.
4. Nationwide Insurance Company of America objects to the Defendants' Supplemental Discovery Requests to the extent they call for information that constitutes confidential, proprietary business information or trade secrets.

HG27



5. Nationwide Insurance Company of America objects to the Defendants' Supplemental Discovery Requests on the grounds that Nationwide Insurance Company of America is still in the process of its discovery and investigation efforts and, therefore, its answers are based on information available at this point.

ANSWERS TO INTERROGATORIES

7. Did Plaintiff attempt to exclude portable UM coverage to your Nationwide insureds' resident relatives by using Endorsement 3109A, Voiding Auto Insurance While Named Person is Operating Car in 2016?

ANSWER: Objection. This Interrogatory is not reasonably calculated to lead to the discovery of admissible evidence. Furthermore, the Interrogatory seeks information that is not limited to the subject matter of this lawsuit. It is also not limited by time or jurisdiction. Without waiving these objections, Plaintiff Nationwide would show that the terms of Endorsement 3109A are clear from the endorsement and that those terms speak for themselves. Plaintiff Nationwide only uses this endorsement to exclude uninsured motorist ("UM") coverage from its policy when its policyholder makes such a request. In 2016 this was the only endorsement that Plaintiff Nationwide used to exclude a specific driver from coverage regardless of whether the person being excluded is the policyholder's resident relative or otherwise.

8. Did Plaintiff attempt to exclude portable UIM coverage to your Nationwide insureds' resident relatives by using Endorsement 3109A, Voiding Auto Insurance While Named Person is Operating Car in 2016?

ANSWER: Objection. This Interrogatory is not reasonably calculated to lead to the discovery of admissible evidence. Furthermore, the Interrogatory seeks information that is not limited to the subject matter of this lawsuit. It is also not limited by time or jurisdiction. Without waiving these objections, Plaintiff Nationwide would show that the terms of Endorsement 3109A are clear from the endorsement and that those terms speak for themselves. Plaintiff Nationwide only uses this endorsement to exclude underinsured motorist ("UIM") coverage from its policy when its policyholder makes such a request. This is the only endorsement that Plaintiff Nationwide uses to exclude a specific driver from coverage regardless of whether the person being excluded is the policyholder's resident relative or otherwise.

9. Approximately how many South Carolina families in South Carolina did Plaintiff subject to such UM and UIM exclusions by use of Endorsement 3109A, Voiding Auto Insurance While Named Person is Operating Car in 2016 (See Interrogatories 7 and 8)?

ANSWER: Objection. This Interrogatory is not reasonably calculated to lead to the discovery of admissible evidence. Furthermore, the Interrogatory seeks information that is not limited to the subject matter of this lawsuit. It is also not limited by time or jurisdiction.

10. During 2016 and 2017, did Defendant knowingly use Endorsement 3109A, Voiding Auto Insurance While Named Person is Operating Car in 2016, to attempt to exclude UM and UIM coverage to spouses of named insureds?

ANSWER: Objection. This Interrogatory is not reasonably calculated to lead to the discovery of admissible evidence. Furthermore, the Interrogatory seeks information that is not limited to the subject matter of this lawsuit. It is also not limited by time or jurisdiction. Without waiving these objections, Plaintiff Nationwide would show that the Endorsement 3109A is the only endorsement used by Plaintiff Nationwide to remove all coverage for the driver identified by the policyholder. Sometimes the excluded drivers are spouses of the named insureds.

11. During 2016 and 2017, did Defendant knowingly use Endorsement 3109A, Voiding Auto Insurance While Named Person is Operating Car in 2016, to attempt to exclude UM and UIM coverage to children of named insureds?

ANSWER: Objection. This Interrogatory is not reasonably calculated to lead to the discovery of admissible evidence. Furthermore, the Interrogatory seeks information that is not limited to the subject matter of this lawsuit. It is also not limited by time or jurisdiction. Without waiving these objections, Plaintiff Nationwide would show that Endorsement 3109A is the only endorsement used by Plaintiff Nationwide to remove all coverage for the driver identified by the policyholder. Sometimes the excluded drivers are children of the named insureds.

12. Was Defendant's agent, Deborah Ellett, aware that Kristina and Daniel Knight married before his fatal motor vehicle collision on December 2, 2016? If so, when did Defendant learn about their marriage?

ANSWER: Deborah Ellett became aware that Kristina and Daniel Knight were married prior to the December 2, 2016, automobile accident. However, Ms. Ellett is

unaware of the specific date that she became aware of their marriage. Upon information and belief, Ms. Ellett never told any Nationwide employee about the marriage.

RESPONSES TO DOCUMENT REQUESTS

8. Produce all writings Defendant sent to the Insurance Commission when it submitted Endorsement 3109A, Voiding Auto Insurance While Named Person is Operating Car in 2016.

RESPONSE: The information called for in Response to Request for Production number 8 was previously produced to counsel for the Defendant by way of a letter from the undersigned dated March 13, 2017. ~~These documents are Bates Numbered NW000001-~~

9. Produce all communications of any nature whatsoever with the S.C. Insurance Commission with regard to Endorsement 3109A, Voiding Auto Insurance While Named Person is Operating Car in 2016.

RESPONSE: There is no other correspondence besides the documentation provided in response to Request number 8.

10. Produce all internal memorandums analyzing the legality with regard to South Carolina public policy before Defendant submitted Endorsement 3109A, Voiding Auto Insurance While Named Person is Operating Car in 2016.

RESPONSE: Objection. This information called for by Request for Production Number 10 seeks information protected by the attorney/client privilege and/or the work product doctrine. Moreover, the information sought by Request for Production Number 10 is irrelevant to the matters before the Court and is not likely to lead to the discovery of admissible evidence.

11. Produce all drafts and versions of Endorsement 3109A, Voiding Auto Insurance While Named Person is Operating Car in 2016 before it was submitted to the South Carolina Insurance Commission.

RESPONSE: Objection. This information called for by Request for Production Number 11 seeks information protected by the attorney/client privilege and/or the work product doctrine. Moreover, the information sought by Request for Production Number 11 is irrelevant to the matters before the Court and is not likely to lead to the discovery of admissible evidence. Without waiving the objection, Nationwide would show that there are no drafts or other versions of Endorsement 3109A besides the one that was approved by the South Carolina Department of Insurance.

RESPONSES TO REQUESTS TO ADMIT

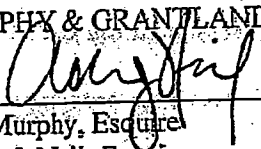
1. Plaintiff does not use Endorsement 3109A, Voiding Auto Insurance While Named Person is Operating Car in 2016 to exclude coverage of spouses of named insureds?

RESPONSE: Denied.

2. Plaintiff does not use Endorsement 3109A, Voiding Auto Insurance While Named Person is Operating Car in 2016 to exclude coverage of children of named insureds?

RESPONSE: Denied.

MURPHY & GRANTLAND, P.A.


J.R. Murphy, Esquire

Adam J. Neil, Esquire

P.O. Box 6648

Columbia, South Carolina 29260

(803) 782-4100

Attorneys for Nationwide Insurance Company of America

Columbia, South Carolina

May 3, 2017

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

NATIONWIDE INSURANCE COMPANY OF
AMERICA,

Plaintiff,

vs.

KRISTINA KNIGHT, INDIVIDUALLY and as
PERSONAL REPRESENTATIVE of the
ESTATE OF DANIEL P. KNIGHT,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2016-CP-23-04327

AMENDED

NOTICE OF TAKING DEPOSITION

TO: ADAM NEIL, ATTORNEY FOR PLAINTIFF:

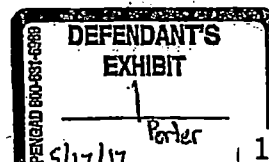
YOU WILL PLEASE TAKE NOTICE that on May 17, 2017, at 10:00, at South Carolina Insurance Department, Conference Room (to be determined), 1201 Main Street, Ste 1000; Columbia, SC 29201, the undersigned attorney for the Defendants will take the deposition of the corporate officer, director or managing agents or agents, or other person or persons who consent to testify on behalf of the South Carolina Department of Insurance on oral examination, pursuant to Rule 30(b)(6) of the South Carolina Rules of Civil Procedure, before a Notary Public, or some other officer authorized by law to take depositions, said deposition to continue from day to day until completed. You are invited to attend and take such part as is fit and proper.

SUBJECT MATTER

The individual or individuals designated by the South Carolina Department of Insurance (SCDOI) in accordance with this Notice must be able to testify concerning the following:

1. The SCDOI procedures associated with approval of Nationwide Endorsement 3109A, Voiding Auto Insurance While Named Person is Operating Car in 2016.¹

¹ See attached Exhibit.



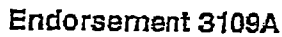
2. Whether the SCDOI conducted any legal analysis or obtained the opinion of a South Carolina attorney familiar with the public policy of South Carolina automobile insurance statute before approving Endorsement 3109A, Voiding Auto Insurance While Named Person is Operating Car in 2016.
3. Does the SCDOI's interpret the scope of Section 38-77-340 to authorize insurance companies to exclude UM or UIM coverages in addition to liability insurance coverage?
4. By approving of Endorsement 3109A, Voiding Auto Insurance While Named Person is Operating Car in 2016, is the SCDOI in anyway endorsing Nationwide's position in this litigation that insurance companies may exclude by endorsement the resident relatives of named insureds from a policy's portable UM and UIM coverage?

HARRIS AND GRAVES, P.A.

EDWIN L. TURNAGE
Attorney for Defendant
SC Bar No.
P.O. Box 6263
Greenville, SC, 29606
(864) 235-1331
elt@harrisgraves.com

Greenville, South Carolina

Dated: _____



Voiding Auto Insurance While Named Person Is Operating Car

Please attach this important addition to your auto policy.

With this endorsement, all coverages in your policy are not in effect while _____ is operating any motor vehicle.
excluded person

The policy remains unchanged in all other respects.

As indicated by my signature, I _____ accept this endorsement.
signature of policyholder(s)

Check one:

- () The excluded person's driver's license has been surrendered to the State Highway Department.
() The excluded person has obtained insurance or other security to operate motor vehicles.

This endorsement applies as stated in the policy Declarations.

This endorsement is issued by the company shown in the Declarations as the Issuing company.

Attached to and forming a part of policy number:	Effective at 12:01 a.m. on policy effective date or on _____ whichever is later
---	--

NATIONWIDE INSURANCE COMPANIES
Home Office: Columbus, Ohio 43215-2220

Issued to:

Countersigned at:

Authorized Representative:

V-3109-A

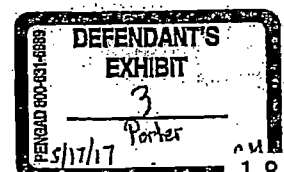
NW000015

DEFENDANT'S
EXHIBIT
2
Porter
5/17/17 185

Section 38-77-340 Agreement to exclude designated natural person from coverage

Notwithstanding the definition of "insured" in Section 38-77-30, the insurer and any named insured must, by the terms of a written amendatory endorsement, the form of which has been approved by the director or his designee, agree that coverage under such a policy of liability insurance shall not apply while the motor vehicle is being operated by a natural person designated by name. The agreement, when signed by the named insured, is binding upon every insured to whom the policy applies and any substitution or renewal of it. However, no natural person may be excluded unless the named insured declares in the agreement that (1) the driver's license of the excluded person has been turned in to the Department of Motor Vehicles or (2) an appropriate policy of liability insurance or other security as may be authorized by law has been properly executed in the name of the person to be excluded.

HISTORY: Former 1976 Code Section 56-11-250 [1962 Code Section 46-750.125; 1974 (58) 2718; 1987 Act No. 166, Section 20; 1987 Act No. 155, Section 25] recodified as Section 38-77-340 by 1987 Act No. 155, Section 1 [amendment to former 1976 Code Section 56-11-250 by 1987 Act No. 166, Section 20, transferred to Section 38-77-340 by 1987 Act No. 155, Section 24]; 1988 Act No. 641, Section 2; 1993 Act No. 181, Section 813A; 1993 Act No. 181, Section 813B; 1996 Act No. 459, Section 63; 2004 Act No. 241, Section 8, eff January 1, 2005.



EXPLANATORY MEMORANDUM

Nationwide Insurance Company of America (NICOA)

The following forms are included in this filing submission for approval in the Nationwide Insurance Company of America:

FORM NUMBER	TITLE
V-0100-A	Declarations
V-3009	Non-Owner Policy
V-3316	Leased Auto Endorsement
V-3315	Loss Payable Endorsement
V-3020	Additional Interest
V-3109-A	Voiding Auto Insurance
V-3436	Roadside Assistance
V-3416	Diminishing Deductible
V-3417	Total Loss Deductible Waiver

The forms listed above are in addition to the forms that have already been approved for use as part of these other NICOA filings:

NWPP-126353144, approved 12/3/2009 (Policy and forms)

NWPP-126354541, approved 12/22/2009 (Cancellations notices)

Additionally, we offer comment on the following items found in the SC DOI Property and Casualty check list:

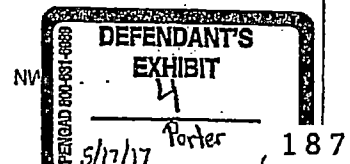
501. UM Offer: Form V-8066E UM/UIM Selection/Rejection form was filed and approved 12/3/2009; NWPP-126353144.

502. UM One Dollar: NICOA will report electronically on a quarterly basis using the ALIR system in compliance with Bulletin 2004-08.

515. Renewals Cancellation: Cancellation letters to be used in NICOA were filed and approved 12/22/2009; NWPP 126354541.

521. Adult Driver Training Credit: NICOA "Defensive Driver Discount" premium credits for adult drivers were filed in the rate filing and approved 11/20/2009; NWPC 126317279.

522. Driver Training: "Driver Training Discount" to be used in NICOA were filed in the rate filing and provides premium credits for drivers under 25; approved 11/20/2009; NWPC 126317279.



523. Credit Reports: Credit Reports are retained for policies written in NICOA as prescribed in Section 38-73-740.

524. Required Names: The name of the company issuing the policy, its address and telephone number are displayed on the Declarations page V-0100-A. See attachment of sample in this submission.

525. Tier Disclosure: A Tier Disclosure letter is provided to NICOA policyholders when warranted. See attachment of sample in this submission.

529. New Policy Notice: A policyholder Important Notice is included in the policy package. See attachment of sample in this filing submission. The required information is also contained in Form V-8066E which was approved 12/3/2009; NWPP-126353144.

537. Glass Deductible: The required language is in Policy Z-039, Page P-1, approved for use in NICOA 12/3/2009; NWPP-126353144.

539. Exclusion of Operator: "Voiding Auto Insurance", form V-3109-A is included in this filing submission. Previously approved on 1/5/2005 St Track# 147028&9.

546. ID Cards: Contents as described in Bulletin 97-2 are contained in the ID card issued to NICOA policyholders. See attached sample included in this submission.

553. Policy Fixed/Extra Fees: NICOA fees were filed in the rate/rule filing and approved 11/20/2009; NWPC 126317279.

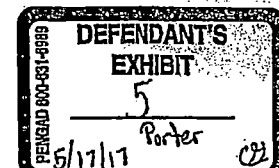
563. Waiver of Premium Refund: NICOA waiver of premium refund rules were filed in the rate/rule filing and approved 11/20/2009; NWPC 126317279.

NW000025

on 38-77-30 Definitions

As used in this chapter, unless the context requires otherwise:

- (1) "Automobile insurance" means automobile bodily injury and property damage liability insurance, including medical payments and uninsured motorist coverage, and automobile physical damage insurance such as automobile comprehensive physical damage, collision, fire, theft, combined additional coverage, and similar automobile physical damage insurance and economic loss benefits as provided by this chapter written or offered by automobile insurers. An automobile insurance policy includes a motor vehicle liability policy as defined in item (7) of Section 56-9-20 and any nonowner automobile insurance policy which covers an individual private passenger automobile not owned by the insured, a family member of the insured, or a resident of the same household as the insured.
- (2) "Automobile insurer" means an insurer licensed to do business in South Carolina and authorized to issue automobile insurance policies.
- (3) "Bodily injury" includes death resulting therefrom.
- (4) "Cancellation" or "to cancel" means a termination of a policy during the policy period.
- (4.5) "Facility physical damage rate" means the final rate or premium charge for physical damage coverage which must be established by adding the physical damage loss component developed under Section 38-77-596 to the expense component developed under Section 38-77-596.
- (5.2) "Facility physical damage rate" means the final rate or premium charge for physical damage coverage which must be established by adding the physical damage loss component developed under Section 38-73-780 to the expense component developed under Section 38-73-1420.
- (5.5)(a) "Individual private passenger automobile" means the following types of motor vehicles owned by or leased under a long-term contract by an individual or individuals:
 - (i) motor vehicles of the private passenger type or station wagon type;
 - (ii) panel trucks, delivery sedans, vehicles with a pickup body, vans, or similar motor vehicles designed for use on streets and highways and so licensed;
 motor homes, so long as the motor vehicles described in (ii) and (iii) are not used in the



(8) "Insurance-support organization" means any person who regularly engages, in whole or in part, in the practice of assembling or collecting information about natural persons for the primary purpose of providing the information to an insurer or agent for insurance transactions, including (i) the furnishing of consumer reports or investigative consumer reports to an insurer or agent for use in connection with an insurance transaction or (ii) the collection of personal information from insurers, agents, or other insurance-support organizations for the purpose of detecting or preventing fraud, material misrepresentation, or material nondisclosure in connection with insurance underwriting or insurance claim activity. However, the following persons shall not be considered insurance-support organizations for purposes of this chapter: agents, governmental institutions, insurers, rating organizations, medical care institutions, and medical professionals.

(9) "Motor vehicle" means every self-propelled vehicle which is designed for use upon a highway, including trailers and semitrailers designed for use with these vehicles but excepting traction engines, road rollers, farm trailers, tractor cranes, power shovels and well-drillers, and every vehicle which is propelled by electric power obtained from overhead wires but not operated upon rails. For purposes of this chapter, the term automobile has the same meaning as motor vehicle.

(10) "Nonpayment of premium" means failure of the named insured to pay when due any of his obligations in connection with the payment of premiums on a policy, or any installment of the premium, whether the premium is payable directly to the insurer or its agent or indirectly under any premium finance plan or extension of credit, or failure to maintain membership in an organization if membership is a condition precedent to insurance coverage.

(10.5) ~~"Policy of automobile insurance"~~ or "policy" means a policy or contract for bodily injury or property damage liability insurance issued or delivered in this State covering liability arising from the ownership, maintenance, or use of any motor vehicle, insuring as the named insured one individual or husband and wife who are residents of the same household, and under which the insured vehicle designated in the policy is either:

(a) a motor vehicle of a private passenger, station wagon, or motorcycle type that is not used commercially, rented to others, or used as a public or livery conveyance where the terms "public or livery conveyance" do not include car pools, or

(b) any other four-wheel motor vehicle which is not used in the occupation, profession, or business, other than farming, of the insured, or as a public or livery conveyance, or rented to others. The term "policy of automobile insurance" or "policy" does not include:

(i) any policy issued through the Associated Auto Insurers Plan,

(ii) any policy covering the operation of a garage, sales agency, repair shop, service station, or

public parking place,

(iii) any policy providing insurance on an excess basis such as an umbrella policy, or

(iv) any other contract providing insurance to the named insured even though the contract may incidentally provide insurance on motor vehicles.

(11) "Quota share reinsurance" means that form of reinsurance in which the reinsurer assumes a fixed percentage of the insured risk.

(12) "Renewal" or "to renew" means the issuance and delivery by an insurer of a policy superseding at the end of the policy period a policy previously issued and delivered by the same insurer, the renewal policy to provide types and limits of coverage at least equal to those contained in the policy being superseded, or the issuance and delivery of a certificate or notice extending the terms of a policy beyond its policy period or term with types and limits of coverage at least equal to those contained in the policy being extended. However, any policy with a policy period or term of less than six months or any period with no fixed expiration date is considered as if written for successive policy periods or terms of six months.

(13) "Small commercial risk" means:

(a) Garage risks including nonmotor vehicle insurance when written in combination with automobile liability coverage.

(b) Ambulance risks.

(c) Commercial risks which have a manufacturer's gross vehicular weight less than twenty thousand pounds and are not required to have a mandatory filing by a governmental authority other than an SR-22.

(d) Church buses used by a church to transport adults or children to and from services and in activities incidental to church functions, so long as a mandatory filing by any governmental authority other than an SR-22 is not required.

(e) Privately-owned school buses used to carry school children and students, their parents or guardians, members of the faculty, school board members, nurses, doctors, and dentists, as well as guests in connection with any school activity and operations incidental thereto, including games, outings, and similar road trips, so long as a mandatory filing by any governmental authority other than an SR-22 is not required.

"Small commercial risk" does not include pulpwood trucks or dump trucks.

(14) "Uninsured motor vehicle" means a motor vehicle as to which:

(a) there is not bodily injury liability insurance and property damage liability insurance both at least in the amounts specified in Section 38-77-140; or

(b) there is nominally that insurance, but the insurer writing the same successfully denies coverage thereunder; or

(c) there was that insurance, but the insurer who wrote the same is declared insolvent, or is in delinquency proceedings, suspension, or receivership, or is proven unable fully to respond to a judgment; and

(d) there is no bond or deposit of cash or securities in lieu of the bodily injury and property damage liability insurance;

(e) the owner of the motor vehicle has not qualified as a self-insurer in accordance with the applicable provisions of law.

A motor vehicle is considered uninsured if the owner or operator is unknown. However, recovery under the uninsured motorist provision is subject to the conditions set forth in this chapter.

Any motor vehicle owned by the State or any of its political subdivisions is considered an uninsured motor vehicle when the vehicle is operated by a person without proper authorization.

(15) "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 insured's damages.

HISTORY: Former 1976 Code Sections 38-37-10 [1962 Code Section 37-591; 1974 (58) 2718; 1976 Act No. 694, Section 1] and 56-9-810 [1962 Code Section 46-750.31; 1963 (53) 526; 1964 (53) 2064; 1977 Act No. 80, Section 5; 1987 Act No. 155, Section 25(a); 1987 Act No. 166, Section 21, transferred to Section 38-77-30 by 1987 Act No. 155, Section 24] recodified as Section 38-77-30 by 1987 Act No. 155, Section 1; 1988 Act No. 376, Sections 1, 2; 1988 Act No. 399, Section 5; 1989 Act No. 148, Section 52; 1992 Act No. 443, Section 1; 1993 Act No. 181, Section 802; 1996 Act No. 326, Section 5; 1997 Act No. 154, Section 7.



Section 38-77-150 Uninsured motorist provision; defense of action by insurer; subrogation and assignment of benefits

(A) No automobile insurance policy or contract may be issued or delivered unless it contains a provision by endorsement or otherwise, herein referred to as the uninsured motorist provision, undertaking to pay the insured all sums which he is legally entitled to recover as damages from the owner or operator of an uninsured motor vehicle, within limits which may be no less than the requirements of Section 38-77-140. ~~The uninsured motorist provision also must provide for no less than twenty-five thousand dollars coverage for injury to or destruction of the property of the insured in any one accident but may provide an exclusion of the first two hundred dollars of the loss or damage.~~ The director or his designee may prescribe the form to be used in providing uninsured motorist coverage and when prescribed and promulgated no other form may be used.

(B) No action may be brought under the uninsured motorist provision unless copies of the pleadings in the action establishing liability are served in the manner provided by law upon the insurer writing the uninsured motorist provision. The insurer has the right to appear and defend in the name of the uninsured motorist in any action which may affect its liability and has thirty days after service of process on it in which to appear. The evidence of service upon the insurer may not be made a part of the record.

(C) Benefits paid pursuant to this section are subject to subrogation and assignment if an uninsured motorist has selected the option to be uninsured by paying the fee pursuant to Section 56-10-510.

HISTORY: Former 1976 Code Section 56-9-830 [1962 Code Section 46-750.33; 1963 (53) 526; 1971 (57) 854; 1974 (58) 2718] recodified as Section 38-77-150 by 1987 Act No. 155, Section 1; 1993 Act No. 181, Section 807; 1997 Act No. 154, Section 13; 2013 Act No. 47, Section 1, eff. January 1, 2014.

Editor's

Note

2013 Act No. 47, Section 5, provides as follows:

"SECTION 5: An automobile liability insurer is not required to make a new offer of coverage or obtain a new prescribed form on any automobile insurance policy, within the contemplation of Section 38-77-350, to comply with statutory changes to the minimum required limits set forth in Section 38-77-140 and Section 38-77-150."



**South Carolina
Department of Insurance**

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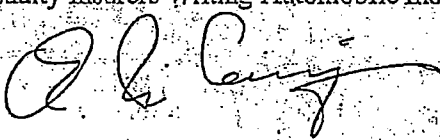
MARK SANFORD
Governor

ERNST N CSISZAR
Director of Insurance

BULLETIN NUMBER 2004 - 10

(Issued upon August 18, 2004)

To: Property and Casualty Insurers Writing Automobile Insurance

From: Ernst N. Csiszar
Director 

Subject: Legislative Changes in Automobile Insurance Regarding
Excluded Drivers

Act 241 has been enacted by the South Carolina General Assembly and it includes a change to the process for excluding named drivers in South Carolina. The legislation is effective on January 1, 2005 and may require insurers to change their forms for policies effective on that date. Bulletin 1974-32 is repealed effective January 1, 2005.

Beginning on January 1, 2005, the revised law will read as follows:

Section 38-77-340. Notwithstanding the definition of 'insured' in Section 38-77-30, the insurer and any named insured, by the terms of a written amendatory endorsement, the form of which has been approved by the director or his designee, must agree that coverage under such a policy of liability insurance shall not apply while the motor vehicle is being operated by a natural person designated by name. The agreement, when signed by the named insured, is binding upon every insured to whom the policy applies and any substitution or renewal of it. However, no natural person may be excluded unless the named insured declares in the agreement that (1) the driver's license of the excluded person has been turned in to the Department of Motor Vehicles or (2) an appropriate policy of liability insurance or other security as may be authorized by law has been properly executed in the name of the person to be excluded."

Insurers may file to change the form that they use for excluding named drivers. A form filed with the Department for this purpose must include the signed declaration of the named insured that (1) the driver's license of the excluded person has been turned in to the Department of Motor Vehicles or (2) an appropriate policy of liability insurance or other security as may be authorized by law has been properly executed in the name of the person to be excluded.

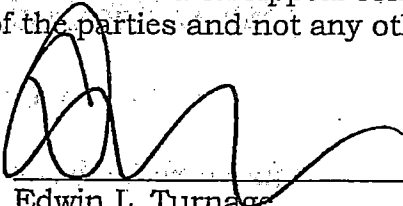
Questions on this bulletin may be sent to P&Cmail@doi.state.sc.us or call 803-737-6230.



Certificate of Counsel

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

September 20, 2017


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SC Court of Appeals

The State of South Carolina In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY

Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge

Case No. 2017-001348

NATIONWIDE INSURANCE COMPANY
OF AMERICA,

Respondent,

v.

KRISTINA KNIGHT, Individually and as
Personal Representative of
THE ESTATE OF DANIEL KNIGHT,

Appellants.

BRIEF OF APPELLANTS

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OCT 12 2017

SG Court of Appeals

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STATEMENT OF ISSUE ON APPEAL

Does Respondent's automobile insurance policy, which seeks to exclude all portable UIM and UM coverages to statutory insureds, violate South Carolina public policy?

STATEMENT OF THE CASE

On February 2, 2016, Danny Knight was killed by a negligent driver in an Anderson County motor vehicle collision.

On July 18, 2016, Respondent sued Appellants seeking a declaration that its policy was not required to provide any coverage to Danny Knight. (R. p. 10)

On September 29, 2016, Appellants filed an Answer and Counterclaim. Appellants asked the court to declare that Respondent's policy excluding UIM coverage to Danny Knight violated South Carolina public policy and that they were entitled to recovery of the insurance policy limits (\$25,000). (R. pp. 13-16)

On October 7, 2016, Respondent filed a reply denying Appellants' counterclaim. (R. pp. 17-19)

On March 9, 2017, Respondent filed a motion for summary judgment. (R. pp. 45-46) On April 13, 2017, Appellants filed a motion

for summary judgment. (R. p. 51) On May 22, 2017, the trial court conducted a hearing on the parties' cross motions for summary judgment. On May 26, 2017, the trial court granted Respondent's motion for summary judgment and denied Appellants' motion for summary judgment. (R. pp. 1-4)

On June 12, 2017, Appellants filed a notice of appeal. (R. p. 6).

FACTS

On February 2, 2016, Randy M. Mincey was driving a 2007 Saturn east on Monroe Street in Anderson. Meanwhile, a 1998 Honda motorcycle was traveling north on Market Street. Mincey, inattentive, failed to yield and drove the Saturn onto Market Street and into the path of the motorcycle. The vehicles collided and the motorcycle rider was ejected. His head hit the road surface. The impact caused a severe head injury and death. (R. p. 13) The rider and owner of the motorcycle was Danny Knight, Kristi Knight's husband. (R. pp. 154-155, 167). The liability carrier for the at-fault driver, and the UIM carriers for Danny's motorcycle insurance and automobile insurance paid their respective policy limits. (R. p. 8) Respondent stipulates that the damages exceed the coverage of the policy. (R. pp. 156-157)

Before the fatal collision, Nationwide issued an automobile insurance policy, policy number 6139D 065876, on a 1996 Ford Ranger owned by Kristina Knight (hereinafter Kristina). Kristina opted

to purchase UIM coverage and paid the extra premium for that coverage. That policy was in good standing on the date of her husband's death. The policy provided for underinsured motorist coverage to Kristina and all resident relatives (*i.e.*, statutory insureds) as required by the South Carolina automobile insurance statute. (R. pp. 12, 81) However, by endorsement, the policy sought to exclude all coverage, including the portable UIM and UM coverage, for Kristina's late husband Danny Knight. (R. pp. 8, 74) Nationwide denied the widow's UIM claim. (R. pp. 8-9, 15-16)

ARGUMENTS

1. An automobile insurance policy provision that eliminates mandatory, minimum, portable UIM coverage of a statutory insured is void because it violates South Carolina public policy.

Nationwide v. Knight is an important public policy case because an order affirming summary judgment for Respondent will eliminate UM and UIM coverage for thousands of South Carolina families. (R. pp. 163-165) Respondent continues to use the excluded driver endorsement broadly on policies across the State. (R. pp. 176-178)

The statutory purpose of the automobile insurance statute is to provide that, "every automobile insurance risk which is insurable on the basis of the criteria established in this chapter is entitled to automobile insurance." S.C. Code Ann. § 38-77-10. The statute

directs the trial courts to "liberally construe[]" the statutory language "in order to achieve its purposes." S.C. Code Ann. § 38-77-20.

This is a case about underinsured motorist insurance "portability." "[P]ortability refers to a person's ability to use his coverage on a vehicle not involved in an accident as a basis for recovery of damages sustained in the accident." *Nakatsu v. Encompass Indemnity Co.*, 390 S.C. 172, 181, 178, 700 S.E.2d 283 (2010).

The South Carolina UIM statute states as follows:

Automobile insurance carriers shall offer, at the option of the insured, underinsured motorist coverage up to the limits of the insured's liability coverage in addition to the mandatory coverage prescribed by Section 38-77-150. Such carriers *shall also offer*, at the option of the insured, underinsured motorist coverage *up to the limits of the insured liability coverage* to provide coverage in the event that damages are sustained in excess of the liability limits carried by an at-fault insured or underinsured motorist or in excess of any damages cap or limitation imposed by statute. If, however, *an insured or named insured* is protected by uninsured or underinsured motorist coverage in excess of the basic limits, the policy shall provide that *the insured or named insured* is protected only to the extent of the coverage he has on the vehicle involved in the accident. If none of the *insured's or named insured's* vehicles is involved in the accident, coverage is available only to the extent of coverage on any one of the vehicles with the excess or underinsured coverage.

See S.C. Code Ann. § 38-77-160 (emphasis added). The Legislature required the policy include UIM coverage for the "named insured" as well as the statutorily "insured."

The South Carolina automobile insurance statute defines "insured" to include the insured person (or persons named in a policy)

and "[w]hile resident of the same household, the spouse of any named insured and relatives of either." S.C. Code Ann. § 38-77-30

(definitions). It is undisputed that Danny was Kristina's spouse. The couple was married in Anderson on December 2, 2015, after the policy was issued and about two months before the fatal motor vehicle collision. Danny and Kristina were living in the same residence on the date of Danny's fatal collision. (R. pp. 154-155, 171-179)

South Carolina has a strong, remedial public policy requiring insurance companies who write automobile insurance in this State provide portable UM or UIM coverages to insureds and their families:

Our supreme court has previously explained, "uninsured motorist coverage is not to provide coverage for the uninsured vehicle but to afford additional protection to the insured." *Nationwide Mut. Ins. Co. v. Howard*, 288 S.C. 5, 12, 339 S.E.2d 501, 504 (citing *Hogan v. Home Ins. Co.*, 260 S.C. 157, 162, 194 S.E.2d 890, 892 (1973)). The court further clarified in *Hogan* that "unlike the provisions relative to liability coverage, the statute plainly affords uninsured motorist coverage to the named insured and resident relatives of his or her household *at all times and without regard to the activity* in which they were engaged at the time. *Such coverage is nowhere limited in the statute to the use of the insured vehicle.*" *Hogan*, 260 S.C. at 162, 194 S.E.2d at 892. Similarly, the statutory purpose of UIM coverage is to provide coverage in the event damages are sustained in excess of the liability limits carried by an at-fault insured or underinsured. S.C. Code Ann. § 38-77-160. Thus, *our UIM statute is also remedial in nature and enacted for the benefit of injured persons. It should be construed liberally to effect the purpose intended by the legislature. See Sloan v. Greenville County*, 356 S.C. 531, 564, 590 S.E.2d 338, 356 (Ct. App.2003) (reasoning that the provisions of a code should be construed liberally if the code is remedial in nature).

Understanding that UIM coverage is a variation of UM coverage, we believe that *Hogan* indicates the legislative intent behind our UIM statute and is applicable here. In other words, under insurance, like un insurance, *is personal and portable*. "In jurisdictions where the coverage follows the person any person who enjoys the status of an insured under a motor vehicle policy of insurance which includes uninsured/underinsured coverage enjoys coverage protection simply by reason of having been injured by an uninsured/underinsured motorist." 9 Couch on Ins.3d § 123:3.

Burgess v. Nationwide Mut. Ins. Co., 361 S.C. 196, 201-02, 603 S.E.2d 861 (S.C. App., 2004), *rev'd on other grounds*, 644 S.E.2d 40, 373 S.C. 37 (S.C., 2007).

Nationwide cannot by policy endorsement eliminate coverage of insureds that is mandated by statute. "[A]ny limiting language in an insurance contract which has the effect of providing less protection than made obligatory by the statute is contrary to public policy and is of no force and effect." See *Ferguson v. State Farm Mut. Ins. Co.*, 261 S.C. 96, 100, 198 S.E.2d 522 (1973); see also *Nationwide Mut. Ins. v. Howard*, 288 S.C. 5, 339 S.E.2d 501 (1985). Any policy provision in Respondent's policy that limits the Legislature's mandatory portable coverage must be declared void. "A policy of automobile insurance must provide at least the minimum amount of coverage outlined in the statute, and 'a policy issued pursuant to the law which gives less protection will be interpreted by the court as supplying the protection which the legislature intended.'" *Carter v. Standard Fire Ins. Co.*, 406 S.C. 609 (2013) (quoting *Kay v. State Farm Mut. Auto. Ins. Co.*, 349

S.C. 446, 450, 562 S.E.2d 676, 678 (Ct. App.2002)); *Jackson v. State Farm Mutual Auto. Ins. Co.*, 288 S.C. 335, 342 S.E.2d 603 (1986); and *Giles v. Whitaker*, 297 S.C. 267, 376 S.E.2d 278 (1989). Therefore, the minimum limits UIM coverage on this policy cannot be excluded by Respondent. Nationwide's policy endorsement language that purports to exclude it for Danny Knight must be declared void.

2. Section 38-77-340, a provision that sets forth procedures allowing automobile insurance companies to exclude liability insurance coverage to a resident relative, does not authorize them to also exclude mandatory minimum, portable UM and UIM coverages those family members.

The South Carolina Legislature permits automobile insurance companies to make policy endorsement agreements with insureds to exclude *liability* insurance coverage for resident relatives. The procedures for entering such *liability* insurance coverage exclusions are set forth in Section 38-77-340.

Notwithstanding the definition of "insured" in Section 38-77-30, the insurer and any named insured must, by the terms of a written amendatory endorsement, the form of which has been approved by the director or his designee, agree that coverage under such a *policy of liability insurance* shall not apply while the motor vehicle is being operated by a natural person designated by name.

S.C. Code Ann. § 38-77-340 (emphasis added). This Section only relates to *liability coverage*. However, Nationwide uses the endorsement over-broadly to exclude all coverages including mandatory, minimum, portable UM and UIM coverage.

When construing a statute, courts must determine the intent of the legislature. See *Horn v. Davis Elec. Constructors, Inc.*, 307 S.C. 559, 563, 416 S.E.2d 634, 636 (1992). The words of a statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand its operation. See *First Baptist Church of Mauldin v. City of Mauldin*, 308 S.C. 226, 229, 417 S.E.2d 592, 593 (1992). One principle of statutory construction is that a court must assume the legislature intended to accomplish something through an enacted statute and did not engage in futile action. See *Purvis v. State Farm Mut. Auto. Ins. Co.*, 304 S.C. 283, 288, 403 S.E.2d 662, 666 (Ct. App. 1991). A statute ought to be read so that, "no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous, for the General Assembly obviously intended the statute to have some efficacy, or the legislature would not have enacted it into law." *CFRE, LLC v. Greenville Cnty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011).

The Order acknowledged that Section 38-77-340 was applicable only to, "a policy of liability insurance." However, the Court ruled that, "In this context . . . [it] must encompass all coverages provided to the policyholder because UIM coverage cannot be sold as a stand-alone policy." (R. p. 3) By lumping all coverages together, the Circuit Court overlooked the practical and public policy differences between liability coverage on the one hand, and UM and UIM coverage on the other. As

shown below, the distinctions must be considered to properly analyze the statutory language. Otherwise, the language of the statute does not make sense.

Obviously, the South Carolina Legislature understood the public policy distinctions between these types of coverages and the narrowly written statute section it enacted reflects it. The italicized phrase ("*a policy of liability insurance*") shows that Legislature meant to limit the exclusion permitted to liability coverage only. If the Legislature meant to grant insurance companies the authorization to exclude all coverages, the statute would simply say, "a policy of insurance shall not apply." Instead, Legislature included the limiting word "liability" after the words "policy of." An illustration how the word "liability" adds nothing to Nationwide's alleged interpretation of this Section follows:

policy of liability insurance shall not apply

The only logical reason the Legislature had for including the word "liability" after the words, "policy of" was to make clear that the excluded driver endorsement allowed is limited to just "liability coverage." Otherwise, the additional word, "liability" after the words "policy of" serves no purpose. It is a nonsensical surplusage. Superfluous.

The Legislative intent to limit the allowed exclusion to just the liability insurance coverage is also indicated because the sentence also references *operation* of the insured vehicle. "[C]overage under such a policy of liability insurance shall not apply *while the motor vehicle is being operated*" S.C. Code Ann. § 38-77-340 (emphasis added) Under South Carolina public policy, liability insurance coverage follows the vehicle. UIM (and UM) coverage, on the other hand, follow the person.

UIM coverage follows the person; in others it follows the vehicle. We believe that South Carolina falls in the category where UIM coverage follows the person, as is the case with uninsured motorist ("UM") coverage. *Burgess v. Nationwide Mut. Ins. Co.*, 361 S.C. 196, 201-02, 603 S.E.2d 861 (S.C. App., 2004), *rev'd on other grounds*, 644 S.E.2d 40, 373 S.C. 37 (S.C., 2007). Liability insurance coverage is the only kind of automobile insurance coverage in a policy that is implicated by the *careless operation* of a motor vehicle (using the word the Legislature included in Section 38-77-340). Thus, by limiting the "coverage" exclusion allowed to persons operating the insured vehicle, the Legislature confirmed its intent to limit the allowed exclusion to just liability insurance coverage.

The purpose of allowing insurance companies to exclude liability coverage to some drivers makes sense as a public policy. It allows an insured and an insurance company to exclude a high risk resident

relative from the liability insurance coverage related to his operation of an insured vehicle. Thus, the named insured and company can set an affordable premium on the car insurance.

The purpose of this section is to "alleviate the problem often faced by the owner of a family policy, who . . . has a relatively safe driving record but is forced to pay higher premiums because another member of the family . . . is by definition also included in the policy coverage."

Lincoln General v. Progressive, 406 S.C. 534, 753 S.E.2d 437, 441

(S.C. Ct. App. 2013) (citation omitted). The primary benefit associated with excluding a driver on an automobile insurance policy relates to the liability insurance coverage risk implicated by operation of an insured vehicle by a high risk driver. On the other hand, there is little

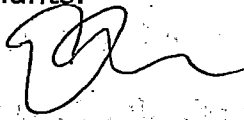
associated insurance risk of providing that same high risk driver portable UIM and UM coverage. UIM and UM coverages are only implicated when the negligence of a third party causes a collision.

Therefore, no public policy purpose of reduced premiums is served by expanding Section 38-77-340 to allow exclusion of portable UM and UIM coverages.

For all of the above reasons, Nationwide's endorsement that attempts to exclude portable UM and UIM coverages to resident relatives of their insureds is not authorized by Section 38-77-340 and violates South Carolina public policy.

CONCLUSION

For the reasons stated, this Court must reverse the judgment of the Circuit Court and remand the case with instructions to enter judgment in favor of Appellants.



October 2, 2017

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The State of South Carolina In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY

Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge

Case No. 2017-001348

NATIONWIDE INSURANCE COMPANY
OF AMERICA,

Respondent,

v.

KRISTINA KNIGHT, Individually and as
Personal Representative of
THE ESTATE OF DANIEL KNIGHT,

Appellants.

REPLY BRIEF OF APPELLANTS

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SC Court of Appeals

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ARGUMENT

Nationwide Insurance Company admits that despite the clear language of Section 38-77-340, a Section that allows a company to make a policy endorsement that excludes the *liability coverage* of a resident relative while using an insured vehicle, the company uses its excluded driver endorsement form to exclude not only such liability coverage, but "all coverages." (Respondent's Brief at 1) Thus, Nationwide confirmed this as an important public policy case. An order affirming summary judgment for Nationwide will eliminate the mandatory portable UM and UIM coverage of thousands of South Carolinians insured under Nationwide policies. (R. pp. 163-165). See *Hogan v. Home Ins. Co.*, 260 S.C. 157, 194 S.E.2d 890, 892 (1973) ("The present policy provision which excludes resident relatives of the named insured from uninsured motorist coverage except when occupying the vehicle described in the policy is clearly a limitation upon the broad coverage required by the statute and is, therefore, void."); *Boyd v. State Farm Mut. Auto. Ins. Co.*, 195 S.E.2d 706, 707, 260 S.C. 316 (S.C., 1973) ("It is settled law that statutory provisions relating to an insurance contract are part of the contract, and that a policy provision which contravenes an applicable statute is to that extent invalid.")

1. COURTS MUST LIBERALLY CONSTRUE THE AUTOMOBILE INSURANCE STATUTE AND STRICTLY CONSTRUE EXCEPTIONS AND EXCLUSIONS.

The statute directs the trial courts to "liberally construe[]" the statutory language "in order to achieve its purposes." S.C. Code Ann. § 38-77-20. The purpose of Title 38 is to insure automobile risk. Nationwide's broad policy exclusion undermines our State policy by limiting portable UM and UIM coverages of resident relative family members who are not even using a Nationwide insured vehicle. Because these portable coverages are mandatory under South Carolina public policy, Nationwide's overbroad policy exclusions are void and of no effect. The description of State public policy that Nationwide recommends this Court adopt constitutes a massive change of existing State policy. It would strip South Carolina families of currently existing portable UM and UIM coverages. Therefore, Nationwide's arguments about, and its characterizations of, South Carolina public policy must be viewed with skepticism and carefully scrutinized.

Nationwide's recommendation to change South Carolina public policy derives from its overbroad interpretation of the exclusion allowed under Section 38-77-340 of Title 38. However, the breadth of Nationwide's interpretation of this Section is inconsistent with principles used to interpret remedial statutes. That is because the Supreme Court requires a strict construction of "the exclusions

recognized in the statutes." *Pennsylvania Nat. Mut. Cas. Ins. Co. v. Parker*, 282 S.C. 546, 551, 320 S.E.2d 458 (S.C. App., 1984). See also *McPherson By and Through McPherson v. Michigan Mut. Ins. Co.*, 426 S.E.2d 770, 310 S.C. 316, 319 (S.C., 1992) ("rules of construction require clauses of exclusion to be narrowly interpreted, and clauses of inclusion to be broadly construed.")

2. SOUTH CAROLINA FAVORS A PUBLIC POLICY OF REMEDIAL UM AND UIM COVERAGE OF STATUTORY INSUREDS.

The central purpose of the UIM statute is to provide coverage when the injured party's damages exceed the liability limits of the at-fault motorist. *Cobb v. Benjamin*, 325 S.C. 573, 583, 482 S.E.2d 589, 594 (Ct. App.1997). "The UIM and UM statutes are remedial in nature and enacted for the benefit of injured persons; therefore, they should be construed liberally to effect the purpose intended by the Legislature." *Floyd v. Nationwide Mut. Ins. Co.*, 626 S.E.2d 6, 10, 367 S.C. 253 (S.C., 2005).

3. NATIONWIDE'S BRIEF INACCURATELY SETS FORTH SOUTH CAROLINA PUBLIC POLICY.

Nationwide's public policy argument for why UM and UIM coverages *must* be excluded by Section 38-77-340 (along with liability coverage) is set out in its brief at pages 8 through 10. Its articulation of public policy is unsupported by case law and conflicts with the

remedial purposes described above. The public policy argument made by the insurance company here is rambling and difficult to follow. However, the gist of Nationwide's argument is that when the liability coverage of an individual is excluded by policy endorsement all of the portable coverages (UM and UIM) in the same policy must also be excluded because an individual should not be permitted to obtain greater insurance coverage than what is provided to the community by the (excluded) liability insurance. At page 9, Nationwide provides an example that attempts to explain this alleged South Carolina public policy:

For example, a father might insure himself for liability coverage, but exclude the rest of his driving family from liability coverage to save premium expense. However, under Appellant's position, all of his excluded family members would still have coverage for themselves via uninsured or underinsured motorist coverage. Thus, they have effectively insured themselves with more coverage than they provide for the general public.

(Respondent's Brief at 9).

The only authority cited in support of this description of South Carolina public policy was S.C. Code Ann. § 38-77-160.¹ Nationwide incorrectly asserts that this Code Section, "mandates that UIM

¹ Nationwide cited no case law supporting its description of South Carolina public policy.

coverage *can only be purchased up to the limits* of the insured liability coverage." (Respondent's Brief at 8) (emphasis added).

Nationwide's claim about the mandate of Section 38-77-160 is incorrect. The Statute states as follows:

Automobile insurance carriers shall offer, at the option of the insured, uninsured motorist coverage up to the limits of the insured's liability coverage in addition to the mandatory coverage prescribed by Section 38-77-150. Such carriers *shall also offer*, at the option of the insured, *underinsured motorist coverage up to the limits of the insured liability coverage* to provide coverage in the event that damages are sustained in excess of the liability limits carried by an at-fault insured or underinsured motorist or in excess of any damages cap or limitation imposed by statute.

S.C. Code Ann. § 38-77-160 (emphasis added). The mandate here defines *the minimum* portable coverages an insurance company must offer ("up to the liability limits"). It in no way limits the right of an automobile insurance company to offer more portable coverage than a policy's liability limits. That South Carolina permits insurers to offer additional portable coverages beyond liability limits is made clear by the Motor Vehicle Financial Responsibility Act.

Additional coverage permitted. 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.

S.C. Code Ann. 56-9-20(d). *See also Universal Underwriters Ins. Co. v. Metropolitan Property and Life Ins. Co.*, 298 S.C. 404, 410, 380 S.E.2d 858 (S.C. App., 1989) ("The Act permits coverage beyond the mandated minimum limit.") Thus, contrary to Nationwide's claim, there is obviously no South Carolina public policy that prohibits an insurer from providing additional remedial portable coverage than the policy's liability coverage limits. Thus, Nationwide's claim that S.C. Code Ann. § 38-77-160 must prohibit UM and UIM coverage in excess of liability limits allowed because of the State public policy is simply an incorrect statement. To illustrate why Nationwide is wrong about this, we offer several examples.

4. UNLIKE LIABILITY INSURANCE COVERAGE, SOUTH CAROLINA MANDATES PORTABLE UM AND UIM COVERAGE BEYOND THE INSURED VEHICLE.

The first example of South Carolina public policy mandating more portable UM and UIM coverage than is required for liability coverage relates to the scope of our remedial, portable UM and UIM coverages. These remedial coverages extend beyond the mere use of the insured vehicle while the liability coverage follows the vehicle. In *Hogan v. Home Ins. Co.*, the South Carolina Supreme Court stated: "Unlike the provisions relative to liability coverage, the statute plainly affords uninsured motorist coverage to the named insured and resident relatives of his or her household *at all times and without*

regard to the activity in which they were engaged at the time. Such coverage is nowhere limited in the statute *to the use of the insured vehicle*, and cannot be so limited by the policy provisions." *Hogan v. Home Ins. Co.*, 260 S.C. 157, 161, 194 S.E.2d 890, 892 (1973) (emphasis added).

5. SOUTH CAROLINA REQUIRES MANDATORY STACKING OF PORTABLE UM AND UIM COVERAGE BUT STACKING OF LIABILITY INSURANCE IS NOT REQUIRED.

Another example of how the State requires greater portable UM and UIM coverages than the mandated the liability coverage obligation is illustrated by the concept of stacking. The remedial, portable coverages are treated differently than liability coverage under our public policy because they spring from different Sections of Title 38. "[S]tacking of uninsured and underinsured coverages, which are both statutorily required coverages, is governed specifically by statute. Construing specific statutory language, we have held an insured is entitled to stack underinsured or uninsured coverage in an amount no greater than the amount of coverage on the vehicle involved in the accident." *S.C. Farm Bureau Mut. Ins. Co. v. Mooneyham*, 304 S.C. 442, 405 S.E.2d 396 (1991) (citation omitted). On the other hand, stacking of liability coverage is *not* permitted.

In this case, we look to § 38-77-140 which mandates liability insurance in this State. This section requires coverage under a policy issued to the owner of a motor

vehicle for liability arising out of the ownership, maintenance, or use of that motor vehicle. Liability coverage, therefore, while statutorily required, is limited to the particular vehicle for which it is purchased. The extent of liability coverage is thus statutorily defined by the amount of coverage on the insured vehicle and does not encompass coverage applicable to other vehicles.

Ruppe v. Auto-Owners Ins. Co., 329 S.C. 402, 496 S.E.2d 631, 633 (1997). The stacking jurisprudence shows that the portable UM or UIM coverages *must be* stacked to multiple levels in South Carolina. However, stacking of the liability coverage limits, even for for multi-vehicle policies, is not required. Therefore, public policy *mandates* additional portable UM or UIM coverage in excess of the liability coverage. These two examples are well-established South Carolina public policies. Nationwide's Brief argues that Section 38-77-340 had to include "all coverages" because otherwise (under its view of public policy) the portable UM and UIM coverage might exceed the policy liability coverage limit. As shown above, Nationwide's interpretation of current South Carolina public policy is incorrect. Nationwide seeks a judicially significant change to South Carolina public policy, curtailing existing mandatory UM and UIM coverages required by Title 38.

6. NATIONWIDE'S PUBLIC POLICY ARGUMENT IS ILLOGICAL CONSIDERING THE DIFFERENCES BETWEEN LIABILITY COVERAGE AND THE REMEDIAL PORTABLE COVERAGES.

Nationwide's public policy theory—that an individual should not be permitted to obtain greater insurance for his family (via the

portable UM and UIM coverages) than what the liability policy on a particular policy of insurance on a vehicle provides to the general public—is also illogical. These two types of coverages are mutually exclusive. This is because the remedial, portable UM and UIM coverages arise only when an individual is injured by negligence of a third party. When UM and UIM coverage applies, the liability insurance coverage on the insured vehicle is irrelevant. Thus, the public is never exposed any additional threat by construing Section 38-77-340 as it was narrowly written and intended, an allowed exclusion that is limited to the *liability coverage* for a particular individual driving the insured vehicle.

An example of this in operation was the liability created by Randy Mincey's driving when he caused Danny Knight's death. The liability coverage on Mincey's policy was unrelated to Kristi Knight's automobile insurance policy. The only liability coverage implicated was the liability coverage *of the negligent third party*, Randy Mincey. That liability coverage was exhausted here before the UIM claim was made against Kristi Knight's Nationwide's policy.

**7. THE MOTOR VEHICLE FINANCIAL RESPONSIBILITY ACT
DEFINITIONS (TITLE 56) ARE INAPPLICABLE TO
INTERPRETING TITLE 38 STATUTES.**

Section 38-77-340 uses the terms "policy of liability insurance." Nationwide attempts to define this statutory language by reference to

the definitions found in Title 56, the Motor Vehicle Financial Responsibility Act (MVFRA). The MVFRA established the implied consent law, and rules the DMV uses for issuing drivers' licenses and vehicle license plates including minimum insurance requirements. See *Unisun Ins. Co. v. First Southern Ins. Co.*, 319 S.C. 419, 462 S.E.2d 260, 262 (S.C., 1995) ("Article One of Title 56 primarily concerns procedures relating to the licensing of motor vehicle drivers. It does not govern coverage under automobile insurance policies.") The relevant definitions applicable to interpreting this Title 38 statute are found in Title 38 at S.C. Code Ann. § 38-77-30.

The reason Nationwide takes us to the implied consent statute definitions is because the definitions the Legislature included for interpreting Title 38 support a narrower construction of Section 38-77-340. Title 38 definitions define the term, "policy," very broadly. See S.C. Code Ann. § 38-77-30(10.5). "Policy" under Title 38 includes all forms and types of automobile insurance coverage. The subsequent and modifying terms after the word policy ("of liability insurance"), are not defined under Title 38. However, the location of the words "of liability insurance" after a defined term "policy," clearly indicate that the modifying words are intended to narrow the scope of the exclusion allowed by Section 38-77-340. We addressed construction of the language thoroughly in our Brief. Nationwide does not rebut our

statutory construction analysis except by diverting the Court to the wrong set of definitions.

**8. NATIONWIDE'S EFFORT TO SHOEHORN THIS CASE INTO
LINCOLN GENERAL FAILS.**

From the beginning of this case we have conceded Nationwide's policy properly excluded the *liability* coverage. The *Answer* stated, "Defendants admit the policy excluded liability coverage for Kristina's husband Daniel Knight." (R. pp. 12, 14) In the memorandum filed with the trial court, we agreed that, "The Legislature does permit an insurance company and a named insured to exclude liability insurance by endorsement. The limitation allowed was limited to only liability insurance." (R. p. 55) And at page 7 of *Appellants' Brief* we agreed that, "The South Carolina Legislature permits automobile insurance companies to make policy endorsement agreements with insureds to exclude liability insurance coverage for resident relatives." (Appellants' Brief at 7) Nevertheless, Nationwide misconstrues our argument as follows: "Mrs. Knight essentially claims the endorsement cannot apply to coverage required by statute." (Respondent's Brief)

In order to bolster its position, Nationwide needs to pit us against *Lincoln General Ins. Co.* However, we have always agreed with the holding of *Lincoln General*. It stands for the proposition that Section 38-77-340 was enacted to permit exclusion of liability

coverage of individuals otherwise covered as statutory insureds while driving an insured vehicle.

An "insured" is statutorily defined to include the named insured and resident relative. S.C. Code Ann. § 38-77-30(7) (2002). As a result, resident relatives of the named insured are generally covered as an "insured" under the named insured's policy regardless of whether the named insured gave them permission to operate the covered vehicle.

Lincoln Gen. Ins. Co. v. Progressive N. Ins. Co., 406 S.C. 534, 753 S.E.2d 437, 440 (S.C. App., 2013). "Notwithstanding the definition of 'insured' in Section 38-77-30, the insurer and any named insured must, by the terms of a written amendatory endorsement, the form of which has been approved by the director or his designee, agree that coverage under such a policy of liability insurance shall not apply while the motor vehicle is being operated by a natural person designated by name." *Id.*

The facts of the *Lincoln General* case are as follows. Jennifer Strickland bought an automobile insurance policy on a vehicle from Progressive Northern Insurance Company. She also entered an agreement to exclude the *liability* coverage of her husband Avery Strickland while driving the vehicle. Unlike this case, Jennifer allowed Avery to drive the insured vehicle and he negligently caused a collision with a Lincoln General insured. Progressive, citing the exclusion of liability coverage allowed by Section 38-77-340, denied the *liability*

coverage on the vehicle. Lincoln General paid compensation pursuant to the uninsured motorist coverage provisions. It then brought a declaratory judgment action challenging Progressive's denial of *liability* coverage. Lincoln General argued the *liability* coverage of Avery was required by the MVFRA despite the proper exclusion of liability under Section 38-77-340. Ultimately, Progressive's policy exclusion of the *liability* coverage for Avery was upheld as an authorized exclusion under Section 38-77-340. We agree with the *Lincoln General* holding.

In its brief, Nationwide carelessly argued that the *Lincoln General* held the exclusion allowed by Section 38-77-340, "applies to all coverage under the policy, even when that coverage is mandated by statute." (Respondent's Brief) That is wrong. *Lincoln General* holds as follows:

The MVFRA does not permit recovery of minimum limits *liability coverage* on a motor vehicle *liability insurance policy* when a person named in a policy provision pursuant to section 38-77-340 is operating the motor vehicle and the requirements of the statute are satisfied because the policy "shall not apply" under those circumstances.
Id., 753 S.E.2d at 440 (emphasis added).

Kristi Knight and The Estate of Danny Knight have never argued that the exclusion of Danny from Kristi Knight's *liability coverage* on Kristi Knight's vehicle violated State public policy. We agree that such exclusions are authorized by Section 38-77-340. The issue here, on

the other hand, is whether the exclusion of a "policy of liability insurance" (quoting the statute) may be extended by Nationwide to exclude the mandatory, portable UIM coverage of Danny. That issue was neither raised nor addressed in *Lincoln General*. However, the court's policy discussion about why the exclusion was enacted (to lower premiums)² and the carefully limited language of the court's holding, suggests no.

9. THE APPROVAL OF NATIONWIDE'S EXCLUDED DRIVER ENDORSEMENT FORM BY THE SCDOI WAS NOT AN ENDORSEMENT OF ITS VALIDITY.

Nationwide's brief states that the South Carolina Department of Insurance (SCDOI) approved the use of its form to exclude all coverages. However, the approval of Nationwide's form through the SCDOI bureaucratic process does not constitute an endorsement of Nationwide's interpretation of Section 38-77-340.

The title of the form used by Nationwide, shown in the image below, is misleading.

² The purpose of this section is to "alleviate the problem often faced by the owner of a family policy, who . . . has a relatively safe driving record but is forced to pay higher premiums because another member of the family . . . is by definition also included in the policy coverage." *Id.*, 753 S.E.2d at 441.



Endorsement 3109A

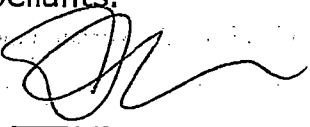
***Voiding Auto Insurance While Named
Person Is Operating Car***
(South Carolina)

The form's title tracks the language of the statute while the fine print in the body of the form states an exclusion denies all coverages. It is not surprising that such a form might be approved by non-lawyer employees of a busy State agency. Indeed, the SCDOI acknowledged that Nationwide's form was never reviewed by a SCDOI attorney. (R. p. 37). The form was one of thousands submitted by insurance companies. (R. p. 24). The SCDOI takes no position on issues of public policy raised by this case. (R. p. 24). Moreover, the agency's legal department is currently reviewing and vetting Nationwide's Endorsement 3109A to determine its validity in view of issues we raised by serving Appellants' deposition notice. (R. pp. 26-27)

CONCLUSION

For the reasons stated, this Court must reverse the judgment of the Circuit Court and remand the case with instructions to enter judgment in favor of Appellants.

October 2, 2017



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IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge

Appellate Case No. 2017-001348

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SC Court of Appeals

Nationwide Insurance Company of America.....Respondent

Kristina Knight, individually and as Personal Representative of the Estate of Daniel P. Knight
.....Appellant

RESPONDENT'S FINAL BRIEF

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STATEMENT OF THE ISSUE ON APPEAL

1. Was the trial court correct when it found that the Excluded Driver endorsement naming Daniel Knight, which was requested and signed by Kristi Call Knight, barred her claim for underinsured motorist ("UIM") benefits on behalf of the Estate of Daniel Knight?

STATEMENT OF THE CASE

This insurance coverage dispute is the product of an automobile accident that occurred on February 2, 2016. Appellant's decedent Daniel P. Knight was driving his motorcycle when he was involved in a collision with a vehicle operated by Randy Minley. Mr. Knight subsequently died as a result of injuries he sustained in the accident.

While the motorcycle that Mr. Knight was driving at the time of the accident was insured by another insurance company,¹ Nationwide Insurance Company of America (hereinafter "Nationwide") provided automobile insurance coverage to Kristi Call² for a different vehicle – a 1996 Ford Ranger – that was not involved in the accident. (R. p. 76). Daniel Knight was excluded from coverage at Mrs. Knight's written request (hereinafter "excluded driver endorsement"). (R. p. 74). At the time she applied for the policy, Mrs. Knight signed the excluded driver endorsement, which is entitled "Voiding Auto Insurance While Named Person Is Operating Car." (R. p. 74). The endorsement states, "With this endorsement, *all* coverages in your policy are not in effect while Danny Knight is operating

¹ Appellant represents that Daniel Knight was paid liability insurance benefits by Minley's liability insurer and underinsured motorist benefits by his motorcycle's insurer.

² Kristi and Daniel were not married at the time she purchased the Nationwide policy, which was issued with "Kristi Call" as the named insured. When she executed the endorsement, she signed it as "Kristi Call." By the time of the accident, she and Mr. Knight were married and she is referred to as "Mrs. Knight" in the remainder of this brief.

any motor vehicle.” (Id.) (emphasis added). When she applied for the policy and signed the excluded driver endorsement, Mrs. Knight represented that Mr. Knight had “obtained insurance or other security to operate motor vehicles.”³ (Id.)

There is no dispute that Mrs. Knight executed the excluded driver endorsement and that she represented to Nationwide that Mr. Knight had obtained other insurance. (R. p. 74; p. 13, ¶11). Nor is there any dispute that Mr. Knight actually had other insurance coverage at the time of the execution of the endorsement. (R. p. 8, ¶ 9; p. 13, ¶ 5). Mrs. Knight signed the excluded driver endorsement, thus Mr. Knight was listed as an excluded driver on the policy at the time of the February 2, 2016 accident. Therefore, there are no disputed issues of material fact in this case, and the trial court properly decided the cross-motions for summary judgment in favor of Nationwide.

Nationwide filed a motion for summary judgment on March 9, 2017. The Appellant filed a cross-motion for summary judgment on April 13, 2017. The trial court held a hearing on the matter on May 22, 2017. The Order granting Nationwide’s motion and denying Knight’s cross-motion was signed and filed on May 26, 2017. The Appellant filed her notice of appeal on June 12, 2017.

ARGUMENT

By enacting S.C. Code Anni. § 38-77-340, the General Assembly permitted the use of excluded driver forms in automobile insurance policies issued in the State of South Carolina. Nationwide’s excluded driver endorsement states in plain and unambiguous terms that “all coverages” in the policy are not in effect while “Danny Knight is operating

³ Although it is not necessary for Nationwide to confirm the veracity of this representation, United Financial Cas. Co. v. Bostic, 782 F. Supp. 2d 179 (D.S.C. 2011), the appellant has conceded that this was a true statement.

any motor vehicle.” (R. p. 74). The policy defines “motor vehicle” to include land motor vehicles “designed primarily to be driven on public roads.” (R. p. 99). Mr. Knight’s motorcycle was a land motor vehicle “designed primarily to be driven on public roads.” Therefore, the exclusion applies and the Nationwide policy does not extend *any* coverage – including UIM coverage – for injuries Mr. Knight sustained while operating a motor vehicle.

I. The Excluded Driver Endorsement complies with every requirement of South Carolina Code § 38-77-340.

South Carolina’s excluded driver statute allows for the exclusion of a specific person from the coverage afforded by the policy if certain directives are followed:

Notwithstanding the definition of “insured” in Section 38-77-30, the insurer and any named insured must, by the terms of a written amendatory endorsement, the form of which has been approved by the director or his designee, agree that coverage under such a policy of liability insurance shall not apply while the motor vehicle is being operated by a natural person designated by name. The agreement, when signed by the named insured, is binding upon every insured to whom the policy applies and any substitution or renewal of it. However, no natural person may be excluded unless the named insured declares in the agreement that (1) the driver’s license of the excluded person has been turned in to the Department of Motor Vehicles or (2) an appropriate policy of liability insurance or other security as may be authorized by law has been properly executed in the name of the person to be excluded.

S.C. Code Ann. § 38-77-340. In sum, an excluded driver form is valid and enforceable when the form has been approved by the South Carolina Department of Insurance, the endorsement names the excluded driver, and the named insured declares either that the named excluded driver has turned in his license to the DMV or the named excluded driver has an appropriate policy of liability insurance. Once these elements are satisfied – as is

the case here – “coverage under the policy shall not apply” when the excluded driver is operating any motor vehicle.

A. The South Carolina Department of Insurance approved Nationwide’s Excluded Driver Form endorsement.

The first element required for application of § 38-77-340 is that the form must be approved by the South Carolina Department of Insurance. The South Carolina Department of Insurance approved Nationwide’s use of the excluded driver endorsement (Form V-3109-A) on January 28, 2010, with an effective date of January 22, 2010. (R. pp. 123-128).⁴ Thus, Nationwide’s endorsement satisfies the first requirement of § 38-77-340.

B. The Excluded Driver Endorsement names Mr. Knight as the excluded driver, and Mrs. Knight represented on the form that Mr. Knight had an appropriate policy of liability insurance.

The excluded driver endorsement also satisfies the second and third requirements of the statute. The second requirement under § 38-77-340 is that the excluded driver endorsement name the person to be excluded. “Danny Knight” is clearly named as the “excluded person.” (R. p. 74). Lastly, § 38-77-340 requires the named insured – Mrs. Knight – to represent on the form that the excluded driver had turned in his license to the State Highway Department or obtained other appropriate insurance. Here, Mrs. Knight marked the space indicating that Mr. Knight had obtained insurance or other security to operate motor vehicles. (R. p. 74). Therefore, Nationwide’s excluded driver endorsement satisfies each of the elements of § 38-77-340.

⁴ The System for Electronic Rate and Form Filing (SERFF) is managed by the National Association of Insurance Commissioners as a method for facilitating the submission, review and approval of product filings between regulators – such as the South Carolina Department of Insurance – and insurance companies.

II. Despite Appellant's arguments to the contrary, the Excluded Driver Endorsement applies to all coverage under the policy, including Underinsured Motorist Coverage.

Knight erroneously argues that the Nationwide policy does not and cannot exclude UIM coverage because § 38-77-340 only applies to liability coverage. However, neither the statute nor the endorsement supports Mrs. Knight's position. The unambiguous endorsement applies to every coverage afforded by the policy: "With this endorsement, *all* coverages in your policy are not in effect while Danny Knight is operating *any* motor vehicle." (emphasis added). Because the endorsement clearly applies to the entire policy, the only question is whether the exclusion is authorized by the statute. Section 38-77-340 states that "a policy of liability insurance" will not be in effect when a vehicle is being driven by the excluded driver. Upon a cursory review one might conclude, as Appellant suggests, that only liability coverage can be the subject of an excluded driver endorsement. But a closer reading reveals that the statute does not refer to liability coverage; it refers to a "policy of liability insurance." As the trial court found, a "policy of liability insurance" must incorporate every single type of coverage that is part of the policy "because UIM coverage cannot be sold as a stand-alone policy." (R. p. 3). *See also* S.C. Code Ann. §38-77-160.⁵

The General Assembly established a structure for automobile insurance whereby a particular "coverage" is only a subpart of the whole policy of insurance to which the

⁵ Section 38-77-160 requires that "Such [automobile insurance] carriers shall also offer, at the option of the insured, underinsured motorist coverage up to the limits of the insured liability coverage...." Thus, UIM coverage cannot be sold separate from liability coverage because there would be no way to determine the maximum limit of allowable coverage.

specific coverage is attached. UIM coverage is one type of coverage that is attached to a broader insurance policy. The legislature chose to refer to the whole policy as a “liability policy.” This is made clear by § 56-9-20(5) which defines “Motor Vehicle Liability Policy” to include a policy with any of the coverages described in S.C. Code Ann. §§38-77-140 – 38-77-230. A variety of types of coverage are established in those code sections and UIM coverage is dealt with in § 38-77-160, which means that UIM coverage is plainly within the scope of a “Motor Vehicle Liability Policy.” Thus, the legislature has demonstrated that “liability policy” refers to the complete automobile insurance policy regardless of which type of coverage is implicated in a particular claim.

Second, in arguing against the application of Nationwide’s endorsement, Mrs. Knight contends that it does not apply because Mr. Knight was a statutory insured, i.e. her resident relative. Mrs. Knight essentially claims the endorsement cannot apply to coverage required by statute.⁶ However, this Court already addressed the application of an excluded driver endorsement to mandatory coverage in *Lincoln General Ins. Co. v. Progressive Northern Ins. Co.*, 406 S.C. 534, 753 S.E.2d 437 (Ct. App. 2013), and held the exclusion applies to all coverage under the policy, even when that coverage is mandated by statute.

⁶ Of course, UIM coverage is not mandatory despite Appellant’s efforts to convert “personal and portable” coverage into statutorily mandated coverage. Appellant erroneously cites to this Court’s decision in *Burgess v. Nationwide Mut. Ins. Co.*, 361 S.C. 196, 603 S.E.2d 861 (Ct. App. 2004), *rev’d*, 373 S.C. 37, 644 S.E.2d 40 (2007). While the *Burgess* opinion notes that uninsured coverage is mandatory and favorably compares treatment of uninsured coverage to that of UIM coverage for some purposes, the opinion does not override §38-77-160, which makes UIM coverage optional at the request of the insured.

The named insured in *Lincoln General* – like Mrs. Knight here – identified her husband as an excluded driver under the policy and executed an excluded driver endorsement. *Id.* at 537, 753 S.E.2d at 438-39. Later, the husband was driving an insured vehicle when he caused an accident. *Id.* Progressive relied on the endorsement and denied liability coverage to the husband. The plaintiff⁷ claimed Progressive's excluded driver endorsement could not operate as a bar against collection of the statutorily required minimum limits of liability coverage. *Id.* at 538, 753 S.E.2d at 439. The trial court agreed, and granted Lincoln General's motion for summary judgment. *Id.*

This Court reversed and rejected the argument that an excluded driver endorsement could not exclude statutorily required coverage: "Here, Progressive is not required to provide minimum limits. The named driver endorsement statute says that, '[n]otwithstanding the definition of 'insured' in Section 38-77-30, ... a policy of liability insurance shall not apply' when the named driver is operating the vehicle." *Id.* at 541, 753 S.E.2d at 441 (emphasis in original). Therefore, "an insurer's obligation to provide minimum limits for 'insureds' is *inapplicable* when the person named in the endorsement is driving and the statute's remaining requirements are satisfied." *Id.* (emphasis added).

Just like Progressive's exclusion, Nationwide's excluded driver endorsement follows the language of the statute. "[A]ll coverages in your policy are not in effect while Danny Knight is operating any motor vehicle." (R. p. 74). Because Knight was operating a motor vehicle at the time of the accident, the policy was not in effect when the accident

⁷ In that case the plaintiff, Lincoln General, was the uninsured motorist coverage provider of the people injured in the accident. Lincoln General sued Progressive claiming subrogation rights and asserted that the excluded driver endorsement was invalid under the facts at issue in that case.

occurred. Knight's estate cannot collect UIM benefits from a policy that was not in effect at the time of the accident. Therefore, Nationwide was entitled to summary judgment in its favor and the trial court's order should be affirmed.

III. Allowing Mr. Knight's estate to collect UIM coverage from a policy in which he is excluded from liability coverage violates the public policy of South Carolina.

Contrary to Appellant's argument, the public policy of South Carolina does not favor the disregard of Nationwide's unambiguous endorsement in this context. In fact, if the Court allows the Knight Estate to collect UIM coverage from Nationwide, the Court would permit an inequity that South Carolina insurance law does not support.

South Carolina adopted the Motor Vehicle Financial Responsibility Act for the purpose of mandating financial protection to injured third-parties. As the Supreme Court stated in *Factory Mut. Liab. Ins. Co. of Am. v. Kennedy*, 256 S.C. 376, 380, 182 S.E.2d 727, 729 (1971), liability insurance not only affords protection to the insured motorists,

it serves the public purpose of affording protection to innocent victims of motor vehicle accidents. In recognition of this important public purpose, the legislatures of some states have enacted compulsory liability insurance laws. Others, including our General Assembly, have sought protection for highway victims, short of compulsory insurance, by the enactment of financial responsibility and uninsured motorist statutes.

Id. at 380, 182 S.E.2d at 729. The General Assembly also made it clear in §38-77-160 that South Carolina's drivers should not be allowed to protect themselves with UIM coverage in an amount greater than the liability coverage purchased to protect the general public. This statute mandates that UIM coverage can only be purchased "up to the limits of the insured liability coverage...." If Knight's Estate is allowed to collect UIM coverage from

a policy where he is not afforded liability coverage, this important public policy is thwarted because Knight is protected from accidental injuries he may sustain but he has not protected the public to the same extent – or even at all.

In fact, the Supreme Court has already opined that allowing the excluded driver endorsement is to “alleviate the problem often faced by the owner of a family policy, who ... has a relatively safe driving record but is forced to pay higher premiums because another member of the family ... is by definition also included in the policy coverage.” *Lovette v. U.S. Fid. & Guar. Co.*, 274 S.C. 597, 600, 266 S.E.2d 782, 783 (1980) (internal quotation marks omitted) (discussing predecessor statute). Allowing a policyholder to insure her family members for UIM coverage when she is unwilling to insure the public against her family’s potential for poor driving is certainly not what the Supreme Court or the legislature envisioned. Following the position endorsed by Knight would lead to absurd results when compared to the aforementioned statutory policies.

For example, a father might insure himself for liability coverage, but exclude the rest of his driving family from liability coverage to save the premium expense. However, under Appellant’s position, all of his excluded family members would still have coverage for themselves via uninsured or underinsured motorist coverage. Thus, they have effectively insured themselves with more coverage than they provide for the general public. This position is not justifiable in light of the State’s public policy which allows for the protection of self only to the extent you also protect the community. In fact, Appellant’s position actually harms the public interest by incentivizing the exclusion of drivers to create lower premiums, while still affording them first-party insurance benefits.

To the extent that Appellant's "personal and portable" argument is based on the expressions of public policy about that topic, the argument is a distortion of the policy in light of the overall purpose of the MVFRA statutory scheme. Appellant's argument is also contrary to the language of S.C. Code Ann. § 38-77-340 and the explicit finding of this Court concerning the policy behind that statute. First, the personal and portable nature of UIM coverage applies only to those who are actually insured by the policy. Appellant argues that Mr. Knight is an insured because he was Mrs. Knight's resident spouse. But for the excluded driver endorsement this would be a true statement. However, Appellant's argument fails because the endorsement modifies the statutory definition of "insured." S.C. Code Ann. § 38-77-340 ("Notwithstanding the definition of "insured" in Section 38-77-30...."). This Court recognized that the legislature allows a policyholder and an insurance company to modify the definition of "insured" in this context by agreement.

Thus, "the legislative expression of the public policy of the State as revealed in the various motor vehicle insurance statutes" specifies that an insurer's obligation to provide minimum limits for "insureds" is inapplicable when the person named in the endorsement is driving and the statute's remaining requirements are satisfied. Because the policy is not in effect when the named driver is operating the vehicle and such an endorsement is part of our state's public policy, the MVFRA's mandate that "[t]he liability of the insurance carrier with respect to the insurance required by this chapter shall become absolute whenever injury or damage covered by the motor vehicle liability policy occurs" does not apply.

Lincoln General, 406 S.C. at 541, 753 S.E.2d at 441.⁸ Again, when a policyholder can

⁸ Nationwide respectfully contends that this Court's opinion in *Burgess* is not persuasive authority because it was reversed by the Supreme Court. However, to the extent that the logic in that decision remains influential, this Court found that the personal and portable coverage is only available to a "person who enjoys the status of an insured under a motor vehicle policy of insurance...." *Burgess*, 361 S.C. at 202, 603 S.E.2d at 865. Because Mrs.

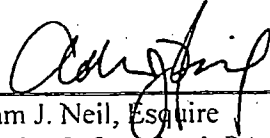
exclude a statutory insured for mandatory liability coverage, the same exclusion must be enforced as to optional UIM coverage.

CONCLUSION

The trial court properly granted Nationwide's Motion for Summary Judgment, and its decision should be affirmed. First, Nationwide's excluded driver endorsement meets all statutory requirements imposed by the legislature. Second, it is undisputed that Mrs. Knight signed the excluded driver endorsement and identified Mr. Knight as an individual to be excluded for *all* coverages provided by Nationwide's policy while he was operating any motor vehicle. Third, the broad statutory scheme indicates that the General Assembly never intended for the excluded driver endorsement to apply only to liability coverage. Finally, the State's public policy, which prohibits a driver from insuring himself for more than he insures against his liability to the public, supports the application of the excluded driver endorsement to UIM coverage, not just liability coverage. Therefore, considering the plain terms of Nationwide's endorsement and Mrs. Knight's decision to reject any coverage for Mr. Knight, "all coverages" in the Nationwide policy were "not in effect" at the time of the accident. Respectfully, this Court should affirm the trial court's decision declaring that Nationwide owes no UIM benefits to Mr. Knight's estate because of the February 2, 2016 accident.

Knight chose to modify the definition of "insured" in her policy to exclude Mr. Knight, he did not have insured status under the policy.

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SC Court of Appeals

APPEAL FROM GREENVILLE COUNTY
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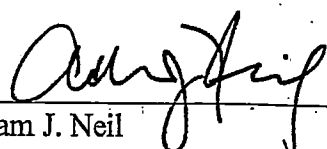
Appellate Case No. 2017-001348

Nationwide Insurance Company of America.....Respondent

Kristina Knight, individually and as Personal Representative of the Estate
of Daniel P. Knight.....Appellant

PROOF OF SERVICE

I certify that I have served the Respondent's Final Brief on Appellant, by depositing a copy of it in the United States Mail, postage prepaid, on October 4, 2017, addressed to his attorney of record, Edwin L. Turnage, Post Office Box 6263, Greenville, South Carolina 29606.


Adam J. Neil

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM GREENVILLE COUNTY
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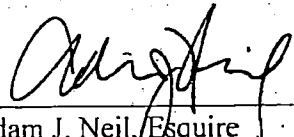
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Nationwide Insurance Company of America.....Respondent

Kristina Knight, individually and as Personal Representative of the Estate
of Daniel P. Knight.....Appellant

CERTIFICATE OF COMPLIANCE

I, Adam J. Neil, Esquire, attorney for Respondent, certify that the Respondent's Final Brief complies with the South Carolina Supreme Court Order of August 13, 2007 and Rule 211(b) of the South Carolina Court Rules.


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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Nationwide Insurance Company of America,
Respondent,

v.

Kristina Knight, individually and as Personal
Representative of the Estate of Daniel P. Knight,
Appellant.

Appellate Case No. 2017-001348

Appeal From Greenville County
William H. Seals, Jr., Circuit Court Judge

Opinion No. 5685

Heard June 4, 2019 – Filed October 2, 2019

AFFIRMED

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Wesley Brian Sawyer and Adam J. Neil, both of Murphy
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MCDONALD, J.: In this declaratory judgment action to determine whether underinsured motorist (UIM) coverage exists under an automobile insurance policy, Kristina Knight (Knight), individually and as personal representative of the estate of Daniel Knight (Decedent), appeals the circuit court's order granting summary judgment to Nationwide Insurance Company of America (Nationwide). Knight argues South Carolina's excluded driver statute, section 38-77-340 of the

South Carolina Code (2015), and public policy considerations prohibit an insurer from excluding a resident relative from uninsured motorist (UM) or underinsured motorist (UIM) coverage, even when the policyholder has executed an endorsement intentionally excluding the resident relative from "all coverages in [the] policy." We affirm the circuit court's order granting summary judgment.

Facts and Procedural History

On May 22, 2014, Knight applied for a Nationwide automobile insurance policy (the Policy) and completed an endorsement (Excluded Driver Endorsement) listing Decedent as an individual excluded from coverage under the Policy.¹ The Excluded Driver Endorsement states, "With this endorsement, all coverages in your policy are not in effect while Danny Knight is operating any motor vehicle." Knight signed this page, on which she also checked the box confirming "the excluded person has obtained insurance or other security to operate motor vehicles."

On December 4, 2015, Nationwide issued the Policy to Knight, who was then engaged to Decedent. The Policy insured a 1996 Ford Ranger and was effective from December 4, 2015, through June 4, 2016. Decedent and Knight married later in December 2015.

On February 2, 2016, a vehicle struck and killed Decedent while he was riding his motorcycle. Decedent's estate collected from the at-fault driver's liability coverage, Decedent's motorcycle policy, and Decedent's UIM coverage from his own automobile policy. Knight subsequently made a claim with Nationwide, seeking to stack her Policy's UIM limits with the other coverages. It is undisputed that the damages here exceed the coverage limits of the Policy.

Nationwide filed a declaratory judgment action seeking a declaration "that it is not required to provide any coverage, including but not limited to underinsured motorist coverage," for any claim "made on account of the February 2, 2016 accident." Knight answered and counterclaimed for breach of contract.

Nationwide moved for summary judgment; Knight filed a cross motion for summary judgment, arguing Nationwide's "insurance policy and [Excluded Driver] endorsement violate the public policy of the State of South Carolina." The circuit

¹ The title "Voiding Auto Insurance While Named Person is Operating Car" appears at the top of the Excluded Driver Endorsement.

court heard the motions on May 22, 2017, and subsequently granted Nationwide's motion for summary judgment.

Standard of Review

"Because declaratory judgment actions are neither legal nor equitable, the standard of review depends on the nature of the underlying issues." *Goldston v. State Farm Mut. Auto. Ins. Co.*, 358 S.C. 157, 166, 594 S.E.2d 511, 516 (Ct. App. 2004).

"When the purpose of the underlying dispute is to determine whether coverage exists under an insurance policy, the action is one at law." *Williams v. Gov't Employees Ins. Co. (GEICO)*, 409 S.C. 586, 593, 762 S.E.2d 705, 709 (2014) (quoting *S.C. Farm Bureau Mut. Ins. Co. v. Kennedy*, 398 S.C. 604, 610, 730 S.E.2d 862, 864 (2012)).

"The purpose of summary judgment is to expedite the disposition of cases not requiring the services of a fact finder. When reviewing the grant of a summary judgment motion, this court applies the same standard that governs the trial court under Rule 56(c), SCRPC." *Lincoln Gen. Ins. Co. v. Progressive N. Ins. Co.*, 406 S.C. 534, 538, 753 S.E.2d 437, 439 (Ct. App. 2013) (quoting *Nakatsu v. Encompass Indem. Co.*, 390 S.C. 172, 177, 700 S.E.2d 283, 286 (Ct. App. 2010)).

"Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." *Id.* (citing Rule 56(c), SCRPC).

Law and Analysis

"An insurance policy is a contract between the insured and the insurance company, and the terms of the policy are to be construed according to contract law." *Auto Owners Ins. Co. v. Rollison*, 378 S.C. 600, 606, 663 S.E.2d 484, 487 (2008). "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. "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 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.

"[S]tatutes relating to an insurance contract are generally part of the contract as a matter of law. To the extent a policy conflicts with an applicable statute, the

statute prevails." *Lincoln Gen. Ins.*, 406 S.C. at 539, 753 S.E.2d at 439-40 (citation omitted). "The words of a statute must be given their plain and ordinary meaning without resorting to subtle or forced construction." *Jones v. State Farm Mut. Auto. Ins. Co.*, 364 S.C. 222, 231, 612 S.E.2d 719, 724 (Ct. App. 2005). "A court should not consider a particular clause in a statute as being construed in isolation, but should read it in conjunction with the purpose of the whole statute and the policy of the law." *Id.* at 232, 612 S.E.2d at 724.

South Carolina's excluded driver statute, § 38-77-340, provides:

Notwithstanding the definition of "insured" in Section 38-77-30, the insurer and any named insured must, by the terms of a written amendatory endorsement, the form of which has been approved by the director or his designee, agree that coverage under such a policy of liability insurance shall not apply while the motor vehicle is being operated by a natural person designated by name. The agreement, when signed by the named insured, is binding upon every insured to whom the policy applies and any substitution or renewal of it. However, no natural person may be excluded unless the named insured declares in the agreement that (1) the driver's license of the excluded person has been turned in to the Department of Motor Vehicles or (2) an appropriate policy of liability insurance or other security as may be authorized by law has been properly executed in the name of the person to be excluded.

S.C. Code Ann. § 38-77-340 (2015). "The purpose of this section is to alleviate the problem often faced by the owner of a family policy, who . . . has a relatively safe driving record but is forced to pay higher premiums because another member of the family . . . is by definition also included in the policy coverage." *Lincoln Gen. Ins.*, 406 S.C. at 541, 753 S.E.2d at 441 (alterations in original) (quoting *Lovette v. U.S. Fid. & Guar. Co.*, 274 S.C. 597, 600, 266 S.E.2d 782, 783 (1980)).

An automobile insurance company, in setting its rates, bases those rates at least in part on the probabilities involving the insured and the vehicle(s) he is insuring. Where, as here, the vehicle is not insured by the company from whom coverage is sought, the carrier cannot

accurately calculate its risks. It is one thing to insure against "unknowable" risks, such as the chance that one will be injured by an underinsured at-fault driver while a passenger in another's vehicle, or as a pedestrian; it is an entirely different calculus where a company's insured owns and operates a motor vehicle, *especially a motorcycle*, not insured by the carrier making its risk assessments.

Burgess v. Nationwide Mut. Ins. Co., 373 S.C. 37, 42, 644 S.E.2d 40, 43 (2007) (emphasis added).

Knight argues the plain language of § 38-77-340 contemplates an exclusion from liability coverage only and the application of the excluded driver endorsement to UIM coverage violates South Carolina's "strong, remedial public policy requiring insurance companies who write automobile insurance in this State to provide portable [uninsured] and [underinsured motorist] coverages to insureds and their families." However, as the circuit court aptly noted, "UIM coverage is not mandatory in South Carolina." *See e.g.*, S.C. Code § 38-77-160 (2015) (requiring that automobile insurance "carriers shall also offer, at the option of the insured, underinsured motorist coverage up to the limits of the insured liability coverage to provide coverage in the event that damages are sustained in excess of the liability limits carried by an at-fault insured or underinsured motorist or in excess of any damages cap or limitation imposed by statute."). UIM coverage is sold as optional "additional coverage" with a motor vehicle liability policy; thus, certain definitions provided within Title 38, "Insurance," and Title 56, "Motor Vehicles," are helpful to our analysis.

While Title 38 does not define "policy of liability insurance" (as referenced in § 38-77-340), Title 56's Motor Vehicle Financial Responsibility Act (MVFRA)² defines a "motor vehicle liability policy" as

(5) An owner's or operator's policy of liability insurance that fulfills all the requirements of Sections 38-77-140 through 38-77-230, certified as provided [in Title 56] and issued, except as otherwise provided by Section 56-9-560, by an insurance carrier duly authorized to transact

² §§ 56-9-10 to -630 of the South Carolina Code (2018).

business in this State, to or for the benefit of the person or persons named therein as insured, and any other person, as insured, using the vehicle described therein with the express or implied permission of the named insured, and subject to the following special conditions:

...
(d) Additional coverage permitted: Any policy which grants the coverage required by 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.^[3]

S.C. Code Ann. § 56-9-20(5) (2018). Section 38-77-160, referenced in the MVFRA definition, addresses the UIM coverage that may be purchased as "Additional coverage" with the purchase of a motor vehicle liability policy. Although Title 38 does not define "motor vehicle liability policy," section 38-77-30(1) (2015) defines "Automobile insurance" as

automobile bodily injury and property damage liability insurance, including medical payments and uninsured motorist coverage, and automobile physical damage insurance such as automobile comprehensive physical damage, collision, fire, theft, combined additional coverage, and similar automobile physical damage insurance and economic loss benefits as provided by this chapter written or offered by automobile insurers. An automobile insurance policy includes a motor vehicle

³ Our court has referenced this definition in explaining that "so long as the mandatory minimum coverage limits are met, an insurer may provide reasonable limitations on optional coverage." *Nationwide Mut. Fire Ins. Co. v. Walls*, Op. No. 5653 (S.C. Ct. App. filed June 5, 2019) (Shearouse Adv. Sh. No. 23 at 15).

policy as defined in item (7)^[4] of Section 56-9-20 and any nonowner automobile insurance policy which covers an individual private passenger automobile not owned by the insured, a family member of the insured, or a resident of the same household as the insured.

S.C. Code Ann. § 38-77-30(1) (2015). Section 38-77-30(10.5) defines a "Policy of automobile insurance" or "policy" as

a policy or contract for bodily injury or property damage liability insurance issued or delivered in this State covering liability arising from the ownership, maintenance, or use of any motor vehicle, insuring as the named insured one individual or husband and wife who are residents of the same household

Finally, section 38-77-30(15) defines "Underinsured motor vehicle" as "a motor vehicle as defined in [this section] 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 [providing minimum limits] and the amount of the insurance or bond is less than the amount of the insureds' damage." "UIM coverage is entirely voluntary, and permits insureds, at their option, to purchase insurance coverage for situations where they are injured by an at-fault driver who does not carry sufficient liability insurance to cover the insureds' damages."

Burgess, 373 S.C. at 42, 644 S.E.2d at 43.

We find that to interpret § 38-77-340 to allow for the intentional exclusion of a resident relative from liability coverage, but not UIM coverage offered as optional, "additional coverage" in conjunction with the same liability policy, would impose a forced construction of the statute not intended by the General Assembly. *See Jones*, 364 S.C. at 231, 612 S.E.2d at 724 ("The words of a statute must be given their plain and ordinary meaning without resorting to subtle or forced construction."). In enacting § 38-77-340, the Legislature empowered consumers to choose to limit their coverage—and corresponding premium—within applicable

⁴ "Presumably, the South Carolina General Assembly intended to amend this section reference to read "item (5)." In the 1991 Code, item 7 defines motor vehicle liability policy." *Goldston*, 358 S.C. at 177 n.4, 594 S.E.2d at 522 n.4. However, in the 2018 Code, item 5 defines "motor vehicle liability policy" while item 7 defines "nonresident operating privilege."

statutory constraints. In exercising this option, Knight likely paid a lesser premium—serving the purpose the Legislature sought to achieve through § 38-77-340. See *Lincoln Gen. Ins.*, 406 S.C. at 541, 753 S.E.2d at 441 ("The purpose of [section 38-77-340] is to 'alleviate the problem often faced by the owner of a family policy, who . . . has a relatively safe driving record but is forced to pay higher premiums because another member of the family . . . is by definition also included in the policy coverage.'" (alteration in original) (quoting *Lovette*, 274 S.C. at 600, 266 S.E.2d at 783)).

Accordingly, we find the Excluded Driver endorsement validly excluded Decedent from the UIM coverage Knight now seeks to stack. See *Lincoln Gen. Ins.*, 406 S.C. at 547, 753 S.E.2d at 444 (finding "the named driver endorsement statute 'is not inhibited by' the MVFRA's public policy because it constitutes separately approved public policy. While the MVFRA protects the public, the named driver endorsement statute 'protects, in limited situations, the right of the parties to make their own contract.'" (citation omitted))

We affirm the circuit court's grant of summary judgment.

AFFIRMED.

LOCKEMY, C.J., and SHORT, J., concur.

The State of South Carolina In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY

Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge

Case No. 2017-001348

NATIONWIDE INSURANCE COMPANY
OF AMERICA,

Respondent,

v.

KRISTINA KNIGHT, Individually and as
Personal Representative of
THE ESTATE OF DANIEL KNIGHT,

Appellants.

Appellants' Motion for Rehearing, and Suggestion for Rehearing *En Banc*

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Attorney for Appellants

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Pursuant to Rules 219 and 221, SCACR, Appellants respectfully request a rehearing *en banc* related to the Court's October 2, 2019, Order. Rehearing *en banc* is needed to protect uniformity of precedent and because this is a case of exceptional importance affecting South Carolina public policy. Rehearing is required because the October 2, 2019, Order overlooked precedent and misapprehended Section 38-77-340.

This case arose when Respondent denied The Estate of Daniel Knight's¹ wrongful death, underinsured motorist coverage (UIM) claim arising from a motor vehicle collision. Respondent insured Kristina Knight's (Daniel Knight's spouse) vehicle, and provided UIM coverage on the automobile insurance policy. Respondent, by policy endorsement, excluded "all coverages in [Kristina Knight's] policy . . . while Daniel P. Knight is operating *any* motor vehicle." (ROA at 9) Respondent ostensibly based its exclusion on Section 38-77-340; however, that Section only allows an automobile insurance carrier to exclude coverage on a "policy of liability insurance." Appellants' believe that the exclusion under Section 38-77-340 permitted only exclusion of liability insurance coverage and did *not* allow insurance companies to exclude all other bodily injury coverages such as the required, remedial, personal and portable UIM coverage.

The Court's October 2, 2019, Order finds, "UIM coverage is not mandatory in South Carolina." (Order at 5). The Order holds that UIM is an optional, non-mandatory coverage subject to "reasonable limitations." (Order's footnote 3) Thus, the Order approves Respondent automobile insurance carrier's policy provision excluding all coverages, including the uninsured (UM) and UIM coverage as a reasonable limitation on "optional" coverage.

¹ It is undisputed that Daniel Knight was a Class I insured.

By holding that UIM is non-required, optional coverage that automobile insurers may reasonably limit, this Order disregards clear, explicit, and contradictory Supreme Court and Court of Appeals precedent. For example, the Order directly contradicts *Jackson v. State Farm Mut. Auto. Ins. Co.*, 288 S.C. 335, 337 n.1, 342 S.E.2d 603 (S.C., 1986) (Ness, J.), providing that UIM is required coverage: “Required coverage is coverage required to be provided *or required to be offered*.” *Id.* (emphasis added)² As noted in the attached memorandum, rehearing *en banc* is required because the October 2, 2019, Order disrupts the uniformity of long-standing precedent based upon *Jackson* and its progeny including this court’s decision *Nakatsu v. Encompass Indem. Co.*, 390 S.C. 172, 700 S.E.2d 283, 287 (S.C. App. 2010).

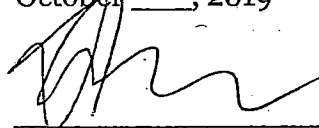
The Order also misapprehends the language of S.C. Code Ann. § 38-77-340 which allowed a limited exclusion for designated drivers, as to liability coverage only, while using a particular insured vehicle or vehicles. Section 38-77-340 nowhere permits insurers to also exclude required, personal and portable coverages, *i.e.*, required UM and UIM coverages.

Nationwide v. Knight involves a question of exceptional importance affecting public policy in our State. The Order erodes and overrules numerous cases protecting important remedial coverage mandated by our Legislature. It impacts thousands of South Carolina citizens. This exceptionally important case deserves a rehearing before the full court. For the reasons outlined in the accompanying memorandum in support, Appellants respectfully suggest rehearing *en banc* is needed to reconsider the October 2, 2019, Order. As stated above, rehearing *en banc* is needed to insure uniformity of

² Further authorities are cited in the attached memorandum of law.

precedent and further warranted to readdress the October 2, 2019, Order's misunderstanding of Section 38-77-340.

October 15, 2019



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The State of South Carolina In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY

Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge

Case No. 2017-001348

**NATIONWIDE INSURANCE COMPANY
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v.

**KRISTINA KNIGHT, Individually and as
Personal Representative of
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Appellants.

MEMORANDUM IN SUPPORT OF APPELLANTS' MOTION FOR REHEARING, AND SUGGESTION FOR REHEARING EN BANC

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Attorney for Appellants

This proceeding, affecting South Carolina public policy, involves a question of exceptional importance. The October 2, 2019, Order approves Respondent's exclusion of "all coverages" whether a designated driver is using a vehicle insured under the policy or not. This Court must grant *Appellants' Petition for Rehearing and Suggestion for Rehearing En Banc* to insure uniformity of precedent because the October 2, 2019, Order overlooks or directly contradicts and overrules important and long-standing South Carolina public policy cases requiring automobile insurers provide consumers certain minimal amounts of remedial, personal and portable, underinsured motorist (UIM) coverage. The court must also rehear this matter *en banc* to correct the October 2, 2019, Order's misapprehension or misinterpretation of the exclusion allowed by Section 38-77-340.

The Legislature enacted Section 38-77-340 as a limited exception to the general rule requiring automobile insurance policies provide for liability insurance coverage of all statutory insureds that might use an insured vehicle. By its terms, Section 38-77-340 allows automobile insurers and policy-holders, by agreement, to limit liability insurance for designated family members with regard to specified automobiles. The purpose of this exception is to reduce risks (and the associated higher premiums) related to the liability insurance coverage for a resident relative with a bad driving record. Under the exclusion permitted by Section 38-77-340, the automobile insurance company and its policy-holder agree that a designated person will not to drive an insured vehicle, and that the designated person will purchase his own automobile insurance policy. There is nothing in Section 38-77-340 that suggests that an automobile insurance carrier may also exclude other required coverages including personal and portable UM and UIM coverages.

1. Underinsured motorist coverage is required, remedial, personal, and portable coverage.

Appellants believe that UIM coverage is required coverage and its exclusion is *not* allowed by Section 38-77-340. The October 2, 2019, Order rejected that argument stating, “However, as the circuit court aptly noted, ‘UIM coverage is not mandatory in South Carolina.’” The Court cited to S.C. Code Ann. § 38-77-160 for this assertion, noting Section 38-77-160 only required automobile insurance companies to *offer* UIM coverage.¹ The October 2, 2019, Order then reasoned that because UIM is not mandatory, Respondent may subject it to a “reasonable limitation” (footnote 3). However, the Court’s assertion that UIM is not required coverage is contradicted by numerous South Carolina Supreme Court opinions. In *Jackson v. State Farm Mut. Auto. Ins. Co.*, 288 S.C. 335, 337 n.1, 342 S.E.2d 603 (S.C., 1986) (Ness, J.), the Supreme Court stated, “Required coverage is coverage required to be provided or required to be offered.” In *Ruppe v. Auto-Owners Ins. Co.*, 329 S.C. 402, 405, 496 S.E.2d 631, 632 (S.C., 1997), the Supreme Court stated: “Statutorily required coverage is that which is required to be offered or provided.” In *Brown v. Continental Ins. Co.*, 434 S.E.2d 270, 272, 315 S.C. 393, 396 (S.C., 1993), the Supreme Court stated, “In *Jackson*, we specifically noted that required coverage includes coverage that is required to be provided or required to be offered.” In *Carter v. Standard Fire Ins. Co.*, 406 S.C. 609, 753 S.E.2d 515, 519 (S.C., 2014), the Supreme Court quoted *Ruppe* as stated above. The Court of Appeals has also affirmed the required nature of UIM coverage. In *Nakatsu v. Encompass Indem. Co.*, 390 S.C. 172, 700 S.E.2d 283, 287 (S.C. App., 2010), this Court

¹ It is undisputed that Respondent offered Kristina Knight UIM coverage and that Kristina Knight accepted the offer. She paid additional premiums for the UIM coverage in her policy.

stated, "Statutorily required coverage is that which is required to be offered or provided." *Id.* (quoting *Ruppe*) Therefore, the Order's characterization that required UIM as non-mandatory and optional is an incorrect statement of long-standing South Carolina law and public policy.

In footnote 3, Page 6, the Order reasoned that, "so long as the mandatory minimum coverage limits are met, an insurer may provide reasonable limitations on optional coverage." However, the required, minimum amount of UIM coverage for Daniel Knight was not tendered. Rather, Respondent totally excluded all UIM (and UM) coverage for Daniel Knight. As such, Respondent's policy exclusions are void. "[A]ny limiting language in an insurance contract which has the effect of providing less protection than made obligatory by the statute is contrary to public policy and is of no force and effect." *See Ferguson v. State Farm Mut. Ins. Co.*, 261 S.C. 96, 100, 198 S.E.2d 522 (1973). Because the October 2, 2019, Order deviates from established South Carolina precedent, this Court must rehear this case *en banc* and reconsider it.

2. The Statutory language demonstrates Section 38-77-340 was intended to allow a limited exclusion of liability insurance coverage only.

The relevant language of this S.C. Code Ann. § 38-77-340, with its operative language highlighted, is set forth below.

Notwithstanding the definition of "insured" in Section 38-77-30, the insurer and any named insured must, by the terms of a written amendatory endorsement, the form of which has been approved by the director or his designee, agree that coverage *under such a policy of liability insurance* shall not apply *while the motor vehicle is being operated* by a natural person designated by name.

S.C. Code Ann. § 38-77-340 (emphasis added). By enacting Section 38-77-340, the Legislature intended to permit automobile insurance carriers and policy-holders to agree

on an exception to the general mandate that liability insurance must cover all statutory insureds, i.e., resident relatives of the policy-holder who might drive an insured vehicle. That the allowed exclusion in Section 38-77-340 was intended narrowly for the liability insurance coverage only is shown by the Legislature's use of the terms "policy of liability insurance." "Policy" is a defined term under the automobile insurance statute (Title 38). "Policy" is defined broadly as the "contract" for "bodily injury." S.C. Code Ann. § 38-77-30(10.5). "Policy" therefore encompasses all bodily injury coverages in an insurance contract including liability, UM, and UIM. Thus, by modifying the defined term, "policy," with the undefined words "liability insurance," the Legislature demonstrated its intent to permit a narrow exclusion for liability insurance coverage only. Otherwise, the words following the defined term "policy" become surplusage. This is because "policy," as defined by the automobile insurance statute, already includes all bodily injury coverages in an insurance contract. In construing a statute, it must be read so that, "no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous, for the General Assembly obviously intended the statute to have some efficacy, or the legislature would not have enacted it into law." *CFRE, LLC v. Greenville Cnty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011). The October 2, 2019, Order violates this canon of statutory construction.

Legislative intent to limit the allowed exclusion to liability insurance coverage only is further shown because Section 38-77-340 limits it to, "while the insured vehicle is being operated."² This language can also only refer liability insurance coverage.

Liability insurance coverage is the only bodily injury insurance coverage that follows the

² It is undisputed that Daniel Knight was *not* operating his wife's insured vehicle at the time of his death.

insured vehicle. See *Hogan v. Home Ins. Co.*, 260 S.C. 157, 162, 194 S.E.2d 890, 892 (1973) (UM “coverage is nowhere limited in the statute to the use of the insured vehicle.”); *Burgess v. Nationwide Mut. Ins. Co.*, 361 S.C. 196, 201-02, 603 S.E.2d 861 (S.C. App., 2004), *rev’d on other grounds*, 644 S.E.2d 40, 373 S.C. 37 (S.C., 2007). In *Hogan v. Home Ins. Co.*, the South Carolina Supreme Court stated: “Unlike the provisions relative to liability coverage, the statute plainly affords uninsured motorist coverage to the named insured and resident relatives of his or her household at all times and without regard to the activity in which they were engaged at the time. Such coverage is nowhere limited in the statute to the use of the insured vehicle, and cannot be so limited by the policy provisions.” *Hogan v. Home Ins. Co.*, 260 S.C. 157, 161, 194 S.E.2d 890, 892 (1973) (emphasis added). The October 2, 2019, Order never addressed the provision that limited the allowed exclusion to operation of an insured vehicle. Yet there is simply no other logical explanation for why Section 38-77-340 included the further limiting language, “while the motor vehicle is being operated by a natural person designated by name,” except for legislative intent to limit the allowed exclusion to only liability insurance coverage.

3. The Court must strictly construe the exclusion against the automobile insurance industry.

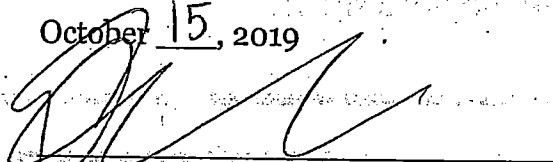
The automobile insurance statute directs the trial courts to “liberally construe[]” the statutory language “in order to achieve its purposes.” S.C. Code Ann. § 38-77-20. The purpose of Title 38 is to insure automobile risk. As argued above, the automobile insurance company’s over-broad policy exclusion here, if upheld, undermines our State policy by limiting required, portable UM and UIM coverages of resident relative family members who are not even using the insured vehicle. The Supreme Court requires a

strict construction of "the exclusions recognized in the statutes." *Pennsylvania Nat. Mut. Cas. Ins. Co. v. Parker*, 282 S.C. 546, 551, 320 S.E.2d 458 (S.C. App., 1984); see also *McPherson By and Through McPherson v. Michigan Mut. Ins. Co.*, 426 S.E.2d 770, 310 S.C. 316, 319 (S.C., 1992) ("rules of construction require clauses of exclusion to be narrowly interpreted, and clauses of inclusion to be broadly construed."). The October 2, 2019, Order fails to comply with the Supreme Court's guidance for interpreting remedial statutes broadly and narrowly construing exceptions in a remedial statute.

CONCLUSION

For the reasons stated above, the Court must rehear this case, and a rehearing *en banc* is warranted because of the exceptional importance and impact of the October 2, 2019, Order on the public policy of South Carolina.

October 15, 2019



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Attorney for Appellants

The State of South Carolina In The Court of Appeals

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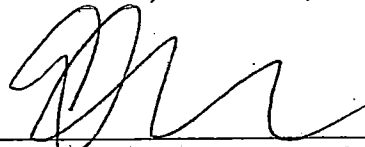
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PROOF OF SERVICE

I certify that I have served Appellants' Motion for Rehearing, and Suggestion for Rehearing En Banc and Appellants' Memorandum in Support of Motion for Rehearing, and Suggestion for Rehearing En Banc on Nationwide Insurance Company of America by UPS - Overnight on October 15, 2019 addressed to its attorney of record, Mr. Wesley Brian Sawyer, Esquire, 4406B Forest Drive, Columbia, SC 29206



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October 15, 2019

The South Carolina Court of Appeals

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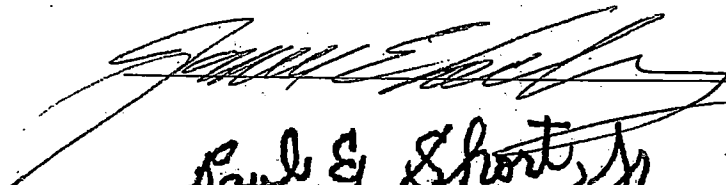
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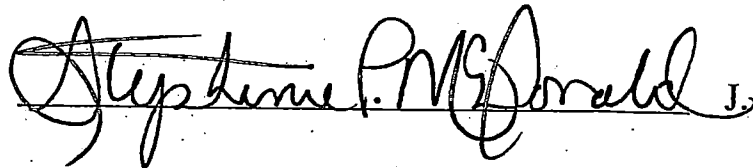
Kristina Knight, individually and as Personal
Representative of the Estate of Daniel P. Knight,
Appellant.

Appellate Case No. 2017-001348

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.


Paul E. Short, Jr. C.J.
J.


Stephen P. McDonald J.

Columbia, South Carolina

cc:

Adam J. Neil, Esquire
Edwin L. Turnage, Esquire
Wesley Brian Sawyer, Esquire
The Honorable William H. Seals, Jr.

FILED

December 16, 2019