

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

Kristi F. Curtis, Circuit Court Judge

Case No. 2018-CP-29-00794

Appellate Case No. 2019-001685

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SC Court of Appeals

NGM Insurance Company..... Appellant,

v.

Miles Insurance Agency, Inc..... Respondent.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA COUNTY OF LANCASTER NGM Insurance Company, Plaintiff, v. Miles Insurance Agency, Inc., Defendant.	) IN THE COURT OF COMMON PLEAS)) Civil Action No. 2018-CP-29-00794)))) ORDER GRANTING DEFENDANT’S) MOTION TO ALTER OR AMEND,) DENYING PLAINTIFF’S MOTION) FOR RECONSIDERATION AND) GRANTING SUMMARY JUDGMENT) TO DEFENDANT)))

This matter is before the Court on Plaintiff’s and Defendant’s motions to alter or amend the order of the Court filed May 30, 2019 denying both parties’ motions for summary judgment. Defendant’s motion to alter or amend was filed and served on June 6, 2019. Plaintiff’s motion for reconsideration was filed and served June 10, 2019. Therefore, both motions were timely made.

Upon reconsideration of this matter, specifically Exhibit A to Defendant’s memorandum in support of its motion for summary judgment discussed below, the Court GRANTS Defendant’s motion to alter or amend, GRANTS summary judgment in favor of Defendant, DENIES Plaintiff’s motion for reconsideration, and substitutes this Order for the previous Order denying summary judgment filed May 30, 2019.

FACTS AND PROCEDURAL HISTORY

Jerry and Janet Webster were customers of Miles Insurance Agency and had been insured under an automobile policy issued by General Accident prior to 2001. General Accident Insurance thereafter ceased doing business in South Carolina, and Miles Agency contacted the Websters to recommend that they switch their coverage to NGM Insurance Company. Mrs. Janet Webster went to Miles Agency on January 5, 2001 and signed an application for insurance with NGM in which she requested liability coverage of \$50,000/\$100,000 and uninsured coverage of \$50,000/\$100,000, but rejected underinsured motorist coverage. Her husband was injured in an automobile accident on June 30, 2012, and the Websters thereafter brought an action to reform the NGM policy to include UIM coverage, arguing that Miles Agency failed to make a meaningful offer of UIM coverage.

The trial court in the reformation action found that Miles Agency failed to avail itself of the safe harbor provision of S.C. Code Ann. §38-77-350 because it failed to fill in the blanks on the form to show the Insured the amount of additional premiums which would be charged for UIM coverage. In addition, the trial court found that Miles Agency failed to meet its burden of proving that it had otherwise made a meaningful offer of UIM coverage. The trial court ordered that the policy be reformed to provide UIM coverage of \$50,000/\$100,000 for 7 covered vehicles, or

\$350,000 in available coverage. NGM thereafter settled the case with the Websters and tendered payment in the amount of \$300,000.00. NGM did not appeal the trial court's order.

NGM then brought this action against Miles Insurance Agency alleging breach of contract, contractual indemnity, and equitable indemnity. NGM seeks damages for the \$300,000 it paid to settle the Websters' suit, along with the attorney fees and costs incurred by NGM in defending the reformation lawsuit brought by the Websters, and the attorney fees and costs incurred in the present suit.

MILES AGENCY'S MOTION FOR SUMMARY JUDGMENT

Miles Agency moves for summary judgment arguing: (1) NGM has suffered no damages; and (2) NGM is not entitled to contractual or equitable indemnity where it was negligent in accepting an application that had not been properly executed.

Regarding, Miles' second ground for seeking summary judgment, the Court finds that reaching a conclusion as to NGM's negligence would involve an inherently factual determination requiring that summary judgment be denied, were that the only ground on which summary judgment had been sought.

However, Miles also argues that NGM has no damages in the present suit because if Miles' agents had made a meaningful offer of UIM, then Janet Webster would have elected to purchase UIM, and NGM would have been required to issue the policy with UIM coverage. This court agrees that NGM would be legally obligated to issue the UIM coverage had it been requested.

In support of its motion for summary judgment, Miles filed a portion of the trial transcript from the reformation action in which Mrs. Webster had testified that she would have purchased UIM coverage if a meaningful offer had been made.

Q. Okay. You claim that you did not receive a meaningful offer of UIM coverage. I take it your position is that if you had gotten a UIM coverage offer that you would have bought it?

A. Yes, sir.

Q. So even if it greatly increased the amount of premiums you had to pay, if you had known what UIM coverage was your position is you would have purchased it.

A. Yes, sir.

Trial Transcript, Civil Action No. 2015-CP-29-00810, p. 39. (Attached as Exhibit A to Defendant's memorandum in support of its motion for summary judgment)

In Fowler v. Hunter, 388 S.C. 355, 697 S.E.2d 531 (2010), the Insured had requested automobile coverage under a commercial liability policy. The agent admitted that the insured requested the coverage, but he inadvertently failed to check the correct box when submitting the insurance application. According to the agent, there would have been no additional premium to include the automobile coverage requested. The trial court ruled that the insurance company was not harmed by the agent's error because it would have still issued the policy had the agent not checked the wrong box. In other words, the insurer suffered no additional losses by virtue of the agent's negligence. The Court of Appeals reversed, and the Supreme Court affirmed, but only for the trial court to determine a narrow issue of fact as to whether the Insurance Company would have been automatically required to issue the policy.

NGM would have been unquestionably required by law to issue the policy with UIM coverage at the Insured's request. [Brian Brennan Deposition at 24-25]. The undisputed evidence in this case is that if Miles had performed its contractual duties perfectly, i.e., explaining UIM coverage in detail, NGM would still have had to issue UIM coverage to the Websters which it was later required to do by the trial court in the reformation action.

As NGM has not raised a genuine issue of a material fact that Miles' performance of its duties, or lack thereof, resulted in liability to NGM that it would not otherwise have had, Defendant Miles's motion to alter or amend is GRANTED and summary judgment is GRANTED to Defendant.

NGM'S CROSS MOTION FOR SUMMARY JUDGMENT

For the reasons set forth above NGM's motion for summary judgment and its motion for reconsideration are DENIED.

WHEREFORE, summary judgment is GRANTED in Defendant's favor.

IT IS SO ORDERED.

Judge of the Circuit Court

_____, 2019



Lancaster Common Pleas

Case Caption: Ngm Insurance Company VS Miles Insurance Agency

Case Number: 2018CP2900794

Type: Order/Summary Judgment

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762

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STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF LANCASTER

CIVIL ACTION: 2018-CP-29-00794

NGM Insurance Company,

Plaintiff,

vs.

Miles Insurance Agency, Inc.,

Defendant.

ORDER DENYING CROSS MOTIONS FOR
SUMMARY JUDGMENT

This matter comes before the court on cross motions for summary judgment. After hearing oral arguments and reviewing the applicable statutes, case law, and deposition testimony, both motions are DENIED, as there are genuine issues of material fact pertinent to any final determination of liability.

FACTS AND PROCEDURAL HISTORY

Jerry and Janet Webster were customers of Miles Insurance Agency and had been insured under an automobile policy issued by General Accident prior to 2001. General Accident Insurance thereafter ceased doing business in South Carolina, and Miles Agency contacted the Websters to recommend that they switch their coverage to NGM Insurance Company. Mrs. Janet Webster went to Miles Agency on January 5, 2001 and signed an application for insurance with NGM in which she requested liability coverage of \$50,000/\$100,000 and uninsured coverage of \$50,000/\$100,000, but rejected underinsured motorist coverage. Her husband was injured in an automobile accident on June 30, 2012, and the Websters thereafter brought an action to reform the NGM policy to include UIM coverage, arguing that Miles Agency failed to make a meaningful offer of UIM coverage.

The trial court in the reformation action found that Miles Agency failed to avail itself of the safe harbor provision of S.C. Code Ann. §38-77-350 because it failed to fill in the blanks on the form to show the Insured the amount of additional premiums which would be charged for UIM coverage. In addition, the trial court found that Miles Agency failed to meet its burden of proving that it had otherwise made a meaningful offer of UIM coverage. The trial court ordered that the policy be reformed to provide UIM coverage of \$50,000/\$100,000 for 7 covered vehicles, or \$350,000 in available coverage. NGM thereafter settled the case with the Websters and tendered payment in the amount of \$300,000.00. NGM did not appeal the trial court's order.

NGM then brought this action against Miles Insurance Agency alleging breach of contract, contractual indemnity, and equitable indemnity. NGM seeks damages for the \$300,000 it paid to settle the Websters' suit, along with the attorney fees and costs incurred by NGM in defending the reformation lawsuit brought by the Websters, and the attorney fees and costs incurred in the present suit.

MILES AGENCY'S MOTION FOR SUMMARY JUDGMENT

Miles Agency moves for summary judgment arguing: (1) NGM has suffered no damages; and (2) NGM is not entitled to contractual or equitable indemnity where it was negligent in accepting an application that had not been properly executed.

Miles first argues that NGM has no damages in the present suit because if Miles' agents had made a meaningful offer of UIM, then Janet Webster would have elected to purchase UIM and NGM would have been required to issue the policy with UIM coverage. This court agrees that NGM would be legally obligated to issue the UIM coverage had it been requested. However, there is a genuine issue of material fact as to whether Janet Webster would have elected the coverage.

First, we note that Miles Agency and NGM took the exact opposite position in the reformation suit. In the previous reformation action, both parties argued that Miles' agents had made a meaningful offer of UIM, had shown the Websters a rate sheet or quote sheet with UIM premiums (separate from the insurance application), and that Janet Webster explicitly rejected UIM coverage on the insurance application.

Miles Agency argues that Janet Webster testified she would have purchased UIM coverage if a meaningful offer had been made, and that the Order reforming the policy explicitly carries with it the holding that the Websters would have purchased UIM if a meaningful offer had been made. This court disagrees. Janet Webster testified in her deposition that she received a notice informing her that she had to move her automobile insurance from General Accident to a new insurance company. She went to Miles Agency on January 5, 2001 to sign an automobile insurance application.

Q: And January 5 of 2001 is the date you said, "I don't want underinsured motorist coverage," and you signed the application. Correct?

A: I didn't say that. They never read it to me and they never explained it to me. They just gave me the paper to sign.

Q: What did she tell you you were signing?

A: She - - she may have told me the underinsured, that I was signing for the underinsured, but she didn't explain that. [Deposition at 32]

Q: And you were not aware that you did not have underinsured until this accident in 2012. Is that correct?

A: Yes, ma'am. [Deposition at 34-35]

Q: You're alleging that the defendants "never made a meaningful offer of underinsurance," and then you later alleged that Miles Agency, "defendant and therefore the defendant's insurance companies actually filled out any form" except for the signature of you, the

plaintiff, Janet Webster. Is that correct?

A: Yes, ma'am. [Deposition at 40-41]

Q: Ms. Webster, I think we've pretty much covered it, but I have one big important question. What do you want from your lawsuit?

A: Justice.

Q: What does that mean?

A: My husband was in an accident of no fault of his. We thought we had insurance, and then we don't have coverage.

Q: Anything else?

A: No.

Q: Tell me why you thought you had insurance.

A: I trusted them to fill the paperwork out correctly and for me to be covered.

Q: Are you saying - -

A: I assumed our coverage was correct on the policy. We needed -

Q: You trusted them to - I'm sorry. Go ahead.

A: We needed - I mean, I assumed we had what we needed when you have an accident.

Q: You trusted them to fill out the paperwork correctly. Is it your testimony that they did not?

A: No. They just didn't explain it to me. [Deposition at 41-42]

There was no specific testimony from Mrs. Webster that she would have purchased UIM coverage if it had been explained to her, nor did anyone specifically ask her that question. The trial court order in the reformation case makes no such finding, nor was the court required to make such a finding to reform the policy. The insurer bears the burden of establishing that it made a meaningful offer of UIM coverage. Butler v. Unisun Ins. Co., 323 S.C. 402, 405, 475 S.E.2d 758, 759 (1996). A noncomplying offer of UIM has the legal effect of no offer at all. If the insurer fails to comply with its duty to make a meaningful offer, the policy will be reformed by operation of law up to the limits of liability insurance carried by the insured. Butler, 323 S.C. at 405, 475 S.E.2d at 760. In the absence of a meaningful offer, the Insured is not required to take the additional step of proving she would have opted for the additional coverage.

Miles Agency points to Ray v. Austin, 388 S.C. 605, 698 S.E.2d 208 (2010) in support of its position. In Ray, the Insured's manager testified that the company had adopted a risk management strategy of declining UIM coverage in states where such coverage was not required. According to the Insured's manager, the Insured implemented the strategy because it obtained other insurance, namely workers' compensation, to cover injuries sustained by employees while driving company vehicles. As in this case, the insurance company was not entitled to the statutory presumption that a meaningful offer was made, as the form used was not in compliance with section 38-77-350. In determining whether a meaningful offer was otherwise made, the court noted that the insurer explained UIM coverage, explained the company had the option of purchasing UIM coverage, and presented a form explaining the coverage and that it was available for an additional premium. The manager for the Insured testified that he would talk with the insurance agent about the availability of UIM coverage, but "Of course, our stance was no. We knew that additional coverage had additional costs associated with it." The Supreme Court held that the Insured made a business decision to refuse UIM coverage with full awareness of the nature of the coverage it was rejecting.

Miles seeks to extend the holding in Ray to mean that if the trial court reformed the policy we must presume the Insured would have purchased UIM coverage. Of course, NGM argues that if Miles' agents had merely filled in the blanks on the form to include the premium amounts for UIM coverage, then NGM could have availed itself of the statutory presumption that a meaningful offer was made and no reformation would have been granted. Miles agents testified they had gone over UIM coverage with the Websters previously, had quoted rates, and that the Websters had previously declined to purchase UIM coverage.

This case is also distinguishable from Fowler v. Hunt, 388 S.C. 355, 697 S.E.2d 531 (2010). In Fowler, the Insured requested automobile coverage under a commercial liability policy. The agent admitted that the insured requested the coverage, but he inadvertently failed to check the correct box when submitting the insurance application. According to the agent, there would have been no additional premium to include the automobile coverage requested. The trial court ruled that the insurance company was not harmed by the agent's error because it would have still issued the policy had the agent not checked the wrong box. In other words, the insurer suffered no additional losses by virtue of the agent's negligence. The Court of Appeals reversed, and the Supreme Court affirmed, but only for the trial court to determine a narrow issue of fact as to whether the Insurance Company would have been automatically required to issue the policy.

In this case, NGM would have been unquestionably required by law to issue the policy with UIM coverage at the Insured's request. [Brian Brennan Deposition at 24-25] However, unlike the Insured in Fowler who had clearly requested the automobile coverage, Mrs. Watson did not expressly request UIM coverage but was granted the coverage by operation of law in spite of the fact that she signed the application rejecting coverage.

Of course, summary judgment is appropriate only where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. This court finds there is a genuine issue of material fact as to whether Janet Webster would have purchased UIM coverage if a meaningful offer had been made, or whether she would have rejected UIM but was

able to take advantage of Miles agency's negligence in filling out the insurance application and thus failing to avail itself of the safe harbor provision.

Miles further argues that NGM is not entitled to contractual or equitable indemnification where NGM contributed to or compounded the error or omission. This court disagrees. On April 28, 1994, the parties entered into an Agency Agreement. The Agreement was renewed in December of 2007 with identical terms. Under the terms of the Agency Agreement, the Agent has the authority to bind the insurance company and sell policies. The Agent has the duty to "adhere to all the published instructions, rules and regulations of the Company and any special written or printed instructions that may be communicated to the Agent." The Agent also agrees to "hold the Company harmless against liability it may incur to or on behalf of its policyholder, actual or alleged, based on error or omission of the Agent if the Company has not contributed to or compounded such error or omission."

The trial court held in the reformation action that Miles' agents had failed to properly fill out the insurance application pursuant to section 38-77-350, and therefore could not avail themselves of the safe harbor provision. The trial court further found the Insurer could not otherwise prove that it had made a meaningful offer of UIM. "There is no evidence that Plaintiffs were properly explained or informed about Under Insurance Coverage. . . The Defendants have not shown that they orally or in writing told Plaintiffs her premium ranges." Because of these failures, the Court reformed the policy.

Miles Agency argues that it was required to fax the application to NGM, and that NGM could have therefore seen on the face of the document that no premiums had been listed for UIM coverage, and therefore the safe harbor provision would not apply. Miles Agency argues that NGM could have "caught" the error when it received the application and sent it back to the agency for correction. This court declines to hold that NGM's failure to catch Miles Agency's error constitutes "compounding" the error or omission within the meaning of the contract.

According to the 30(b)(6) deposition of NGM representative Brian Brennan, NGM issued policies in 30 different states with 30 different insurance laws. The company's policy was to review new insurance applications for such errors as missing Social Security numbers or where the application left off mandatory coverage, such as uninsured motorist coverage. However, with voluntary coverage like UIM, NGM relied on the Agent to properly complete the application. Moreover, not only did Miles Agency fail to fill out the application correctly, they also failed to explain UIM to the insured or to document their discussion with her of the applicable premium rates for UIM. Miles Agency agents were the only ones with direct interaction with the Insured and the only ones who could make a meaningful offer of UIM.

NGM'S CROSS MOTION FOR SUMMARY JUDGMENT

This Court declines to grant summary judgment for NGM for the reasons cited above. There is a genuine issue of material fact as to whether NGM suffered damages, and if so what amount, by virtue of Miles' Agency's negligence in failing to properly complete the insurance application.

IT IS SO ORDERED.

Kristi F. Curtis, Circuit Court Judge

May 30, 2019

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Lancaster Common Pleas

Case Caption: Ngm Insurance Company VS Miles Insurance Agency

Case Number: 2018CP2900794

Type: Order/Summary Judgment

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762

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ELECTRONICALLY FILED - 2019 May 30 2:04 PM - LANCASTER - COMMON PLEAS - CASE#2018CP2900794

STATE OF SOUTH CAROLINA,	)	
COUNTY OF LANCASTER.	)	IN THE COURT OF COMMON PLEAS
	)	
JERRY WAYNE WEBSTER &	)	
JANET WEBSTER,	)	
PLAINTIFFS,	)	
VS.	)	
	)	
MILES INSURANCE AGENCY,	)	
INC., NATIONAL GARAGE	)	
MUTUAL INSURANCE COMPANY	)	
n/k/a NGM INSURANCE	)	
COMPANY,	)	
	)	
DEFENDANTS.	)	

ORDER
2015-CP-29-810

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LANCASTER, SC

This matter came before the Court for a non-jury trial on November 29, 2017, by way of the Plaintiffs' Complaint, filed June 8, 2015. Present were the Plaintiffs and on behalf of the Plaintiffs was Francis L. Bell, Jr., Esquire and West C. Bell, Esquire. Present was Richard Miles of Miles Insurance Agency, Inc. and on behalf of the Defendants were Bernie W. Ellis, Esquire, for Miles Insurance Agency and Thomas F. Dougall, Esquire, for NGM Insurance Company.

The Plaintiffs seek judgment on whether a valid offer of Under Insurance Coverage was ever made to the Plaintiffs. This issue is broken into two parts:

- (1) Did the Defendants' failure to follow the statutory requirements of §38-77-350 when Plaintiffs signed an application for insurance form filled out by Defendant's agents, remove the presumption that there was a meaningful offer of Under Insurance Coverage?
- (2) If the presumption is removed for failure to follow the requirements of §38-77-350, did the Defendants make a meaningful offer of Under Insurance coverage to the Plaintiffs per *Wannamaker*?

FACTUAL BACKGROUND

On June 30, 2012, Plaintiff Jerry Webster was involved in an automobile accident, which accident was not his fault. The Plaintiff suffered severe injuries, extensive medical bills in the amount of Two Hundred Forty Four Thousand Eight Hundred Fifty Nine (\$244,859.00) Dollars, and total disability. The vehicle at fault carried South Carolina minimum liability limits in the sum of Twenty Five Thousand (\$25,000.00) Dollars. The facts clearly show that the Plaintiffs' have an underinsurance claim and that a vehicle insured by Defendants' insurance company was involved in the accident.

Plaintiffs Janet and Jerry Webster began a business relationship with Miles Insurance Agency, Inc. in 1991. In 2000, the Websters were informed their current carrier would no longer be offering policies in South Carolina. On January 5, 2001, Plaintiff Janet Webster, by and through Miles Insurance Agency, Inc., as an agent for Defendant National Grange Insurance Company, now known as NGM Insurance Company, was offered policies of automobile insurance with liability limits of 50/100/50, un-insurance limits of 50/100/50 on several automobiles. On January 5, 2001, the Defendants did not make a meaningful offer of underinsurance per South Carolina Code of Laws Section 38-77-160 or Section 38-77-350 to Plaintiff Janet Webster or Plaintiff Jerry Webster.

ANALYSIS

- I. Did the Defendants' failure to follow the statutory requirements of §38-77-350 when Plaintiffs signed an application for insurance form filled out by Defendant's agents, remove the presumption that there was a meaningful offer of Under Insurance Coverage?**

On January 5, 2001, Defendants never made a meaningful offer of underinsurance coverage to the Plaintiffs Jerry and Janet Webster. S.C. Code Ann. §38-77-160 (2015) states that

automobile insurance carriers shall offer, at the option of the insured, underinsured motorist coverage up to limits of the insured's liability coverage in addition to the mandatory coverage prescribed by §38-77-150.

In 1989 S.C. Code Ann §38-77-350 was introduced establishing a set of requirements for a form that shall be used during the application process of issuing new insurance policies. The form at a minimum must provide the following for each optional coverage required to be offered per Part A of §38-77-350:

1. A brief and concise explanation of the coverage,
2. A list of available limits and the range of premiums for the limits,
3. A space for the insured to mark whether the insured chooses to accept or reject the coverage and a space for the insured to select the limits of coverage he desires,
4. A space for the insured to sign the form which acknowledges that he has been offered the optional coverages,
5. The mailing address and telephone number of the Insurance Department which the applicant may contact if the applicant has any questions that the insurance agent is unable to answer.

Part B of the section provides that there is a presumed meaningful offer if the completed form follows §38-77-350's requirements in part A. If for any reason the form does not comply with the statute, then the insurance provider loses the presumption that it made a meaningful offer. The burden of a meaningful offer shifts to the Insurer/agent. The trial court can make the factual determination of whether the insurer made a meaningful offer. *Cohen v. Progressive Northern Ins. Co.*, 737 S.E.2d 869, 874 (S.C.App 2013). After a determination that the insurer was not entitled to the presumption because of violating §38-77-350's requirements on the form, the trial court makes a factual determination of whether the insurer made a meaningful offer under *Wannamaker* and §38-77-160. *Cohen*.

On January 5, 2001, Plaintiff Janet Webster went to Defendant Miles Insurance Agency, Inc. to apply for a new automobile policy. The form presented to Plaintiff was filled out by hand by an employee of Defendant Miles Insurance Company. After the written identifying information section on the form, there is Section 2 that offers additional uninsured motorist coverage, then Section 3 that offers underinsured motorist coverage. In Section 3 there is a list of coverage limits in the left column, and on the right column blanks where the Amount of Increased Premium would be listed to correspond with the limits listed in the left column. There is nothing listed in those blank columns as to increased premiums. Print to the right of the blank columns indicates that "These increased premium charges must be filled in by our Insurance agent prior to your decision; and signature." There is a box checked "no" on the question do you wish to purchase, a signature line signed by Plaintiff Janet Webster, and a line with the word "Reject." Defendant Miles Insurance Agency employee Candice Grau (known as Candice Short in 2001) admitted at trial to her writing of the word "Reject" and the marking of check marks.

Failing to fill in the blanks as required by §38-77-350(A)(2) makes the application non-compliant. In *McDowell v. Travelers Property and Cas. Co.*, 590 S.E.2d 514 (S.C. App. 2003), Travelers failed to fill in the blanks provided on the form. The Court found that the form, because of the non-filled out blanks, violated the statute and did not enjoy the statutory presumption that it made a meaningful offer of UIM.

Although Plaintiff Janet Webster signed the form, the form does not meet the minimum requirements enumerated in §38-77-350 (A). Specifically §38-77-350(A)(2), that states the form must have "a list of available limits and the range of premiums for the limits." The form has the

blanks for the agent to fill in the amount of the premium increase, but they were never filled in. Without knowledge of the available limits and the range of premiums for the limits, §38-77-350 is not complied with and the Defendants in this case lose their presumption that the offer for underinsurance was meaningful. 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 (S.C. 2005).

S.C. Ann. §38-77-350(B) as written in 1989, and still in effect in 2001, read “If this form is properly completed and executed by the named insured it is conclusively presumed that there was an informed, knowing selection of coverage and neither the insurance company nor any insurance agent has any liability to the named insured or any other insured under the policy for the insured’s failure to purchase any optional coverage or higher limits.” Plaintiff Janet Webster did not fill out the application form which was completed January 5, 2001. Plaintiff did sign the form in at least three places, but did not write any other information on the form. Defendant Miles Insurance Agency, Inc., by not having the insured fill out the application, the form is not in compliance with §38-77-350(B) (1997) as it appeared in 2001 when the application was signed. “We conclude that the Legislature intended, by the plain and unambiguous terms of the statute, for the insured herself to personally mark, select, and sign the UIM offer form pursuant to Section 38-77-350(A).” *Floyd* at 12. If the contract is not in compliance with the statute, then Defendants lose the presumption that their offer of Underinsurance coverage was meaningful.

II. If the presumption is removed for failure to follow the requirements of §38-77-350, did the Defendants make a meaningful offer of Under Insurance coverage to the Plaintiffs per §38-77-160 and *Wannamaker*?

If the Defendants violate §38-77-350, they lose the presumption that there was a meaningful offer of underinsurance. Automobile insurance carriers are required to offer, at the option of the insured, UIM coverage up to the limits of the insured's liability coverage. S.C. Code Ann. §38-77-160 (2015). The insurer bears the burden of establishing that it made a meaningful offer of UIM and additional UM coverages. *Progressive Cas. Ins. Co. v. Leachman*, 608 S.E.2d 569, 571 (S.C. 2005). The purpose of requiring automobile insurers to make a meaningful offer of additional UIM coverage is for insureds to know their options and to make an informed decision as to which amount of coverage will best suit their needs. *Id* at 573.

State Farm Mut. Auto Ins. Co. v. Wannamaker, 354 S.E.2d 555 (S.C. 1987) established a four part test to determine when an insurer has made a meaningful offer of coverage:

- a. Notification process must be commercially reasonable, whether oral or in writing;
- b. Insurer must specify the limits of optional coverage and not merely offer additional coverage in general terms;
- c. Insurer must intelligibly advise the insured of the nature of the optional coverage; and
- d. The insured must be told that optional coverages are available for an additional premium.

The form that was presented on January 5, 2001 to Plaintiff Janet Webster had no premiums listed beside the preset coverage limits listed on the form. Under *Wannamaker*, the insurer must specify the limits of optional coverage with optional premium costs and not merely offer additional coverage in general terms. Without the specifics of the coverage and premiums listed out, Plaintiff Janet Webster was not intelligibly advised and per the statute was not made a meaningful offer. Evidence of the insured's knowledge or level of sophistication is relevant and admissible when analyzing, under *Wannamaker*, whether an insurer intelligibly advised the insured of the nature of the optional UIM coverage. *Grinnell Corp. v. Wood*, 698 S.E.2d 796,

800 (S.C. 2010) (quoting *Croft v. Old Republic Ins. Co.*, 618 S.E.2d 909, 918 (2005)). In *McDowell*, although the Court found the form was not in compliance with §38-77-350, found that the insured had a commercial contract with Travelers that gave detailed formulas for calculating premiums for UIM coverage and those were readily available. The *McDowell* case fell on the plaintiffs being informed purchasers.

Documents introduced at trial that were produced prior to 2001 did not show that a proper offer of under insurance coverage had been made or explained to the Plaintiffs. There is no evidence that Plaintiffs were properly explained or informed about Under Insurance Coverage. Plaintiffs introduced a letter that was sent to the Plaintiffs on December 20, 2000, before the application form was filled out. The letter did not mention premium ranges for Under Insurance Coverage, but merely a generalized annual auto policy premium. The Defendants have not shown that they orally or in writing told Plaintiffs her premium ranges. Defendants also rely on prior automobile insurance applications from 1991 and 1998. Any policy prior to 2001 is irrelevant because it still does not show a meaningful offer was made in 2001 when a new policy was being issued as required by §38-77-160. The same goes for any material issued by Defendants after 2001 including declaration pages. Material issued after the application was filled out does not show that a meaningful offer of Under Insurance Coverage was made in 2001.

The insurance provider has the opportunity to prove an offer is meaningful. If the application form fails statutory requirements for the offer, it does not meet requirements of a meaningful offer without evidence outside of the offer form. *Grinnell* at 800. "If the insurer fails to comply with its statutory duty to make a meaningful offer to the insured, the policy will be reformed, by operation of law, to include UIM coverage up to the limits of liability insurance

carried by the insured." *Floyd* at 11. The form presented to Plaintiff Janet Webster was not properly filled out with premium information, so without the presumption of a meaningful offer and without any other form of evidence presented to the Plaintiffs to show that there was a meaningful offer per *Wannamaker*, the policy should be reformed to include UIM coverage. Mrs. Grau and Mr. Miles offered no evidence of premiums being discussed to show there was a meaningful offer.

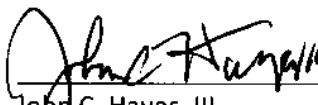
Defendants did not reoffer Under Insurance Coverage up to the limits when §38-77-140 was amended in 2006. Since the coverage issues are being decided on Defendants' failure to make a meaningful offer of Under Insurance Coverage in 2001 the Court does not have to address this issue.

CONCLUSION

The Defendants in this case have failed to give a meaningful offer of Underinsurance motorist coverage to the Plaintiffs. The Defendants' application form which was signed on January 5, 2001 violated §38-77-350(A) and §38-77-350(B) (1997) in the form that the statutes existed in 2001. Because of no premiums in the form and the agent actually filling out the form, the form fails to comply with the statutes. Because of those failures, the policy does not carry the presumption that a meaningful offer of underinsurance motorist coverage was made. I find all of the witnesses credible in this case but after considering the *Cohen* case on habit or customary practice I find for the Plaintiffs. The lapse of time in this case being a longer period than that of *Cohen*, weighs in favor of the Plaintiff Mrs. Webster's recollection as to the transaction at issue. Mrs. Webster's recollection of the application process was more sound and believable than that of Defendant Miles Insurance Agency's employee Mrs. Grau who worked

with Plaintiff Janet Webster on the application in 2001. Defendants' failed to present a meaningful offer per *Wannamaker* by offering no evidence of informing the Plaintiff of any additional premium to be considered to purchase under insurance. Because of those failures, the policy issued on all the vehicles as of the date of January 5, 2001, and any additional vehicles added as of the accident date of June 30, 2012 (see Plaintiff's exhibit 7), should be reformed to include underinsurance motorist coverage.

AND IT IS SO ORDERED!


John C. Hayes, III
Circuit Court Judge #9

2/12, 2018

1/12, South Carolina

STATE OF SOUTH CAROLINA	)	
	)	IN THE CIRCUIT COURT
COUNTY OF LANCASTER	)	
NGM INSURANCE COMPANY,	)	
	)	2018-CP-29-_____
Plaintiff,	)	
	)	
v.	)	
	)	COMPLAINT
MILES INSURANCE AGENCY, INC.,	)	
	)	(Non-Jury)
Defendant.	)	
_____	)	

COMES NOW the Plaintiff, NGM Insurance Company, Inc. (hereinafter “NGM” or “Plaintiff”), complaining of the Defendant, Miles Insurance Company, Inc. (hereinafter “Miles” or “Defendant”) and would show unto the Court as follows:

1. NGM Insurance Company is a corporation existing under the laws of the State of Florida and is licensed to do business as an insurance Company in South Carolina and at all times mentioned herein was transacting business in Lancaster County, South Carolina.
2. Upon information and belief Miles Insurance Agency, Inc. is a South Carolina corporation and at all times mentioned herein was transacting business as an insurance agency in Lancaster County, South Carolina.
3. Miles, for many years, transacted business, as an independent insurance agent, with NGM.
4. On or about December 20, 2007 Miles and NGM entered into an Agency Agreement, a copy of which is attached hereto as Exhibit A and is hereby

incorporated by reference herein.

5. On June 30, 2012, Jerry Webster, the husband of Janet Webster, both NGM insureds, was involved in an automobile accident which was not his fault. He suffered severe injuries and his medical bills were at least \$244,859.00.
6. The at-fault driver involved in the accident has minimum limit liability coverage of \$25,0000 per occurrence.
7. The automobile being driven by Jerry Webster was insured by NGM.
8. Janet and Jerry Webster made an underinsured motorist (“UIM”) claim to NGM.
9. NGM denied the UIM claim based upon a rejection of UIM coverage signed by Janet Webster.
10. Jerry and Janet Webster subsequently filed suit in the Circuit Court of Lancaster County against both NGM and Miles alleging that Miles did not make a meaningful offer of UIM coverage and asked the Court to reform the policy to include UIM coverage for the automobile accident.
11. On November 29, 2017 the Honorable John C. Hayes conducted a bench trial.
12. As a result of the trial, the Court ruled that Miles failed to provide a meaningful offer of UIM coverage to the Websters and ordered that the insurance policy be reformed to include UIM coverage for the automobile accident in the amount of \$50,000.00 per occurrence.
13. Jerry Webster was a Class I insured and thus entitled to “stack” his UIM coverage for all seven vehicles on the policy thereby providing UIM benefits in the total sum of \$350,000.

14. Miles did not appeal the ruling that it failed to make a meaningful offer of UIM coverage to the Websters.
15. NGM requested that Miles Agency, due to its sole failure to provide a meaningful offer of UIM coverage to the Websters pay the \$350,000 demanded by the Websters.
16. Mile refused to pay the \$350,000 demanded by the Websters.
17. NGM, in an effort to mitigate the damages resulting from Miles's failure to make a meaningful offer of UIM to the Websters, and after the refusal of Miles, obtained a policy release from the Websters for payment of \$300,000.
18. NGM has demanded that Miles, pursuant to the Agency Agreement (Exhibit A) reimburse NGM for the \$300,000 and its attorneys fees and costs expended in defending the underlying matter and its attorney fees and costs for pursuing this action to recover said funds from Miles.
19. Again, Miles has refused NGM's demand.
20. Venue in this matter is proper in Lancaster County and this Court has personal jurisdiction over the parties herein.

FOR A FIRST CAUSE OF ACTION – BREACH OF CONTRACT

21. NGM realleges the foregoing paragraphs above consistent with this cause of action as if fully restated verbatim herein.
22. The Agency Agreement (Exhibit A) entered into by NGM and Miles constitutes a valid contract and NGM has fully performed its obligations under the Agency Agreement.

23. Miles has wrongfully failed to fully perform its obligations under the Agency Agreement by:
- a. Failing to adhere to the published instructions, rules, and regulations of NGM.
 - b. Failing to hold NGM harmless for the loss herein;
 - c. Failing to reimburse NGM for the loss herein; and,
 - d. Failing to reimburse NGM for its attorneys fees and costs for the defense of the underlying lawsuit brought by the Websters.
24. Miles's failures constitute a breach of contract between NGM and Miles. As a result of Miles's breach NGM has been damaged in the amount of \$300,000 plus its attorneys fees and costs in both the underlying lawsuit brought by the Websters and its attorneys fees and costs in this matter to collect said sums.

FOR A SECOND CAUSE OF ACTION - CONTRACTUAL INDEMNITY

25. NGM realleges the foregoing paragraphs above consistent with this cause of action as if fully restated verbatim herein.
26. The Agency Agreement (Exhibit A) entered into by NGM and Miles constitutes a valid contract and NGM has fully performed its obligations under the Agency Agreement.
27. Miles has wrongfully failed to fully perform its obligations under the Agency Agreement by:
- a. Failing to adhere to the published instructions, rules, and regulations of NGM.

- b. Failing to hold NGM harmless for the loss herein;
 - c. Failing to reimburse NGM for the loss herein; and,
 - d. Failing to reimburse NGM for its attorneys fees and costs for the defense of the underlying lawsuit brought by the Websters.
28. Miles contractually agreed to indemnify NGM for losses such as those incurred by NGM in satisfying the UIM coverage owed to the Websters which was solely the result of Miles's failure to make a meaningful offer of UIM to the Websters.
29. Miles's failures constitute a breach of contract between NGM and Miles and a breach of Miles's duty to indemnify NGM. As a result of Miles's breach NGM has been damaged in the amount of \$300,000 plus its attorneys fees and costs in both the underlying lawsuit brought by the Websters and its attorneys fees and costs in this matter to collect said sums.

FOR A THIRD CAUSE OF ACTION - EQUITABLE INDEMNITY

30. NGM realleges the foregoing paragraphs above consistent with this cause of action as if fully restated verbatim herein.
31. NGM was required to pay \$300,000 to the Websters to satisfy the UIM claim made by the Websters.
32. In the underlying lawsuit brought by the Websters, the Court determined that Miles had failed to make a meaningful offer of UIM coverage to the Websters.
33. There was no finding of any wrongdoing by NGM and Miles's failure to do so was the sole reason that the Court reformed the NGM insurance policy to include UIM coverage for the Websters.

34. Miles has wrongfully refused to indemnify NGM for its damages.
35. NGM mitigated the damages in its settlement with the Websters after Miles wrongfully refused to do so.
36. As a result of Miles's sole failure to make a meaningful offer of UIM coverage to the Websters, NGM has been damaged in the amount of \$300,000 plus its attorneys fees and costs in both the underlying lawsuit brought by the Websters and its attorneys fees and costs in this matter to collect said sums.

WHEREFORE, NGM Insurance Company prays that the Court enter judgement against Miles Insurance Agency in the amount of \$300,000.00 plus the attorneys fees and costs incurred by NGM in both the lawsuit brought by the Websters and this lawsuit in attempting to collect the sums owed to NGM and for such further relief as the Court deems just and proper.

Respectfully submitted,

DOUGALL & COLLINS

s/Thomas F. Dougall

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Michal Kalwajtys, SC Bar No. 100950
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Suite 100
Elgin, SC 29045
(803) 865-8858 (TEL)

Attorneys for NGM Insurance Company

June 29, 2018

Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LANCASTER	)	
Jerry Wayne Webster and Janet Webster,	)	
	)	
PLAINTIFFS,	)	COMPLAINT
	)	2015-CP-29- <u>00810</u>
vs.	)	Non-Jury
	)	
MILES INSURANCE AGENCY, INC.,	)	
NATIONAL GRANGE MUTUAL	)	
INSURANCE COMPANY n/k/a NGM	)	
INSURANCE COMPANY	)	
	)	
DEFENDANTS.	)	

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CLERK OF COURT
LANCASTER, SC

Plaintiffs complaining of the Defendants would allege and show:

1. Plaintiffs are husband and wife and are residents of the County of Lancaster, State of South Carolina.
2. Defendant Miles Insurance Agency, Inc. is a South Carolina company with its primary place of business in Lancaster County and is the agent for and sells insurance for National Grange Mutual Insurance Company, now known as NGM Insurance Company.
3. Defendant National Grange Mutual Insurance Company, now known as NGM Insurance Company, is an insurance conglomerate licensed to do business in South Carolina and in particular, Lancaster County, South Carolina; selling insurance products.
4. This action is brought pursuant to Section 15-53-10 *et seq.* of The Code of Laws for South Carolina 1976, as amended.
5. On June 30, 2012, Plaintiff Jerry Webster was involved in an accident, of which accident was not his fault, further, Plaintiff Jerry Webster suffered severe injuries, extensive medical bills in the amount of Two Hundred Forty Four Thousand Eight Hundred Fifty Nine (\$244,859.00) Dollars, and total disability. The vehicle at fault carried South Carolina minimum liability limits in the sum of Twenty Five Thousand (\$25,000.00) Dollars. The facts

clearly show that Plaintiffs have an underinsurance claim and that a vehicle insured by Defendant's insurance company was involved in the accident.

6. Plaintiffs have filed a tort action suit against the at fault driver and per statute have activated available underinsurance by serving the Defendant's insurance companies, Defendant's insurance companies have denied such underinsurance coverage exists, though they have made an appearance in the tort action.

FOR A FIRST CAUSE OF ACTION

7. That the allegations alleged above are incorporated into this cause of action by way of reference.

8. On January 5, 2001, Plaintiff Janet Webster, by and through Miles Insurance Agency, Inc., as agent for Defendants; National Grange Insurance Company, now known as NGM Insurance Company, was offered policies of automobile insurance with liability limits of 50/100/50, un-insurance limits of 50/100/50 on the following automobiles:

- A. 1970 Chevrolet Pickup – VIN# 1W8DKADY439079
(incorrectly listed as 1970 Chevrolet EL Camino on auto application dated 1/5/01)
- B. 1985 Chevrolet El Camino – VIN# 3GCCW80H7F5906597
- C. 1986 Ford Motorhome – VIN# 1FDKE30L5GHB23399
- D. 1991 Ford F150 Pickup – VIN# 1FTEF15N3MNA82586
- E. 1980 Chevrolet El Camino – VIN# 1W80KAD439079
- F. 1988 Honda – VIN# ? or 1996 Honda Accord - VIN#1HGCD563TA175895

9. After the initial insurance application date of January 5, 2001, but prior to the accident date of June 30, 2012; the following vehicles were added to the Plaintiffs insurance policy and were insured by Defendants with liability limits of 50/100/50 and uninsured limits of 50/100/50:

- G. 2001 Honda Civic – VIN# 1HGEM22571L017426
- H. 1999 Chevrolet S10 – VIN# 1GCCS1448XK132206
- I. 2008 Honda Accord – VIN# 1HGCP26828A099803
- J. 1978 Chevrolet Van – VIN# CGL3380100541

10. That the said Defendant's insurance companies, on January 5, 2001 and any subsequent dates, did not make a meaningful offer of underinsurance per Section 38-77-160 Code of Laws for South Carolina 1976, as amended, to Plaintiff Janet Webster.
11. That the said Defendants have never made a meaningful offer of underinsurance per Section 38-77-160 Code of Laws for South Carolina 1976, as amended, to the Plaintiff Jerry Webster.
12. That by reason of this cause of action, Plaintiffs are entitled to reformation of all policies to provide underinsurance on the accident date of June 30, 2012.

FOR A SECOND CAUSE OF ACTION

13. That the allegations contained in Paragraphs 1-12 above, are incorporated into this cause of action by reference.
14. That Defendant Miles Insurance Agency and therefore, Defendant's insurance companies actually filled out any form as to underinsurance, except for the signature of Plaintiff Janet Webster.
15. That such action on behalf does not constitute a meaningful offer of underinsurance per Sections 38-177-60 and Section 38-7-350; both Code of Laws for South Carolina 1976, as amended.
16. That by reason of this cause of action, Plaintiffs are entitled to the reformation of all policies to provide underinsurance on the accident date of June 30, 2012.

FOR A THIRD CAUSE OF ACTION

17. That the allegations contained in Paragraphs 1-14 above, are incorporated into this cause of action by reference.
18. That said Defendants and their agents should have made a new meaningful offer when a substantial change in law occurred, meaning when Section 38-77-140 Code of Laws for

South Carolina was amended effective June 15, 2006, increasing the minimum limits to 25/50/25, which potentially would have an increase in premiums.

19. This substantial change in the law required a new offer and/or obtaining a new prescribed form as set out in Section 38-77-350 Code of Laws for South Carolina.

20. That by reason of this cause of action, Plaintiffs are entitled to the reformation of all policies issued by the Defendants to provide underinsurance on the accident date of June 30, 2012.

FOR A FOURTH CAUSE OF ACTION

21. That on the form used by Defendants on January 5, 2001 which purported to be a meaningful offer, no amounts of increased premiums were listed by the Defendants as required by their form and by law.

22. That this factor means no meaningful offer of underinsurance was made to either Plaintiff as set out in Sections 38-77-160 and 38-77-350; both Code of Laws for South Carolina 1976, as amended.

23. That by reason of this cause of action, Plaintiffs are entitled to the reformation of all policies to provide underinsurance on the accident date of June 30, 2012.

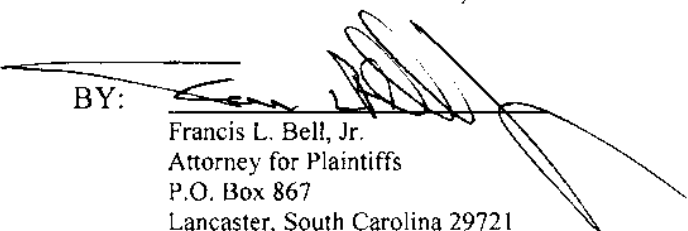
Wherefore Plaintiffs having made their complaint prays:

1. That the court issue its order reforming all automobile policies issued by the Defendants to be reformed as containing underinsurance for the limits of liability issued as of June 30, 2012, the date of accident Plaintiff's claim coverages.

June 8, 2015

Lancaster, South Carolina

FRANCIS BELL LAW FIRM, LLC

BY: 

Francis L. Bell, Jr.
Attorney for Plaintiffs
P.O. Box 867
Lancaster, South Carolina 29721
(803) 283-8476

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF KERSHAW	)	
JERRY WAYNE WEBSTER AND	)	
JANET WEBSTER,	)	
	)	
PLAINTIFFS,	)	COMPLAINT
	)	2014-CP-28- <u>1144</u>
vs.	)	Jury Trial Demanded
	)	
ETHAN SCOTT AUSTIN,	)	
	)	
	)	
DEFENDANT.	)	

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CLERK OF COURT
KERSHAW COUNTY, S.C.

Plaintiffs complaining of the Defendant would allege and show:

1. Plaintiffs are both residents of the County of Lancaster and are husband and wife.
2. Defendant is a resident of the County of Kershaw.
3. The below mentioned accident occurred in Kershaw County and Defendant being a resident of Kershaw; Kershaw County is the proper venue for this suit.
4. That on June 30, 2012, Plaintiff Jerry Wayne Webster was driving his vehicle on US Hwy. 521 in Kershaw County in a southerly direction, when suddenly and without any warning, Defendant drove his vehicle from a parking lot directly into the left side of Plaintiff Jerry Wayne Webster's vehicle, causing such vehicle to become uncontrollable and hitting a pole.
5. That said collision caused Plaintiff Jerry Wayne Webster to suffer property damages to his vehicle, loss of use, depredation; that said collision further caused Plaintiff to suffer injury to his head, face, neck, shoulders, hands, back, chest, legs, medical bills, hospital bills, drug bills, temporary and permanent disability, future medical bills, loss of earning, loss of enjoyment of life and pain and suffering, all in such of actual damages and punitive damages as established by the facts.

6. That the accident and resulting damages to Plaintiff, Jerry Wayne Webster, was a direct and proximate result of negligence, gross negligence, willfulness, wantonness and recklessness of the Defendant in following particulars to wit:
- A. Defendant failed to maintain a proper lookout.
 - B. Defendant failed to keep his motor vehicle under proper control.
 - C. Defendant failed to yield the right of way.
 - D. Defendant was driving too fast for conditions.
 - E. Defendant failed to make proper use of his brakes.

SECOND CAUSE OF ACTION

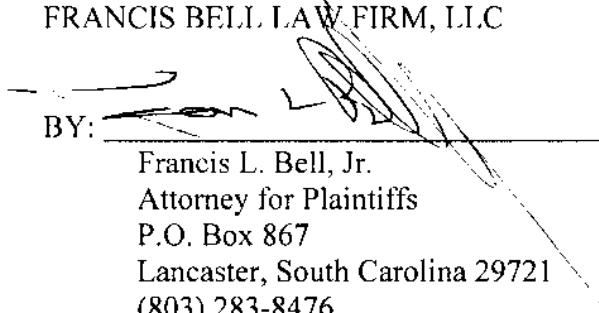
7. That the first cause of action is incorporated into this issue of action by way of reference.
8. That Plaintiffs are husband and wife and the collision and injuries to Plaintiff Jerry Wayne Webster caused Plaintiff Janet Webster to suffer a loss of consortium per Section 15-75-30, Code of Laws for South Carolina, 1976; as amended in that Plaintiff Janet Webster due to this collision and injuries above, loss the support and services provided by her husband consisting of love, companionship, affection, society, sexual relations, comfort, solace and guidance in such sum as established by the evidence.

Wherefore, Plaintiffs pray for a verdict for such actual damages as to both causes of actual and punitive damages as established by the evidence.

December 10, 2014

FRANCIS BELL LAW FIRM, L.L.C

Lancaster, South Carolina

BY: 

Francis L. Bell, Jr.
Attorney for Plaintiffs
P.O. Box 867
Lancaster, South Carolina 29721
(803) 283-8476

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF LANCASTER

) Civil Action No. 2018-CP-29-00794

NGM Insurance Company,

Plaintiff,

v.

Miles Insurance Agency, Inc.,

Defendant.

**ANSWER AND AFFIRMATIVE
DEFENSES**

Miles Insurance Agency, Inc. ("Miles") by and through its undersigned counsel, answers the Complaint as set forth below. Any allegation of the Complaint not admitted is denied.

1. Paragraph 1 is admitted.
2. Paragraph 2 is admitted.
3. Paragraph 3 is admitted.
4. Paragraph 4 is admitted.
5. Answering Paragraph 5, Miles lacks knowledge and information sufficient to form a belief as to the truth of the allegations set forth therein.
6. Answering Paragraph 6, Miles lacks knowledge and information sufficient to form a belief as to the truth of the allegations set forth therein.
7. Paragraph 7 is admitted.
8. Paragraph 8 is admitted.
9. Paragraph 9 is admitted.

10. Paragraph 10 is admitted insofar as it alleges that Mr. and Mrs. Webster filed suit in Lancaster County and that the Websters asked to have the policy reformed to include UIM coverage. The remaining allegations of Paragraph 10 are denied.

11. Paragraph 11 is admitted.

12. Answering Paragraph 12, Miles craves reference to the terms of the order referred to therein and denies all allegations inconsistent therewith.

13. Paragraph 13 states a legal conclusion to which no response is required.

14. Answering Paragraph 14, Miles admits that, like NGM, which was also a Defendant, it did not appeal the order of the court. As for the remaining allegations of Paragraph 14, Miles craves reference to the order and denies all allegations inconsistent therewith.

15. Answering Paragraph 15, Miles admits that NGM asked Miles to pay \$350,000.00 to the Websters. The remaining allegations of Paragraph 15 are denied.

16. Paragraph 16 is admitted.

17. Answering Paragraph 17, Miles admits that the NGM reached a settlement to pay \$300,000.00 to the Websters. The remaining allegations of Paragraph 17 are denied.

18. Paragraph 18 is admitted.

19. Paragraph 19 is admitted.

20. Paragraph 20 is admitted.

21. Answering Paragraph 21, Miles incorporates the foregoing paragraphs of this Answer.

22. Answering Paragraph 22, Miles admits that the Agency Agreement is a valid contract. The remaining allegations of Paragraph 22 are denied.

23. Paragraph 23 is denied.

24. Paragraph 24 is denied.

25. Answering Paragraph 25, Miles incorporates the foregoing paragraphs of this answer.

26. Answering Paragraph 26, Miles admits that the Agency Agreement is a valid contract.

27. Paragraph 27 is denied.

28. Answering Paragraph 28, Miles craves reference to the terms of the Agency Agreement and denies all allegations inconsistent therewith. Miles denies that the amounts NGM paid were solely the result of the offer Miles made to the Websters.

29. Paragraph 29 is denied.

30. Answering Paragraph 30, Miles incorporates the foregoing paragraphs of this Answer.

31. Answering Paragraph 31, Miles lacks knowledge and information sufficient to form a belief as to the truth of the allegations set forth therein, and, therefore, denies them.

32. Answering Paragraph 32, Miles craves reference to the order entered by the court and denies all allegations inconsistent therewith.

33. Paragraph 33 is denied.

34. Paragraph 34 is denied.

35. Paragraph 35 is denied.

36. Paragraph 36 is denied.

AFFIRMATIVE DEFENSES

1. NGM's claims for breach of contract, contractual indemnification, and equitable indemnification against Miles fail as a matter of law because NGM was negligent in not ensuring that the insurance application was properly filled out.

2. The order in the underlying action found that Defendants, including NGM, had not made a meaningful offer. Therefore, NGM may not assert contractual or equitable indemnity against Miles because of its own fault in the matter.

3. NGM has no damages in that the NGM was legally obligated to sell UIM coverage to the Websters in the amount that the Websters had sought in their action against NGM and Miles if the Websters wanted that coverage. Therefore, NGM either has no damages, or its damages were limited to the unpaid premiums which NGM should have recovered from the Websters.

WHEREFORE, having set forth its answer and affirmative defenses, Defendant prays that the complaint be dismissed with costs and attorney fees, if available, awarded to Defendant.

Dated: July 27, 2018

MCNAIR LAW FIRM, P.A.

By s/Bernie W. Ellis
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Fax: 864.271.4015
Attorneys for Defendant
Miles Insurance Agency, Inc.

STATE OF SOUTH CAROLINA**) IN THE COURT OF COMMON PLEAS****COUNTY OF LANCASTER****) Civil Action No. 2018-CP-29-00794**

NGM Insurance Company,

Plaintiff,

v.

Miles Insurance Agency, Inc.,

Defendant.

**DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

Miles Insurance Agency, Inc. ("Miles") by and through its undersigned counsel hereby moves for summary judgment in this action. The ground for this motion is that this is an action in which Plaintiff seeks damages for breach of contract, contractual indemnification, or equitable indemnification against Defendant for monies paid by Plaintiff pursuant to an insurance policy. Defendant will show that under the law of South Carolina as applied to the facts of this case, the relief Plaintiff seeks is not available because Plaintiff cannot prove damages caused by any act or omission of Defendant. Also, to the extent Defendant was negligent in its procuring of the insurance policy at issue in this case, the negligence of Plaintiff bars any action for either equitable or contractual indemnification.

WHEREFORE, Defendant prays that summary judgment be granted in its favor.

Respectfully submitted,

Dated: November 20, 2018

MCNAIR LAW FIRM, P.A.

By s/Bernie W. Ellis
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Attorneys for Defendant
Miles Insurance Agency, Inc.

ELECTRONICALLY FILED - 2018 Nov 20 3:06 PM - LANCASTER - COMMON PLEAS - CASE#2018CP2900794

STATE OF SOUTH CAROLINA	) IN THE COURT OF COMMON PLEAS
	)
COUNTY OF LANCASTER	) Civil Action No. 2018-CP-29-00794
	)
NGM Insurance Company,	)
	)
Plaintiff,	) DEFENDANT MILES INSURANCE
	) AGENCY'S MEMORANDUM IN
v.	) SUPPORT OF ITS MOTION FOR
	) SUMMARY JUDGMENT AND IN
Miles Insurance Agency, Inc.,	) OPPOSITION TO PLAINTIFF'S
	) MOTION FOR SUMMARY
Defendant.	) JUDGMENT
	)

In other words, if Selective would have issued the policy anyway, it was not damaged by Insurance Associate's negligence[.]

Fowler v. Hunter, 380 S.C. 121, 129, 668 S.E.2d 803, 807 (Ct. App. 2008) (Emphasis added).

INTRODUCTION

NGM Insurance Company has sued Miles Insurance Agency, Inc. ("Miles") for indemnification based upon a court's having found that NGM did not make a meaningful offer of underinsured motorists coverage to Janet and Jerry Webster. NGM's offer was made through the Miles Insurance Agency. In the policy reformation case, Jerry Wayne Webster and Janet Webster v. Miles Insurance Agency and National Grange Insurance Company, Civil Action No. 2015-CP-29-00810, the court so found and reformed the Websters insurance policy such that NGM was required to provide UIM coverage for an automobile accident in which Mr. Webster was severely injured. While Miles disagrees with the court's ruling, Miles acknowledges that it was the party that actually made the offer to the Websters.

South Carolina law provides a safe harbor for insurers if a form is used in offering UIM coverage and that form is properly filled out. S.C. Code § 38-77-350. In this case, the form that was used was the proper form, but the form lacked the available range of premiums for the available limits of UIM coverage. Therefore NGM did not receive the automatic protection against policy reformation provided by section 38-77-350. The court's order also discussed the fact that the insurance agent, and not the insured filled out the form which runs contrary to Floyd v. Nationwide Mut. Ins. Co., 367 S.C. 253, 626 S.E.2d 6 (2005). In that case, the South Carolina Supreme Court held that the insured must check the rejection boxes herself in order for the safe harbor provisions to apply. That case was decided well after the insurance policy was issued in this case, and was overruled by statute in 2006. Therefore, it would be difficult to argue that Miles did something wrong in 2001 when even the United States District Court did not know that the insured had to check the boxes on the form, and the legislature immediately corrected it.

Though the offer form was not filled out so as to protect the insurer, NGM was also entitled to prove the Websters still received a meaningful offer of UIM coverage. The court ruled in favor of the Websters as to that issue, but that finding was heavily affected by the passage of time and the credibility of the witnesses. The fact is that had the offer form been filled out correctly, one way or the other, the reformation case would probably not have been filed because either the safe harbor would have applied or the Websters would have purchased UIM coverage.

NGM's claim for indemnification, both contractual and equitable, overlooks a critical issue discussed in the South Carolina case Fowler v. Hunter, 388 S.C. 355, 697 S.E.2d 531 (2010). Under the principle in that case, in order to be indemnified by an insurance agent for causing an insurer to provide coverage that was not supposed to have been included in the policy, the insurer has to prove that but for the negligence of the agent, the insurer would not have sold the policy to

the insured. In other words, to be entitled to indemnification, NGM has to prove that had Miles made a meaningful offer of UIM coverage, either the Websters would not have selected it or NGM would not have sold the coverage to the Websters, and NGM would not have been liable under the insurance policy. NGM cannot prove that because Mrs. Webster testified that had Miles made a meaningful offer of coverage, she would have selected it; therefore, NGM would have been required by law to sell it to the Websters. Exhibit A. (Excerpt from trial transcript, p. 39, ll. 17-25).

Furthermore, even if NGM could seek indemnification without the ability to show that it would not have sold the policy, NGM's own failure to review its form and the way it was filled out prevents it from seeking either contractual or equitable indemnification.

A. NGM HAS NO DAMAGES BECAUSE IT WOULD HAVE HAD TO PROVIDE UIM COVERAGE IF THE WEBSTERS HAD SELECTED IT, AND MRS. WEBSTER TESTIFIED SHE WOULD HAVE SELECTED IT.

In Fowler, an insurance agent negligently failed to procure automobile coverage for an insured as part of an umbrella policy issued by Selective Insurance. Id. at 359, 697 S.E.2d at 534. The agent acknowledged that he was supposed to have procured that coverage but inadvertently had not checked the box to add that coverage to the policy. Id. at 360, 697 S.E.2d at 534. Selective settled the claim with the insureds and sought equitable indemnification against the insurance agent for its negligence in subjecting Selective to liability for a policy it had not issued. Id.

The trial court granted the insurance agent's motion for summary judgment against Selective on the grounds that Selective could not prove that had the insurance agent performed its duties properly, Selective would not have issued the policy. The court of appeals reversed, and the Supreme Court affirmed that reversal - but only because there was a question of fact as to whether Selective would have automatically issued the policy including automobile coverage. Id.

at 363-64, 697 S.E.2d at 535-36. As made clear in the court of appeals' opinion, had Selective not been able to raise an issue of fact as to whether it would have issued automobile coverage, it could not have sought equitable indemnification because it would not have been able to prove damages as the result of the agent's negligence. In so holding, the Court of Appeals stated, "We find Selective's position raises a question regarding the indemnification claim, but only if we can conclude Selective would not have issued the policy had the application been correctly submitted. In other words, if Selective would have issued the policy anyway, it was not damaged by Insurance Associate's negligence as it would have been exposed for the full four million dollars." Fowler v. Hunter, 380 S.C. 121, 129, 668 S.E.2d 803, 807 (Ct. App. 2008) (Emphasis added).

If Miles had made an meaningful offer of UIM coverage, the law of the underlying case as well as Mrs. Websters trial testimony is that the Websters would have accepted it. In fact, one argument made by NGM on this issue – that Janet Webster's intent did not underlie the court's decision - is wrong. In Ray v. Austin, 388 S.C. 605, 698 S.E.2d 208 (2010), the Supreme Court refused to reach the absurd result of "reforming the policy to give Cintas coverage it understood, did not want, and clearly rejected." Id. at 614, 698 S.E.2d at 212. When a court reforms a policy to add UIM coverage, the implicit finding is that the insured would have gotten the coverage, and, in this case, NGM would have had to provide it.

Based upon the foregoing, it is clear that NGM cannot proceed on its claim for equitable indemnification. As for its claim for contractual indemnification, NGM has the same problem - it does not have damages. To prove an action for breach of contract, NGM must prove damages. Branche Builders, Inc. v. Coggins, 386 S.C. 43, 686 S.E.2d 200 (Ct. App. 2009). "The elements for breach of contract are the existence of the contract, its breach, and the damages caused by such

breach.” As set forth in Fowler, because NGM cannot prove that it would not have provided UIM coverage had the Websters asked for it because by law, NGM would have had to provide it.

B. NGM WAS NEGLIGENT IN ACCEPTING AN APPLICATION THAT HAD NOT BEEN PROPERLY FILLED OUT.

For a party to recover under a theory of equitable indemnification, three things must be proven: (1) the indemnitor was liable for causing the Plaintiff's damages; (2) the indemnitee was exonerated from any liability for those damages; and (3) the indemnitee suffered damages as a result of the Plaintiff's claims against it which were eventually proven to be the fault of the indemnitor.

Vermeer Carolina's, Inc. v. Wood/Chuck Chipper Corp., 336 S.C. 53, 63, 518 S.E.2d 301, 307 (Ct. App. 1999).

NGM was not exonerated from liability from any liability for damages to the Websters. In fact the order in the underlying case repeatedly refers to the “Defendants” which includes NGM. The insurance statute places the obligation upon the insurance carrier, not the agent, to offer underinsured motorists coverage. S.C. Code § 38-77-160. Under S.C. Code § 38-77-350, if an insured fails or refuses to return an executed offer form within 30 days to the insurer, the insurer shall add on uninsured motorist and underinsured motorist coverages with the same policy limits as the insured's liability limits. There is no implication in the underlying case that NGM was completely innocent of having caused the liability.

In fact, NGM was not innocent. When the Webster's insurance application was filled out, it was faxed to NGM, and NGM could see what was on the application and what was not. Exhibit B. (NGM 30(b)(6) Dep., p. 15, ll. 1-16). NGM had certain parameters to kick out an application if the application did not comply with certain requirements such as lacking a Social Security number or failing to provide mandatory coverages. Id., (p. 11, ll. 8-25; p. 13, ll. 5-21). As noted above, under South Carolina law, if an executed offer form is not returned within 30 days to the

insurer, the insurer is to add on UM and UIM coverage with the same policy limits as the insured policy limits.

NGM was just as aware as Miles Insurance was that the premium amounts for UIM coverage were not on the form that Mrs. Webster signed. NGM had other parameters in place to reject an application if it was not properly filled out.

This issue goes to the heart of the contractual indemnification provision in the NGM agency agreement. Under that contract, NGM cannot be indemnified if it contributed to or compounded the error or omission. In this case, the problem was that the form did not have the premium amounts for UIM set forth in the form; therefore, NGM did not get the safe harbor protection of the South Carolina statute. That information was just as available to NGM as it was to Miles, the policy was not issued until NGM approved the application. Therefore, NGM cannot recover under its own contractual language.

WHEREFORE, Defendant prays that summary judgment be granted in its favor.

Respectfully submitted,

Dated: March 1, 2019

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STATE OF SOUTH CAROLINA

COUNTY OF LANCASTER

NGM Insurance Company,

Plaintiff,

v.

Miles Insurance Agency, Inc.,

Defendant.

IN THE COURT OF COMMON PLEAS

IN THE SIXTH JUDICIAL CIRCUIT

PLAINTIFF'S
**CROSS-MOTION
FOR SUMMARY JUDGMENT
AND MEMORANDUM IN SUPPORT**

(breach of contract—contractual indemnity)

C/A No: 2018-CP-29-00794

The plaintiff, NGM Insurance Company (NGM), in accordance with Rule 56 of the South Carolina Rules of Civil Procedure, cross moves for summary judgment against the defendant, Miles Insurance Agency, Inc. (Miles Agency), for \$300,000.00 in damages with pre- and post-judgment interest and attorneys' fees.

NGM is entitled to judgment in its favor because the pleadings filed in this case, deposition testimonies of the relevant witnesses, as well as documentary evidence, which includes an order of this Court, establish beyond genuine dispute that:

- Miles Agency, acting as NGM's independent agent, made errors and omissions in making an offer of underinsured motorist coverage (UIM) to the insured, Janet Webster.
- Because of Miles Agency's errors and omissions, as conclusively determined by this Court, no meaningful offer of UIM coverage was made to Webster, which resulted in NGM incurring a substantial loss.
- Under the agency agreement between NGM and Miles Agency, NGM is entitled to be indemnified for the loss caused by Miles Agency's errors and omissions.

- Miles refused to indemnify NGM and, therefore, breached the terms of its contract with NGM.

BACKGROUND

Miles Insurance Agency, Inc. is an independent insurance agency in Lancaster, SC, solely owned by Mr. Richard Miles. (*See* Richard Miles Dep. 7:13–7:21, December 15, 2016.) Mr. Miles has been licensed to sell casualty insurance since 1987. (Miles Dep. 7:13–7:21.) Through the years, Miles Agency has had relationships with various insurance companies, among them, National Grange Mutual Insurance Company, later renamed NGM Insurance Company. (*See* Miles Dep. 7:22–7:24.)

In 1994, NGM and Miles Agency entered into an Agency Agreement, which authorized Miles to solicit and bind auto insurance contracts for NGM. (A copy of the agreement is attached as Exhibit A.) In 2007, Miles Agency and NGM’s parent company, Main Street America Group (MSA), executed an MSA Agency Agreement, which replaced the 1994 contract. (Miles Dep. 63:15–63:25, Ex. 1.) Both documents contain the same language and provide, among others, that Miles Agency will hold NGM “harmless against liability it may incur to . . . its policyholder . . . based on error or omission of the Agent . . . [and that the] Agent shall reimburse the Company for any loss, expense, or damage sustained by reason of any violation of the provisions of the Agreement or printed instructions furnished to the Agent by the Company.” (Miles Dep. Ex. 1 at 3.)

On January 5, 2001, Janet Webster visited Miles Agency with the purpose of insuring her and her husband's cars. (Janet Polston Webster Dep. 25:5–25:12, 32:5–32:10, 33:1–33:18, 34:14–34:18, January 20, 2016.) The Websters had been Miles Agency's clients for quite some time. (Janet Dep. 46:17–46:21, 47:3–47:11.) Janet's visit to Miles Agency was prompted by its letter informing the Websters that because their insurer, General Accident, was withdrawing from South Carolina, their policies could not be renewed. (Miles Dep. 31:25–32:18; Webster Dep. 33:4–34:20.) Miles suggested switching to National Grange Mutual Insurance Company, as NGM was then known. (Id.)

While at the agency, Mrs. Webster talked to the clerk at the counter. (Webster Dep. 46:6–46:16.) She might have also met with both Mr. Miles and his employee, Candice Short. (Candice Short Dep. 47:9–47:18, December 15, 2016; Webster Dep. 50:22–51:4, 54:9–55:9.) Ms. Short had been employed with Miles Agency for over three years. (Short Dep. 7:21–8:2.) Although her primary role was customer service, she was a duly licensed insurance agent, familiar with the relevant laws. (Short Dep. 9:3–10:20.) Ms. Short had been aware that the law required insurance agents to make a meaningful offer of underinsured motorist (UIM) coverage to the customers purchasing auto insurance. (Short Dep. 10:15–10:20.)

Ms. Short filled out—partially—the form ACORD 61 SC (2000/01), entitled “South Carolina Auto Supplement,” which NGM had supplied to Miles Agency and

required its use for making offers of UIM coverage. (Short Dep. 20:3–20:17, 15:16–15:20, 30:13–31:24, 42:19–42:25, 51:3–51:8, Ex. 1 at 3–6; Miles Dep. 16:7–16:13, 61:15–61:19.) Under NGM’s underwriting and rate manuals, which were furnished to Miles, Miles Agency was to fill out all relevant forms. (Miles Dep. 59:21–59:23.) On two separate pages, and in four different locations, the Auto Supplement form contained an instruction: “These increased premium charges must be filled-in by your insurance agent prior to your decision and signature.” (Miles Dep. Ex. 1 at 4 and 5.)

Despite the instruction, Ms. Short did not fill out the blank spaces for listing the increased premiums. (Short Dep. 32:1–32:8, 52:3–52:9.) Miles Agency’s standard procedure, when offering the UIM coverage, was to show the premiums to an applicant on a separate quote sheet instead of filling out the form as instructed. (Short Dep. 32:4–32:8; 52: 52:18–52:21; Miles Dep. 61:22–62:3.) Ms. Short checked the box indicating rejection of UIM coverage and Mrs. Webster signed the Auto Supplement form. (Short Dep. 31:14–31:24.) By countersigning the application form, Mr. Miles, as an authorized independent agent of NGM, bound NGM to a policy that did not include UIM coverage, apparently rejected by Mrs. Webster. (Miles Dep. 60:19–61:14.) Through the years, the Websters have added cars to the policy, covering eventually seven vehicles. (Webster Dep. 26:8–26:12.)

* * *

In the summer 2012, Janet’s husband, Jerry Webster, had a traffic accident while driving one of the NGM-insured vehicles and suffered serious injuries. (2014-

CP-28-1144 Compl. ¶¶ 4 and 5.) In 2014, the Websters sued the at-fault driver. (2014-CP-28-1144 Compl.) They also served the pleadings on NGM, which appeared in the case; NGM denied that UIM coverage was available to Jerry under the policy. (2015-CP-29-00810 Compl. ¶ 6.)

A year later, the Websters sued NGM and Miles Agency seeking reformation of the policy to include UIM coverage in an amount equal to the limits of the liability coverage, alleging that the defendants failed to make a meaningful offer of UIM coverage. (*See* 2015-CP-29-00810 Compl.) NGM tendered the defense in that action to Miles Agency, pursuant to the indemnification clause of the MSA Agency Agreement. (A copy of the tender-of-defense letter is attached as Exhibit B.) Miles Agency declined to defend and hold harmless NGM. (A copy of the letter from counsel for Miles Agency is attached as Exhibit C.)

Following the bench trial held on November 29, 2017—during which Janet Webster, Candice Short n/k/a Candice Grau, and Richard Miles testified—the Honorable John C. Hayes, III, Circuit Judge, found that because of the un-filled blanks in the Auto Supplement form the defendants lost the presumption that a meaningful offer of UIM coverage had been made and that “Mrs. Grau and Mr. Miles offered no evidence of premiums being discussed to show there was a meaningful offer.” (2015-CP-29-810 Order at 5 and 8.) The Court reformed the policy to include UIM coverage. (2015-CP-29-810 Order at 9.) Miles Agency did not appeal the Order. (Answer ¶ 14.)

Under the reformed policy, the Websters had a right to “stack” coverages for all of their vehicles listed in the policy for the total amount of \$350,000.00.

On February 23, 2018, NGM demanded that, in accordance with the indemnification clause of the MSA Agency Agreement, Miles Agency pay \$350,000.00 to the Websters. (Compl. ¶ 15; Answer ¶ 15.) Miles Agency refused. (Compl. ¶ 16; Answer ¶ 16.) To mitigate its damages, NGM reached a compromise with the Websters and settled for \$300,000.00. (Compl. ¶ 17; Answer ¶ 17.) On April 6, 2018, NGM demanded indemnification from Miles Agency in the amount of \$300,000 that had been paid to the Websters and \$21,894.46 in attorneys’ fees incurred by NGM for its defense in the reformation action. (The April 6 demand letter to Miles Agency’s counsel is attached as Exhibit D; Compl. ¶ 18; Answer ¶ 18.) Miles Agency declined to indemnify NGM and this lawsuit followed. (Compl. ¶ 19; Answer ¶ 19.)

SUMMARY JUDGMENT STANDARD

Under Rule 56 of the South Carolina Rules of Civil Procedure, the judgment sought by the moving party “shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Rule 56(c), SCRPC. The rule further provides that “[w]hen a motion for summary judgment is made and supported as

provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial.” Rule 56(e), SCRCP.

“In ruling on a motion for summary judgment, the evidence and the inferences which can be drawn therefrom should be viewed in the light most favorable to the nonmoving party.” *Gilmer v. Martin*, 323 S.C. 154, 156, 473 S.E.2d 812, 813 (Ct. App. 1996). It is not sufficient, however, that a non-moving party creates an inference that is not reasonable or raises issue of fact that is not genuine. *Evans v. Stewart*, 370 S.C. 522, 636 S.E.2d 632, 635 (Ct. App. 2006). “To justify departure from the course of the trial of an issue of fact and the award of summary judgment, the court must be convinced that the issue is not genuine but feigned and that there is in truth nothing to be tried. . . . The fact that there is a factual dispute is not enough to preclude a summary judgment.” *Saluda Motor Lines, Inc. v. Crouch*, 300 S.C. 43, 46, 386 S.E.2d 290, 292 (Ct. App. 1989) (quoting 73 Am. Jur. 2d *Summary Judgment* § 27).

“The plain language of Rule 56(c), SCRCP, mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to the party’s case, and on which that party will bear the burden of proof at trial.” *Etheredge v. Richland School Dist. I*, 330 S.C. 447, 453, 499 S.E.2d 238 (Ct. App. 1998). “The

purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder. In that way, a motion for summary judgment is akin to a motion for a directed verdict because in each instance, one party must lose as a matter of law.” *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868 (2001) (internal citations and quotation marks omitted).

ARGUMENT

Section XI, “Indemnification,” of the MSA Agency Agreement, entered into by Miles Agency and MSA on December 20, 2007, as well as identically titled and phrased provision of the 1994 Agency Agreement between Miles Agency and National Grange Mutual Insurance Company (hereinafter both documents are referred to as the “Agreement”), provides that “the Agent will hold the Company harmless against liability it may incur to or on behalf of its policy holder, actual or alleged, based on error or omission of the Agent if the Company has not contributed to or compounded such error or omission.” (Miles Dep. Ex. 1.) And further, that the agent “shall reimburse the Company for any loss, expense or damage sustained by reason of any violation of the provisions of this Agreement or of the written or printed instructions furnished the Agent by the Company.” (Miles Dep. Ex. 1 at 3–4.)

* * *

I. NGM is entitled to indemnification because it incurred a liability to its policyholder based solely on Miles Agency's errors and omissions in making the offer of UIM coverage.

South Carolina law requires insurers to “offer, at the option of the insured, underinsured motorist coverage up to the limits of the insured liability coverage” S.C. Code Ann. § 38-77-160 (2015). To be valid under the statute, the offer must be a meaningful one. *Traynum v. Scavens*, 416 S.C. 197, 202, 786 S.E.2d 115, 118 (2016). In other words, an insurer must provide the insured “with adequate information, and in such a manner, as to allow the insured to make an intelligent decision of whether to accept or reject the coverage.” *State Farm Mut. Auto. Ins. Co. v. Wannamaker*, 291 S.C. 518, 521, 534 S.E.2d 555, 556 (1987).

In *Wannamaker*, our Supreme Court adopted a set of criteria that allow for determination of an offer's validity. *Id.* According to the court, in making an offer of UIM coverage,

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

Id. (citing *Hastings v. United Pac. Ins. Co.*, 318 N.W.2d 849 (Minn. 1982)).

Furthermore, under § 38-77-350 of the South Carolina Code, an insurer is conclusively presumed to have met the *Wannamaker* criteria, and thus made a meaningful offer of

UIM coverage, if it used the form promulgated by the South Carolina Department of Insurance in accordance with the section's requirements, and that form was "signed by the named insured, after it has been completed by an insurance producer or a representative of the insurer." S.C. Code Ann. § 38-77-350 (2015); *Traynum*, 416 S.C. at 203, 786 S.E.2d at 118.

A. NGM had a right to rely on Miles Agency to act with adequate care when dealing with Webster and, accordingly, make a meaningful offer of UIM coverage in compliance with the law of South Carolina.

According to the leading treatise on insurance law, "An insurance agent, so far as the insurer is concerned, is a person expressly or impliedly authorized to represent it in dealing with third persons in matters relating to insurance." Lee R. Russ, *Couch on Insurance* 3d § 44:38 (2011). An agent is usually "commissioned . . . by an insurance company to solicit and write insurance by and in the name of the company." *Id.* "An agency on behalf of the insurer may be created by and in the same ways as any other agency may be created." *Id.*

Miles's agency relationship with NGM was established through an express agreement. Under the terms of the Agency Agreement, and "subject to requirements imposed by law . . . [Miles was] authorized to [s]olicit the kinds of insurance for which a commission is specified in Schedule A" (Exhibit A at 1.) That schedule specified a commission of 15% for personal auto insurance. (Exhibit A at 5.) The

agreement also authorized Miles to “[b]ind insurance contracts and countersign binders, policies, and customary endorsements effecting policy changes, all in accordance with the Company’s manuals and written or printed instructions . . . furnished to the Agent.” (Exhibit A at 1.) By executing the Agency Agreement, Miles undertook to “[a]dhere to all the published instructions, rules and regulations of the Company and any special written or printed instructions that may be communicated to the Agent.” (Id.) Under the General Provisions and Conditions of the Agency Agreement, Miles could not use “any . . . circular matters or forms other than those furnished or approved by the Company.” (Exhibit A at 3.)

NGM furnished Miles Agency with its underwriting and rates manual, which mandated that the application and supplemental forms be filled out by the agents. (*See* Miles Dep. 59:11–59:22.) NGM also furnished a form, which complied with the South Carolina law and was approved by the South Carolina Department of Insurance, to be used by Miles when making an offer of UIM coverage. (*See* Short Dep. 15:16–15:20, 16:10–16:11, 51:3–51:8; Miles Dep. 16:7–16:20; Brian Brennan Dep. 35:12–35:20, November 15, 2016.)

The form, ACORD 61 SC (2000/01), tracks word-for-word the form that had been promulgated by the Department of Insurance pursuant to § 28-77-350 of the South Carolina Code. (Short Dep. Ex. 1 at 3–6; *cf.* SCDOI Form Number 2006, <https://www.doi.sc.gov/DocumentCenter/View/2933/Bulletin-1999-1-Offer-of->

Optional-Additional-Uninsured-Motorist-Coverage-and-Optional-Underinsured-M (last visited Feb. 15, 2019).) The form contains all the elements set forth in the subsections (1) through (5) of § 28-77-350(A): it provides concise explanation of the coverage, includes the Department’s address and telephone number, lists available limits, and contains appropriate check boxes and signature lines. The form also contains an explicit instruction: “These increased premium charges *must be* filled-in by your *insurance agent* prior to your decision and signature.” (Short Dep. Ex. 1 at 5) (emphasis added).

* * *

Apart from contractual terms, the general laws of agency govern the relationships of the insurance agents with the insurance companies. *See* Lee R. Russ, *Couch on Insurance 3d* § 44:38 (2011). Therefore, an insurance agent owes his or her principal—the insurance company—fiduciary duties, among them, a duty of care: A compensated agent must “act with standard care and with the skill which is standard in the locality for the kind of work which he is employed to perform and, in addition, to exercise any special skill that he has.” Restatement (Second) *Agency* § 379(1).

For this reason, NGM, a Florida company, had a right to rely on Miles Agency, which was duly licensed by the State of South Carolina, to properly fill out a form—use of which was mandated by the law of South Carolina—as to allow for a

presumption of meaningful offer of UIM coverage to arise, or to otherwise communicate to Janet Webster a meaningful offer of UIM coverage.

B. Miles Agency made errors and omissions that led to the reformation of the policy and NGM's liability to the insured.

During his deposition, Richard Miles testified that through his training and years of experience he had known that South Carolina law required that insurance producers, such as Miles Agency, make a meaningful offer of UIM coverage to the purchasers of auto policies. (*See* Miles Dep. 8:5–8:21.) He had been familiar with the requirements of § 38-77-350 of the South Carolina Code:

“Q: As of 2001 . . . are you aware of what this statute calls for?

A: Yes. They like to see the premiums indicated, or increase in the premium.”
(Miles Dep. 10:6–10:9.)

Miles further acknowledged that listing the premiums on the Auto Supplement form had been required under the statute and that he or other employees of Miles Agency should have written the premiums into the form. (*See* Miles Dep. 23:3–23:8; 37:10–37:19.) Moreover, according to Miles, the underwriting and rate manual provided by NGM required Miles Agency to “fill out the supplemental form.” (Miles Dep. 59:21–59:23.)

Despite Miles's knowledge of the statutory requirements, and despite NGM's manual and the instructions on the form itself, Miles Agency failed to properly fill out

the form, depriving NGM of the presumption under § 38-77-350. During her deposition, Candice Short—Miles Agency’s employee and a licensed agent herself—acknowledged that the form called for an agent to write down the amounts of increased premiums and testified that she did not do that. (Short Dep. 52:3–52:9.) In fact, Miles Agency’s operating procedure was to use a quote sheet when offering UIM coverage instead of filling out the form as required by law. (Short Dep. 52:18–52:21; Miles Dep. 69:1–69:6.)

Furthermore, as determined by this Court, and tacitly acknowledged by Miles Agency through its failure to appeal Judge Hayes’s order, Miles Agency did not make a meaningful offer of UIM coverage. The Court heard testimony of Janet Webster, Richard Miles, and Candice Grau (formerly Short), and found that Grau’s and Miles’s testimonies did not indicate that the premiums were discussed and that “[w]ithout the specifics of the coverage and premiums listed out, Plaintiff Janet Webster was not intelligibly advised and per the statute was not made a meaningful offer.” (2015-CP-29-00810 Order at 6 and 8.)

Miles Agency’s errors and omissions as determined by Judge Hayes, exposed NGM to liability—liability that would not arise but for Miles Agency’s failures to act in accordance with the law, instructions, and standards of skill and care incumbent on compensated agents.

C. NGM did not contribute to, or compound, Miles Agency's errors and omissions.

In its Answer, Miles Agency points out that “the order in the underlying action found that Defendants, including NGM, had not made a meaningful offer.” (Answer at 5.) That finding was hardly surprising. It was a predictable consequence of the agency relationship between NGM and Miles. By virtue of that relationship, all actions of Miles Agency vis-à-vis Janet Webster were imputed to NGM. After all, Miles Agency was expressly authorized to solicit and bind insurance contracts on behalf of NGM. (See Miles Dep. Ex.1.)

Miles Agency also asserts that NGM cannot recover in this action because it “was negligent in not ensuring that the insurance application was properly filled out.” (Answer at 4.) Under the indemnification clause of the MSA Agency Agreement, however, that issue is irrelevant. What matters is whether NGM *contributed* or *compounded* Miles Agency's errors and omissions, namely, its failure to fill out the form and to intelligibly advise Mrs. Webster, in a commercially reasonable manner, of the increased premiums if UIM coverage were to be selected. (See 2015-CP-29-00810 Order at 4–8.)

The indemnification clause—and its phrase “contributed to or compounded such errors or omissions”—must be interpreted in accordance with the rules and canons of construction applicable to contracts generally. *Lauren Emer. Med. Spec. v.*

M.S. Bailey, 348 S.C. 191, 195, 558 S.E.2d 531, __ (Ct. App. 2002). For this reason the principal question focuses on the intent of the parties. *Id.* Their intent is discerned from the language used in the contract. *Id.* “If that language is clear and unambiguous, it must be given its plain and usual meaning.” *Id.* That meaning can be established through resort to dictionary definitions of the relevant words.

According to Merriam-Webster, “to contribute” is “to play a significant part in bringing about an end or result.” *Merriam-Webster* (online edition).¹ Oxford English Dictionary defines “contribute to” as “help to cause or bring about.” *The Oxford English Dictionary* (online edition).² To “compound,” on the other hand, is to “put together (parts) so as to form a whole,” “add to,” or “make (something bad) worse; intensify the negative aspects of.” *Merriam-Webster* (online edition)³; *The Oxford English Dictionary* (online edition).⁴ Thus, the following questions arise: Did NGM play a part in Candice Short’s not filling in the blanks on the Auto Supplement form? Did NGM cause Miles Agency, in any way, not to advise Janet Webster of the UIM coverage in accordance with the *Wannamaker* criteria? Finally, were any of those failures made worse by any act or omission on NGM’s part? The answer to all is no.

¹ <https://www.merriam-webster.com/dictionary/contribute> (last visited Feb. 15, 2019).

² <http://www.oed.com/view/Entry/107015?redirectedFrom=contribute#eid> (last visited Feb. 15, 2019).

³ <https://www.merriam-webster.com/dictionary/compound> (last visited Feb. 15, 2019).

⁴ <http://www.oed.com/view/Entry/107015?redirectedFrom=compund#eid> (last visited Feb. 15, 2019).

To be sure, NGM received the forms, including ACORD 61 SC (2000/01). (Brennan Dep. 14:13–14:16.) And Miles Agency might argue that, in the words of its counsel, NGM “did not have a parameter at that time that this form should be kicked back if that premium was not filled out.” (Brennan Dep. 15:9–15:11.) But the purported failure to “kick back” the form did not contribute to, or compound, Miles Agency’s errors and omissions. By then the genie was out of the bottle. And it is debatable, whether NGM could have bottled it up later. But in any event, NGM’s failure to do so would not amount to contributing to, or compounding, Miles Agency’s error or omission. The meeting with Janet Webster had already taken place and no meaningful offer of UIM coverage was made during that meeting. The coverage was bound on the same day, without UIM, as reported to NGM by Miles Agency. (*See* Brennan Dep. 8:7–9:8.) And, under the law, NGM was not required to re-offer UIM coverage at each renewal of the policy. *See* S.C. Code Ann. 38-77-350(C) (2015).

Arguably, NGM would have contributed to Miles Agency’s failure to make a meaningful offer if NGM’s underwriting and rate manuals commanded use of quote sheets or instructed the agents that entering the premiums into the Auto Supplement form was not required. Quite the opposite, however, the instructions embedded in the form, use of which was commanded by NGM, stated that the “increased premium charges *must be* filled-in by your insurance agent.” (Short Dep. Ex. 1 at 5.) (emphasis added)

Similarly, one cannot compound the errors resulting in Miles Agency's not making a meaningful offer. Those errors could not have been made worse or intensified by NGM as to bring about the effect noted by Judge Hayes. Again, any action or inaction on the part of NGM would not have made the UIM offer, presented by Miles Agency, any less meaningful than it already was. Because NGM did not contribute to, or compound, Miles Agency's errors or omissions in making the offer of UIM coverage to Mrs. Webster, NGM's recovery cannot be barred.

II. Miles Agency's failure to make a meaningful offer of UIM coverage in accordance with the South Carolina law constituted violation of the Agreement thus entitling NGM to indemnification.

Under Section I, "Authority of Agent," of the Agreement, subsections a. and b., NGM granted Miles Agency authority to solicit and bind insurance contracts on behalf of NGM. At the same time, however, Miles Agency expressly undertook to exercise that authority "subject to requirements imposed by law." (Miles Dep. Ex. 1. at 1.) Those requirements had been well known to Miles Agency but, as attested by Richard Miles, they were not followed:

Q: . . . So your training and understanding is that underinsured is technically optional? A: Yes. It is optional in the State of South Carolina. Q: And the option to exercise it or not to exercise it rests with the insured? A: Yes. Q: And your training and understanding is . . . that you have to make . . . a meaningful offer? A: Yes. . . . A: . . . I've been in the industry a lot longer than 2001, when this started. So I was familiar with the process of dealing with it. . . . Q: . . . It appears that since at least '89, that we've had a statute that talks about a form to be used when optional coverages are offered. That's 38-77-350. . . Q: . . . As of

2001 . . . are you aware of what this statute calls for? A: Yes. They like to see the premiums indicated or increase in the premium. . . . Q: How come we don't have a premium listed when the form calls for it? A: Other than the fact that it was on the quote sheet. That would be the only reason, that maybe she forgot to input it in. . . Q: Is it required to be there? As you understand? A: Yes. . . . Q: And are you agreeing that they should have been on the form? A: Yes. By the statute, they're supposed to be on the form. Q: Okay. Therefore they should have been put down . . . by you or somebody in Miles Insurance Agency. Is that correct? A: Yes.

(Miles Dep. 8:11–8:21, 9:15–9:25, 10:6–10:9, 22:21–23:4, 37:10–37:19.)

By failing to act in accordance with the requirements of § 38-77-350, which specifically commands completion of the UIM offer form by “an insurance producer or representative of the insurer” S.C. Code Ann. § 38-77-350(B) (2015), Miles Agency violated Section I of the Agreement. Section I, however, is not the only provision implicated here.

Under Section II, “Duties of Agent,” subsection a., Miles Agency agreed to “adhere to the published instructions, rules and regulations of the Company and any special written or printed instructions that may be communicated to the Agent.” (Miles Dep. Ex. 1. at 1.) Richard Miles testified that the underwriting manual, provided by NGM, called for supplemental forms to be filled out. (Miles Dep. 59:21–59:22.) Furthermore, the Auto Supplement form, which according to Mr. Miles was furnished by NGM as well, contained a printed instruction commanding the insurance agent to fill in the increased premium charges prior to the insured's signing the form. (Miles

Dep. 16:7–16:20; Short Dep. Ex. 1 at 5.) As shown above, Miles Agency failed to abide by these instructions in violation of Section II a.

* * *

Section XI c. of the Agreement provides that the “Agent shall hold the Company harmless and shall reimburse the Company for any loss, expense or damage sustained by reason of any violation of the provisions of this Agreement or of the written or printed instructions furnished to the Agent by the Company.” (Miles Dep. Ex. 1 at 4.) Because Miles Agency’s violations of Sections I and II a. directly caused NGM’s expense in the form of incurred attorneys’ fees and payment of \$300,000 to the Websters, NGM has a right to recover those sums.

III. By not accepting tender of defense and then failing to reimburse NGM’s expenses, Miles breached the terms of MSA Agency Agreement.

Miles Agency has refused to heed NGM’s multiple demands for payment and remains in breach of its obligation to hold NGM harmless. In its Answer, Miles Agency disputes the extent of NGM’s damages claiming that NGM is entitled to recover, at most, the sum total of the premiums the Websters would have paid had they selected UIM coverage in 2001. (See Answer at 5.) This implies that the Order reforming the policy had, as it were, a *nunc pro tunc* effect on the intent of the Websters: They want UIM coverage now therefore they wanted it then. But that is not the case. What the Order not only implies but practically states, however, is that

neither Richard Miles nor his employee, Candice Short, made a meaningful offer of UIM coverage. (*See* 2015-CP-29-00810 Order.) This determination, and not determination of Janet Webster's intent in 2001, underlies the Court's decision to reform the policy—a reformation that would not have been, but for Miles Agency's errors and omissions discussed above.

Reformation of the policy was a direct result of Miles Agency's failures, which in and of themselves constituted breach of the Agency Agreement. Because of that breach NGM sustained \$300,000 loss and expended tens of thousands of dollars in attorneys' fees.

In its letter declining tender of defense, Miles Agency cited § 38-77-350(E) of the South Carolina Code, claiming that “Miles used the form provided by NGM in offering UIM coverage to Mrs. Webster. If the application was not completed correctly, then it was NGM's duty to issue UIM coverage” (Exhibit C.) Miles Agency, however, appears to have misread § 38-77-350(E). The section provides for UIM coverage only if “the *insured fails or refuses to return* an executed offer form to the insurer.” S.C. Code Ann. § 350(E) (2015) (emphasis added). Unlike § 38-77-350 (B), however, subsection (E) applies only to the situations where no intermediary, such as an agent or a broker, is involved. *See Gov't Emps. Ins. Co. v. Draine*, 389 S.C. 586, 698 S.E.2d 866 (Ct. App. 2010) (the insured filled out the form himself and then sent

to the insurer). Here, Mrs. Webster signed the form while at Miles Agency, and Webster neither failed nor refused to return it; Miles Agency retained its possession.

But even if Miles Agency were correct in its understanding of subsection (E), NGM's duty to add UIM coverage would not arise if Miles Agency filled out the form properly—a task Miles Agency was charged with both under the law and under the Agreement. Furthermore, the form would not matter had Miles Agency made an offer of UIM coverage that met the *Wannamaker* test, which it did not. (*See* 2015-CP-29-00810 Order.); *See e.g., Ray v. Austin*, 388 S.C. 605, 698 S.E.2d 208 (2010).

Accordingly, NGM is entitled to recover damages that equal \$300,000 paid in settlement of NGM's obligations under the reformed policy. Miles Agency should also pay the pre-judgment interest accruing from April 6, 2018, which is the date of the demand made following NGM's payment to the Websters. Furthermore, by declining tender of NGM's defense in the reformation action, Miles Agency breached its duty to hold NGM harmless, resulting in \$21,894.46 in attorneys' fees. This amount should also accrue interest since April 6, 2018.

CONCLUSION

NGM Insurance Company f/k/a National Grange Mutual Insurance Company insures Americans in 30 states. (*See* Brennan Dep. 29:12–29:15.) It does so through independent agents, such as Miles Insurance Agency, Inc., who are duly licensed in their states and are familiar with the peculiarities of those states' regulatory regimes.

Miles Agency, like any other of those agents, owes NGM not only expressly undertaken contractual duties, but also fiduciary duties, among them a duty to act with care and skill “which is standard in the locality for the kind of work [the agent] is employed to perform” Restatement (Second) *Agency* § 379(1). Miles Agency, however, did not act with care when dealing with Janet Webster on behalf of NGM. Miles Agency’s failures violated provisions of its agency agreement and exposed its principal to liability.

Because the evidence cited above establishes beyond genuine dispute that Miles Agency’s errors and omissions caused NGM to incur a loss, NGM is entitled to indemnification as a matter of law.

WHEREFORE, NGM asks this Court for grant of summary judgment and award of the following:

1. \$321,894.46 in damages, which amount comprises the monies paid to the Websters and \$21,894.46 of attorneys’ fees incurred for the defense in reformation action.
2. Pre-judgment interest accruing at the statutory rate since April 6, 2018.
3. Post-judgment interest accruing at the statutory rate from the date of entry of the judgment through the day of payment.
4. Attorneys’ fees incurred in prosecuting this action.

[SIGNATURE PAGE FOLLOWS]

Respectfully submitted,

DOUGALL & COLLINS

s/Michal Kalwajtys

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Attorneys for Plaintiff
NGM Insurance Company

Columbia, South Carolina
February 15, 2019

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF LANCASTER

)

) Civil Action No. 2018-CP-29-00794

NGM Insurance Company,

)

)

)

Plaintiff,

) **DEFENDANT'S MOTION TO**) **ALTER OR AMEND THE ORDER**

v.

) **DENYING SUMMARY**) **JUDGMENT.**

Miles Insurance Agency, Inc.,

)

)

Defendant.

)

)

Defendant moves to alter or amend the Court's order denying Defendant's motion for summary judgment. The Court apparently overlooked evidence presented as a part of Defendant's motion.

In the Court's order, attached hereto as Exhibit A, the Court states as follows:

Miles Agency argues that Janet Webster testified she would have purchased UIM coverage if a meaningful offer had been made, and that the Order reforming the policy explicitly carries with it the holding that the Websters would have purchased UIM if a meaningful offer had been made. This court disagrees. Janet Webster testified in her deposition that she received a notice informing her that she had to move her automobile insurance from General Accident to a new insurance company. She went to Miles Agency on January 5, 2001 to sign an automobile insurance application.

Order, p. 2

After citing deposition testimony from Mrs. Webster from the reformation case, the Court stated:

There was no specific testimony from Mrs. Webster that she would have purchased UIM coverage if it had been explained to her, nor did anyone specifically ask her that question. The trial court order in the reformation case makes no such finding, nor

was the court required to make such a finding to reform the policy.

Order, p. 3.

Respectfully, Mrs. Webster did testify at trial that she would have purchased UIM if she had received a meaningful offer of coverage. That testimony was attached as Exhibit A to Defendant's Motion for Summary Judgment and discussed in Defendant's Motion.

Q. Okay. You claim that you did not receive a meaningful offer of UIM coverage. I take it that your position is that if you had gotten a UIM coverage offer that you would have bought it?

A. Yes sir.

Q. So even if it greatly increased the amount of premiums you had to pay., If you had known what UIM coverage was your position is you would have purchased it.

A. Yes, sir.

Trial Transcript p. 29. (Attached hereto as Exhibit B).

In its order denying summary judgment, this Court stated:

Of course, summary judgment is appropriate only where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. This court finds there is a genuine issue of material fact as to whether Janet Webster would have purchased UIM coverage if a meaningful offer had been made, or whether she would have rejected UIM but was able to take advantage of Miles agency's negligence in filling out the insurance application and thus failing to avail itself of the safe harbor provision. (Emphasis added).

Order, pp. 4-5.

As noted above, Mrs. Webster clearly testified that she would have purchased the coverage if a meaningful offer had been made, and that testimony was provided to the court in this motion.

Therefore, because there is no “genuine issue of material fact as to whether Janet Webster would have purchased UIM coverage if a meaningful offer had been made...” (Order, pp. 4-5) based upon this Court’s order, summary judgment in Defendant’s favor is appropriate.

WHEREFORE, Miles Insurance prays that the Court reconsider its order denying summary judgment and award summary judgment in Defendant’s favor.

Respectfully submitted,

BURR & FORMAN, LLP

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Greenville, South Carolina
June 6, 2019

STATE OF SOUTH CAROLINA

COUNTY OF LANCASTER

NGM Insurance Company,

Plaintiff,

v.

Miles Insurance Agency, Inc.,

Defendant.

IN THE COURT OF COMMON PLEAS

IN THE SIXTH JUDICIAL CIRCUIT

PLAINTIFF'S
**MOTION FOR
RECONSIDERATION**
OF THE DENIAL OF ITS MOTION FOR
SUMMARY JUDGMENT
AND RETURN
TO DEFENDANT'S
MOTION TO ALTER AND AMEND

C/A No: 2018-CP-29-00794

The plaintiff, NGM Insurance Company (NGM), in accordance with Rule 59(e) of the South Carolina Rules of Civil Procedure, hereby moves this Court to reconsider the grounds for denial of NGM's motion for summary judgment and, consequently, alter and amend the May 30, 2019 Order Denying Cross Motions for Summary Judgment, to grant summary judgment in NGM's favor.

This motion, as well as NGM's opposition to Defendant Miles Insurance Agency, Inc.'s (Miles) motion to alter and amend, is made on the following grounds:

1. Janet Webster's intent of purchasing UIM coverage is immaterial and, therefore, it does not have to be established beyond genuine dispute. *See Ackerman v. Travelers Indem. Co.*, 318 S.C. 137, 456 S.E.2d 408 (S.C. App. 1995) (citing *American Sec. Ins. Co. v. Howard*, __S.C.__, 431 S.E.2d 604 (Ct. App. 1993)).
2. The record contains no evidence suggesting that Webster would not have placed her signature on the Auto Supplement Form below the check mark for answering "No" to the question: "Do you wish to purchase underinsured motorist coverage?" (and right above the word "Reject") had the blank spaces for inscribing increased premiums been filled by the agent.

3. The causal link between Miles's error in failing to inscribe the increased premiums and NGM's liability to Webster under the reformed policy is undisputed.
4. It is undisputed that that NGM suffered a loss of \$321,894.46 as a direct result of Miles's error.

These grounds will be further developed in a memorandum of law to be submitted before the hearing.

WHEREFORE, pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, NGM respectfully requests this Court to reconsider its Order of May 30, 2019 and grant summary judgment in favor of NGM.

Respectfully submitted,

DOUGALL & COLLINS

s/Michal Kalwajtys

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**ATTORNEYS FOR DEFENDANT
NGM INSURANCE COMPANY**

June 10, 2019
Columbia, South Carolina

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS

LANCASTER COUNTY

2018-CP-29-00794

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-----X
NGM INSURANCE COMPANY,      :
                             :
        Plaintiff,          :
                             :
        vs.                  :      TRANSCRIPT OF RECORD
                             :
MILES INSURANCE AGENCY, INC., :
                             :
        Defendant.          :
-----X
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March 4, 2019
Lancaster, South Carolina

B E F O R E

The Honorable Kristi F. Curtis, Judge Presiding.

A P P E A R A N C E S

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I N D E X

PROCEEDINGS	3
CERTIFICATE OF DELIVERY	32

E X H I B I T S

(NONE OFFERED)

1 P R O C E E D I N G S

2 * * *

3 MONDAY, MARCH 4, 2019

4 LANCASTER, SOUTH CAROLINA

5 * * *

6 THE COURT: NGM Insurance Company v. Miles
7 Insurance Agency. Tell me who we have got here today.

8 MR. KALWAJTYS: Your Honor, I am Michael Kalwajtys.
9 I am here with Mr. Tom Dougall. We represent the
10 plaintiff, NGM Insurance Company. We are here to argue
11 my motion for summary judgment.

12 THE COURT: You are Mr. Ellis?

13 MR. ELLIS: I am Bernie Ellis, yes, Your Honor. I
14 am with Burr Forman, formerly known as McNair Law Firm.
15 I am here for Miles Insurance Agency.

16 THE COURT: And you also have a Motion for Summary
17 Judgment?

18 MR. ELLIS: I do. They are cross-motions, Your
19 Honor.

20 THE COURT: Okay. Whoever wants to go first.

21 MR. ELLIS: Well, I think I filed mine first.

22 MR. KALWAJTYS: Go ahead.

23 MR. ELLIS: Your Honor, both motions, I think, deal
24 with basically the same set of facts. There was an
25 underlying action for a policy reformation filed by.

1 Janet and Jerry Webster. Janet and Jerry Webster were
2 seeking reformation of an automobile policy to include
3 UIM coverage.

4 Mr. Webster was in a terrible accident in 2014.
5 The at-fault driver did not have very much insurance. I
6 think he had just the basic limits. The Websters'
7 testimony was that they went to their attorney, Mr.
8 Francis Bell, here in town. They claimed that they
9 discovered for the first time that they did not have UIM
10 coverage. They thought that they had gotten full
11 coverage. They thought that they had gotten all the
12 coverage they said they would need.

13 So the Websters filed this action for policy
14 reformation against NGM and against Miles Insurance.

15 Your Honor, I would note something that is somewhat
16 water under the bridge, but while my client was a party
17 to the case, actually, the entire case was for
18 reformation of an insurance policy. So my client was,
19 in fact, pretty much a witness in the case, because
20 there were not any damages or a remedy imposed against
21 my client at that time.

22 Your Honor, the Court found for the Websters. The
23 Court ordered reformation and said that UIM coverage had
24 to be provided. That my client had not filled out the
25 insurance forms in a manner that allowed us to take

1 advantage of the safe harbor provision. Furthermore,
2 there was a question of fact as to whether otherwise the
3 right to UIM coverage had been explained to the
4 Websters. So the Judge found in favor of the Websters
5 again.

6 Your Honor, one important thing about the case is
7 that is Ms. Webster -- who is the one who bought the
8 insurance -- testified at trial that if she had
9 understood what UIM coverage was, if it had been
10 explained to her properly, she would have gotten it,
11 even if it would have cost a whole bunch more in
12 premiums. She also had testified in her deposition --
13 Your Honor, that is in the notebook I handed up, in the
14 supplemental documents I handed up. She testified that
15 they wanted full coverage, and they thought they had
16 full coverage.

17 Your Honor, because they had seven cars, a \$50,000
18 UIM coverage where the policy was reformed, allowed them
19 to have up to \$350,000 in coverage. NGM settled with
20 the Websters for \$300,000 and then is seeking
21 indemnification from us. Just so that we have the full
22 story, this was all part of the original case, then NGM
23 and Miles agreed to 40(j). That portion of the case
24 will be brought up a later time.

25 I didn't want to imply that the first time they

1 brought up indemnification was when this case was filed.
2 That is something they are pleading from the
3 beginning.

4 THE COURT: So the Websters settled for \$300,000?

5 MR. ELLIS: The Websters settled with NGM for
6 \$300,000. NGM is now suing Miles Insurance for
7 indemnification for \$300,000. One of the questions I
8 have looked at all along, what do you do about the fact
9 that the Websters have said all along that they would
10 have bought the coverage, had it been offered to them
11 properly?

12 If they had filled out the forms properly and told
13 us all about it, we would have gotten this coverage. I
14 began doing some research in this, not only in South
15 Carolina, but all over the country. It does appear to
16 be the law that when an insurance company sues its agent
17 for indemnification for having done something negligent
18 that exposed the insurance company to liability, the
19 insurance company has to prove they would not have sold
20 the policy.

21 The leading cases on this in South Carolina, I
22 believe, are Fowler v. Hunter. It's a Court of Appeals
23 case that was affirmed by the South Carolina Supreme
24 Court.

25 In that case you had a woman who was -- well, she

1 was the driver of a car in which another person was
2 severely injured. She found out that she did not
3 have automobile coverage, which she thought she had.
4 The insurance agent acknowledged that he was negligent
5 in not getting the automobile insurance coverage for
6 her. He was supposed to check the box, as far as an
7 umbrella policy.

8 They decided to go ahead and pay the driver's claim
9 and settled it, because they were afraid they would have
10 been popped with the full amount of what the policy was
11 supposed to have been. So then they sued the insurance
12 agent.

13 The insurance agent actually got summary judgment.
14 That was reversed by the Court of Appeals and affirmed
15 by the Supreme Court, but on this ground. So they
16 raised an issue of fact that it might not have sold the
17 automobile policy as part of the umbrella policy. They
18 hadn't been asked to do so.

19 The Court of Appeals made it very clear that if the
20 insurer is going to sue its agent for indemnification,
21 you have to pay us back for the liability it exposed us
22 to. The insurer first has to prove we wouldn't have
23 sold the policy if you had done your job correctly.

24 THE COURT: So you are basically saying, if your
25 agent had done its job properly, you would have sold the

1 policy, and they would have been on the hook for the
2 eventual coverage anyway?

3 MR. ELLIS: That's correct. That is Fowler v.
4 Hunter.

5 THE COURT: How about for not receiving the
6 premiums that you otherwise would have received if your
7 agent had sold it correctly, then the policy holder
8 would have had to pay the premium to the insurance
9 company. So, at the least they are out the premium.

10 MR. ELLIS: They are out the premiums. There is no
11 question about that. What I would suggest -- and I'm
12 not going to be too terribly dogmatic about this -- I
13 would suggest that NGM could have gotten premiums from
14 the Websters.

15 Frankly, if this boils down to whether or not my
16 client is responsible for the premiums. I think we can
17 probably work that out. It's \$300,000 that is obviously
18 causing the problem here.

19 The point of this is that, obviously, when you sue
20 under any theory, whether it's equitable indemnification
21 or contractual indemnification, you have to prove
22 damages. You have to prove that but for some sort of
23 wrongdoing, whether it's a breach of contract or
24 negligence on the part of the defendant, we would not
25 have been exposed to damages.

1 NGM can't prove that here. As a matter of law,
2 they are required to sell UIM coverage to any automobile
3 driver who wants it up to the limits that are available
4 under the law. So they don't have the ability to come
5 into court to say, "Well, if the Websters had wanted UIM
6 coverage, we wouldn't have sold it to them."

7 The second part of this is that the Websters
8 testified at trial, if we had received a meaningful
9 offer -- if Miles Insurance had done its job perfectly,
10 we would have bought the coverage. NGM would be on the
11 hook for it, and all we would be out are the
12 premiums.

13 I think it's an inherent finding when the Court
14 rules that UIM coverage has to be provided, I think
15 there has to be an inherent finding that the insured
16 would have gotten the coverage. I am basing that on a
17 couple of cases. Ray v. Austin. Another case, United
18 Services Automobile Association v. Litchfield, which I
19 have in the notebook I just handed up.

20 Those are both cases in which -- one is from the
21 Court of Appeals, and one is from the Supreme Court.
22 They basically said that if you knew what UIM was and
23 you weren't going to buy it, we are not going to put
24 much thought into the meaningful offer side of this.

25 The purpose of this is to give UIM coverage to

1 somebody who is coming to court and saying, if it had
2 been explained to me, I would have thought differently
3 about it.

4 I am taking that a little bit of a step to say,
5 that I think anytime a Court rules that UIM coverage has
6 to be provided, there is an inherent ruling that the
7 insured would have gotten it. That sort of becomes the
8 underlying fact that is established.

9 I really don't even need to go there here, because
10 the Websters testified that they would have bought it.
11 I want to address a couple of issues too.

12 One of the things with NGM is they are not only
13 relying on the issue of equitable indemnification, they
14 are also relying on contractual indemnification, because
15 there was an agency agreement between NGM and my client
16 that required the agency to indemnify the company for
17 damages it may incur on behalf of its policyholder,
18 actual or alleged, based on error or omission of the
19 agent if the company has not contributed to or
20 compounded such error or omission.

21 Your Honor, once again, we are still dealing with
22 damages. We are still dealing with -- you have got to
23 prove NGM that if the agent had done its job
24 appropriately, then the Websters wouldn't have bought
25 it. You still have to prove proximate cause, which they

1 can't do.

2 Your Honor, also if the company has not contributed
3 to or compounded such error or omission -- one of the
4 things that we produced as an exhibit to our case is
5 from the 30(b)(6) deposition of NGM. That is that at
6 the time these policies were issued, what Miles
7 Insurance Agency and others had to do was they would
8 actually take the hard copy of the application and send
9 it to NGM for review.

10 While the policy binding was immediate, NGM had the
11 ability to kick the application back out if there was
12 something wrong with it.

13 The testimony of NGM was that they had parameters
14 in place, such as if the limits of liability were too
15 low under the law. If there was not a Social Security
16 Number. If it were not properly signed. Then NGM would
17 kick it back out and ask the insurance agent to get it
18 done properly. Then they had the ability to cancel the
19 insurance on 30-days' notice.

20 That is not within the deposition testimony, but he
21 did testify that they can kick it back out if it had
22 these problems in it to get it done right.

23 Your Honor, this application in place, it not have
24 the policy limits put in for UIM or the premiums put in
25 for UIM was sent to NGM for its review. NGM had the

1 ability to look at that, to view it, and to see if it
2 was done properly.

3 The argument that is being made by NGM is that that
4 doesn't count as contributed to or compounded to. It
5 says that we only have to indemnify if the company has
6 not contributed to or compounded such error or omission.

7 Your Honor, I think that NGM is taking way too
8 narrow a view of contributed to or compounded. Under
9 the law of indemnification, generally speaking -- and
10 this contract supports this theory. If you were
11 negligent at all in any way, 1 percent, you can't seek
12 indemnification. The law of equitable indemnification
13 is very clear. You have to have been adjudged to have
14 been completely innocent in the underlying matter, which
15 NGM was not, in the order of the Court.

16 It doesn't anywhere come off to say that the
17 defendants have no responsibility here. In this
18 situation, too, if NGM has even 1 percent contributory
19 aspect of this, they can't seek indemnification under
20 their own contract. This harkens back to the old notion
21 of contributory negligence, which is before most us were
22 practicing law full time.

23 Under contributory negligence, the theory of
24 contributory negligence is that if there is a pothole in
25 the road -- if I negligently create a pothole in the

1 road, the driver still has a duty to exercise due care
2 not to go into the pot hole.

3 The driver can't say, "You were negligent putting a
4 pothole, so I am going scot-free."

5 NGM had a policy at that time that required agents
6 to send the hard copy for NGM to review. The
7 application that my client filled out did say in there
8 that the agent is supposed to put the premiums in the
9 application. Well, my client didn't.

10 THE COURT: That is what -- you allege NGM could
11 have caught it because on the face of the application,
12 those were omitted?

13 MR. ELLIS: That's correct. NGM could have caught
14 it, and NGM had parameters in place to catch other
15 things. This is something that apparently they did not
16 think it was serious enough to kick it back, which is a
17 decision they made. I don't think that under their own
18 contract they can come claiming indemnification now for
19 that reason.

20 They have to have not contributed or compounded in
21 any way the error or omission. Again, I go back to the
22 fact that if Miles had done the job perfectly,
23 apparently, the Websters would have bought the
24 coverage.

25 Your Honor, they are also citing under their

1 contract, "The agent shall hold the company harmless and
2 shall reimburse the company for any loss, expense, or
3 damage sustained by reason of any violation or provision
4 of this agreement or of any written or printed
5 instructions furnished by, first, the agency by the
6 company."

7 So what about the fact that you just violated our
8 policy? You were supposed to fill this in. Your Honor,
9 one of the cases in what I have handed up is a case from
10 South Carolina which holds that "Generally speaking,
11 contracts of indemnification will not ensure a party
12 against its own acts of negligence, unless it is stated
13 extremely clearly that that's what the parties
14 intended."

15 We generally want people to take care not to be
16 negligent. So I don't think that this provision can be
17 read to absolve NGM for its own failure to catch a
18 mistake in the policy. Then we also go back to the same
19 issue. We don't have any damages. We don't have any
20 damages caused by the error of the agent, except for the
21 premiums. Other than that, as a matter of law, you had
22 to sell this, had to sell UIM coverage, and they would
23 have this coverage.

24 So, Your Honor, that's the defendant's motion for
25 summary judgment. I believe that they would have had to

1 have sold this policy, so they cannot claim
2 indemnification against the agent based on those facts.
3 Thank you.

4 MR. KALWAJTYS: Your Honor, we can prove damages
5 really well in this case. As shown on Pages 46 and 48
6 of our binder, Exhibit F. This is a liability that
7 arose under a reformed policy that would not have been
8 reformed but for Mr. Ellis' clients failure to follow
9 the law and instructions from NGM.

10 The reformation occurs, as mandated by the law, if
11 no meaningful offer is made of UIM coverage regardless
12 of the intention of the party involved, of the
13 insured -- the law nowhere says that determination of
14 intention at the time is relevant.

15 In fact, the Fowler (phonetic) decision that was
16 cited by Mr. Ellis in his submission to the Court says
17 clearly, "That a non-compliant offer has the legal
18 effect of no offer at all."

19 Under the law of South Carolina, such offer has to
20 be made. In other words, the agency under which NGM
21 relied -- I would point out to the Court that it's a
22 Florida-based company that sells insurance in 30 states.
23 To do so, it relies on independent agents that doesn't
24 have a corporate presence here in this state. It relies
25 on independent agents that it contracts with that are

1 duly licensed in the State of South Carolina -- or any
2 other state for that matter -- and are familiar with the
3 laws of all those states, including regulations and laws
4 of the State of South Carolina.

5 I included in our submission to the Court extensive
6 excerpts from the deposition of Mr. Miles, the owner of
7 Miles Insurance Agency, where he talks about what should
8 have been done, what the statute commands -- inclusion
9 of the limits and premiums to be inscribed in the form.
10 Furthermore, our client furnished the forms to be used
11 by the Miles Agency, and they were commanded to use
12 those forms under the agency agreement.

13 That form had a clear statement in it: That the
14 increase of the premiums for UIM coverage has to be
15 inscribed by the agent. Your Honor, I would refer you
16 also to the Order of this Court in the underlying
17 reformation action where the Court noted the reasons why
18 the reformation occurred. Failure to fill out the form,
19 which deprived my client from the presumption of a
20 meaningful offer having been made and failure to
21 otherwise to make a meaningful offer under the criteria
22 set forth in the case of State Farm v. Wannamaker.

23 In that reformation action, the only testimony that
24 was heard by Judge Hayes was from Mr. Miles, his
25 employee, Ms. Candice Short, and from Mrs. Webster.

1 Again, nowhere in the order of reformation does the
2 Court talk about intention of Mrs. Webster at the time
3 that she was talking to Miles Agency.

4 Now, as far the case law that has been cited by Mr.
5 Ellis regarding the alleged principle that could be
6 discerned from the matter of Fowler v. Hunter, that we
7 cannot prove damages as a matter of law; that we have to
8 prove that we wouldn't have sold the UIM coverage.

9 First of all, that case pertains to equitable
10 indemnity. Here, even though we pleaded equitable
11 indemnity, we are relying on contractual indemnity. I
12 would point out also that what was involved there was a
13 negligence cause of action by the insured -- there was
14 an assignment of cause of action, professional cause of
15 action against the agency for failing to get the
16 coverage, click someplace in a computer program that
17 would trigger coverage.

18 Because of that negligence -- that negligence was
19 imputed to Selective Insurance based on agency
20 principles. So they were vicariously liable, and
21 therefore, they paid out more than \$1.5 million so they
22 could seek equitable indemnity saying that they were not
23 at fault for the professional negligence of their agent;
24 the negligence caused the insured damage; therefore,
25 they could seek indemnity for more than \$1.5 million.

1 This case is different. Here, the underlying cause
2 of action is reformation, not negligence. Nobody
3 claimed that Miles Agency caused damage to the Websters
4 and then somehow, because of the errors or omissions or
5 negligence, that negligence was imputed to our client,
6 and now we are seeking indemnification because we were
7 on the hook.

8 Not at all. They failed to fill out the form, make
9 a meaningful offer. By operation of the law,
10 reformation had to be done, which exposed our client to
11 liability under the reformed policy, that would not have
12 occurred but for those failures -- failures that were
13 noted by Judge Hayes in his order.

14 THE COURT: Mr. Kalwajtys, what about his argument
15 that the Websters said, if we had been made a meaningful
16 offer, we would have purchased that coverage. We wanted
17 full coverage, but they never made a meaningful offer.
18 We didn't understand what UIM was, or we would have
19 bought the coverage.

20 MR. KALWAJTYS: I think that's irrelevant, Your
21 Honor. If you look at Page 174 of my binder, on Page 177
22 there is an acknowledgement signed by Mrs. Webster that
23 she understood what she was signing, et cetera; that she
24 was rejecting the offer of UIM coverage.

25 Under principles of contract, everybody is charged

1 with the knowledge of what they signed.

2 THE COURT: They disagreed at some point and said,
3 "No. It was not a meaningful offer."

4 MR. KALWAJTYS: Yes, Your Honor, because the form
5 was not filled. If the form had been filled with the
6 increased premiums, that rejection, that
7 acknowledgement, would stand; it would be upheld by
8 Judge Hayes.

9 So there would be no damage. There would be no
10 increased liability under the policy, and reformation
11 would not have occurred.

12 So it's not about intentions. It's about whether
13 rejection stands or it does not, because of the failure
14 of the agent not filling out the form. Basically, their
15 errors and omissions in dealing with Mrs. Webster, which
16 they did as our client's agent. Our client did not have
17 any interaction, vis a vis, Mrs. Webster. That is all
18 done through the agent. That is what they are for.

19 THE COURT: How is this different from the
20 Selective Insurance where they didn't check the box on
21 the form?

22 MR. KALWAJTYS: Selective Insurance was a claim by
23 the insured against the agency; a professional
24 negligence claim. There were multiple parties involved.

25 THE COURT: It wasn't just a reformation case.

1 MR. KALWAJTYS: It was not a reformation case. It
2 was a negligence case, which they decided to settle
3 because the negligence of their agent was imputed to
4 them. That is why they could seek equitable
5 indemnification.

6 Our case is different. Our case is a reformation
7 cause of action. There was no damage done to Ms.
8 Webster. They never claimed that anybody was at fault.
9 They just said that they were entitled to reformation,
10 because no meaningful offer was made.

11 Our client relied on Miles Agency to extend that
12 offer. Mr. Miles was fully aware of the requirements
13 under the law, which he extensively cited in his
14 deposition, where he talks about it. If you would turn,
15 Your Honor, to Page 18 of the binder, of the brief.

16 On Page 19 he is being asked, "How come we don't
17 have a premium listed when the form calls for it?"
18 "Other than the fact that it was not on the quote
19 sheet. That would be the only reason. Maybe she forgot
20 to input it in."

21 "Is it required to be there, as you understand it?"
22 "Yes."

23 "And are you agreeing that it should have been on
24 the form."

25 "Yes. By the statute, they are supposed to be on

1 the form."

2 "There should have been put down by you or by
3 somebody at Miles Insurance Agency. Is that correct?"

4 "Yes."

5 That failure caused reformation and increased our
6 client's liability under the reformed policy.

7 Our liability under the reformed policy wouldn't
8 have occurred but for that failure. Basically because
9 of that failure, the rejection on Page 177 in the binder
10 would have stood, would have been upheld.

11 So the intention of Mrs. Webster now through the
12 years doesn't matter. I would also point out to you,
13 Your Honor, it is not exactly right that she all of a
14 sudden that says she always wanted to have that
15 insurance.

16 If you look at 178 in the binder, in 2012 she came
17 back and said, "I wanted underinsurance coverage."

18 THE COURT: How about Mr. Ellis' argument that your
19 own policy required that the agent submit the
20 application to NGM for them to give it the final review?
21 It looks like on the face of it, there is a blank.
22 There is nothing filled in for the premiums on the face
23 of the document.

24 MR. KALWAJTYS: Your Honor, they were authorized by
25 NGM to bind coverage from day one. They had the full

1 authority to do that with the policies from day 1. That
2 application wouldn't have arrived before that for NGM
3 for another 10 days. If an accident happened during
4 those 10 days, we would have the same situation. There
5 is nothing that could have been done.

6 THE COURT: It didn't happen within 10 days?

7 MR. KALWAJTYS: No. It happened in 2012. Your
8 Honor, we are entitled to indemnity through Section 11
9 of the agency agreement. There are two clauses.

10 One talks about if the error or omission on the
11 part of the agent causes a liability to the policy
12 holder, then we are entitled to be indemnified. Also,
13 the part about the failure to follow the instructions or
14 the law, thereby breaching the provisions of the
15 contract. That causes a loss to NGM. They are under a
16 contractual duty to reimburse my client. That doesn't
17 involve an issue or contributory negligence or anything.

18 THE COURT: Doesn't your own language say provided
19 that your company didn't contribute to or compound the
20 problem?

21 MR. KALWAJTYS: Your Honor, that is a good
22 question. I cited from -- I don't think there is any
23 ambiguity in this contractual language -- and we can
24 refer to the meaning; what "to contribute means" and
25 what it means to compound anything.

1 So, Your Honor, on Page 16 of our brief we talked
2 about contribute; to contribute is to play a significant
3 part in bringing about an end result. To contribute is
4 to help to cause or bring about something. To compound,
5 on the other hand, is to make something bad worse; to
6 intensify the negative aspects of something.

7 THE COURT: Your argument is that even though you
8 may not have caught it, you didn't actually contribute
9 to the problem?

10 MR. KALWAJTYS: That is precisely right. Because
11 the relevant questions that arise then are, did NGM play
12 any part in Ms. Short (the employee of Miles Insurance
13 Agency) not filling in the blank? No, it did not. Did
14 NGM cause Miles Agency in any way not to advise Janet
15 Webster of the UIM coverage in the manner prescribed by
16 the Wannamaker decision? No, it did not.

17 Did any of the failures on the part of our client,
18 any act or omission make the meaningful offer any less
19 meaningful than it already was? That would be
20 compounding it; because we are compounding the error or
21 omission.

22 Your Honor, I think we are entitled to
23 indemnification under that provision, because we did not
24 contribute to them making an error. In fact -- despite
25 knowledge of the law, which Mr. Miles admitted to and

1 his employee Candice Short also admitted to as a duly
2 licensed insurance agent -- they were using a quote
3 sheet trying to make it easy on them.

4 Instead of inscribing the increased premiums, they
5 would read out the premiums off a quote sheet that they
6 had. That was standard operating procedure in that
7 agency. No instructions came out from NGM that told
8 them to do that. That would be contribution on our part
9 to the error; if our client told them not to inscribe or
10 "don't worry about it."

11 Actually, quite contrary, what happened was that
12 our client furnished the forms to be used. That form
13 has an embedded instruction on it that sits on the form
14 right beside the blank spaces that say, the increased
15 premium. It has to be filled in by the agent. Your
16 Honor, our client did not contribute, compounding the
17 errors that were made on the day when they met with Mrs.
18 Webster.

19 The argument could be, well, they could have caught
20 it, and they could have kicked it back. You could argue
21 that that would be failure to take a corrective action,
22 but it would not be contributing to the error or
23 compound the error.

24 Thank you, Your Honor.

25 THE COURT: Thank you.

1 Yes, sir.

2 MR. ELLIS: Your Honor, but by the same token,
3 ignoring the pothole in the road is the same thing. You
4 still have the duty to take due care to exercise --
5 exercise due care. Your Honor, what Mr. Miles said in
6 the affidavit offered in opposition pretty much for
7 summary judgment, is consistent to what NGM testified
8 to. We were required to send hard copies of these
9 applications back so that NGM could review them.

10 Their position would be, we reviewed some things,
11 but not that. The point is, I think that under the law,
12 if they are 1 percent liable for this, they can't get
13 indemnification. That is what the law of
14 indemnification has to offer.

15 The case I referred to earlier was Laurens Medical
16 Specialists v. Daly and Sons Bankers. It's a Supreme
17 Court case in the notebook I handed up. It's the one
18 that said, generally speaking, we don't interpret
19 contracts of indemnity to protect one against its own
20 negligence.

21 I say that because one of the clauses in the
22 indemnification clause, basically says, we are liable
23 for any losses caused by failure to follow the
24 instructions.

25 Your Honor, I do have the same point. One of the

1 things that counsel said, but for the failure to fill
2 out the form properly, this policy wouldn't have been
3 reformed. You're forgetting that they can't possibly
4 prove that but for the failure to fill out the form
5 properly, the Websters would not have bought this
6 coverage, because they testified they would.

7 My question to her was, "You claim that you did not
8 receive a meaningful offer of UIM coverage" -- this is
9 at trial.

10 "I take it your position is that if you had gotten
11 a UIM coverage offer, that you would have bought it?"

12 "Yes, sir."

13 "So even if it greatly increased the amount of
14 premiums you had to pay, if you had known what UIM
15 coverage was, your position is that you would have
16 purchased it?"

17 "Yes, sir."

18 Your Honor, I think under the Fowler case and under
19 any of the authority nationwide that have looked at
20 these types of issues, when the insurance company is
21 going back to the insured and saying, okay. We had to
22 pay out on a policy that we didn't have prior notice of,
23 because you didn't tell us that the person had a medical
24 condition or you forgot to check the right box.

25 The cases come back and say, "But you have to prove

1 that wouldn't have sold the sole policy. That is what
2 they can't prove. They had to sell the policy.

3 The only evidence we have in this case is that the
4 Websters would have bought it. That is why I think they
5 cannot possibly prove that but for the acts or omissions
6 of the Miles Insurance Agency, they would not have had
7 to come up with \$300,000 to give to the Websters as a
8 result of this accident.

9 Thank you very much.

10 THE COURT: Since we have cross-motions for summary
11 judgment, Mr. Kalwajtys, I understand your position with
12 respect to -- you are asking for summary judgment
13 because you believe as a matter of law you are entitled
14 to indemnification for the damages that you paid out to
15 the Websters?

16 MR. KALWAJTYS: Yes.

17 THE COURT: Since we are hearing his motion for
18 summary judgment, I am glad to hear anything you want to
19 tell me.

20 MR. KALWAJTYS: Your Honor, I addressed most of it,
21 but just to be on the record. We are seeking summary
22 judgment for precisely \$321,894.46, which amount
23 comprises that \$300,000 we talked about and attorney's
24 fees incurred by our client in the reformation action.

25 We are also seeking interest accruing from April 6,

1 2018. That is the date when the demand was made and it
2 was rejected.

3 Also, attorney's fees incurred in prosecuting this
4 action. Your Honor, that is a clear breach of contract.
5 There is a duty to indemnify under the contract. As we
6 already discussed, that duty was not performed upon
7 demand when we settled the case with the Websters.

8 That duty arose because of the errors or omissions
9 that we discussed. The indemnity clause of the agency
10 agreement states that agent hold harmless NGM from
11 liability because of errors and omissions or failures to
12 follow the provisions of the contract that we discussed.

13 Your Honor, as we discussed, I think we have
14 proven -- and the facts are not disputed, really; I
15 think we are on the same page. It's just a matter of
16 interpretation of the contractual language, Your Honor.
17 We believe that we are entitled to judgment as a matter
18 of law, based on the language and based on the case law.

19 The case law again that Mr. Ellis cited is not
20 applicable because that was equitable indemnity, the
21 negligence was the underlying cause of action, whereas
22 here we have a reformation cause of action and seek
23 indemnity under contract.

24 Thank you, Your Honor.

25 THE COURT: Thank you.

1 MR. ELLIS: May I make one point?

2 THE COURT: Sure.

3 MR. ELLIS: Their language for contractual
4 indemnification is very close to South Carolina
5 equitable indemnification. What it contributed to or
6 compounded -- we can seek indemnification against you if
7 we didn't contribute or compound. I make the point,
8 because I don't really think equitable indemnification
9 is materially different than the way their contract
10 reads, as far as being able to seek indemnification.

11 I always come back to the point that you have got
12 to be able to prove damages. You have to be able to
13 prove that if the agent had done his job perfectly, you
14 wouldn't have had to provide UIM coverage. That's what
15 I think they can't prove.

16 Thank you, Your Honor.

17 THE COURT: Just to be clear, the omission of not
18 writing down the premiums. He was supposed to have
19 listed on there what the premium would be if they
20 elected to get the additional coverage?

21 MR. ELLIS: That's correct.

22 THE COURT: So it gets certain different levels of
23 potentially UIM coverage, and then there is a blank next
24 to it. She signed all the places, and she actually
25 checked, "No." "The offer of Underinsured Matters

1 coverage. On the left-hand side, it gives a number of
2 different coverage amounts. There are blanks in the
3 middle.

4 What is he was supposed to have done is to list
5 there how much additional premium would cost if she were
6 to accept the UIM offer.

7 MR. ELLIS: That's correct. Your Honor, one thing
8 I would point out factually -- that Mr. Bell made an
9 issue of -- is that she didn't actually check the box
10 that said she did not want the UIM coverage; that that
11 was done by the agent.

12 I think in Ms. Webster's theory -- that was
13 actually checked by the agent. There was a later case,
14 Floyd, that said that the insured has to do all of the
15 box checking. That was later overruled by statute, so
16 now the agent can fill it out. I take it Ms. Webster's
17 position was that if we would have gone through this
18 process like we were supposed to have done, I would have
19 gotten it.

20 I would point out to the Court that it puts us in a
21 bit of an awkward spot. We were both on this same side
22 of the table at the trial believing she did receive an
23 offer of coverage. This is one reason that I think the
24 Court caught it correctly. I object to any use of Ms.
25 Webster signing a statement that she didn't wish to buy

1 UIM coverage. If that were applicable or binding, we
2 wouldn't be here.

3 The fact is that the Court has rejected that as
4 providing a meaningful offer. The South Carolina
5 Legislature has rejected that as providing a meaningful
6 offer. So here we are. Thank you.

7 MR. KALWAJTYS: Your Honor, quickly about causation
8 here. But for failure to fill out the form, the
9 rejection on that form would be upheld, and no
10 reformation would result. Reformation is mandated only
11 when a meaningful offer is not made, regardless of the
12 intention. I bet there are cases where the intention
13 could not be determined.

14 It's just a technicality that favors the insured.
15 They didn't fill it in. That deprived the presumption
16 under the law, a conclusive presumption under the law:
17 so that no matter what they would say would help their
18 case if the form was filled out. Because it was not
19 filled out, as Judge Hayes concluded, and also that
20 otherwise a meaningful offer was not made; therefore,
21 the policy was reformed and our client was on the hook
22 for \$350,000. Thank you, Your Honor.

23 THE COURT: Thank you. You have given me quite a
24 lot to look at here. I will be glad to look at it
25 carefully and take it under advisement.

1 MR. ELLIS: Thank you, Your Honor.

2 MR. KALWAJTYS: Thank you, Your Honor.

3 - - -END OF TRANSCRIPT- - -

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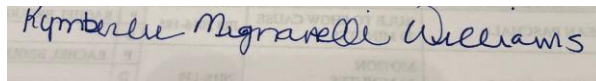
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CERTIFICATE OF REPORTER

I, Kymberlee M. Williams, Certified Shorthand Reporter/Registered Professional Reporter for the 6th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, in the 6th Court for Lancaster County, South Carolina, on the 4th day of March, 2019.

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

This, the 17th day of December 2019.

A rectangular box containing a handwritten signature in blue ink that reads "Kymberlee M. Williams".

KYMBERLEE M. WILLIAMS, CSR/RPR



webster vs. Miles Insurance 11-29-17.txt

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1 STATE OF SOUTH CAROLINA
2 COURT OF COMMON PLEAS
3 COUNTY OF LANCASTER
4 2015-CP-29-00810
5
6 Wayne and Janet Webster
7 Vs.
8 Miles Insurance Agency
9
10 Lancaster, South Carolina
11 November 29, 2017
12 Before the Honorable John C. Hayes
13 APPEARANCES
14 For the Plaintiff: Frances Bell
15 For the Defendants: Bernie Ellis, Thomas Dougall
16
17 Reported by: Michael C. Watkins
18 Official Court Reporter
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25

2

1 Jerry wayne webster: 7
2 Janet webster: 9

Page 1

Webster vs. Miles Insurance 11-29-17.txt

17 MR. ELLIS: Your Honor, can I pass up an exhibit book to
18 you?

19 THE COURT: Yes, sir.

20 CROSS EXAMINATION

21 BY MR. ELLIS:

22 Q Ms. Webster, as you know I'm Bernie Ellis and I
23 represent Miles Insurance Agency. I believe it was your
24 testimony earlier that you didn't always know what UM and
25 UIM coverage was, right?

27

1 A Right.

2 Q And you learned about that for the first time after the
3 wreck?

4 A Yes, sir.

5 Q Let me ask you if you would turn to Exhibit 1 in this
6 black notebook. And if you would turn to the second page of
7 that Exhibit 1 where it says Utika (phonetically) 00118 on
8 the bottom.

9 A Yes, sir.

10 Q Do you see at the top of that, is that your signature?

11 A Yes, sir.

12 Q And it has an applicant's acknowledgment, Janet P.
13 Webster. Is that your signature under that as well?

14 A Yes, sir.

15 Q And this is 1991, right?

16 A Yes, sir.

17 Q And you see that at the top of that page there is an
18 offer of underinsured motorist coverage combined single
19 limit?

20 A Yes, sir.

Page 23

Webster vs. Miles Insurance 11-29-17.txt

- 8 A Yes, sir.
- 9 Q And every single one of these says underinsured
- 10 motorist no coverage, right?
- 11 A Yes, sir.
- 12 Q And these go from 2001 up to 2012.
- 13 A Yes, sir.
- 14 Q And you got something every year that says you did not
- 15 have underinsured motorist coverage.
- 16 A Yes, sir.
- 17 Q Okay. You claim that you did not receive a meaningful
- 18 offer of UIM coverage. I take it your position is that if
- 19 you had gotten a UIM coverage offer that you would have
- 20 bought it?
- 21 A Yes, sir.
- 22 Q So even if it greatly increased the amount of premiums
- 23 you had to pay, if you had known what UIM coverage was your
- 24 position is you would have purchased it.
- 25 A Yes, sir.

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- 1 MR. ELLIS: I have no further questions at this time, Mr.
- 2 Dougall may have some for you.
- 3 CROSS EXAMINATION
- 4 BY MR. DOUGALL:
- 5 Q Good morning, Ms. Webster, how are you today?
- 6 A Good.
- 7 Q I just want to briefly go over a few things. I want to
- 8 start with the last Exhibit Number 25 that Mr. Ellis was
- 9 talking to you about. And those are all declaration pages
- 10 from National Grange Insurance Company, or NGM, correct?
- 11 A Yes, sir.

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JERRY WAYNE WEBSTER, ET AL. vs. MILES INSURANCE AGENCY, INC., ET AL.
Richard Miles on 12/15/2016

1 STATE OF SOUTH CAROLINA)
 2 COUNTY OF LANCASTER) IN THE COURT OF COMMON PLEAS
 3
 4 JERRY WAYNE WEBSTER AND)
 5 JANET WEBSTER,)
 6 PLAINTIFFS,)
 7 VS)
 8 MILES INSURANCE AGENCY,) CASE NO. 2015-CP-29-00810
 9 INC., NATIONAL GRANGE)
 10 MUTUAL INSURANCE COMPANY)
 11 N/K/A NGM INSURANCE)
 12 COMPANY,)
 13 DEFENDANTS.)
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DEPOSITION OF RICHARD MILES

LANCASTER, SOUTH CAROLINA

DECEMBER 15, 2016

REPORTER: KELLY L. REITER
 DALLAS REPORTING, A HUSEBY COMPANY

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1 Deposition of Richard Miles, taken before me, Kelly
2 Reiter, a Notary Public for the State of South Carolina,
3 at the Francis Bell Law Firm, LLC, 312 North Main Street,
4 Lancaster, South Carolina, commencing at 11:26 a.m. on
5 December 15, 2016, in accordance with the South Carolina
6 Rules of Civil Procedure.

7 It was stipulated by and between Counsel for the
8 Plaintiffs and Counsel for the Defendants that this
9 deposition is taken for any purpose allowed under the
10 South Carolina Rules of Civil Procedure;

11 That the signing of the transcript of deposition by
12 the witness is not waived.

13 * * * * *

14 Whereupon, Richard Miles, having been first duly sworn,
15 was examined and testified as follows:

16 DIRECT EXAMINATION

17 BY MR. BELL:

18 Q Richard, of course, you and I have known each other a
19 good many years.

20 A Right.

21 Q I'm Francis Bell, and I represent Mr. and Ms.
22 Webster, who are here due to the fact that Jerry
23 almost got killed in a wreck several years ago and
24 then a question came up about the coverages. So we
25 had to do what we're doing today, and that - - -

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1 A Right.

2 Q They had to sue Miles and had to sue National Grange.
3 You technically have been listed as a fact witness in
4 that you may have some knowledge about the events of
5 January the 5th of '01, which is when we have been
6 told that now NGM is saying, you ain't got no under
7 coverage. Okay?

8 A (Indicating yes)

9 Q So that's why you're here today. A lady who used to
10 work for you, Ms. Short, just left. Again, I'm going
11 to tell you - - - Of course, you know of me. You
12 know my reputation of being mean and everything else,
13 but that ain't - - - That ain't what we've got today.
14 Okay? There is no yelling or hollering or anything.
15 We're trying to seek the facts as they exist. Okay?

16 A (Indicating yes)

17 Q So I'm going to ask you a series of questions, and we
18 expect you, of course, to give us an answer. Please
19 say at least a yes or a no. Because if you nod your
20 head, the court reporter is going to simply say, the
21 witness nods. She's not going to say which way.
22 You're not limited to yes or no. I'll do my best not
23 to talk over you, but sometimes, I don't keep that
24 promise. Do your best not to talk over me. Let me
25 get the question out, and then you give me the

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1 answer. Okay?

2 A (Indicating yes)

3 Q You understand the ground rules?

4 A Yes, sir.

5 Q All right. Now, we are in court on this issue over

6 technically this series of paper. I'm going to talk

7 about this one, too. It's a document, or a series of

8 documents, that are basically dated January 5 of '01.

9 Okay, sir? Do you see it up there on the top?

10 A Right.

11 Q The last page theoretically doesn't have anything to

12 do with this lawsuit, as to '01. Okay, sir?

13 A Right.

14 Q Because I don't mind telling you, in '12, they went

15 out there, and when it appeared they didn't have any

16 under, they made sure as of '12 they did have under.

17 But that, technically, ain't got nothing to do with

18 this suit that I know of, but anyway - - - Now, do

19 you have any independent recollection of dealing with

20 Ms. Webster way back on January the 5th of '01?

21 A No, not specific to this event. I do recognize

22 Janet. She was in the office from time-to-time,

23 dealing with different things, so I - - - To say

24 specific to this date, I can't say for certain.

25 Q I understand, and Ms. Short said the same thing.

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1 Okay? Except I have to tell you this, Ms. Short did
2 acknowledge that most of the writing, except for the
3 signatures - - -
4 A (Indicating yes)
5 Q Was by her. Okay? And then she told us that on Page
6 2 of Exhibit 1, down there at the bottom, that she
7 said that's your signature.
8 A Yes, it is.
9 Q Is that correct?
10 A Yes.
11 Q That is your signature, okay. Now, let's put this to
12 one side. Answer me this. Of course, your daddy's
13 been there forever. Do you own it? Do you own the
14 outfit now, or is he still active?
15 A No. He's retired, and I'm the owner now.
16 Q Okay. Well, good.
17 A Right.
18 Q And you've been licensed to sell property and
19 casualty and everything for how long?
20 A Before I came back to Lancaster, so nineteen - - -
21 Let's see. 1987.
22 Q Okay. And one of the companies that you dealt with,
23 as far as '01, was then called National Grange. Is
24 that correct, sir?
25 A Yes, it is.

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1 Q And that's a short version. They're now known as
2 NGM, I understand. Are you familiar with that?

3 A Yes.

4 Q Okay. And we've had - - - Don't hold me to this
5 date. But we've had underinsured since maybe the
6 seventies?

7 A '76.

8 Q Okay, good. And that's why I have to look at the
9 statute. At first, it was passed - - - Well, this
10 statute was passed in '76, and it's continuously been
11 evolving. So your training and understanding is that
12 underinsured is technically optional?

13 A Yes. It is optional in the State of South Carolina.

14 Q And the option to exercise it or not to exercise it
15 rests with the insured?

16 A Yes.

17 Q And your training and understanding is, and this has
18 definitely been evolving, that you have to make what
19 we call a meaningful offer. Does that sound
20 familiar?

21 A Yes.

22 Q Now, dealing with National Grange, tell me, as of '01
23 when this paperwork came into existence, did you have
24 in your office or access to any training manuals,
25 policy and procedure manuals, anything from National

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1 Grange as to making a meaningful offer of
2 underinsured to whoever is coming in there to
3 conceivably buy it?

4 A No, not from that standpoint.

5 Q All right. So how did you then form the opinion of
6 what you had to do to make a meaningful offer for the
7 insurance company, if you had received no training
8 from them?

9 A Well, basically, it was to identify the coverage.
10 That was basically what we were told, identify the
11 coverage to the client and offering it to them from
12 that standpoint, what is its purpose.

13 Q Okay. And when you say, what we were told, who told
14 you that? That's what I'm trying to get to.

15 A Well, obviously, I've been in the industry a lot
16 longer than 2001, when this started. So I was
17 familiar with the process of dealing with it. So I
18 can't say that anyone with National Grange
19 particularly said, you have to do it this way.

20 Q Okay. Well, as part - - - And I realize you're not a
21 lawyer. I'm not going to necessarily ask you a legal
22 question, but I may read the law to you. It appears,
23 since at least '89, that we've had a statute that
24 talks about a form to be used when optional coverages
25 are offered. That's 38-77-350. Did you ever have

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1 any training from any of your carriers, particularly
2 National Grange, as to how to implement the
3 requirements of 38-77-350, which is using a form?

4 A No, I can't say there was any specific training to
5 the form.

6 Q Well, okay. As of 2001, and maybe even through
7 today, are you aware of what this statute calls for?

8 A Yes. They like to see the premiums indicated, or
9 increase in the premium.

10 Q Okay. Well, it reads, a brief and concise
11 explanation of the coverage. You've been told that's
12 in there?

13 A (Indicating yes)

14 Q It reads, a list of available limits and the range of
15 premiums for the limits, and that's a big issue in
16 this case. And then a space to mark whether they
17 choose or reject, and a space to acknowledge that the
18 insured has been offered and all that stuff, and the
19 mailing address. But it says, this form must be
20 approved by the Department of Insurance. So let's
21 get to the form itself. This is - - - And I'm having
22 to learn this stuff myself.

23 A (Indicating yes)

24 Q But on Page 3, it's called a South Carolina auto
25 supplement. Is this the form that you used to make

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1 these offers?

2 A Yes.

3 Q And I realize that this is an offer of additional
4 uninsured, as well as the underinsured. Okay? But
5 we're not dealing with uninsured. Okay? But it
6 says, ACORD, A-C-O-R-D.

7 A (Indicating yes)

8 Q Who are they in reference to your knowledge of this
9 form?

10 A ISO established ACORD.

11 Q All right. You just lost me. What is ISO?

12 A Insurance Services Office.

13 Q Okay.

14 A They standardize forms, and ACORD is the - - - I
15 guess the printer of those forms.

16 Q All right. Well, where is the ISO located?

17 A In Columbia, as far as I'm - - - know. Yes.

18 Q Is it a state agency or a private agency? Do you
19 know?

20 A ISO? Well, they are - - - They're a national
21 organization, but I - - - I would assume they have
22 someone in each state that kind of keeps up with
23 regulations for that state.

24 Q Okay, and laws. So ACORD, tell me who they are. As
25 you understand it, who are they?

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1 A They're just a standardized form printer.

2 Q A printer of the forms - - -

3 A Well, yeah. They - - -

4 Q As you understand it?

5 A Right. They're - - - They're - - - If it's a

6 standardized form, it's usually going to be ACORD,

7 and that's been approved by ISO.

8 Q Okay. But ISO is not a government agency. It is a

9 private organization, as you understand it?

10 A Insurance Services Offices, I would assume, yes,

11 they're a private - - - (No further response)

12 Q Do you have to pay a fee to belong or anything like

13 that to get any stuff out of them? Do you remember?

14 Is it costing you money to go use them?

15 A No.

16 Q Okay. Does it cost you money to go use ACORD?

17 A (Indicating no)

18 Q Well, I mean, they give away these forms for free?

19 A From my understanding.

20 Q Okay. Well, I mean, you don't pay ACORD to get - - -

21 A No, I don't.

22 Q To get these forms delivered?

23 A We don't have to pay them.

24 Q Okay. Well, as of January the 5th of '01, how do you

25 know that this form has been approved for use by

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1 National Grange?

2 A Well, that, I can't answer a hundred percent.

3 Q I understand.

4 A Yes.

5 Q Well, give me the fifty percent or seventy-five.

6 What are you going to - - -

7 A Well - - -

8 Q Tell me what you - - -

9 A Well, like I said, it's ISO, Insurance Services
10 Office, and that's the standard form for the
11 industry. So therefore, I - - - That's - - - (No
12 further response)

13 Q All right. And again, the reason I'm going over
14 this, the statute says, the director or his designee
15 shall approve a form that automobile insurers shall
16 use. Now in this case of the Websters, the
17 automobile insurer is National Grange Mutual, now
18 known as NGM. Is that correct?

19 A Yes.

20 Q Okay. So you don't have any independent knowledge
21 that this form has been approved for use by the
22 Department of Insurance for National Grange?

23 A Right. I wouldn't have any independent knowledge.

24 Q I understand, but that's why I had to ask you. But
25 you then used the form in January of '01. Is that

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1 correct, sir?

2 A Yes, January the 10th.

3 Q Yes, sir. And answer me this, here's another issue.

4 The form itself, starting at Page 3 and 4 and 5 and

5 6, assuming it was all done at the same time, it's

6 dated January 10th. Is that right?

7 A Right, because - - - Well, this January 10th says the

8 effective date of the policy.

9 Q Well, that's what I'm asking you.

10 A Right.

11 Q 1-10-01.

12 A This other is the date that the application was

13 completed, up there, not the effective date.

14 Q So 1-5-01?

15 A Right. That's the day Ms. Webster was there in the

16 office, yes.

17 Q Okay. Well, what I want to know is, was this form

18 used on the 5th or on the 10th?

19 A It was used on the 5th.

20 Q Okay. Now, help me look. Look at Page 3, Page 4,

21 Page 5, and Page 6, which all goes with the form. Is

22 there anything to indicate that it was filled out on

23 January the 5th or used on January the 5th?

24 A No. On this ACORD form, it didn't have a date

25 signed.

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1 Q All right. But it's got - - -

2 A Which today's forms do.

3 Q Right. But it - - - Okay, I understand.

4 A Yeah.

5 Q But the only date on it is January the 10th - - -

6 A Right, the effective date of the policy.

7 Q Of 2001? But it does say - - - To be fair, it does

8 say, effective date.

9 A Right.

10 Q Okay. So not knowing - - - Well, and I don't mean -

11 - - I'm not trying to embarrass you, and I'm sure

12 this is teaching us a lot of stuff. Again,

13 recapping, as of this January 5th date of '01, you

14 had never received any training manual, policy or

15 procedure, nothing from National Grange as to how to

16 sell their underinsured product?

17 A There was nothing that indicated how they would want

18 the form to be completed.

19 Q No. Now, my question was - - -

20 A Now, we have underwriting that we follow.

21 Q I understand. Well, that's what I'm asking you. Did

22 you have anything prior to January the 5th of '01,

23 either in writing or orally, as to how National

24 Grange wants you to sell the product of underinsured?

25 Forms to use, offers, meaningful offers, anything

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1 from National Grange as to how to sell their product,
2 which is underinsured?

3 A No. There was no specific training as to how to
4 sell.

5 Q All right.

6 A Yeah.

7 Q Well, then how did we know to use this ACORD form?

8 A Like I said, that would be a part of the packet that
9 we would receive initially that says, here - - - Here
10 is your application. We're using ISO ACORD form
11 applications. We use an ISO ACORD UM supplement
12 form. So this is what they wanted. This is what
13 they supplied as their application process.

14 Q All right. Well, that's what I need to know. So
15 you're telling me that this ACORD form, Page 1 of
16 Exhibit 1 that's dated 1-5-01, and Page 2, Page 3,
17 Page 4, Page 5, Page 6, all of these documents came
18 from National Grange to you or to your office?

19 A Right. They would have been the forms that they
20 wanted used.

21 Q Okay. Well, that's what I'm trying to get to.

22 A Right.

23 Q I'm trying to figure it out, too. So you cannot tell
24 me today, in January of '01, if any further training
25 or instructions came other than, use this form to

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1 sell car insurance or truck insurance? That's
2 basically what we're talking about.

3 A Right.

4 Q And again, we are assuming that National Grange has
5 got the form to offer the under approved by the
6 Department of Insurance. That's not your job to do
7 that?

8 A Right. I - - - But I'm not necessarily sure that
9 it's their job, either, to get the ISO form approved.

10 Q Well, I don't know.

11 A ISO is an organization that provides the documents
12 for the insurance companies.

13 Q I understand. I understand.

14 A And so that would have been - - - My assumption is,
15 ISO has approved forms, and that's why they're the
16 standard out there for the companies. Now companies
17 can, at times, put their own name on it and make some
18 small modifications.

19 Q Right. But - - -

20 A But National Grange didn't. They used ISO.

21 Q I know. We're going to find out. Because the
22 statute says, that automobile insurers shall use.
23 That's National Grange. That ain't ACORD. That
24 ain't ISO. They ain't selling insurance. You agree?

25 A No, ISO doesn't. Right.

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1 Q And ACORD don't sell insurance?

2 A Right.

3 Q They're the form people. Okay. So I can assure you
4 National Grange is going to be looking to see,
5 because I'm going to ask them. So the form that they
6 sent you, that we called the South Carolina auto
7 supplement, has a number one on it. Go to Page 3.
8 That's the language that says - - - I'm assuming we
9 are explaining with this language what the coverage
10 entails or consists of. If you're dealing with
11 somebody, you just tell them this is what it's all
12 about, right?

13 A (Indicating yes)

14 Q And you don't have any independent recollection of
15 this date and dealing with Ms. Webster. Is that
16 correct?

17 A That's correct.

18 Q Okay. But as a matter of procedure, does somebody
19 read it to them or ask them to read it?

20 A No. We would basically go over each part of the
21 coverage. We go down through here. We tell them
22 what South Carolina required. Uninsured was
23 required. Underinsured not required, but you can
24 purchase it. We tell them what its purposes are, and
25 that's basically how we go through the form.

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1 Q All right. Well, you don't read it to them word-for-
2 word?
3 A No.
4 Q And you don't ask them to read it word-for-word?
5 A Right.
6 Q So you give, for lack of a better word, a summary - -
7 -
8 A Of - - - Right.
9 Q Of what this page consists of?
10 A Right.
11 Q And that's basically explaining the difference
12 between un and under?
13 A Yes.
14 Q And the fact that you can have a variety of - - -
15 ranges of coverage?
16 A Right up to their liability limits.
17 Q Right. And you have additional premiums. Is that
18 correct, sir?
19 A Right.
20 Q So then is that the same thing with what we - - -
21 Turn the page, if you'd be so kind. That's the same
22 thing - - -
23 A Yes.
24 Q The top of that page or three-quarters of that page
25 covers the same issue. Is that correct, sir?

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1 A Yes.

2 Q Then we come down to the offer of additional

3 uninsured. Of course, that's not an issue here. But

4 on the form, that is an option that y'all have a

5 right to offer to a person.

6 A Additional, yes.

7 Q Additional uninsured, that's correct.

8 A Right.

9 Q Additional uninsured. Ms. Short has told us about

10 the 50/100, and she said that was her signature.

11 A Yeah, that's her printing.

12 Q Right.

13 A Yes.

14 Q And then we go to Page 5, which is actually Page 3 of

15 the form. Then we have the single limits stuff.

16 That's kind of hard to explain to anybody, isn't it?

17 A (No response)

18 Q Again, even lawyers don't necessarily understand the

19 single limits, but that's what that's all about?

20 A Right.

21 Q Which is different than the other pages?

22 A Right.

23 Q Okay. And Ms. Short said she did the check, and then

24 she wrote the 50/100. Okay?

25 A Yes.

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1 Q Then we come to the under. Now, the under doesn't
2 have a mandatory provision?
3 A That's correct.
4 Q It's all optional?
5 A Yes.
6 Q And it can be above your limits? It can't be below
7 them. Isn't that what the law said back then?
8 A Above your limits?
9 Q Yeah.
10 A Above your liability limits?
11 Q Yeah.
12 A No.
13 Q Okay. Well, then explain to me the form. It says,
14 15/30, 25/50, 50/100, 100/300, 250/500. Why is all
15 of that on the form if I can't buy insurance above my
16 limits of liability?
17 A Well - - -
18 Q I realize it's not your form, but - - -
19 A Well - - -
20 Q Explain that to me, as to how you would explain that
21 to - - -
22 A Right.
23 Q Somebody buying it.
24 A Well, the customer, when I talk to them, I say, if
25 you have a concern of a serious accident, we can sell

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1 you higher underinsured motorist, but I'm going to
2 have to sell you higher liability limits.

3 Q Okay. Well, they - - -

4 A So we can't do one without the other, you know.

5 Q Okay. Well, based on what's right above that with
6 the optional uninsured, we knew that they had 50/100.
7 Is that correct?

8 A We knew what? The liability?

9 Q Yeah.

10 A We knew the liability limit is at 50/100.

11 Q That's what I'm saying.

12 A Right.

13 Q So therefore, the uninsured could be 50/100?

14 A Yes.

15 Q The underinsured could be 50/100?

16 A Yes.

17 Q How come we don't have a premium for any of this
18 coverage in the form? We don't have a premium.
19 You'd agree there's no premium listed?

20 A Right.

21 Q Okay. How come we don't have a premium listed when
22 the form calls for it?

23 A Other than the fact that it was on the quote sheet.
24 That would be the only reason, that maybe she forgot
25 to input it in, but - - - (No further response)

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1 Q Well, you agree it's not there?

2 A Right, it's not there.

3 Q Is it required to be there? As you understand - - -

4 A Yes.

5 Q The form - - -

6 A Yes.

7 Q Is it required to be there?

8 A Yes.

9 Q So this form, that again is being shown to me as why

10 they say I don't have insurance, underinsured, how

11 would she have known about premiums since it's not in

12 the form that the offer is being made upon? How is

13 she going to know about the premiums?

14 A Through the quote sheet.

15 Q Now, tell me what a quote sheet is.

16 A Well, that - - - that would be a quote sheet that's

17 there.

18 Q No, no, no. I'm going to show it to you in a minute.

19 A All right.

20 Q Tell me what it is first - - -

21 A I believe - - -

22 Q In broad terms, broad terms.

23 A It shows coverages, it shows vehicles, and it shows

24 limits.

25 Q Okay. Now, I've been - - - And I had this before,

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1 but believe it or not, I forgot I had it. But it's
2 now in evidence. If you'll look at - - - Where is it
3 at? Right here. There you go. It's Exhibit 2, and
4 the pages don't mean anything. It's just the way
5 they are. The first page is dated 1-21-98. Do you
6 see that?

7 A Yes.

8 Q My wreck's in 2012.

9 A Right.

10 Q Of course, that's simply a date you have to work back
11 from. This offer is 2001. Do you agree?

12 A Yes.

13 Q Okay. So what's this '98 quote sheet? What is it
14 supposed to show me, as you understand it?

15 A Right, right. Mr. and Mrs. Webster bought a
16 motorhome back in January of 1998. At that time, the
17 coverage was with General Accident, and this was the
18 quote sheet for that motorhome at the time, where we
19 had quoted the full coverage that she was carrying at
20 that time.

21 Q Okay. And that's the '86 Ford? They can tell me
22 what it is - - -

23 A Right.

24 Q But see, they're not allowed to say anything today.
25 So are you telling me that they were quoted - - -

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1 They had 25/50 liability, and therefore, everything
2 else was 25/50. But they were quoted for - - - Where
3 it reads, U-n-d-i-n-s B-I, 25/50, and it's got nine
4 dollars over there, that was the premium?

5 A For the bodily injury portion.

6 Q For under?

7 A Yes.

8 Q Okay. And then it's got P-D, which was two dollars.
9 But then it's got an X through it?

10 A (Indicating yes)

11 Q And we've been told, we think that's your X. Can you
12 - - -

13 A Yes.

14 Q Confirm that?

15 A It is.

16 Q Okay. And then it has an eleven over there, which is
17 nine plus two?

18 A Right.

19 Q And it's got an X through it?

20 A (Indicating yes)

21 Q Is that your X?

22 A Yes.

23 Q So what is that showing me, as it applies to the '86
24 Ford motorhome, as of 1-21-98?

25 A Right. It was showing that premium for the - - -

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1 Let's see. What's the time period? Six months was a
2 hundred and sixty-three sixty-three with full
3 coverage and underinsured motorist on it.

4 Q Right.

5 A And then in the conversation - - - And the reason
6 this has gone out to the side is because General
7 Accident, this was a manually-issued policy.
8 Motorhomes were getting sixty-five percent
9 discounting on the physical damage and were getting
10 fifty percent discounting on the liability, but not
11 on uninsured and underinsured. So therefore is why
12 all of the writing is on that.

13 Q Right.

14 A Because they didn't have a manual rate system that
15 would rate the motorhomes. They didn't even have a
16 way of doing computer-issued policies, so they had to
17 manually issue that policy as well.

18 Q So you had to do all of that writing out there?

19 A Right. I had to do all the writing.

20 Q Okay.

21 A So that was in the conversation. Well, what do we
22 want to carry? And then it was decided, well, we
23 didn't want the underinsured. So I X'd that out, and
24 the one fifty-two sixty-three is that rate without
25 the underinsured.

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1 Q Okay. So the one sixty-three sixty-three was the
2 total, but if you drop that eleven dollars, it drops
3 to the one fifty-two sixty-three?

4 A Right.

5 Q That's what that tells me?

6 A (Indicating yes)

7 Q That's understandable. All right. Then the other
8 form is the second page. It's dated April 14, '05.
9 Do you see it at the top?

10 A Yes, sir.

11 Q It's with - - - Well, it's through y'all. Who is it
12 with? National Grange. There you go. Now, I've got
13 three vehicles on here. Does this sheet of paper I'm
14 looking at involve all three of them, or just one, or
15 just two? What can you tell me?

16 A Well, the quote sheet was based on the three
17 automobiles that were on the policy and - - -

18 Q That's the three at the top?

19 A Right.

20 Q Are these new or coming online for the first time
21 with y'all? What can you tell me the piece of paper
22 can show you about the '99, '96, and '93 car?

23 A Well, just knowing what was going on here, the '99
24 and the '93 were already on the policy.

25 Q Okay.

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1 A And so this was looking at a substitution of the 1996
2 Honda Accord that was being purchased.

3 Q All right. Now, hold on. And it was being
4 substituted for what?

5 A That doesn't show on here.

6 Q But am I not looking at a '99 Chevrolet that has
7 quotes and the '96 Honda that has quotes?

8 A (No response)

9 Q Is that what this page is showing me?

10 A Right. This is showing the quotes.

11 Q Okay. All right.

12 A But there would have been a third page to this with
13 the '93 Mazda.

14 Q I understand. But why would you be making a quote on
15 a '99 Chevrolet if it was being replaced by
16 something, if I understood you correctly?

17 A No, because we're dealing with that policy and seeing
18 how it could impact any of the vehicles. So we're
19 basically recreating the three cars that were on the
20 policy, and then having to sub in the Honda Accord to
21 get its rate.

22 Q Which it looks like we're missing the '93 Mazda?

23 A Right, in which - - -

24 Q Because I don't have but one page.

25 A I'm not sure what happened to that page.

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- 1 Q Right. Well, looking at the Chevrolet, it was an
2 existing car as of '05?
- 3 A (Indicating yes)
- 4 Q And my clients would have to look at this and tell me
5 if the car still exists, I don't know, or was it in
6 existence on the day of the wreck. It appears it had
7 under on it?
- 8 A No. This was just us rating it for the client to
9 say, hey, if you want that underinsured, this is what
10 it is today, and then - - - Because they had a young
11 driver at that time that was on the policy. Again,
12 we just kind of felt concerned that, with a young
13 driver, we - - - we want to at least put it out there
14 again. So that's why they were rating it.
- 15 Q Okay. Well, then this stuff on 4-14-05, talking
16 about the Chevrolet, is not an offer, a rejection, or
17 nothing? It's just something y'all did to get the
18 customer to look at this versus that?
- 19 A Right.
- 20 Q Is that correct?
- 21 A Right.
- 22 Q Okay. But the Honda is the new car coming online, so
23 to speak?
- 24 A Yes.
- 25 Q Okay. And again, I see a quote out there for the

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1 under. Was it purchased? Can you tell me that from
2 this Honda? Was the under purchased in '05?

3 A No.

4 Q Well, where is the - - -

5 A Oh, you mean if the - - - if the car was purchased?

6 Q No, no, no. Was under coverage purchased?

7 A No, it wasn't.

8 Q Well, how do I know that based on what I'm looking at
9 right here?

10 A There's nothing here to indicate that. Right.

11 Q Okay.

12 A This was just an offer, a quote sheet to them to say,
13 okay, you're buying this Honda, a young driver. Here
14 is underinsured if you'd like to have it. But
15 there's nothing here to indicate - - - (No further
16 response)

17 Q It was rejected - - -

18 A Right.

19 Q Or turned down, or offered, paid for, or nothing? So
20 other words - - - And I realize you're not involved
21 in the lawsuit, but your company is involved in the
22 lawsuit. I have to sue you. And of course, I know
23 there's a countersuit between you and Grange, and I'm
24 pointing to that lawyer down there because he
25 represents them. Okay?

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1 A (Indicating yes)

2 Q And what I want to know is, would it - - - And I got
3 this sheet from your lawyer. Tell me - - - And he
4 may not object because you're not the designee yet.
5 But can you tell me what this has got to do with the
6 lawsuit?

7 A Well, this was just pretty much saying that we talked
8 about underinsured from time-to-time.

9 Q Okay. I don't dispute you didn't talk about it.
10 Okay? It's a matter of whether or not it was
11 offered, a meaningful offer.

12 A (Indicating yes)

13 Q That's the issue, see, with the form.

14 A Yeah.

15 Q Well, if - - - And I'm opening myself up, because
16 somebody's got to go find out. Are you telling me
17 these documents or something similar to these
18 documents maybe or by procedure should have been used
19 in '01 to show premiums?

20 A Right. We - - - We would talk with the client about
21 coverages through the quote sheets.

22 Q I agree, but ain't nobody produced them. Do they
23 still exist?

24 A No. I - - - Typically what would happen - - - And in
25 this particular case, General Accident was pulling

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1 out of South Carolina, and that's who Mr. and Mrs.
2 Webster had.

3 Q I agree.

4 A So on November - - - November 21st, we sent a letter,
5 and that would have been November 21st of 2000,
6 saying you're going to get cancellations from General
7 Accident. We're going to be providing you some
8 quotes, so don't be alarmed. So December 1st - - -

9 Q That's what we call - - -

10 A Of 2000 - - -

11 Q That's what we call good PR work.

12 A Right.

13 Q I understand.

14 A December 1, General Accident sent out the actual
15 cancellation. Then on December the 20th, we did our
16 quotes and letter and sent that out to the Websters
17 saying, we need you to come by the office. We - - -
18 We're able to offer you this with National Grange.

19 Q All right. Well, then you tell - - -

20 A And then so that little invoice - - -

21 Q Let me - - - Let me stop you right here. Are you
22 telling me that on that December date of 2000,
23 whatever it was, you sent them quotes in the mail?

24 A Yes.

25 Q That covered under?

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1 A Right.

2 Q It had under coverage?

3 A Yeah. It - - - It would have had the quote of
4 coverages there, and that was mailed with the letter.

5 Q All right. Let me make sure we understand.

6 A (Indicating yes)

7 Q The quote of the coverage is, this much premium for
8 liability, this much premium for collision, this much
9 premium for PD, and this much - - - That type of
10 quote?

11 A Yes.

12 Q Okay. And it would have included under?

13 A Yes, sir.

14 Q Is that an offer at that point, as you understand the
15 law of this state?

16 A It - - - It is us providing them a quote of
17 coverages, and then we sit down and we'd talk about
18 it when the customer comes in.

19 Q Okay. All right.

20 A Yeah.

21 Q So Ms. Webster came in. Have you got - - - Does that
22 letter still exist anywhere that you sent my clients?

23 A All I have is a kind of carbon invoice thing that was
24 sent out with it, with - - -

25 Q Showing who you mailed - - -

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1 A With the quote sheet.

2 Q Who you mailed something to?

3 A Huh? Who the - - -

4 Q Showing who received the - - - who your letter was

5 sent to?

6 A Yeah. That would have been sent to the Websters.

7 Q I understand, but - - -

8 A Yeah.

9 Q You've got more than one insured or one customer. So

10 you had to send a bunch of them?

11 A The first standardized letter?

12 Q Well, whatever letter it is.

13 A Yeah. Well, the one that would have gone out in

14 December had a little invoice thing at the top that

15 says, this is what we're looking at. This is your

16 different options of payments, and it's with National

17 Grange, and there would have been a quote sheet with

18 that.

19 Q And a quote sheet supposedly sets out all of the

20 premiums?

21 A Right.

22 Q For each type of coverage?

23 A Right.

24 Q All right. But then they come in and - - - Were they

25 instructed, bring this letter with you when you come

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1 in, or anything like that?

2 A Typically, most customers would. I'm not sure on - -

3 -

4 Q I understand, but - - -

5 A On that, if it would have been specific. It just
6 says, come by the office.

7 Q Well, you wanted them to come in and - - -

8 A Right.

9 Q Still do business with you, but it's got to be for a
10 different company?

11 A Right.

12 Q That's - - - Okay. So assuming this 1-5-01 is the
13 date Janet came in - - -

14 A Yes.

15 Q Did we regenerate on that date these rate sheets or
16 quote sheets, whatever you want to call them? Did we
17 regenerate them on January 5 of '01?

18 A No, I wouldn't think so, but - - -

19 Q Okay.

20 A Yeah.

21 Q Well, that's what I'm asking. So technically
22 speaking, Mr. Miles, on January the 5th of '01, she
23 was not given any rates on that day for her to make a
24 decision whether or not to buy any coverage? She was
25 given no rates?

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1 A That's not necessarily so.

2 Q Well, explain to me - - - And I am picking at you,
3 but this is why this suit is where we are. On
4 January the 5th of '01, you agree we've got to make a
5 meaningful offer. Is that a true statement?

6 A Yes.

7 Q On January the 5th of '01, you agree that a
8 meaningful offer must include, by statute, the list
9 of available limits and the range of premiums for the
10 limits? You agree that's a requirement?

11 A Yes.

12 Q Tell me, what showed her the range of the premiums on
13 January the 5th of '01?

14 A Right. It's not on this form. Like I said, it would
15 have been on the quote sheet to discuss.

16 Q But the quote sheets, were they generated on January
17 the 1st of '01?

18 Mr. Freeman - Objection to form.

19 Q I'm sorry. January the 5th of '01, were they
20 generated that day?

21 A They would have been generated prior to December the
22 20th.

23 Q Okay. Were they used that day? When this lady was
24 in your office, dealing with whoever she dealt with,
25 were they used that day?

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1 A They should be, yes.

2 Q That's not what I asked you. Were they used that
3 day?

4 A Well, like I said, since - - - Since I don't recall
5 the exact date, I can't say a hundred percent certain
6 what actually happened.

7 Q Okay. Well, were they supposed to be used that day
8 by somebody to tell her what the premium range was?

9 A Yes.

10 Q And are you agreeing that they should have been on
11 the form?

12 A Yes. By the statute, they're supposed to be on the
13 form.

14 Q Okay. Therefore, they should have been put down - -
15 -

16 A Right.

17 Q By you or somebody in Miles Insurance Agency. Is
18 that correct?

19 A Yes.

20 Q If - - - And this is what makes it so weird. If - -
21 - Well, we've got Page 1 that talks about the '70
22 Chevrolet, an '85 Chevrolet, and a '96 - - - I'm
23 sorry, an '86 Ford motorhome, which is the one that's
24 probably covered by the thing back in '98, because I
25 don't think they've had but one Ford motorhome.

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1 A Right.

2 Q They can answer that. I think there were some other
3 vehicles involved. I don't have the dec sheet in
4 front of me. But does a document exist that's dated
5 in either late 2000 or as of January 5 of '01, that
6 shows the premiums for the various under insurance
7 coverages?

8 A I don't have copies of it in my file, no.

9 Q Therefore, it doesn't exist?

10 A Well, I - - -

11 Mr. Freeman - Object to the form.

12 Mr. Dougall - Object to the form.

13 A Like I - - -

14 Q Does it exist?

15 A (No response)

16 Q I understand you say you don't have a copy of it.
17 Who else would have a copy?

18 A Ms. Webster.

19 Q That she got on January the 5th to make an
20 intelligent - - - whether or not a meaningful offer
21 was being made?

22 A Yes.

23 Q So she was required to bring in her stuff that you
24 mailed her to make a decision on what the premiums
25 were? Is that what you're telling me the procedure

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1 was in January of '01?

2 A We - - - We sent the quote to her, giving that

3 option.

4 Q I understand that. I understand. Well, do you know,

5 one, if she received it in the mail?

6 A Well, she came in the office.

7 Q No, no, no. Do you know if she received the quotes?

8 A Well, like I said, on that was the notice that she

9 needed to come into the office.

10 Q I understand that, but - - -

11 A So she followed and came to the office.

12 Q But she also got a letter from General Accident

13 saying, we ain't going to cover you no more, didn't

14 she?

15 A Right, she got that letter.

16 Q Okay. And she got that other letter from you saying,

17 come see me, before you send any quotes out, right?

18 A Right.

19 Q So she was notified once by you before she got these

20 so-called quotes, and she was notified by General

21 Accident that they were pulling out?

22 A Right.

23 Q So you assumed she wanted to continue doing business

24 with you, so she came in?

25 A Right.

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1 Q On December the 5th - - - I'm sorry, on January the
2 5th of '01. But can you tell me today, and therefore
3 tell the Court, that on January the 5th of '01 - - -
4 You've already acknowledged that the form wasn't done
5 correctly, because there's no rates in there. But
6 can you tell me on January the 5th of '01, she was
7 given rates for the coverages of 15/30, up to
8 250/500, for underinsured?

9 A It was rated, and it was supplied.

10 Q But was she given that on the day she came in to
11 apply for underinsured? Was she given it on that
12 day?

13 A Yes. With - - - With her letter, it - - - it would
14 have been a part of it. That would have been a part
15 of the conversation, and then we went through the
16 form itself.

17 Q I understand. But was she given anything by y'all?
18 You keep saying, yes, assuming she brought in what
19 you supposedly mailed her a month earlier. Is that
20 what you're telling me?

21 A We're talking the 20th through the 5th. That's what,
22 sixteen days?

23 Q Well, I understand that.

24 A Okay.

25 Q But assuming she brought in what you say you mailed

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1 her on that - - - On the day she came in on January
2 the 5th of '01, she was not given any new information
3 generated by you as to what the rates were for the
4 underinsured?

5 Mr. Dougall - Object to the form.

6 Q Go ahead and answer it. She was not given anything
7 new as to what the rates were on January the 5th, the
8 day she came in?

9 A Obviously, I can't answer that a hundred percent.

10 Q Why?

11 A I don't recall having been there that particular day.

12 Q Well, but your procedure was to reprint something, or
13 rely on what you sent her a month earlier?

14 A Well, we would always have conversations with people.
15 Some people wanted to go with higher limits. So, you
16 know, we may reproduce a quote if somebody wanted
17 higher liability limits, if - - - if they wanted to
18 change something, obviously. Even in this case, Ms.
19 Webster even said, I don't want a car insured.

20 Q Okay.

21 A There was a sixth vehicle that was - - - or would
22 have been the sixth vehicle on the General Accident
23 policy that she says, I don't want it covered on
24 January the 5th anymore. We're taking the tag off of
25 it - - - or January the 10th.

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1 Q Did that occur?

2 A Yes.

3 Q On which vehicle?

4 A I don't recall. Let me see if I have it in my notes.

5 Q Oh, you've got some notes? You've gone back and done
6 some research before you got here?

7 A A 1978 Chevrolet two-door vehicle was taken - - - was
8 not added to the National Grange policy. It was a
9 vehicle she decided she no longer needed.

10 Q Okay. So again, this is based on not your
11 independent recollection, but this is based on the
12 procedure that Miles used covering December, because
13 General Accident was leaving, up to January the 5th
14 of '01 based on her letter? That's what you're
15 telling me today?

16 A Repeat that again.

17 Q I said, you have no independent recollection of what
18 occurred on January the 5th of '01?

19 A That's correct.

20 Q You cannot produce today or produce - - - It hasn't
21 been produced, what was sent to her concerning
22 premiums sometime in December? You can't reproduce
23 that. Is that correct?

24 A Not the actual quote sheet.

25 Q Okay. Well, that's what I'm talking about, the quote

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1 sheet. And therefore, you don't have an independent
2 recollection if she brought that quote sheet with her
3 on January the 5th of '01, do you?

4 A That's correct, since - - - since I don't recall
5 that, that exact date.

6 Q I understand. Well, that doesn't surprise me. But
7 procedure-wise, you did not give her anything new on
8 January the 5th that would have shown the quote
9 rates?

10 A I can't answer that yes or no, either. Because like
11 I said, I do know that she signed on the General
12 Accident policy to not continue to cover the '78
13 Chevrolet in January of 2001.

14 Q Okay, but I'm not in suit over that. I'm in suit
15 over what occurred with a meaningful offer of
16 underinsured. That's the only thing I'm involved in.

17 A Right.

18 Q And again, you cannot produce or have any independent
19 recollection that you gave her or Miles Insurance
20 Agency gave her rates to consider on January the 5th,
21 '01 as to underinsured?

22 A Like I said, the quote sheet, because we're - - -
23 We're giving her the option with the new carrier, and
24 that quote sheet would have had the underinsured on
25 it.

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1 Q And that's the quote sheet that you supposedly mailed
2 her in December?

3 A Right.

4 Q Okay. You can't tell me she brought them in, can
5 you?

6 A No. I can't say that for a hundred percent, yes.

7 Q Well, let's assume she brought them in. Did you go
8 over them with her?

9 A Yes, we always go over that with the clients.

10 Q All right. Well, let's assume she didn't bring them
11 in. How are you going to tell her about the rates?

12 A That's - - - You know, that - - - If - - - If the
13 person didn't have it with them, we could always
14 generate it back off of the system.

15 Q I know, but you're not telling me you did that.

16 A No, I - - - I don't have them. So I assume she had
17 it with her that day.

18 Q All right. Well, then tell me this. Whoever dealt
19 with her, regardless of what paperwork may have been
20 sent, may have been brought in, what paperwork you
21 generated, why did it not get transferred to the
22 assumingly-approved form?

23 A That, I'm not sure.

24 Q Okay.

25 A Yeah.

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1 Q Because that's your responsibility? That's Miles'
2 responsibility. Is that correct?
3 A Yes, and the carrier.
4 Q Well, I understand. I understand.
5 A Yeah, because these - - -
6 Q Somebody.
7 A These forms, just as you see them, were submitted
8 then straight to the carrier.
9 Q Okay. Well, I was going to get - - -
10 A With a - - - With a paid check.
11 Q I was going to get to that. So once the form is
12 filled out, then we generate this front sheet, which
13 is actually the policy application. Is that correct?
14 A The policy application.
15 Q Okay. And that then eventually goes through the mail
16 or whatever - - -
17 A It was - - -
18 Q I don't - - -
19 A It was - - -
20 Q I don't know whether y'all had email or not. But it
21 goes to then National Grange, which I'm assuming was
22 in Jacksonville then? Do you remember?
23 A No, I - - - I think it was going to New Hampshire.
24 Q Okay. Well, wherever it went.
25 A Right, or Virginia.

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1 Q And - - -

2 A It may have gone to Virginia.

3 Q Okay. And you have no idea what National Grange did
4 with it?

5 A No.

6 Q Reviewing it or nothing, you can't speak for them,
7 one way or another?

8 A Right.

9 Q Okay. But there's no doubt that you were their - - -
10 Miles Insurance Agency was their agent? You were
11 authorized to sell their product?

12 A Yes.

13 Q And of course like all insurance companies, they've
14 all got their own rates?

15 A Right.

16 Q They may or may not be competitive with somebody
17 else, but you've got to go by their rates?

18 A Yes.

19 Q Well, let me ask you this, and this is very unique.
20 I don't even know if you've ever been asked this.
21 When, in '07, they changed the limits from 15/30 - -
22 - The minimum limits from 15/30 to 25/50, that
23 happened in '07?

24 A It did?

25 Q Yeah.

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1 A I thought it was a lot earlier than that.

2 Q No, it was '07.

3 A Okay.

4 Q I'm pretty sure. I can read the statute. It's 140.

5 It's one I keep flipping this around to. Yeah, the

6 last time this act was amended was January 1st of - -

7 - as of January 1st of '07. It took them about six

8 months to do it, but it started in January of '07,

9 where it went to 25/50. Okay?

10 A (Indicating yes)

11 Q What instructions did you get from National Grange on

12 how to handle whether or not you had to reoffer any

13 coverages, including under?

14 A There were no instructions.

15 Q Okay. What instructions did you get from anybody on

16 how to handle the change from 15/30 to 25/50?

17 A (No response)

18 Q If any.

19 A Are you talking about new business or renewals?

20 Q Well, yeah, whatever.

21 A I was - - -

22 Q I mean, that's a significant jump. I mean, that's a

23 - - -

24 A Right.

25 Q To me, that's a significant event, going from 15/30

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1 to 25/50. That affects every policy in this state.

2 A Right.

3 Q Because you've got to have liability if you're going

4 to drive a car. So did you get any instructions, any

5 training from anybody on how to handle either

6 renewals or - - -

7 A No. You would - - -

8 Q New offers, anything?

9 A You would have just gotten something from the

10 insurance department and - - - a briefing in the

11 information that comes out that says, you know, the

12 limits are this. But typically, we didn't write

13 15/30 limits to begin with.

14 Q Well, I understand that. But that's what you could

15 write, by the law?

16 A Right.

17 Q And, of course, you had to tell them under the old

18 law - - -

19 A Right.

20 Q The minimum was 15/30 for under purposes and for

21 uninsured, right?

22 A Yes.

23 Q Okay. So you didn't change any procedure, one way or

24 another, as to existing policies? New policies, you

25 had to go through and tell them the rates and the

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1 offerings and all of that stuff. Is that correct?

2 A Yes.

3 Mr. Bell - Okay. All right. Thank you, sir.

4 I'm sure he may have a question or two.

5 Whereupon - A brief discussion was held off the
6 record which was not reported.

7 DIRECT EXAMINATION

8 BY MR. DOUGALL:

9 Q Mr. Miles, my name is Tom Dougall. I represent
10 what's now called NGM Insurance Company, but back at
11 some point, it was also called National Grange Mutual
12 Insurance Company. Do you understand that that was
13 their old name, and then they changed their name?

14 A Yes.

15 Q I want to go over some of the issues that Mr. Miles -
16 - - I mean, excuse me, Mr. Bell talked with you
17 about. What is your agency's - - - To your
18 knowledge, because you're not technically here as a
19 designee of the company. But to your knowledge as
20 the owner of the company, what is your document
21 retention policy?

22 A We basically keep files for seven years after the
23 policy is canceled.

24 Q Okay. So in this instance with the Websters, are you
25 saying you would have destroyed documents in two

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1 thousand and - - - in actually '09, because the
2 policy would have expired in 2002?
3 A No. This policy?
4 Q (Indicating yes)
5 A No. This policy ended in twenty - - - Yeah, 2014.
6 Q Well, you had renewals so - - - Okay. Well, you're
7 saying - - -
8 A No, no. When the file is no longer a customer, we
9 maintain that file for seven years.
10 Q Okay. So when the Websters canceled their insurance
11 with your agency in 2014, you would keep their file
12 for seven years after that?
13 A Yes.
14 Q Do you actually have that file?
15 A Yes.
16 Q Have you looked at that file?
17 A Yes.
18 Q And so the letter you sent them in 2000 saying
19 General Accident is going to pull their coverage, and
20 then the letter that you sent them saying, come see
21 us, here would be the quotes for new coverage, those
22 aren't in your file?
23 A Yes, they're in the file.
24 Q Those two letters are in the Webster file?
25 A Yes. Prior to 2001, yes.

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1 Q You've looked in their file, and those letters are
2 there?

3 A Yes.

4 Q Okay.

5 Whereupon - A brief discussion was held off the
6 record which was not reported.

7 FURTHER EXAMINATION

8 BY MR. DOUGALL:

9 Q So in that letter that you sent them in December of
10 2000, there are actual quotes where you had
11 underinsured motorist coverage, correct?

12 A No. What I still have is the invoice part that went
13 out with the quote sheet.

14 Q Okay. And what information is on that - - - What did
15 you call that? An invoice?

16 A Yeah. It was kind of an invoice thing that says,
17 come by the office at such-and-such, and it showed
18 the premium, and it showed whether they wanted to pay
19 monthly, quarterly, semi-annual.

20 Q Okay.

21 A And like I said, that would have included the six
22 cars at the time that was there, which - - - which
23 were the six that were renewing on January the 10th.
24 There was a seventh vehicle that wasn't coming up
25 until May of twenty - - - of 2001.

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1 Q When did you last look at the Websters' file?

2 A Yesterday.

3 Q Based on what you looked at yesterday, what

4 information is in that file? In other words, looking

5 at Exhibit 2 that we've been talking about today, is

6 that April 4th, 2005 quote sheet in there?

7 A Yes.

8 Q Is the 1998 General Accident quote sheet in there?

9 A Yes.

10 Q Are there other quote sheets in there?

11 A No. But all the changes that were going on in the

12 policy, all of that is there. Everything that Ms.

13 Webster - - - When she deleted something, she would

14 sign the delete. All of that is in the file.

15 Q Okay. Let's go back to Exhibit 1 because Mr. Bell

16 has done a good job of doing what he's supposed to

17 do, but giving you his side of what those forms mean.

18 So let's go through them again. The first two pages

19 are an ACORD South Carolina personal auto

20 application, correct?

21 A Yes.

22 Q And that's actually a different form than what's on

23 Page 3, which is the auto supplement?

24 A Yes.

25 Q Okay. Now, I want to direct your attention down to

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1 the bottom left-hand corner. It says, ACORD 90 S.C.,
2 parenthesis, 3/99, close parenthesis. Do you see
3 that?

4 A Yes.

5 Q Do you have any idea what that means?

6 A Yes. That's the ACORD Form Number 90 for South
7 Carolina with the edition date of March of 1999.

8 Q Okay. And so is it your understanding that ISO is
9 telling you that this is a form that was approved as
10 of 3/99 for the State of South Carolina?

11 A Well, I - - - I know that it tells me the edition, of
12 the year. Now, like I said, ISO, my assumption is
13 that they get approval in each state for the use of
14 their forms.

15 Q Okay. And if you go to Page 3, looking again back on
16 the bottom, you've got an ACORD 61 S.C., parenthesis,
17 2000/01, close parenthesis. What does that mean to
18 you?

19 A That's - - - That's the standard form, ACORD 61 for
20 South Carolina, edition year of 2000/2001.

21 Q Or does that mean January of 2000?

22 A That, I'm not certain.

23 Q Okay. In any event, it would have been generated
24 before the effective date of the National Grange
25 policy on January 10th of 2001, correct?

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1 A That's correct.

2 Q And I'm sure Mr. Bell will confirm this later. But
3 for the purposes of our discussion, let's assume that
4 as of 2000, ACORD 61 S.C. was approved by the
5 Department of Insurance of South Carolina.

6 A That would be my assumption, yes.

7 Q Okay. And it's your testimony that when the Websters
8 came in in 2001, your company did not write minimum
9 limits policies?

10 A We may have still had some on the books from - - -
11 from way back prior, but I - - - But in 2001, no,
12 there would not have been any 15/30 policies in
13 force.

14 Q What was the minimum limits that you would write in
15 2001?

16 A It would be the 25/50.

17 Q So you were already doing that before the law came in
18 - - -

19 A Right.

20 Q In 2007 and said, you've got to write it that way?

21 A Right.

22 Q Were you doing that as a company policy, or was that
23 mandated by your insurance companies, such as NGM?

24 A It wasn't mandated by the company. It was just
25 something we were doing.

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1 Q You said that you didn't read these pages, word-for-
2 word, to the insured. Did the insured have the
3 opportunity to read them, if they wanted to?

4 A I typically would - - - You know, after having a
5 conversation with an individual, if I said, do you
6 want a copy of it? I will give them a copy.

7 Q Okay. You didn't prevent them from reading it, did
8 you?

9 A No.

10 Q And if you go to the second page of the South
11 Carolina auto supplement, it's your understanding in
12 2001, upon state law, you were only required for
13 uninsured coverage to mandatorily write the minimum
14 limit of 15/30/10, correct?

15 A The state minimum of 25/50.

16 Q No. In 2001, the state minimum was - - -

17 A Oh, okay. Right.

18 Q 15/30/10, correct?

19 A Yes. Yeah, that would have been the minimum at that
20 time, yes.

21 Q All right. And if somebody wanted more coverage than
22 that, they had to pay an extra premium, correct?

23 A Yes.

24 Q And on this form under Section 2, offer of additional
25 uninsured motorist coverage, Ms. Webster actually

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1 selected more than the state-mandated uninsured
2 coverage, correct?

3 A Yes.

4 Q And she, to your knowledge as part of your company's
5 policy, would have been told that there was going to
6 be an additional premium for that?

7 A Yes.

8 Q And while she was taking additional uninsured, she
9 rejected based on these forms, to your knowledge,
10 underinsured coverage?

11 A Yes.

12 Q Now the statute says, the director or his designee
13 shall approve a form, correct?

14 A Yes.

15 Q Are you aware that this statute doesn't require that
16 that form be used?

17 A No.

18 Q Okay. Because it goes on to say, if this form is
19 signed by the named insured, then there is a
20 presumption basically that they knew about what they
21 had been offered. But you're here testifying today
22 on behalf of your company that they were, in fact,
23 told what the rates were and what the limits were,
24 correct?

25 A Yes. That would have been a part of the

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1 conversation.

2 Q So whether the form is filled out correctly or not,
3 it's still your testimony that they were provided
4 with that knowledge, and Ms. Webster made an actual,
5 knowing decision to purchase additional uninsured
6 coverage and rejected underinsured coverage?

7 A Yes.

8 Q Now because it just so happens later in life that our
9 legislature, in their infinite wisdom, changed the
10 law again, let's go back to Section 1 on Page 2 of
11 the auto supplement. One, two, three, four - - - The
12 fifth paragraph down, it says, in the future, if you
13 wish to increase or to decrease your limits, either
14 of additional uninsured motorist or underinsured
15 motorist coverage, then you must contact either your
16 insurance agent or your insurance company. You will
17 not be presented with another copy of this form by
18 your insurance agent or by your insurance company
19 upon renewal of your automobile liability insurance
20 policy. Did I read that correctly?

21 A Yes.

22 Q What's your understanding, as an agent, of what that
23 paragraph means?

24 A Well, it just basically means that - - - that they're
25 not going to get this form again, sort of

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1 arbitrarily - - -

2 Q Okay. So in fact - - -

3 A Upon renewal, right.

4 Q So when the legislature changed the minimum limits,
5 you notified all of your insureds of that, or did you
6 not do it because they were already above the minimum
7 - - - at or above the minimum limits?

8 A Well, upon renewal, if there were any at 15/30, the
9 company would have automatically bumped them to the
10 next limits.

11 Q Well, what did you do in the case of Ms. Webster,
12 since she was already at 50/100? Did you send her a
13 new letter saying, oh by the way, you've got to have
14 twenty-five thousand dollars minimum limits, when she
15 already had double that?

16 A No. No, there would have been no course of action.

17 Q All right. Just business kept on going as usual, and
18 you renewed every year?

19 A Right.

20 Q In fact, this form she signed in '01 informed her
21 that she wasn't going to get reoffers every year when
22 her policy renewed, correct?

23 A That's correct.

24 Q At this time, were you manually generating policies,
25 or was it done electronically?

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1 A They were manually being done.

2 Q When did you switch over to electronic?

3 A Well, whenever National Grange did.

4 Q Okay.

5 A Now, I - - -

6 Q And if you go online to the National Grange site
7 today to enter in the information for a policy, isn't
8 there actually a manual that tells you what you need
9 to do to satisfy NGM's requirements for a policy?

10 A I can't say that I've seen that.

11 Q So you're sitting here today saying, National Grange
12 never provided you with any sort of manual and
13 instructions on how to write policies?

14 A We were given underwriting manuals.

15 Q Okay. And did - - -

16 A And rate manuals.

17 Q And didn't those underwriting manuals and rate
18 manuals tell you the information you had to provide
19 to the underwriters before you could generate the
20 policy?

21 A Well, a manual, you know, says to fill out the
22 application, fill out the supplemental form, and send
23 them to the company with a check. So that's what was
24 happening, yes.

25 Q Okay. And that's what I wanted to get to - - -

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1 A Right.

2 Q Because in response to one of Mr. Bell's questions,
3 you said you had no instructions from NGM, but in
4 fact, you did have instructions that told you which
5 forms had to be filled out and what information had
6 to be conveyed to National Grange before a policy was
7 issued, correct?

8 A About sending forms, right. But not how to, per se,
9 step-by-step deal with the individual form.

10 Q All right. I'll accept that answer as being
11 accurate. So National Grange, as far as Exhibit 1 is
12 concerned, the first two pages of the personal auto
13 application didn't tell you how to fill that out,
14 correct?

15 A That's correct.

16 Q That was your agency's decision on how to fill that
17 out?

18 A (No response)

19 Q So let's assume I'm an underwriter at National
20 Grange, and I get these first two pages in probably a
21 few days after January 5th, 2001. What are those two
22 pages telling me?

23 A That's the coverage that has been bound.

24 Q Okay. And who bound it?

25 A Miles Insurance Agency.

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1 Q Thank you. And how could Miles Insurance Agency bind
2 the policy for NGM?

3 A Because in the agency contract, it says we have
4 binding authority.

5 Q Okay. And you have conveyed to National Grange that
6 as of January 10th, the effective date, you have
7 bound a policy for 50/100 in liability limits,
8 correct?

9 A Yes.

10 Q 50/100 in uninsured motorist coverage, correct?

11 A Yes.

12 Q And nothing in underinsured motorist coverage,
13 because Mrs. Webster had rejected that coverage?

14 A Yes.

15 Q Let's go to the auto supplement that's several pages
16 after that in Exhibit 1. Did National Grange ever
17 tell you that you had to use this specific form?

18 A Yes. They would have said, we're using ISO ACORD
19 forms, yes.

20 Q Okay. Did they tell you how you had to fill it out?

21 A No.

22 Q And you're saying that your agency's standard
23 policies and procedures at the time were to show an
24 applicant the rate sheet or a quote sheet, they've
25 been called both so far, and they would see on that

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1 quote sheet what the possible range of premiums were
2 for different coverages?

3 A Right. We would - - - We would have shown that
4 coverage in there.

5 Q Okay. And in fact at least in 2005, seven years
6 before this accident, Page 2 of Exhibit 2, the April
7 14th, 2005 quote sheet, up in the left-hand corner
8 says, prepared for Janet Webster, correct?

9 A Yes.

10 Q And it was quoted on that date, 4-14-05?

11 A (Indicating yes)

12 Q And it's got different coverages and different
13 quotes, correct?

14 A Yes.

15 Q Is it your testimony that those coverages and quotes
16 were conveyed in a meaningful manner to Mrs. Webster
17 on that date?

18 A There would have been a conversation about it, yes.

19 Q Okay. Do you consider that to be a meaningful
20 conveyance of that information to Mrs. Webster?

21 A Yes.

22 Q And in 2005, you didn't fill out another ACORD 61
23 because she had already rejected those coverages in
24 the past, correct?

25 A Right.

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1 Q And if she had wanted that coverage, then you would
2 have had to generate a new endorsement to her policy,
3 correct?

4 A Yes.

5 Q And since there's no endorsement on that 2012 policy,
6 that would be because she had rejected that coverage
7 and never requested that it be reinstated, correct?

8 A There would have been no reason for a reinstatement
9 because it had never been there.

10 Q Well, she had never come to you and said, you know,
11 I've looked at this, and now I want to have
12 underinsured motorist coverage?

13 A Right. She didn't request that we provide her with
14 the underinsured.

15 Q Now just because there are some other issues going on
16 in this lawsuit, I want to ask you some questions
17 about the MSA agency agreement.

18 Mr. Dougall - And, Francis, here's a copy for
19 you.

20 Mr. Bell - Oh, yes.

21 Mr. Dougall - And would you pass one down to the
22 court reporter? I'd ask her to mark that as my
23 exhibit.

24 Whereupon - A document was marked as Deposition
25 Exhibit NGM 1.

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1 FURTHER EXAMINATION

2 BY MR. DOUGALL:

3 Q Have you ever looked at this agency agreement?

4 A This was done when my father was still the agency
5 principal.

6 Q Okay. In fact, on the fourth page, that's your
7 father's signature - - -

8 A Yes.

9 Q Jerry Miles, correct? Do you agree with me that this
10 agency agreement is still in effect with MSA?

11 A Knowing right off the top of my head if it's been
12 amended since then, that - - - that would be a
13 question.

14 Q Okay. If it hadn't been amended, this would be the
15 agency agreement, correct?

16 A Right. It would have been at that time, right, 2007.

17 Q Okay. And just so we're clear, because MSA is
18 another entity, MSA is defined as Main Street America
19 Group. Then it lists - - - or at least checked are
20 NGM Insurance Company, Main Street America Assurance
21 Company, and Old Dominion Insurance Company, correct?

22 A Yes.

23 Q And do those X's indicate to you that you're
24 authorized, through this agreement, to bind coverage
25 for those three companies?

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1 A Yes, it does.

2 Q In fact, there's another company where there's no X,
3 MSA Insurance Company. You're not authorized to bind
4 them, correct?

5 A That's correct.

6 Q Okay.

7 A At least not as of December of 2007, yeah.

8 Q Okay. And then if we look under Section 1, authority
9 of the agent, Paragraph B, that's the authority that
10 says you as the agent can, in fact, bind the
11 coverage, correct?

12 A Yes.

13 Q And that has to be all in accordance with, and
14 subject to, the limitations set forth in the
15 company's manual and written or printed instructions
16 furnished to the agent, correct?

17 A Yes.

18 Q And then Paragraph E says you get to exercise your
19 authority personally or through your authorized
20 employees, correct?

21 A Yes.

22 Q So people like Candice Short, although her name was
23 different back then, and Lois Taylor had authority
24 from you to talk to people like the Websters and
25 offer them insurance coverage?

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1 A That's correct.

2 Q And then let's go to Section 2, which are the duties
3 of the agent. Again, the duties are to adhere to the
4 published instructions of the company, correct?

5 A That's what it says, yes.

6 Q And then Section B, forward to the company copies of
7 all applications, correct?

8 A Yes.

9 Q And in this case, the application would have been the
10 ACORD 90 that Mrs. Webster signed sometime around
11 January 5th, we assume, of 2001?

12 A Yes.

13 Q And then if we go to Section 11 on Page 3, there's a
14 paragraph about indemnification, correct?

15 A Yes.

16 Q I'm not going to go over that with you, because
17 that's all legal stuff that the lawyers and the judge
18 will argue over. But you agree that that
19 indemnification provision is in there?

20 A Yes.

21 Q As you sit here today, let's assume the Websters
22 convince a judge that they should get their policy
23 reformed, and UIM coverage is then provided for this
24 accident. You're aware that National Grange has said
25 - - - or NGM, excuse me, has said, if that happens,

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1 Miles Agency, we want you to pay that because you
2 agreed to indemnify us for what you did or didn't do
3 properly?
4 A Yes.
5 Q You understand that argument?
6 A Yes.
7 Q Are you aware of any reason why NGM, under that
8 agreement, would not be entitled to make Miles Agency
9 reimburse them for that loss?
10 A Yes.
11 Mr. Freeman - Objection to the form. Go ahead.
12 A Yes. Well, as indicated, they were given the
13 application. They got the form. They saw it all.
14 The - - - You know, we didn't maintain this in our
15 file only. That's - - - Main Street America/National
16 Grange had that in their files. The underwriters saw
17 it. Everybody saw it. It was on y'all's records.
18 Q All right. But you agree that when you sent them - -
19 - And you've already answered that question. That
20 when you sent them the application, it said, don't -
21 - - we're not writing underinsured coverage because
22 they rejected it?
23 A Right.
24 Q Did they have a right to rely on your employee's
25 language that said, reject?

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1 A Right.

2 Mr. Freeman - Object to the form.

3 A Now, they - - - they could rely that the customer
4 said that they didn't want the coverage.

5 Q I'm sorry?

6 A Like I said, they could rely on that the form says
7 rejected, and that the customer did not want that
8 coverage. They were seeing the form that was
9 completed. They had it, so they were seeing the
10 insured's signature.

11 Q Correct. The insured's signature was over the
12 section that said, I reject?

13 A Right.

14 Q So not only could they rely on Mrs. Webster's
15 rejection, they could rely on you that there was, in
16 fact, a rejection?

17 A Yes. But they also had the opportunity to look at
18 the form and say, it's missing something, have Ms.
19 Webster do it again.

20 Q But they also had the right to rely on the fact that,
21 if you told them there was a rejection, that you had
22 properly received that rejection, correct?

23 Mr. Freeman - Objection to the form.

24 A It - - - It indicates the conversation was had with
25 the client, and she rejected it at that time, yes.

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1 Q Okay. And your policy and procedure at that time,
2 when you say you explained it to the client, was that
3 you gave them quotes and limits while you were
4 discussing that offer of underinsured motorist
5 coverage?

6 A Yes.

7 Mr. Dougall - Okay. That's all I've got for
8 you, sir.

9 Whereupon - A brief discussion was held off the
10 record which was not reported.

11 FURTHER EXAMINATION

12 BY MR. BELL:

13 Q All right. And of course, Mr. Miles, I'm not
14 involved in, even though I started it, a dispute
15 between the two defendants. Okay?

16 A (Indicating yes)

17 Q So I'm not asking you any questions about that, but I
18 do need to clear up a couple of things. When I asked
19 you - - - Well, first of all, we're probably going to
20 have to get your lawyer to produce the whole file.
21 But in my clients' file that came into existence in
22 January of 2001 - - - That's when it came into
23 existence, right?

24 Mr. Dougall - Object to the form.

25 Q My clients' files with National Grange came into

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1 existence in January of 2001?

2 A With National Grange?

3 Q With National Grange.

4 A Yes.

5 Q I understand. They weren't with you before. We do
6 not have a copy of the letter you sent. We do not
7 have the letter itself.

8 A Right. It's - - - It's - - - Okay. Which letter are
9 you - - - (No further response)

10 Q Well, the letter you sent them on December the 20th.

11 A (Indicating yes) - - - It's not a letter. It's an
12 invoice thing.

13 Q Well, what does it say? See, that's where we get
14 confused.

15 A Right.

16 Q You call it an invoice. To me, an invoice is when I
17 tell somebody they owe me money, or I'm paying
18 somebody some. What does the word invoice mean to
19 you?

20 A Well, it was on an invoice form.

21 Q Okay, a form.

22 A Right. Then it basically said, January the 10th
23 renewal, that we're switching. So the carrier, who
24 it would be, and then it showed the premiums that
25 were there. Like I said, it would have been for a

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1 little bit more since there was a sixth vehicle at
2 that time. When this policy was written, there was
3 only five written, so - - - (No further response)
4 Q Well, does that form still exist?
5 A Yes.
6 Q All right. Well, what does it say?
7 A (No response)
8 Q I mean, you didn't bring it today?
9 A No.
10 Q Your lawyer hasn't produced it. It's addressed - - -
11 A Well, nobody has asked for that. The only - - -
12 Q Well, no, no. That's all right.
13 A The only thing anybody ever asked for - - -
14 Q That's all right. Don't worry about that.
15 A Was the application.
16 Q Don't worry about that. The form was addressed to
17 Jerry and Elaine Miles - - - or not Elaine, I'm
18 sorry. It's been a long day.
19 A Janet.
20 Q Janet.
21 Whereupon - A brief discussion was held off the
22 record which was not reported.
23 FURTHER EXAMINATION
24 BY MR. BELL:
25 Q All right. Jerry and Janet, you've got a letter.

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1 Does that letter - - - The invoice, as you call it,
2 does it have attached to it or either in it what the
3 premium change is going to be?

4 A Yeah, it had the premium.

5 Q No, no, no. What you've got in your file, does it
6 have the premium there? Is it in your file right
7 now, what the - - - Is the premium attached? I'm
8 asking it wrong, I reckon. What I want to know is,
9 you've got a copy of what you sent them. Does that
10 copy, when you produce it to me, is it going to show
11 me the premium rates?

12 A No.

13 Q Thank you. Do you have anything in your file to show
14 that she brought the premium stuff to you on January
15 5 of '01?

16 A The quote sheet?

17 Q Yeah.

18 A No, I don't have a copy of it.

19 Q All right. Do you have anything in your file that
20 actually shows the premium quotes for the under that
21 was offered on January 5 of '01? Is there anything
22 in your file that actually shows the premium quotes?

23 A No.

24 Q Okay. So what you - - -

25 A Because it would have been attached to the original

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1 invoice thing that was mailed out.

2 Q I understand that. So what you're telling me is - -

3 - And, of course, you've already said this. You do
4 not, today, have any independent recollection of the
5 meeting - - -

6 A Right.

7 Q On January 5 of '01? Therefore, you're saying that
8 you followed your policy. But they were coming in
9 for the first time with a new company, right?

10 A With a new company, yes.

11 Q And you had to offer underinsured for them coming in
12 with a new company?

13 A Right.

14 Q And I disagree with my good colleague down there.
15 Have you ever offered - - - Since '89, have you ever
16 offered underinsured without using a form?

17 A No.

18 Q To me, the statute says you've got to use the form.

19 A Right.

20 Q Is that your understanding?

21 A Well, yeah. It's the - - -

22 Q All right.

23 A Yes.

24 Q Okay, I understand. And you did use the form on this
25 day that has the - - - what I'm calling discrepancies

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1 in it, in that the premiums are not listed? There's
2 no doubt about that?

3 A Right.

4 Mr. Bell - Okay. That's all I've got.

5 Mr. Dougall - One very quick follow-up.

6 Whereupon - A brief discussion was held off the
7 record which was not reported.

8 FURTHER EXAMINATION

9 BY MR. DOUGALL:

10 Q Exhibit 2, Page 2, you don't have a quote sheet for
11 January 5th of 2001. So there is a quote sheet in
12 your file for January - - - I mean, April 14th of
13 2005, correct?

14 A Right.

15 Q And that's at least - - - or about five years before
16 this accident?

17 A Right.

18 Q So at least five years before this accident, you're
19 testifying that you or somebody in your company had
20 sat down with Ms. Webster, Janet Webster who this was
21 prepared for, and discussed potential coverages and
22 the premium rates for those coverages, correct?

23 A Right. And you'll see, this would not have been
24 mailed to her like the other, being a renewal or a
25 rewrite. This was done because she had come in and

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1 said, look, I'm buying this car. What will it cost?
2 And we want to have Meagan as the operator. So
3 Candice obviously dealt with this, since this is
4 Candice's handwriting. Then in that conversation
5 with her to say, okay, here - - - here is what we can
6 offer. It would have shown the underinsured again as
7 - - - as to say, a young driver, this - - - this
8 might be important.

9 Mr. Dougall - Thank you.

10 FURTHER EXAMINATION

11 BY MR. BELL:

12 Q All right. But let me clear this up, because I've
13 got to get it done today. Which - - - Because see, I
14 haven't had time to talk to my client about these.
15 Was the '99 S-10 already insured - - -

16 A Yes.

17 Q As of January the 5th?

18 A Yes.

19 Q Okay.

20 A Well, was as of April the 14th of 2005, yes. That
21 was already insured, and so was the '93 Mazda.

22 Q Okay. So what was being added?

23 A The '96 Honda Accord was being the new car.

24 Q It was being added?

25 A Right.

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1 Q So you did not offer insurance on the '99 Chevrolet?
2 You were simply - - - Because it was already insured.
3 You were simply comparing what it cost versus the
4 Honda, because the Honda was going to be the new car?

5 A (Indicating yes)

6 Q Is that correct?

7 A Yes.

8 Q So technically, you weren't offering any insurance
9 for the '99 Chevrolet. You were simply using that as
10 a comparison?

11 A Well, no. Since - - - Since this is showing the
12 underinsured, we were giving that option, and then
13 the same thing would have been on the '93 Mazda.
14 Obviously, this was the one policy. National Grange,
15 only allowing four cars on a policy, we had more than
16 four cars at that point. So we had two different
17 policies, so each policy had three vehicles on it.

18 Q So are you telling me - - -

19 A And so therefore - - -

20 Q That when this wreck occurred - - - All right. Talk
21 about learning something new every - - -

22 A Well, it's - - -

23 Q That's all right. That's all right.

24 A It's Policy 01 and Policy 02, and then all were the
25 same numbers.

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1 Q Okay. Well - - -

2 A But it was sequenced that way.

3 Q All right. Well, hold on. On the day of the wreck,

4 National Grange only allowed four cars per policy?

5 A On any one policy number - - -

6 Q That's what I'm talking about.

7 A Yes.

8 Q And I think we're claiming, on the day of the wreck,

9 seven cars. Is that right? I think that's right.

10 So I've got two policies out there, and the

11 difference between the numbers is, one's a 01 and the

12 other one is 02?

13 A Yes.

14 Q All right. Well, this is what's unusual. Why would

15 you reoffer insurance on a truck, the S-10, that was

16 already insured and supposedly already rejected?

17 Because the law doesn't require you to do that.

18 That's what's confusing me. Because you were using

19 that as a comparison as to what - - - The Honda was

20 new. I understand that, right?

21 A (Indicating yes)

22 Q The Honda was new. Well, what do we've got to show

23 the - - - Because this offer has - - -

24 Mr. Bell - Off the record.

25 Whereupon - A brief discussion was held off the

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1 record which was not reported.

2 FURTHER EXAMINATION

3 BY MR. BELL:

4 Q So what you're saying is, that the Honda was new as
5 of 4-14-05? Is that correct?

6 A Right.

7 Q And we made an offer, and where are we going to show
8 that they rejected - - - What do we've got to show
9 they rejected the Honda offer?

10 A Well, there's - - - there's nothing. She just didn't
11 choose - - -

12 Q Okay. Well, hold on, hold on, hold on.

13 A Right.

14 Q There's nothing. Well, when you offered the Honda in
15 '05, where is the offer form for it?

16 A It's a vehicle that's being endorsed in place of
17 another vehicle. So we're simply giving her an
18 option as we rate this, because she wanted to know
19 what that vehicle would be - - -

20 Q All right. I understand that.

21 A With comp and collision. So we went ahead and rated
22 the underinsured motorist at the same time and said,
23 here is all of it, if you'd like to do it. Because
24 we were concerned, at that time, because there was a
25 young driver that now was going to have this vehicle.

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1 So we said, let's rate it all. Because to us, it's a
2 benefit to rate the underinsured.

3 Q What's going to show me - - -

4 A Obviously, it's a - - -

5 Q Other than this sheet of paper, which is one of the
6 pages of Exhibit 2 - - - I understand it's got
7 premiums out there, but what's going to show me it
8 was rejected in any way? Because you're telling me
9 this - - - Whether or not the law required you to do
10 it, it doesn't matter to me. You did it. Because
11 you're telling me on January the four - - - excuse
12 me, April the 14th of '05, you offered for the first
13 time under on this Honda, and you did not use a form.
14 Tell me where - - - how it was rejected. What do
15 we've got in writing to show it was rejected?

16 A Well, the state doesn't require us to fill out the
17 form again if the customer doesn't make a change.

18 Q Well, this is a change.

19 A Now, if she - - -

20 Q This is a new car.

21 A No. We - - - We - - - There are a lot of cars that
22 went in and off of the policy, through - - -

23 Q I understand, but you - - -

24 A From 2001 through 2014.

25 Q But you offered it to her, right? You did offer it

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1 to her?

2 A We - - - We gave her an option of purchasing that
3 coverage at that time. Again, because - - -

4 Q Well, is that an offer, or not?

5 A Well, it - - -

6 Mr. Freeman - Object to the form.

7 A It's - - - It's putting it out there for information
8 for the client as saying, we can do this. Here's
9 what it will cost.

10 Q All right. Well - - -

11 A You know, that's - - - That's something that you do
12 from time-to-time.

13 Q Okay. Well, assuming the '99 Chevrolet was in
14 existence, because I think that's the S-10, on the
15 day of the wreck, was this '05 thing of listing the
16 Chevrolet, was it an offer of under, or simply being
17 used to compare the rates between it and the Honda?

18 A No. These would have been the vehicles that would
19 have been on that policy at that time.

20 Q And that's not what I asked you. Was the Chevrolet
21 S-10 being offered underinsured on 4-14, or was it
22 simply used as a comparison with the new car, which
23 was the Honda?

24 A To compare what?

25 Q Premiums.

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1 A They're two different - - -

2 Q That's what you're telling me - - -

3 A They're two different vehicles - - -

4 Q Well, I understand that, but what - - -

5 A Being used by different operators.

6 Q Well, I agree, but why did - - -

7 A We've got a young operator down here on this vehicle.

8 Q Why did we print the form on the Chevrolet? The

9 Chevrolet - - -

10 A Because it - - - Because we were wanting to show them

11 what uninsured and underinsured was going to cost.

12 You'll see on the underinsured, it changed based on

13 each vehicle.

14 Q Okay. So it wasn't all - - -

15 A So it was - - -

16 Q It wasn't all - - -

17 A It was the information to say, hey, this - - - this

18 might be something wise to have.

19 Q Okay. All right.

20 A There's nothing with the state that says I have to

21 sign a new form if the customer doesn't want to make

22 a change.

23 Q Well, I understand that.

24 A If she would have come in and said, Richard, you

25 know, I've got a young driver. Give me a hundred

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1 thousand on liability, three hundred thousand, I
2 would have had to resign the form then.

3 Q If they changed coverages?

4 A If they changed the liability.

5 Q I'm not sure you're right, but anyway - - -

6 A Yes.

7 Q Well, I understand. I'm not arguing with you.

8 A Yeah.

9 Q But the point is that I'm trying to understand what
10 occurred on 4-14. They were coming in because they
11 wanted to insure for the first time the Honda?

12 A That's correct.

13 Q That's a given. Why did we even bring up the
14 Chevrolet? It was already insured. It already had
15 whatever it had. Why did we bring up the Chevrolet
16 on 4-14? Why did we even bring it up?

17 A Because there's a young driver in the household.

18 Q Therefore, we're using it for comparison?

19 A (No response)

20 Q Premium-wise, you're comparing premiums?

21 A No.

22 Q Well, why would you even bring up the premiums then,
23 if you're not comparing premiums? By saying it's
24 cheaper to let him drive this car versus let him
25 drive that car, isn't that what you're doing?

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1 A No. You don't see me rating Meagan on the '99.

2 Q I don't have - - - Okay.

3 A You see Jerry Webster's name right there.

4 Q All right. But why did we even bring up the '99

5 then? Why did we bring it up?

6 A Because it's all a part of the rate, to figure out

7 what underinsured is. You know, if I sell it, I

8 can't sell it just on the '96 Honda Accord. I've got

9 to sell it on every vehicle.

10 Q Say that again now.

11 A I can't sell underinsured motorist just on one car.

12 It has to be for all cars.

13 Q Well, then how come - - - How many cars existed in

14 '05?

15 A There would have been six cars.

16 Q Well, how come - - -

17 A Well, I don't - - - I don't know. I'd have to go

18 through the file and see.

19 Q Well, okay. Where are the other four?

20 A It could have been five cars.

21 Q Where are the other four?

22 A Well - - -

23 Q Where was it offered to the other four in '05?

24 A Well, that - - - That would have given us - - -

25 Because like I said, there's the '93 Mazda. Where

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1 that page is right now, I don't know, but that would
2 have been a part of it. We would have been saying,
3 all right, there's Vehicle 1, there's Vehicle 2,
4 Vehicle 3, this is what the rates are to put that in.

5 Q I understand. And see, you're the agent, not me.
6 I'm not an agent.

7 A Right.

8 Q But you're telling me that if I - - - Because my
9 people are right next door. You're telling me if I
10 go in there, and I've got more than one car, I either
11 - - -

12 A Now, State Farm, I'm not - - - I'm going to tell you,
13 they do weird stuff. I have customers - - - I have
14 people that come in, and - - -

15 Q Okay. Well, forget about State Farm.

16 A They have limits that are all different limits - - -

17 Q Forget about State Farm.

18 A Because they do them all on different policies.

19 Q You're telling me that, as you understand the law or
20 your procedure, that if I want under on one car, I've
21 got to have it on every car I've got?

22 A That's correct. State Farm doesn't do that. That's
23 why they get sued.

24 Q Well, I don't know. I haven't been involved in that
25 situation, because I've got under on all of mine.

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1 A Yeah.

2 Q Okay. So I'm just trying to figure out what this '05
3 stuff means.

4 A Right.

5 Q Because as I understand it, I'm being told that I've
6 rejected it here?

7 A Right.

8 Q Okay.

9 A You know, we - - - We're wanting to give the
10 customers some service. We're saying - - -

11 Q I understand.

12 A Hey, this is an important thing, and - - - and we
13 rated it there, so she would see it. You can see
14 it's not cheap. It's - - - It's a good bit more
15 expensive than the uninsured motorist.

16 Mr. Bell - I understand. This is off the
17 record. I'm through.

18 Whereupon - A brief discussion was held off the
19 record which was not reported.

20 FURTHER EXAMINATION

21 BY MR. DOUGALL:

22 Q In 2005, when you pulled this quote sheet and
23 presented to Mrs. Webster, was it NGM's policy that
24 if one vehicle on the policy had UIM, then all
25 vehicles had to have it?

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1 A Yes, it was.

2 Q And you had to pay all of those different premiums
3 because, under South Carolina law, you could stack
4 all of the coverage, correct?

5 A That's correct.

6 Q And National Grange would not allow you to write UIM
7 for one vehicle on the policy and exclude other cars,
8 correct?

9 A That's correct. You couldn't exclude the other cars,
10 yeah.

11 Q I just forgot my last question.

12 A And it just didn't allow it in the rates. Once you
13 put the cars in and you rate it, it rated it across
14 all of the cars. There was no choice. It wasn't
15 anything you had to learn. It was just the way it
16 is, and all the other companies work that way. Like
17 I said, State Farm is a bit unusual.

18 Q And if, in fact, you had applied all of those UIM
19 coverages to Mrs. Webster's policy, there would have
20 been a significant increase in her premiums, correct?

21 A Very significant.

22 Q And did you explain all of that to her?

23 A Yes.

24 Q And she continued by not selecting UIM coverage on
25 any of the vehicles?

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1 A Right. That's why we never did a new form, because
2 she never chose to go with - - - with a different
3 coverage.

4 Q And if she had in fact decided to go ahead and get
5 UIM coverage, she would have had to get it on all of
6 the vehicles on that policy? And you would have
7 generated an endorsement to National Grange saying,
8 here are some new coverages, and here's the check to
9 go with it?

10 A That's correct.

11 Q And in this case, there is no endorsement to the
12 policy, correct?

13 A No endorsement.

14 Q And there was no check for the additional premiums,
15 correct?

16 A That's correct.

17 Mr. Dougall - That's all I've got.

18 Mr. Bell - Okay. Thank you.

19 Whereupon - A brief discussion was held off the
20 record which was not reported.

21 Mr. Freeman - I've got just a couple of
22 questions.

23 Mr. Bell - Oh, you've got questions? I'm sorry.

24 Mr. Freeman - That's all right.

25 DIRECT EXAMINATION

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1 BY MR. FREEMAN:

2 Q You've testified earlier that Grange had a copy of
3 the application, including the - - - Well, all of the
4 pages in Exhibit 1, correct?

5 A Yes.

6 Q So Grange had the opportunity to review these
7 documents, correct?

8 A That's correct.

9 Q Did Grange ever send any of these documents back,
10 complaining that they had not been filled out
11 properly?

12 A No.

13 Q All right. You mentioned earlier about a policy of
14 Miles Insurance Agency, that is, to explain the rates
15 and what type of coverage under insurance coverage
16 is, correct?

17 A Yes.

18 Q So can you, first of all, tell me how often that
19 policy is followed?

20 A All the time.

21 Q Okay. And so you followed that policy all the time?

22 A Yes.

23 Q Now earlier, you testified about a December 20th
24 letter that went out to the Websters that included a
25 quote sheet or a rate sheet, correct?

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1 A Yes.

2 Q And we can't say for certain whether they brought
3 that in on January 5th, correct?

4 A That's correct, since we don't recall the exact
5 event.

6 Q However, according to Miles Insurance Agency's
7 policy, those quotes would have been discussed either
8 in writing or orally with the Websters during that
9 meeting, correct?

10 A Yes.

11 Q Do you have any reason to believe that those quotes
12 were not discussed with the Websters on January 5th?

13 A There would have been no reason. Like I said, to us,
14 it's an additional premium. National Grange pays us
15 commissions based on premiums, and so those - - -
16 There's no negative to us to not want to sell the
17 underinsured.

18 Q So - - - All right, but let's answer the question.
19 Do you have any reason to believe that those premiums
20 were not discussed with the Websters on January 5th?

21 A There would have been no reason to not.

22 Mr. Freeman - Okay. So I think that's all I
23 have.

24 Mr. Dougall - Thank you. That was the question
25 I forgot.

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1 Whereupon - A brief discussion was held off the
2 record which was not reported.

3 Court Reporter - And, Mr. Bell, you'd have the
4 original and one. Do you want both a hard copy
5 and etran?

6 Mr. Bell - Yes.

7 Court Reporter - And, Mr. Dougall, would you
8 like an etran only?

9 Mr. Dougall - Yes.

10 Court Reporter - And, Mr. Freeman, do you want a
11 copy, just an etran?

12 Mr. Freeman - Yes, the etran only.

13 Court Reporter - Thank you, gentlemen.

14 Whereupon - The deposition was concluded at
15 1:03 p.m.

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- ☒ **NGM Insurance Company Jacksonville, Florida**
☒ **Main Street America Assurance Company of Jacksonville, Florida**
☒ **Old Dominion Insurance Company of Jacksonville, Florida**
☐ **MSA Insurance Company of South Carolina**



9/15/21

ELECTRONICALLY FILED - 2019 Mar 03 2:15 PM - LANCASTER - COMMON PLEAS - CASE#2018CP2900794

MSA AGENCY AGREEMENT

Each of the member companies of the Main Street America Group ("MSA") identified by an "X" in the adjacent box above, hereinafter individually and collectively (if applicable) called the "Company" and 390646

MILES INSURANCE AGENCY INC Of LANCASTER, SC
 hereinafter called the "Agent", mutually agree to the following:

I. AUTHORITY OF AGENT

The Agent is an Independent contractor, not an employee of the Company and, subject to requirements imposed by law and the terms of this Agreement, is authorized to:

- Solicit the kinds of insurance for which a commission is specified in the Schedule(s) of Commission attached hereto and made a part hereof.
- Bind insurance contracts and countersign binders, policies and customary endorsements effecting policy changes, all in accordance with and subject to the limitations set forth in the Company's manuals and written or printed instructions now or hereinafter furnished to the Agent.
- Provide all usual and customary services of an insurance agent on all insurance contracts placed by the Agent with the Company.
- Collect and receipt for premiums and, as full compensation, to retain commissions out of premiums so collected as specified in the Schedule(s) of Commission (subject to the provisions herein with regard to Direct Billed business.)
- Exercise his authority personally or through his authorized employees.
- Represent other companies.
- Exercise exclusive and independent control of his time and the conduct of his agency.

II. DUTIES OF AGENT

The Agent agrees to:

- Adhere to the published instructions, rules and regulations of the Company and any special written or printed instructions that may be communicated to the Agent.
- Forward to the Company copies of all applications, binders, policies, certificates and endorsements issued by the Agent, or otherwise notify the Company of all liability accepted, not later than the fourth succeeding business day following the inception date of coverage.
- Promptly report all claims to the Company.
- Account for and pay over to the Company premiums in accordance with the accounting procedures as hereinafter set forth.
- Keep and retain, throughout the term of this Agreement and for two years after its termination, a complete record and account of all transactions relating to the business transacted by the Agent which shall be accessible to any duly authorized representative of the Company at any reasonable time while this Agreement is in force, or within two years after the termination hereof.

- Keep and maintain an agent's errors and omissions policy of insurance in force at all times, with the minimum limit of liability of Five Hundred Thousand (\$500,000.) Dollars, which covers the acts of the agent and the agent's employees.
- Keep and retain for all insurance business electronically transmitted throughout the term of this Agreement, all original (or the scanned and electronically stored copy of such original) signed applications, exclusions, rejections or choices of optional coverage, any waiver/rejection/reduction statements or requests, and any warranties, assurances, explanations or statements by the insured(s) that were required by or relied upon by the Company before it would agree to provide the insurance coverage or limit(s) of coverage afforded by any binder, policy or renewal, and not discard or destroy any such documents for seven (7) years without the prior written consent of the Company.
- The Agent agrees to provide any and all of the documents described in subsection g., above, as the Company may reasonably request within five (5) business days of such request. The Agent agrees to grant the Company access to any of its facilities for the purpose of inspecting or auditing the Agent's processes for retaining such documents, and to provide the Company with reasonable assistance in performing such inspection or audit.

III. PREMIUM ACCOUNTING

All premiums received by the Agent on business placed with the Company shall be held by the Agent in trust for the Company until remitted to the Company. The Agent shall not mingle such premiums with the Agent's own funds or funds held by the Agent in any other capacity, without the express written consent of the Company. Nothing herein contained shall be deemed to require the Agent to maintain a separate bank account for the premiums of the Company, as long as the premiums of the Company held by the Agent are ascertainable from the books of accounts and records of the Agent. The Agent's privilege of deducting commissions from premiums before remitting, and the keeping of an account with the Agent on the Company's books, similar to a creditor and debtor account, shall not be construed as changing or affecting the status of the Agent as trustee.

- The following provisions are applicable to business other than Direct Billed business placed by the Agent with the Company:
 - All premiums on such business shall be charged to the Agent's account.
 - Except as otherwise provided herein, the Agent shall be obligated to pay to the Company all premiums chargeable to the Agent's account, whether or not the Agent has or is able to collect from the insured.
 - Return premiums shall be credited to the Agent's account and the Agent shall promptly make refund to the insured.

4. The Company shall prepare monthly statement showing the transactions resulting in charges and credits to the Agent's account. By mutual agreement, in writing signed by the Agent and the Company, the statements may be prepared by the Agent.
5. The balance shown in the statement due the Company, or due the Agent, shall be paid the Company or the Agency respectively, not later than 45 days after the end of the account month for which such statement was prepared.
6. Unless the Agent gives the Company written notice that a premium charge, which is overdue on the Agent's account, has been collected by the Agent, the Company may proceed on the assumption that the premium has not been collected and cancel the policy to which the premium charge applies.
7. The omission of any item(s) from a monthly statement shall not affect the responsibility of either party to account for and pay all amounts due the other, nor shall it prejudice the rights of either party to collect all such amounts due from the other.
8. If any interim or final additional premiums developed by audit cannot be collected by the Agent, the Company shall undertake direct collection and the Agent shall not be responsible for such premium provided.
- b. The Agent has made every effort to obtain and retain an adequate deposit premium.
- c. The Agent has made every effort to collect the additional premium and notifies the Company within sixty (60) days of the date of the audit/billing that he has been unable to do so and has requested cancellation of the coverage.
- d. No commission will be earned on items turned over to the Company for collection.
- e. The following provisions apply to business placed by the Agent with the Company and designated by the Company as Direct Billed.
 1. The Company shall be responsible for billing and collecting premiums.
 2. The Agent shall not be responsible for earned premiums except in those cases where the Agent has, either by advancing premiums on behalf of the insured or otherwise extended the time for payment beyond that authorized by the Company. In such cases the Agent shall be obligated for the full earned premium incurred and such premiums shall be paid by the Agent within 30 days after billing by the Company.
 3. The Company shall make refunds of return premiums directly to the insured's.

IV. COMMISSIONS

It is agreed that:

- a. The Agent will accept, and the Company will pay as full compensation for all services rendered under this Agreement, the percentages of commissions as specified in the Schedule of Commission applicable for each individual Company subject to this Agreement.
- b. The terms of this Agreement shall not prohibit the negotiation of special commission rates on individual policies by mutual agreement of the Agent and the Company.
- c. Commissions on Direct Billed premiums shall be paid to the Agent within 30 days after the end of the month in which such premiums are received and recorded by the Company, subject

to offset by the Company of any return commissions or other amounts due the Company from the Agent.

- d. The Agent agrees to pay the Company a return commission on all return premiums at the same rates at which the Agent was originally compensated.

V. DESIGNATION OF AGENT BY POLICYHOLDER

- a. If a conflict exists as to which producer is authorized to represent an existing or prospective policyholder, the policyholder's written statement designating his agent or broker shall be binding upon the Agent and the Company.
- b. Such designation on an unexpired policy will be effective as of the date specified upon receipt by the Company of a reasonable written agreement between the producers involved determining who shall be:
 1. Responsible for collection of premiums.
 2. Entitled to receive commissions.
 3. Responsible for the refund of return commissions.

VI. AGENCY SALE, TRANSFER OR MERGER

The agent agrees to give 60 days notice to the Company of any sale, merger or transfer of his business, or its consolidation with a successor firm, in order that the Company may, at its election and with the consent of the parties of interest, enter into a new Agency Agreement with the successor.

VII. COMPANY ACQUISITION

If the Company, or any affiliate, gains management control through acquisition or other means of any insurance company with which the Agent does business, the Company or its affiliate shall not reduce or eliminate the underwriting capacity of either company on business produced by the Agent, subject to:

- a. Rating plans, policy forms and underwriting rules of the Company, and
- b. Continuation by others of reinsurance arrangements with such companies.

VIII. CHANGES IN AGENCY AGREEMENT

- a. This Agreement may be revised at any time by mutual agreement of the Agent and the Company.
- b. This Agreement may be revised by the Company only after it gives the Agent at least 60 days advance notice, which:
 1. Sets forth the proposed revision and its effective date, and
 2. Offers to meet with the Agent at least 30 days before such effective date in order to discuss the purpose and reasons for such revision.

The Company agrees to make an authorized representative available at any reasonable time and place for such requested conference. Upon compliance by the Company with the foregoing procedures, the requested revision shall then become effective on the date specified in the notice without further action being required of either party.

3. The Company agrees to make no change in any individual rate of commission as specified in any Schedule(s) of Commission until such rate of commission has been in effect for a period of not less than one year.
- c. The Agent and the Company each agree that in the interest of proper recordkeeping all communication done to effect the

operation of subsections a. and/or b., shall be done in writing.

IX. POLICY CANCELLATION OR NONRENEWAL

Subject to requirements imposed by law and compliance with the applicable provisions contained in this Agreement and within the policy:

a. At the agents' request, the Company shall:

1. Cancel any policy.
2. Decline to renew any policy and, upon the Agent's request, give advance written notice of non-renewal to the policyholder.

b. Any authority granted the Agent pursuant to this Agreement, shall not be construed as a waiver by the Company of its rights to decline an application for insurance, cancel a policy, or decline to renew a policy.

X. TERMINATION OR SUSPENSION

a. The Company reserves the right to withdraw authority from the Agent to write any particular line of insurance and to decline or accept a risk or class without previous notice. The Agent shall promptly change the conditions of any insurance bound or issued hereunder, in conformity with any request of the Company.

b. This agreement shall terminate:

1. Automatically if any public authority cancels or declines to renew the Agent's license or certificate of authority.
2. Automatically on the effective date of the sale, transfer or merger of the Agent's business, or its consolidation with a successor firm.
3. Immediately upon either party giving written notice in the event of delinquent payment of accounts, breach of binding authority, abandonment, fraud, insolvency or gross and willful misconduct on the part of the Agent.
4. Upon either party giving at least 90 days advance notice to the other provided, however, that if the Agent has represented the Company continuously for three or more years, the Company will, if requested to do so in writing by the Agent, renew policies that meet the Company's underwriting requirements expiring during the 9 month period following the termination date of this Agreement.

c. The Company may elect to exercise the provisions of this Section X on either an individual Company basis or on a collective Company basis (if applicable), as it shall choose and specifically communicate to the Agent.

d. The Company will pay commissions to the Agent as specified in the applicable Schedule(s) of Commission on the premiums paid to Company, within one year following the termination of this Agreement, for continuous non-cancellable policy or policies which the Company is required by law to renew.

e. In the event of the suspension of the Agent's authority or the termination of this Agreement, and provided the Agent has and continues to promptly and properly account for and pay over to the Company premiums as provided under the terms of this Agreement; the Agent's records, use and control of expirations, shall remain the property of the Agent and be left in his possession. Otherwise, the records, use and control of expirations shall be vested in the Company.

f. During the term of this Agreement and after its expiration, as long as the records and control of expirations are vested in the Agent, the Company shall not:

1. Refer or communicate the names of policyholders and expiration dates to any other Agent, broker or person for purposes of solicitation.

2. Use, or permit the use of, its records of business placed by the Agent to solicit individual policyholders for the sale of other lines of insurance, products or services, without the Agent's authorization. When the Agent grants such authorization, he shall be allowed the applicable commission or fee on such sales resulting from the use of such records.

g. After termination of this Agreement:

1. The obligations of the Company and the Agent to account for and pay premiums, commissions, return premiums and return commissions on policies existing at the time of the termination of this Agreement or renewed pursuant to this Agreement, and any endorsements, audits and installment billings on such policies shall be determined and governed by Sections "III Premium Accounting", "IV Commissions", and VIII Changes in Agency Agreement" herein except that:

a. If this Agreement is terminated because the Agent is delinquent in remitting premiums to the Company, or subsequent to the termination of this Agreement, the Agent is delinquent in remitting premiums to the Company, all unpaid premium charges for policies other than Direct Billed policies shall immediately become due and payable.

b. The Agent shall not receive a commission on, or be obligated to collect, premiums for policies renewed more than one year after the termination of the Agreement (because of the Company's legal obligation to renew) or premiums which become due on continuous non-cancellable policies more than one year after the termination of this Agreement.

2. The Agent shall have authority to service unexpired policies but the Agent shall have no authority to accept new business, bind coverage, renew policies or issue endorsements. All requests for endorsements shall be submitted by the Agent to the Company's underwriting office for acceptance.

3. The Company shall provide the ordinary Company underwriting, claims, engineering and premium audit services for the unexpired policies.

4. The Company agrees to provide the Agent detailed expiration information on Direct Billed policies within 90 days after termination of this Agreement.

XI. INDEMNIFICATION

a. The Company will hold the Agent harmless against liability resulting from loss to policyholders based on error or omission of the Company in processing or handling of policies if the Agent has not contributed to or compounded such error or omission. Conversely, the Agent will hold the Company harmless against liability it may incur to or on behalf of its policyholder, actual or alleged, based on error or omission of the Agent if the Company has not contributed to or compounded such error or omission.

b. The Company agrees to hold the Agent harmless against civil liability for damages and expenses, including the costs of defense, which he may be obligated to pay as a direct result of the failure of the Company to comply with the requirements of the Fair Credit Reporting Act, except in the case of willful or intentional act or omission on the part of the Agent.

c. The Agent shall hold the Company harmless and shall reimburse the Company for any loss, expense of damage sustained by reason of any violation of the provisions of this

Agreement or of the written or printed instructions furnished
the Agent by the Company.

- d. The Company and the Agent both agree that, except for willful or intentional acts or omissions of the other party, each shall hold the other harmless for any loss, expense or damages of any kind which may arise as a result of the transfer of any corrupted or destructive software, program or data (including a computer virus) from one party to the other party.
- e. Each party shall promptly notify the other of any claim or the commencement of any action which could result in a claim for indemnification under this Agreement.

XII. GENERAL PROVISIONS AND CONDITIONS

- a. The Company shall clearly and prominently identify the Agent by name when transmitting policies, premium notices and cancellation notices to policyholders.
- b. The Company will furnish from its own stock to the Agent all such publications of the Company comprising blanks, circulars and other printed matter as in its judgment may be necessary for the development of said Agency. The Agent must not use any advertising, circular matter or forms other than those furnished or approved by the Company. Postage remittances, telegrams, telephone costs and transportation of parcels shall be paid for by the sender.
- c. All undelivered policies and bond forms, supplies, equipment, manuals, books of accounts, premium book registers, documents and other papers furnished by the Company to the Agent at the Company expense shall be returned by the Agent upon demand and shall at any and all times be subject to the inspection of its officers or other representatives, duly authorized, and be freely exhibited to them for the purpose of examination, and at the termination of said agency, from any cause whatever, shall be upon demand surrendered to the Company or its authorized representative.

- d. The Agent shall furnish to the Company if demanded, and as often as required, a good and sufficient indemnity bond.
- e. The Agent shall not appoint any sub-agent, or submit business from other producers, without the knowledge of the Company. The Agent assumes full responsibility for all acts of commission or omission of any of his sub-agents insofar as such acts of such persons affect the Company.
- f. This Agreement shall not apply to any policy issued by the Company as a result of assignment by any governmental agency or through any assigned risk plan, FAIR plan or similar plan however designated.
- g. In the event that any provision of this Agreement conflicts with any statute of the state in which this Agreement is to be performed and is more restrictive than the provisions of such statute, the provisions of the statute shall prevail and define the rights, duties and obligations of the Company and the Agent.
- h. The term policy or policies as used throughout this Agreement shall mean insurance policies and fidelity and surety bonds.
- i. This Agreement shall apply to, and be binding upon, the heirs, next of kin, distributees, legal representatives, successors and assigns of the parties hereto.
- j. This Agreement supersedes all previous Agency Agreements, whether written or oral, between the Company and the Agent and:
1. Shall be effective December 17, 2007
 2. Shall remain in full force and effect until suspended or terminated as provided herein.

In Witness Whereof the Agent and the Company have caused this Agreement to be executed on this 20th day of Dec. 2007

FOR THE AGENT BY:

Jerry B. Miles
President
(Title)

FOR THE COMPANY BY:

Joan E. Mark
Corporate Secretary
(Title)

JERRY WAYNE WEBSTER, ET AL. vs. MILES INSURANCE AGENCY, INC., ET AL.
Candice Short on 12/15/2016

1 STATE OF SOUTH CAROLINA)
 2 COUNTY OF LANCASTER) IN THE COURT OF COMMON PLEAS
 3
 4 JERRY WAYNE WEBSTER AND)
 5 JANET WEBSTER,)
 6 PLAINTIFFS,)
 7 VS)
 8 MILES INSURANCE AGENCY,) CASE NO. 2015-CP-29-00810
 9 INC., NATIONAL GRANGE)
 10 MUTUAL INSURANCE COMPANY)
 11 N/K/A NGM INSURANCE)
 12 COMPANY,)
 13 DEFENDANTS.)
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DEPOSITION OF CANDICE SHORT

LANCASTER, SOUTH CAROLINA

DECEMBER 15, 2016

REPORTER: KELLY L. REITER
 DALLAS REPORTING, A HUSEBY COMPANY

JERRY WAYNE WEBSTER, ET AL. vs. MILES INSURANCE AGENCY, INC., ET AL.

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1 Deposition of Candice Short, taken before me, Kelly
2 Reiter, a Notary Public for the State of South Carolina,
3 at the Francis Bell Law Firm, LLC, 312 North Main Street,
4 Lancaster, South Carolina, commencing at 9:59 a.m. on
5 December 15, 2016, in accordance with the South Carolina
6 Rules of Civil Procedure.

7 It was stipulated by and between Counsel for the
8 Plaintiffs and Counsel for the Defendants that this
9 deposition is taken for any purpose allowed under the
10 South Carolina Rules of Civil Procedure;

11 That the signing of the transcript of deposition by
12 the witness is waived.

13 * * * * *

14 Whereupon, Candice Short, having been first duly sworn,
15 was examined and testified as follows:

16 DIRECT EXAMINATION

17 BY MR. BELL:

18 Q Your full name, please, ma'am.

19 A Candice Delynn Short.

20 Q C-a-n-d-i-c-e?

21 A (Indicating yes) - - - Then Delynn is D-e-l-y-n-n.

22 Q S-h-o-r-t?

23 A (Indicating yes)

24 Q All right. Ms. Short, of course, I'm Francis Bell.

25 I don't believe we know each other, do we?

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1 A No. I don't - - -

2 Q Okay.

3 A I've never had to cross paths with you, but - - - (No
4 further response)

5 Q Okay. Are you from here, Lancaster County?

6 A I've lived here since I was like fifth grade, but I'm
7 originally from Seneca, South Carolina.

8 Q Oh, okay. I'm very familiar with Seneca. I'm a
9 Clemson graduate, among other things.

10 A (Indicating yes)

11 Q All right. Today, your deposition has been noticed
12 as a - - - Well, you were identified by Miles
13 Insurance Agency's lawyers as a witness.

14 A Okay.

15 Q And that's why you are here. I'm going to go over
16 very broadly what you can tell me about your
17 training, and then we'll particularly talk about this
18 document that you've now got in front of you that I'm
19 assuming you have seen before today. I don't want to
20 know what you and your - - - Well, technically,
21 they're not your lawyers. They're your boss's
22 lawyers, but I don't want to know what y'all have
23 talked about in any way. Okay?

24 A Yes, sir.

25 Q Except we're going to talk about that document after

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1 we go over some very broad discussions. This isn't
2 like TV. There's no hollering, no yelling, or
3 anything. We are very professional lawyers here, and
4 believe it or not, that's my youngest son over there.
5 He's my newest lawyer. He's here to backup daddy,
6 okay?

7 A Okay.

8 Q Just relax, and we'll cover this as best we can. I
9 can tell you this, everybody in this room wants you
10 to tell us what you know. We don't necessarily want
11 you to guess. For some reason, we get to these
12 things, and people get scared to say, no.

13 A (Indicating yes)

14 Q If you don't know, say no or say, I don't know. In
15 other words, it doesn't make us look at you one way
16 or another.

17 A Yes, sir.

18 Q This lady will go back and transcribe everything that
19 you say, all the answers and all the questions. I'll
20 get the original, and I'll probably get a copy. I'm
21 sure the other lawyers will get a copy. It can be
22 used in court, and this thing may be coming to trial,
23 just in front of a judge, I think in February.

24 A Okay.

25 Q I would anticipate you may be there, or it could be

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1 we're just going to do it with depositions. We
2 haven't gotten that far yet. So do you understand
3 that?
4 A Yes, sir.
5 Q Now, I'm not known for using big words, but if I use
6 a word that for some reason you don't understand,
7 please ask me to repeat it or explain it. Let's try
8 our best not to talk over each other. Let me do the
9 question, and then you give me what you know as the
10 answer. You need to at least say yes or no.
11 A Okay.
12 Q Because the court reporter is just going to say,
13 witness nods. She's not going to say up and down or
14 left or right. So we've got to at least say yes or
15 no.
16 A Okay.
17 Q You're not limited to yes or no, obviously. Okay?
18 A Yes, sir.
19 Q All right. Are you ready for Christmas?
20 A Yes, sir.
21 Q Well, good for you. All right. How long have you
22 been with Miles?
23 A I was with them - - - I'm no longer with them.
24 Q Okay.
25 A But I worked with them. I started roughly January of

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1 '98 and was with them up until December 26th - - - or
2 excuse me, 2006.

3 Q Okay, and I think the other lawyer may have told me
4 you were no longer there. So January of '98 until
5 December of '06. Now, tell - - - This is going to be
6 very broad, and it's on your best recollection. Do
7 you know what un - - - And I'm not asking you as a
8 lawyer. I'm not asking you to quote the law. When
9 you worked from January of '98 until December of '06,
10 were you an agent to where you could sell insurance
11 and everything, or were you simply an employee that
12 took in general information?

13 A I was a licensed agent with - - - (No further
14 response)

15 Q Okay.

16 A My role was customer service representative, but I
17 was a licensed insurance agent.

18 Q Okay. And therefore, you had studied for and had
19 passed a test that South Carolina gives in some
20 fashion, to where you could get your license?

21 A Yes, sir.

22 Q And you were licensed to sell what type of insurance
23 theoretically?

24 A Property, casualty, and I'm still licensed to sell
25 property, casualty, and life and health.

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1 Q Okay. And when you started working for who I - - -
2 We all around Lancaster say Jerry Miles, even though
3 - - -
4 A right.
5 Q It's now Miles Insurance. You've heard that for
6 years.
7 A (Indicating yes)
8 Q When you started working for Jerry Miles in '98, you
9 were so licensed?
10 A I was licensed right after I started working there,
11 not prior to working there.
12 Q All right. So after coming onboard in January of
13 '98, you then became licensed?
14 A Yes, sir.
15 Q And working with Miles Insurance Agency?
16 A Yes, sir.
17 Q And therefore, you had to sell - - - You were limited
18 to selling his products only that he was authorized
19 to sell?
20 A Yes, sir.
21 Q So what training, very broadly, did you receive
22 concerning underinsured?
23 A Outside of the training curriculum for the licensing,
24 Richard was - - - I was basically Richard's shadow
25 for several months as he went over each coverage, how

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1 they worked, and what - - -

2 Q All right. Well, what can you tell me from the
3 training and the test you had to take of your
4 understanding of underinsured? Just very broadly.

5 A (Indicating yes) - - - Underinsured motorist protects
6 the named insured in the event they're in an accident
7 with someone, and they - - - the at-fault party has
8 no - - - or does not have enough insurance.

9 Q Okay. That's as good an explanation as any lawyer
10 can give. Now, let me ask you this, though. I'm not
11 saying that South Carolina is unique, but it's not a
12 - - - It's an optional coverage. Is that a correct
13 statement?

14 A That is a correct statement.

15 Q And you understand the law that somebody, an agent
16 normally, has got to make what we call a meaningful
17 offer?

18 A Yes.

19 Q You understand that?

20 A I do understand that.

21 Q All right. Your understanding of what those two
22 words mean from an insurance standpoint, a meaningful
23 offer, explain that to me. What's your understanding
24 of it?

25 A My understanding is, although it is an optional

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1 coverage, it's not the agent's option. So a
2 meaningful offer is, we need to present the rate for
3 that coverage to the customer and have them either
4 agree to it or reject it.

5 Q Okay. And what is your definition of, the rate?

6 A The premium that is charged for that coverage.

7 Q Okay. And was that your training, to make that
8 offer? A part of what you had to do was offer the
9 rates for the various coverages?

10 A So when we would present a quote, we would present -
11 - - Or yes, so to - - - To make sure I'm
12 understanding your question, we would present the
13 quote as a whole, with - - - In the way that it - - -
14 Like the liability limits, the premium for that.
15 What, you know - - - The uninsured motorist, the
16 premium for that. Underinsured, the premium for
17 that.

18 Q Okay.

19 A And then the total premium.

20 Q Okay. And your understanding when you were training,
21 and I assume you were trained in '98, is that the
22 offer of under had to at least be the minimum
23 coverage?

24 A That is correct.

25 Q And of course in '98, do you remember what the

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1 minimum coverage was?

2 A Vaguely. Maybe 25/50/10.

3 Q That's later. In '98, may I suggest to you that it

4 was 15/30?

5 A Okay.

6 Q Okay? In '98, okay?

7 A Okay.

8 Q And I'm going to come back to the increase, because

9 it did increase. So with that basic knowledge, do

10 you know this couple sitting next to me?

11 A I don't know them personally. No, sir.

12 Q Have you ever met them before?

13 A I've met them at - - - during my times at Miles.

14 Q Okay. Have you been involved in selling them

15 insurance?

16 A Selling them insurance?

17 Q Yes, ma'am.

18 A I - - -

19 Q And I may be using the wrong terminology. But they

20 would come to Jerry to buy insurance, and one of your

21 jobs was to sell them insurance. Is that correct?

22 A Yes, sir.

23 Q Okay.

24 A I - - - I don't recall if I personally like - - -

25 Yes, this is my handwriting on the application, but

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1 that doesn't, you know - - - (No further response)

2 Q Okay. Well, I - - -

3 A But did I interact with them? Yes, I'm sure I - - -

4 Q I didn't mean to interrupt you. I apologize.

5 A No, that's okay.

6 Q Okay. I'm going to come to this specifically.

7 A (Indicating yes)

8 Q I'm just trying to get a - - - Again, it's just very
9 broadly.

10 A (Indicating yes)

11 Q Well, let's go to - - - Let me have yours.

12 Mr. Bell - Gentlemen, I'd like to introduce this
13 document as a whole in her deposition. Does
14 anybody got an objection to that?

15 Mr. Dougall - No objection.

16 Mr. Freeman - No.

17 Whereupon - A brief discussion was held off the
18 record which was not reported, and a document
19 was marked as Deposition Exhibit Number 1.

20 FURTHER EXAMINATION

21 BY MR. BELL:

22 Q Ms. Short, I'm going to hand you what's been marked
23 as - - - Technically, I'm the plaintiff, so
24 Plaintiff's Exhibit 1 for this deposition.

25 A Okay.

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1 Q And this is what we're going to go over in detail.

2 A Okay.

3 Q Have you had sufficient time - - - Because I just
4 gave it to you a little while ago. I realize you've
5 probably seen it before, but do you need any more
6 time before we get into the details of this to review
7 it in any fashion?

8 A No, sir.

9 Q Okay. This document is dated January the 5th of '01.
10 Is that correct?

11 A Yes, sir.

12 Q And is that date of 1-5-01, is that your writing?

13 A Yes, sir.

14 Q Okay. Do you independently remember dealing with
15 this lady, who is Mrs. Webster, on January 5th of
16 '01, obviously at Miles Insurance Agency on Arch
17 Street?

18 A No, sir.

19 Q So from these questions forward, as we go through
20 these pages, is it going to refresh your memory in
21 any way, or is this simply going to refresh a
22 recollection that you wrote it down?

23 A I mean, I - - - I'm familiar with our proc - - - our
24 proc - - - what our process was at Miles, but to
25 specifically say that I spoke with Mr. and Ms.

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1 Webster on that date, I couldn't say that.

2 Q Okay. So again, when I'm looking at this form, it's

3 called an ACORD - - - Look down at the bottom left.

4 ACORD 90 S.C. Is that J-99 or J/99? Am I reading

5 that correctly?

6 A Ah - - - (No further response)

7 Q The bottom left.

8 A I think it's 3/99, because if you - - -

9 Q Oh, that's a three?

10 A Yeah.

11 Q Okay. Well, that's what I'm saying. I couldn't

12 tell.

13 A Yeah.

14 Q To me, that looked like a slash, but okay. 3/99.

15 Where did Miles Insurance Agency get this form?

16 A These were standard ACORD application forms that the

17 insurance companies would use. I would - - - I don't

18 remember like where we originally got them, but these

19 were, at that time, the forms that the insurance

20 companies required.

21 Q Okay. Well, that's what I'm trying to get - - - This

22 form was not designed and made by Jerry Miles?

23 A Oh, no.

24 Q Okay. This form was not necessarily ordered from the

25 ACORD people by Jerry Miles, was it, if you know the

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1 answer to that?

2 A I do not know the answer to that.

3 Q Okay. But am I correct in understanding that this

4 form could be used by y'all in the selling of

5 property and casualty insurance?

6 A Yes, sir.

7 Q And did it need to be approved by any carrier that

8 you sold for, or you assumed they all would let you

9 use the form, or do you know that?

10 A We - - - No, the carrier would tell whether or not

11 they would accept ACORD forms.

12 Q Okay. Well, I'm dealing back in '01 with National

13 Grange, Tier I, whatever that is. Is that correct?

14 A National Grange was the carrier.

15 Q Yes, ma'am.

16 A (Indicating yes)

17 Q And they're now maybe known as NGM Insurance Company,

18 but it was National Grange to which my client was

19 dealing through you back in '01. Is that correct?

20 A I don't know about me personally, but Miles

21 Insurance.

22 Q Well, no, no, no.

23 A National Grange through Miles Insurance.

24 Q Yeah. That's what I'm - - -

25 A Yes, sir.

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1 Q Well, I'm saying that. I mean, when I - - - And I
2 apologize.

3 A That's okay.

4 Q When I'm saying, you, I mean Miles.

5 A Okay.

6 Q And y'all are simply the agent for Miles. You're not
7 providing the coverage. I understand that. We all
8 understand that. That's why the defendant in this
9 case, besides Miles, is also National Grange. Okay?

10 A Yes, sir.

11 Q So who picked this carrier, if you know, back on
12 January the 5th of '01? Was it something y'all
13 suggested or offered, or did my client pick the
14 carrier, if you remember?

15 A We suggested the offer. The reason being, she was
16 with General Accident. They were pulling out of the
17 state of South Carolina, so we were offering that
18 book of business to all the customers that were
19 insured with General Accident, other options.

20 Q Okay. And again since you don't have any independent
21 recollection, is some of this paperwork going to show
22 me that you knew they were with General Accident, and
23 General Accident was pulling out of the state, and
24 therefore, y'all recommended they consider going to
25 National Grange? Is that going to be somewhere in

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1 the paperwork to help you - - -

2 A General Accident is listed as their prior carrier.

3 Q Okay.

4 A I don't see in this paperwork a copy of the

5 nonrenewal.

6 Q Okay.

7 A But that is just something that I - - - I remember

8 that.

9 Q And you're pointing to, of course, Plaintiff's 1 on

10 Page 2?

11 A Yes, sir.

12 Q Where it says, cover - - - I'm sorry.

13 A Prior carrier.

14 Q The prior carrier and producer is General Accident?

15 A Yes, sir.

16 Q And you were aware, as an agent who knows who's out

17 there, that General Accident was leaving South

18 Carolina for whatever reason?

19 A Yes, sir.

20 Q So again by the general procedure, when the Websters

21 - - - or Ms. Webster in particular came in, the going

22 to National Grange was recommended by y'all, meaning

23 Miles Insurance Agency?

24 A Yes, sir.

25 Q Okay.

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1 Q And y'all were approved - - - Or Jerry Miles - - -
2 And I apologize. Jerry Miles, Miles Insurance
3 Agency, was approved to sell insurance for National
4 Grange?
5 A Yes, sir.
6 Q Now, what document - - - I'm assuming the front page
7 was done after you went through the application and
8 everything. Would that be a correct statement?
9 A This is the application. It would have been
10 completed after the review of the quote sheet.
11 Q Okay. And I'm looking at Page 1, is this writing
12 yours?
13 A Yes, sir.
14 Q I'm looking at Page 2, if you'll be so kind as to go
15 over there. Is all of that writing yours?
16 A Yes, sir, with the exception of the signatures at the
17 bottom.
18 Q Right, right. Now, I can read Ms. Webster's
19 signature. Whose signature is on the right side?
20 A That is Richard Miles.
21 Q Okay. To your knowledge - - - And I think we're
22 deposing Richard next. To your knowledge, was
23 Richard actively involved in this case, if you can
24 remember?
25 A I can't remember.

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1 Q Any more than you can remember your active
2 involvement?

3 A Correct.

4 Q All right. Page 3, which is entitled South Carolina
5 Auto Supplement, ACORD, is this your writing at the
6 top?

7 A Yes, sir.

8 Q Now, the paragraph - - - Well, Page 1 of this thing
9 called auto supplement, Paragraph 1, it says, offer
10 of optional additional uninsured coverage and
11 optional additional underinsured motorist coverage.
12 Am I reading that correctly at the very top?

13 A Yes, sir.

14 Q How did you and Ms. Webster - - - And the reason I'm
15 saying Ms. Webster, she's already testified that she
16 was the only one there.

17 A Okay.

18 Q Okay? So that's a given. How did you go - - - How
19 was this covered?

20 A (No response)

21 Q Normally.

22 A Okay. Yeah, that's what I was going to say. While I
23 - - - As I mentioned previously, I don't remember
24 specifically meeting with Ms. Webster. But I can say
25 that any time that I personally reviewed quotes,

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1 coverages with a customer, we had the quote sheet in
2 front of us.

3 Q All right. Hold on. I don't mean to interrupt you,
4 but is this considered a quote sheet that I'm looking
5 at?

6 A No, sir. This is part of the application.

7 Q Okay. Well, would you go over this page first?

8 A No, sir. What we would do is have - - -

9 Q All right. Look through there and tell me what page
10 you go over with her first then. I'm thinking
11 chronologically, according to my way of looking at
12 it. What page would you go over first?

13 A A copy of the quote is not in here.

14 Q Well, look at page - - - Again, I don't have them
15 numbered. Well, I do. Look at the top, the fax
16 number on the top left - - - right side. I've got
17 Page 3. I've got Page 4. Now, this has got places
18 to put - - -

19 A (Indicating yes)

20 Q A premium on here.

21 Mr. Dougall - Francis, can we take a short
22 break?

23 Mr. Bell - Yeah.

24 Whereupon - A discussion was held off the record
25 which was not reported, and then a brief recess

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1 was taken. During the break, a document was
2 marked as Deposition Exhibit Number 2.

3 FURTHER EXAMINATION

4 BY MR. BELL:

5 Q Ms. Short, have you seen this before today?

6 A Yes, sir.

7 Q Do you need more time to look at it?

8 A No, sir.

9 Q Okay. Well, you've got to help educate me on what
10 that is.

11 A Okay.

12 Q Page 1 of what we now know as Plaintiff's Number 2,
13 what is it called?

14 A It's a quote sheet.

15 Q A quote sheet, meaning what?

16 A Or, I mean, that's what I call it.

17 Q Yes, ma'am.

18 A Basically, when - - - Anytime we would build a quote
19 for customers, put coverages together, it would kind
20 of summarize the - - - what the coverage is, the
21 limits, and the premium for each, and then give a
22 collective premium.

23 Q Okay. And this thing is dated 1-21-98?

24 A (Indicating yes)

25 Q And the company is General Accident? Am I reading

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1 that correctly?

2 A Yes, sir.

3 Q So this was a quote from General Accident as of 1-21-

4 98 to Ms. Webster?

5 A Yes, sir. This, this quote, was done by Richard.

6 Q Yes, ma'am.

7 A Yes.

8 Q But it ain't got anything to do with - - -

9 A With this application.

10 Q National Grange?

11 A No, sir.

12 Q It ain't got anything to do - - - And I realize you -

13 - - Well, I'm not going to ask the question that way.

14 Okay. Do you know what relevance this has to what

15 occurred? From a factual standpoint as an insurance

16 agent, what's this got to do with - - - The existence

17 of this document, what's it got to do with what

18 occurred on 1-5 of '01?

19 A This shows a - - - shows all coverages that were

20 quoted, the bodily injury liability portion, the

21 uninsured and the underinsured, which - - -

22 Q In '98?

23 A In '98, yes, sir.

24 Q Okay.

25 A So - - - And then can I talk about Page 2?

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1 Q Well, let's look at Page 1.

2 A Okay. So - - -

3 Q I want to make sure I understand it. So - - -

4 A Right. All right.

5 Q So was underinsured offered in '98?

6 A Yes, sir.

7 Q Okay.

8 A And - - -

9 Q And if I look at it there on the left side - - - or

10 excuse me, the right side where it's got under - - -

11 It's U-n-d-i-n-s B-I. That's underinsured bodily

12 injured. Is that correct?

13 A That is correct.

14 Q And it's got 25/50, and then it's got nine dollars.

15 Was that the premium then? Am I reading that

16 correctly?

17 A That is the premium for the bio - - - excuse me, the

18 bodily injury portion for one car.

19 Q Yes, ma'am. I understand.

20 A This - - -

21 Q I understand.

22 A This is one car.

23 Q But it has an X through it. Does that mean anything

24 to me, or you, or us?

25 A What that typically means is that this was reviewed

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1 with the customer. The cust - - - Once reviewed, it
2 was marked through and rate adjusted, meaning that
3 ultimately would - - - The customer wasn't interested
4 in that coverage.

5 Q But in '98, when this - - - Again, this is called a
6 rate sheet?

7 A (Indicating yes)

8 Q When this rate sheet was gone over, it had a premium
9 in it?

10 A That is correct.

11 Q Okay, and then this is six months. Does this tell me
12 - - - If I keep reading this document, it's for one
13 car. Somewhere in here, is this going to tell me
14 which car it's on?

15 A Yes, sir. If you'll look at the top, where it starts
16 talking - - -

17 Q '86 Ford?

18 A Yes, sir.

19 Q I see it. See, I'm not used to seeing it either.
20 All right. So the second page of the document is
21 dated 4-14-05. Is that correct?

22 A That is correct.

23 Q All right. That's after '01. So tell me, what is
24 this showing me in '05?

25 A This is a quote through National Grange for these

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1 particular vehicles. I'm not sure if it was some - -
2 - You know, I don't remember which vehicles were
3 existing, or if they were looking to purchase or add
4 some different vehicles.

5 Q All right. But hold on just a minute - - -

6 A (Indicating yes)

7 Q But on this document dated 4-14-05, we are definitely
8 talking about a '99 Chevrolet something, a '96 Honda
9 something, and a '93 Mazda something. Meaning, I
10 don't know if it's a truck, car, or van, but those
11 are the three vehicles we're talking about.

12 A Yeah.

13 Q Is that correct?

14 A Yes, sir.

15 Q Okay. And you can't tell me if they're coming online
16 with y'all, and that's my language, for the first
17 time or if this is a renewal, can you?

18 A (No response)

19 Q Or can you tell me?

20 A It's neither. This would have been, for example, Ms.
21 Webster called in to get a quote for a vehicle that
22 she was looking to purchase or add. Then we would
23 have put this together to show what the new premium
24 would be.

25 Q So that's what I'm saying. In other words - - -

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1 Again, you don't have any personal remembrance of
2 this. But for this document to come into existence
3 on 4-14-05, the '99 Chevrolet was coming online with
4 y'all for the first time. Is that a fair assessment
5 of what I'm looking at?

6 A Well, one of the vehicles on here was likely coming
7 on for the first time, yes.

8 Q All right. Well - - -

9 A I just don't know which one.

10 Q But could it be all three?

11 A Potentially, yes.

12 Q Okay. And what's going to show me if this - - - Was
13 this in person, or was this a phone call? Can you
14 tell me that?

15 A I can't.

16 Q Okay. So this is generated by y'all - - -

17 A Yes.

18 Q By Miles?

19 A Yes, sir.

20 Q Well, the first vehicle is a '99 Chevrolet. It looks
21 like it's a - - - Well, it's an S-10. That's a small
22 truck. 50/100, 50 - - - Does this have underinsured
23 in it?

24 A Yes, sir.

25 Q Where? Where am I looking at that at?

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1 A If you look down under the coverage, it says, bodily
2 injury. It has the limits to the right. Then it
3 talks about the property damage, the uninsured and
4 then it says underinsured.

5 Q Right.

6 A If you look to the right, it's got limits of 50/100.
7 Then down below - - -

8 Q Now, hold on. Let's keep looking to the right. Is
9 that a thirty-eight dollar premium?

10 A For that vehicle, yes, sir.

11 Q Yes, ma'am, okay. And then we've got the next
12 vehicle. It's a Honda, and looking again - - - Now
13 that you've educated me, dropping all the way down to
14 the under part, 50/100, is that a forty-nine dollar
15 premium?

16 A Yes, sir.

17 Q Well, did these cars get insured in '05? Do you
18 know?

19 A I don't remember.

20 Q The reason I'm asking is that, of course, we have
21 been told that no cars she owned on the day of the
22 wreck had underinsured. That's what we have been
23 told.

24 A (Indicating yes)

25 Q And they know which cars we had on the day of the

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1 wreck, because we provided them a copy of it. So is
2 Jerry Miles going to have any documentation showing
3 what happened to these cars, these two that may or
4 may not have been existing on the day of the wreck?
5 I can't answer that off the top of my head myself.
6 My clients can, but I can't. Are we going to have
7 some other documentation out there showing these
8 cars, what the insurance status of these cars was on
9 the day of the wreck, if you know?
10 A I don't know.
11 Q Okay.
12 A But to be clear, this is a quote sheet.
13 Q Now, I know it is.
14 A Okay.
15 Q It doesn't necessarily mean anything was bought.
16 A Right.
17 Q I understand that. Yeah, the wreck date is June the
18 30th of '12. I had to go back. We've got so many
19 dates. Well, not as a lawyer but as a fact witness,
20 tell me what these two documents that I got from
21 y'all's lawyer, which therefore I got it from y'all,
22 what does this, in your opinion, got anything to do
23 with what we're going over - - -
24 A My opinion is that - - -
25 Q Yes, ma'am.

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1 A It shows that we followed a certain process in '98
2 and followed the same process in 2005, by offering
3 the coverages.

4 Q Right, right.

5 A (Indicating yes)

6 Q But you can't tell me if it was purchased or not.
7 You can't tell me?

8 A I cannot tell you.

9 Q All right. Well, then let's go to Page 5 of
10 Plaintiff's Exhibit 1.

11 A (Indicating yes)

12 Q On Page 5 - - - Well, I'm sorry. I do have to back
13 up. I apologize. Page 3, you told us that was your
14 writing. Is that correct?

15 A Yes, sir.

16 Q Page 4, the only thing down there is at the bottom,
17 the 50/100/50. Is that your writing?

18 A Yes, sir.

19 Q Of course, that's uninsured?

20 A This is uninsured.

21 Q Okay. As you understand the law back then and still
22 now, it's mandatory?

23 A That is correct.

24 Q Okay. Then on Page 5, the check - - - And we're
25 still dealing with uninsured. The check, is that

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1 your check?

2 A Yes, sir.

3 Q Okay. Then the next time I've got some figures, it's

4 50/100/50?

5 A (Indicating yes)

6 Q Of course, it's still dealing with uninsured. Is

7 that your figures there - - -

8 A That - - -

9 Q Your writing?

10 A That is my handwriting.

11 Q All right. Then this is what we're in court over,

12 underinsured coverage. Okay?

13 A (Indicating yes)

14 Q Let me get down to the writing on this page. The

15 check for no, is that your check?

16 A That is my check.

17 Q Now, believe it or not, Ms. Webster has admitted

18 that's her signature. Okay?

19 A Okay.

20 Q But when it says, I select reject, and it's got a

21 check there, whose writing is that?

22 A The - - - The handwriting for the word, reject, is

23 mine.

24 Q Yes, ma'am.

25 A I don't know if that's my checkmark.

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1 Q Okay. Well, here's my question. There's no premiums
2 in this form.

3 A (Indicating yes)

4 Q Why? How can you offer something without giving them
5 a premium? That's what I'm asking. Why are there no
6 premiums in here?

7 A We typically offered off of the quote sheets. That
8 showed the premiums.

9 Q Well, where is the quote sheet that covers 2001?
10 Does it still exist?

11 A I don't know.

12 Q Well, he can't answer any more than I can. Okay?

13 A I - - - Yeah.

14 Q You don't know if it exists, or not?

15 A I don't know if it exists.

16 Q All right. So going back to uninsured, going back to
17 Page 4, there's no premiums there. You agree?

18 A I agree.

19 Q Okay.

20 Mr. Dougall - Francis, can I place a slight
21 objection?

22 Mr. Bell - Yes, sir.

23 Mr. Dougall - That's an offer of additional - -
24 -

25 Mr. Bell - Oh, I'm sorry. You're right. You're

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1 right, and I apologize. You're correct.

2 Mr. Dougall - No problem.

3 FURTHER EXAMINATION

4 BY MR. BELL:

5 Q Additional uninsured, there is an additional premium
6 for that. Is there a quote sheet for that somewhere,
7 that's not on this form that I'm looking at?

8 A Yes, sir. That would have all been on - - - been
9 together, similar to the layout of these.

10 Q All right, good. And going back to Page 5, which is
11 the under, then - - - And again, you don't have
12 access to any documents?

13 A (Indicating no)

14 Q This form, were you instructed not to put the
15 premiums on the form?

16 A I don't know if I was specifically told not to do it.
17 It - - - But on the flip side of that, I was never
18 told to specifically do it.

19 Q Okay. Well - - - And I don't expect you to know the
20 law, but again - - - And this is what makes it so
21 tricky. Can you tell me that you know for a fact
22 that this ACORD form, that you're telling me you were
23 authorized to use by National Grange, had been
24 approved by the Secretary of Insurance, the
25 Department of Insurance? I'm assuming you don't know

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1 that, do you?

2 A That is correct. I do not know.

3 Q And the statute - - - And I'm just going to read it
4 to you. It says one thing under 38-77-350, you have
5 to, at a minimum, must provide for each optional
6 coverage to be offered an explanation. I'm not
7 arguing that with you. A list of available limits
8 and the range of premiums for the limits. That's
9 what the law requires. Okay?

10 A (Indicating yes)

11 Q Do you agree with me that this form that is being
12 used against my clients, saying there's no coverage
13 for under, doesn't have a list of premiums for the
14 under, does it?

15 A I agree that that doesn't, but the quote that was
16 provided prior to completing this would have had the
17 premiums for those coverages.

18 Q But how do we know those exist? They haven't been
19 produced. So how can you tell me they necessarily
20 exist?

21 A I - - - I can't for 2001.

22 Q Okay. Well, that's what - - - We're back to 2001,
23 unfortunately. Well, were you instructed - - - Even
24 though we've got this form that this outfit called
25 ACORD produced, whoever they are, and you are

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1 authorized and you understand it to use this form
2 with National Grange Insurance, you were never
3 instructed to put the premiums in here?

4 A No, sir.

5 Q Well, do you agree that my client would have to know
6 the premium to make a decision as to whether they
7 accept it or reject it?

8 A Yes, sir. That's why we always start with the rate
9 sheet.

10 Q Okay. But we don't have rate sheets that go back to
11 2001, unfortunately. Now again, that would be
12 procedure, but you don't have any independent
13 recollection that you did that?

14 A That I personally did it? No, I do not.

15 Q Okay. On Page 6, did you write Janet Webster's name?
16 Is that your writing? She's acknowledged that's her
17 signature. Did you write her name?

18 A Yes, sir.

19 Q And did you write the address, 2203 Balmy Court?

20 A Yes.

21 Q Is that your writing?

22 A (Indicating yes)

23 Q Page 7, that ain't got nothing to do with the
24 lawsuit, so I'm not going to ask you about it because
25 that occurred after you left. That occurred in '12.

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1 A Yes, sir.

2 Mr. Bell - Okay. I can't find my copy of her
3 depo. Give me a second.

4 Whereupon - A brief discussion was held off the
5 record which was not reported.

6 FURTHER EXAMINATION

7 BY MR. BELL:

8 Q Do you remember an employee named Lois?

9 A Yes, sir.

10 Q Do you remember her last name?

11 A Taylor.

12 Q Taylor?

13 A (Indicating yes)

14 Q Do you have any recollection of her involvement in
15 this 1-5-01 paperwork?

16 A Not specifically, no.

17 Q Does she still work for Jerry Miles?

18 A I'm not aware. I don't - - - I do not know if she
19 does or not.

20 Q Well, I mean, I realize you've been gone since '06,
21 but do you - - - Is she still alive, as far as you
22 know? You ain't heard anything - - -

23 A As far as I know, she's still alive.

24 Q About her, one way or another? Okay. Well, Richard
25 could probably tell me more. Let me ask you

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1 something else.

2 Mr. Bell - And this is off the record, while I'm
3 looking.

4 Whereupon - A brief discussion was held off the
5 record which was not reported.

6 FURTHER EXAMINATION

7 BY MR. BELL:

8 Q What training - - - Well, let me back up. I don't
9 expect you to remember the date. In fact, you were
10 gone. When you left in '06, did you stay in the
11 business?

12 A Yes, sir.

13 Q And I don't need to know - - - You're still licensed,
14 so to speak?

15 A Yes, sir.

16 Q And you're still keeping up to sell this insurance
17 and everything - - -

18 A Yes, sir.

19 Q This type of insurance? In '07, the State of South
20 Carolina finally raised the limits from 15/30 to
21 25/50. Did you receive any training on how to deal
22 with that, in reference to offering underinsured?

23 Mr. Freeman - Objection to form.

24 A (No response)

25 Q When the limits changed, were you given any

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1 instructions by any company you worked for about
2 offering underinsured when the limits changed?

3 A No different than what we had done prior to the
4 limits changing. I - - - (No further response)

5 Q Well - - -

6 A Maybe I didn't understand your question.

7 Q Were you instructed by anybody that we need to
8 reoffer underinsured to anybody?

9 A To the best of my recollect - - - recollection, when
10 those limits changed, policies that were already in
11 effect that may have had lower limits, they were
12 raised, and the customer had to sign new forms. The
13 company automatically raised it to meet the new state
14 minimums, and they had to sign new forms.

15 Q All right. But what did the companies do with the
16 under offers? Let's say the policy rates changed,
17 and it probably took about six months for all of that
18 to happen throughout the state. Because you'll
19 agree, most policies are about six months long?

20 A Right.

21 Q Were you instructed to get anybody in, when they came
22 in to make sure they had these new limits, to reoffer
23 under if they didn't have anything like that?

24 A Again, that - - - The best that I remember, we didn't
25 specifically have to call customers in. The carrier

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1 would - - - At that time, I was at Farm Bureau, and

2 that - - -

3 Q Right.

4 A They would - - - They added it to the policy at the
5 new state minimums, and the customer - - - and sent
6 them new forms to sign to reject it, if they did not
7 want to carry it.

8 Q Okay. So in other words - - - And I realize you
9 can't speak for National Grange. They'll have to
10 answer that. But your training once the new law went
11 into effect is, that at least Farm Bureau added the
12 under, and then made people come in and turn it down
13 or reject it. Is that what you're telling me?

14 A That is correct.

15 Q Okay. I don't know if that was statewide or not.
16 We'll find out. But I knew they did - - - I knew
17 somebody did something.

18 A Yes, sir.

19 Mr. Bell - Okay. All right. Give me just a
20 minute.

21 Whereupon - A brief recess was taken.

22 Mr. Bell - All right. Thank you, ma'am. I'm
23 sure this gentleman at the end may have some
24 questions.

25 A Okay.

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1 Mr. Bell - He represents the insurance company.
2 Then I don't know if your lawyer is going to ask
3 any questions or not.

4 Whereupon - A brief discussion was held off the
5 record which was not reported.

6 DIRECT EXAMINATION

7 BY MR. DOUGALL:

8 Q Let's go back over Exhibit 1, Ms. Short. This is a
9 form that you say is in your handwriting, correct?

10 A That is correct.

11 Q And it was filled out on January 5th of 2001?

12 A Yes, sir.

13 Q Okay. And it's your testimony that prior to filling
14 this out, you would have presented Mrs. Webster with
15 a quote sheet?

16 A Someone would have, yes.

17 Q And you don't know if it was you or somebody else in
18 the - - -

19 A I don't recall if it was me.

20 Q But you do recall what the procedure of the agency
21 was?

22 A Yes, sir.

23 Q And the standard procedure for the agency was to
24 prepare a quote sheet, and explain those - - -

25 A (Indicating yes)

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1 Q You have to say yes or no.

2 A Yes, sir. I was waiting for you to finish. I'm

3 sorry.

4 Q Okay. And then you would talk to the applicant about

5 those quotes?

6 A That is correct.

7 Q And then you would fill out the ACORD?

8 A Yes, sir.

9 Q Okay. And on Page 1 of the ACORD, it's got limits

10 for bodily injury liability, correct?

11 A Yes, sir.

12 Q And that's above the state minimum at that time?

13 A That is correct.

14 Q And the same thing for property damage liability,

15 that's above the minimum limits - - -

16 A That's - - - Yeah.

17 Q Required for the state at that time?

18 A Yes, sir.

19 Q And then there is a section for uninsured motorists,

20 correct?

21 A Yes, sir.

22 Q And that's mandatory coverage?

23 A Underinsured?

24 Q Uninsured.

25 A I'm sorry. I misunderstood you. So yes, there is a

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1 section for uninsured.

2 Q Okay. And it's got limits for BI of 50/100, correct?

3 A That is correct.

4 Q And then the other 50 is for property damage?

5 A Correct.

6 Q And that was above the minimum limit, but it hadn't

7 equaled the quoted liability limit at that time under

8 South Carolina law, correct?

9 A It - - - It didn't have to equal it. It just could

10 not exceed it, so it could be less than or equal to.

11 Q Okay. And that goes back into Page 4, where there's

12 an offer of additional uninsured coverage at the

13 bottom of the page, correct?

14 A That is correct.

15 Q And the minimum limits at the time were 15/30/100,

16 but Mrs. Webster opted to take additional uninsured

17 for - - - yes, uninsured coverage?

18 A That is correct.

19 Q And in fact when you go to the fifth page, it asks,

20 do you wish to purchase additional uninsured motorist

21 coverage, and somebody checked yes?

22 A Yes, sir.

23 Q Do you think that's your writing or somebody else's

24 writing?

25 A I believe it's mine.

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1 Q Okay. And then it quotes what that amount that they
2 selected is, which is consistent with the first page
3 at 50/100/50?

4 A Yes, sir.

5 Q And then we go back to the first page, there is a
6 section for underinsured motorist, which is what this
7 case is really about, correct?

8 A Yes.

9 Q And you've written in, reject, and then there are a
10 couple of checkmarks. Are those your checkmarks?

11 A Those are not my checkmarks.

12 Q Okay. But you don't know whose they are? They're
13 just not yours.

14 A Correct.

15 Q And then similar to that on Page 5, after the
16 uninsured on Page 4, there is a section for
17 underinsured. It says, do you wish to purchase
18 underinsured motorist coverage? And there's a no
19 checked. Do you know if that's your check?

20 A Yes, sir. I believe that that was mine.

21 Q But we already know Ms. Webster then signed it.
22 Because it says, if your answer is no, then you must
23 sign here, and there's a signature there, correct?

24 A Correct.

25 Q And then there's the last page which says,

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1 applicant's acknowledgment. That's, for some reason,
2 dated in 2012. You wouldn't have any idea what
3 that's about, do you, because you were no longer with
4 the agency?

5 A Correct. I do not know what that's about.

6 Q Let's go back to Exhibit 2. The first page of that
7 is the same document you have in front of you. It
8 says, General Accident, 9-1-97, but up in the left-
9 hand corner, it's got a January 21st, 1988 (sic)
10 date. Do you know what the significance of those two
11 dates is?

12 A Yes, sir.

13 Mr. Bell - '98.

14 Mr. Dougall - Did I - - - I'm sorry. '98.

15 A The top left corner that says, January 21st, 1998,
16 that would have been the date that the quote was
17 prepared.

18 Q Okay.

19 A The General Accident, 9-1-97, that's the rate set.
20 So those were the rates that were approved - - - I
21 guess approved by the DOI or filed with the DOI in
22 '97.

23 Q Okay. And to your knowledge, the Websters still had
24 General Accident coverage in '98?

25 A Yes, sir.

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1 Q And on this quote sheet, if you'll go down, you'll
2 get to the underinsured BI and the underinsured PD.
3 There is a rate quoted, and then somebody has put an
4 X through it. Do you know whose - - - Is that your
5 X?
6 A That is Richard Miles' handwriting.
7 Q Okay. Do you recognize Mr. Miles' handwriting?
8 A Yes, sir.
9 Q Is that because you worked there for six years - - -
10 or nine years? I'm sorry.
11 A Nine years. Yes, sir.
12 Q And in that time, you recognized and learned to
13 recognize his handwriting?
14 A That is correct.
15 Q Why would Richard have put an X through those two
16 numbers and then the eleven to the right?
17 A I can only assume because he was reviewing it with
18 the Websters, and they decided to decline that
19 coverage and - - -
20 Q Okay.
21 A Just adjusting the premium.
22 Q All right. And if we go to the second page of that
23 exhibit, at the top, there's a phone number, 803-283-
24 5313. Do you have any idea whose phone number that
25 is?

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1 A I do not.

2 Q Okay. And again, there are different quotes rated
3 for different coverages on that page. Then down at
4 the bottom, there's writing that says, 886 with - - -
5 W slash l-i-a-b only. Is that your handwriting?

6 A Yes, sir.

7 Q And what does that mean?

8 A The '96 Honda for the physical damage and all the
9 coverages that you see printed out would have come to
10 an annual premium of seventeen seventy-three. If you
11 remove the comprehensive and collision, that would
12 have been the adjusted total, eight eighty-six.

13 Q Do you know if that adjusted quote also takes out the
14 underinsured motorist coverage?

15 A I don't believe so. Because just looking at the
16 physical damage, that was - - - That looked to be
17 half of the - - - almost half of the premium, the
18 total premium.

19 Q Would there have been another application form that
20 goes with this quote sheet?

21 A The one from twenty fourt - - - or I'm sorry. The
22 one from 2005?

23 Q Yes.

24 A No. That probably would have been done by
25 endorsement, meaning just process the change to add

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1 the vehicle.

2 Q Okay. Do you know if there was any change by
3 endorsement to include underinsured motorist coverage
4 for any of these vehicles on Page 2?

5 A I do not.

6 Q If you didn't personally meet with Mrs. Webster on
7 any of these occasions, why would your handwriting be
8 on these forms?

9 A As I mentioned earlier, although I was licensed, most
10 - - - Well, I mean, most often, Richard would meet
11 with clients for comm - - - excuse me, for personal
12 lines of insurance, home and auto. With the Websters
13 being existing clients - - - Well, not specifically
14 to them. Oftentimes, Richard would meet with them.
15 Once everything was proc - - - or the signatures and
16 everything was collected, then I would just complete
17 the applications with the vehicle information and
18 specifics and whatnot.

19 Q Did you ever have any discussions with any person at
20 National Grange Mutual Insurance Company, which is
21 now known as NGM Insurance Company?

22 A During my time at - - -

23 Q Yes.

24 A Yes, sir.

25 Q Who would you have spoken with at NGM?

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1 A The underwriter.

2 Q Did the underwriter ever give you instructions on how
3 to fill out any of these forms?

4 A No, sir.

5 Q Your instructions all came from Mr. Miles, correct?

6 A That is correct.

7 Q Did anybody at National Grange ever reject any forms
8 you sent in because you had filled them out
9 improperly?

10 A No, sir.

11 Q Okay. Mr. Bell asked you earlier in your deposition
12 about the words, meaningful offer.

13 A (Indicating yes)

14 Q Do you believe, based on your knowledge of Mrs.
15 Webster's business dealings with Miles Agency, that a
16 meaningful offer of underinsured motorist coverage
17 was made to her?

18 A Yes, sir. Yes, sir.

19 Mr. Dougall - That's all I've got. Thank you.

20 Mr. Freeman - Just a couple of questions.

21 DIRECT EXAMINATION

22 BY MR. FREEMAN:

23 Q Earlier, you testified a little bit about the
24 standard policy by which Miles Agency offered or
25 dealt with underinsured coverage, correct?

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1 A Yes, sir.

2 Q And how often was that policy followed?

3 A It - - - Every time, a hundred percent.

4 Q Did you personally follow that policy?

5 A Yes, sir.

6 Q Do you recall any instances where that policy was not
7 followed?

8 A I do not.

9 Mr. Freeman - That's all I have.

10 Mr. Bell - All right. Bear with me, Ms. Short.

11 FURTHER EXAMINATION

12 BY MR. BELL:

13 Q You are telling us today that you did not have a
14 policies and procedures book? And that may be the
15 wrong nomenclature. But you didn't have what I call
16 a policies and procedures book or any training,
17 orally or in writing, from National Grange on how to
18 offer underinsured. Is that true?

19 A That is true.

20 Q Therefore, the insurer in this case was then National
21 Grange. Is that true?

22 A Yes, sir.

23 Q And through whatever the paperwork was between Miles
24 and National Grange, you were authorized to sell
25 their product, National Grange?

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1 A That is correct.

2 Q And again dealing with underinsured, you knew you had

3 to make a meaningful offer?

4 A Yes, sir.

5 Q And which you've said today, you thought you made a

6 meaningful offer - - -

7 A I know - - -

8 Q To the Websters?

9 A Well, I don't know if I made a meaningful offer to

10 them specifically, but I know everybody I ever dealt

11 with, I did.

12 Q Okay. Well, the only persons suing over it is Janet

13 Webster and Jerry Webster specifically. So are you

14 telling me today that you don't know if you made a

15 meaningful offer specifically to them?

16 A No, sir. I'm telling you that I don't know if I

17 specifically talked to them.

18 Q Well, then how can you say you made a meaningful

19 offer to them, if you don't remember talking to them?

20 A I made a meaningful offer to everyone I ever spoke

21 with.

22 Q But you don't know if you spoke with them or not?

23 That's the problem?

24 A I do not recall.

25 Q Okay. Well, I'm not trying to play words with you

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1 because here's what it's leading up to, and this is
2 what makes it complicated, probably industry-wide.
3 This ACORD auto supplement, okay, which is Page 2 - -
4 - I'm sorry, Page 3.

5 A Yes, sir.

6 Q I'm assuming that's the form that you were instructed
7 to use to offer, among other things, underinsured?

8 A Yes, sir.

9 Q And the law says the form must be approved by the
10 Department of Insurance. We assume that's been done?

11 A Correct.

12 Q But you don't know?

13 A I do not know.

14 Q And again, it says, statement of the coverage, but
15 then it says, a list of available limits and the
16 range of premiums for the limits. Don't you agree
17 that should have been in the form? Because that's
18 what we're talking about, the form.

19 A The form is - - -

20 Q The range of limits should have been in the form?

21 Mr. Dougall - Objection.

22 Q Or the premiums.

23 Mr. Dougall - Object to the form of the
24 question.

25 Mr. Bell - I understand.

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1 FURTHER EXAMINATION

2 BY MR. BELL:

3 Q I mean, the form calls for you to write down or for
4 somebody to write down the amount of increased
5 premiums, right?

6 A Yes, sir.

7 Q You didn't do that, or whoever filled this form out
8 didn't do it?

9 A Correct.

10 Q We think you were involved in some fashion. Is that
11 correct?

12 A Yes, sir.

13 Q But you can't answer that you directly remember being
14 involved in it?

15 A Correct.

16 Q Other than what you've told us in the past?

17 A (Indicating yes)

18 Q So what you're telling us is, Richard Miles'
19 procedure, regardless of the law, was to have what we
20 now call - - - What do we call these sheets again?

21 A Rate sheets, quote sheets.

22 Q Rate sheets, quote sheets. We have gone over today
23 two quote sheets, one dated January 21 of '98 - - -

24 A (Indicating yes)

25 Q Dealing with General Accident?

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1 A Yes, sir.

2 Q That all got replaced in '01. Is that correct?

3 A Yes, sir.

4 Q Okay. And we've got a quote sheet dated 4-14-05

5 dealing with National Grange?

6 A Yes, sir.

7 Q And you're telling me that on this quote sheet, that

8 premiums were listed for under. Is that correct?

9 A Yes.

10 Q And nobody has X'd it out, one way or another, have

11 they?

12 A That is correct.

13 Q So this quote sheet indicates that the clients, the

14 Websters, bought under on these two vehicles, doesn't

15 it?

16 A No, sir. It means - - - It indicates that they were

17 offered.

18 Q I understand. Well, what is out there to show

19 whether or not - - - what coverage was purchased as

20 to these two vehicles?

21 A There would - - - There would have been some type of

22 endorsement to their policy.

23 Q All right. A new policy would have been issued, or a

24 new dec sheet would have been issued eventually?

25 A Yes, sir.

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1 Q Okay. So based on what you have been shown, which is
2 all we've got, we don't even have all of the
3 paperwork, do we?

4 A It doesn't appear so. No, sir.

5 Q Yes, ma'am. And who would have that paperwork?
6 Would it be Miles, or the insurance company down in
7 Jacksonville, or perhaps both? Who is going to have
8 the rest of the paperwork?

9 A Perhaps both, in that Miles would - - - would or
10 should have declarations pages, and I'm assuming
11 National Grange has - - - Whether or not it's
12 electronic or actual paper, they would have a trail
13 of that.

14 Q Okay. And based upon the way you said Miles did this
15 in '01, even though you don't have an independent
16 recollection of your exact involvement, do you agree
17 that this document, what's being used in Number 1,
18 Page 5, doesn't have any premiums written in it by
19 anybody?

20 A Correct.

21 Q And we are assuming, under normal procedure, that
22 whatever vehicles were being insured on 1-5-01, which
23 we know at least to be three - - -

24 A (Indicating yes)

25 Q Based on this paperwork I'm looking at, that somebody

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1 had a quote sheet that was printed and presented to
2 my client. That's what you're telling us?

3 A Yes, sir.

4 Q We don't know that for a fact, do - - -

5 A I - - -

6 Q Do we?

7 A I do not know for a fact, but I know that that was
8 the process.

9 Q The process, right. But again, you don't remember
10 your involvement in this process as of January 5th of
11 '01?

12 A No, sir.

13 Mr. Bell - Okay. Thank you, ma'am.

14 A Yes, sir.

15 Mr. Bell - I'm assuming nobody else has got any
16 questions?

17 Mr. Dougall - (Indicating no)

18 Mr. Freeman - (Indicating no)

19 Court Reporter - And, Mr. Bell, of course,
20 you'll have the original and one?

21 Mr. Bell - Yes. Oh, yeah.

22 Whereupon - A brief discussion was held off the
23 record which was not reported.

24 Court Reporter - And, Mr. Freeman, would you
25 like a copy?

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1 Mr. Freeman - Yes.

2 Court Reporter - Would you want both a hard copy
3 and an etran?

4 Mr. Freeman - Let's go with an e-tran right now.

5 I'll check with Bernie to see if he wants a hard
6 copy, but I think electronic is fine.

7 Court Reporter - Okay, great. And - - -

8 Mr. Dougall - I just need an etran.

9 Court Reporter - Etran only. Thank you.

10 Whereupon - The deposition was concluded at

11 11:05 a.m.

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ACORD SOUTH CAROLINA PERSONAL AUTO APPLICATION

DATE (MM/DD/YY)
1/5/01

PRODUCER MILES INSURANCE AGENCY, INC. 210 E. ARCH ST. LANCASTER, SC 29720		APPLICANT'S NAME AND MAILING ADDRESS (Include county & ZIP-4) Janet & Jerry Webster 2203 Balmy Court Lancaster SC 29720		NAIC CODE	FACILITY CODE
CODE 390646	SUBCODE	COPLAN Nat'l Grm	POLY	TELEPHONE NUMBER 803 285-7686	
AGENCY CUSTOMER ID		EFFECTIVE DATE 1/10/01	EXPIRATION DATE 1/10/02	DIRECT BILL AGENCY BILL ☒	MAIL POLICY TO AGENT MAIL POLICY TO ADDT ☒
RESIDENCE		CURRENT RESIDENCE ☒ OWNED ☐ RENTED ☐	GARAGE LOCATION IF DIFF FROM ABOVE (Inc county & ZIP)		
YRS AT ADDR PREVIOUS ADDRESS (If less than 3 years)		VEHI			

VEHICLE DESCRIPTION/USE										TOTAL NUMBER OF VEHICLES IN HOUSEHOLD: 5														
VEH YEAR	MAKE, MODEL AND BODY TYPE										VIN/REGISTERED STATE										HP/CC	DATE LEASED	DATE PURCH	NEW USE
1	1997 Chevrolet El Camina										1W80KADY439079													
2	1995 Chevrolet El Camina										3GCCW80H7F5906597													
3	1998 Ford Motorhome										1FDKE30L5G4B23399													
VEH	COST NEW	SYMBOL AGE GRP	TERM	WLT 1 WAY WNSCHL	# DAYS WEEK	# WKS MONTH	USAGE	FIN FORM 1	MULTI-CL	CAR POOL	EAR-ADD	ODOMETER READING	ANNUAL MILEAGE	COVERED DRIVER	DRIVER USE % (Each veh must equal 100%)	CLASS								
1		80	5	5			W/SN								2	88722								
2		80	P				PE/SY									88512								
3	18,000	80																						
VEH	PASSIVE SEAT BELT	AIRBAG DRV/ROTH	ANTI-LOCK BRAKES	ANTI-LOCK BRAKES	ANTI-LOCK BRAKES	ANTI-LOCK BRAKES	ANTI-LOCK BRAKES	CREDITS AND SURCHARGES	VEH	PASSIVE SEAT BELT	AIRBAG DRV/ROTH	ANTI-LOCK BRAKES	ANTI-LOCK BRAKES	ANTI-LOCK BRAKES	ANTI-LOCK BRAKES	CREDITS AND SURCHARGES								
								SDD								SDD								

COVERAGES		UNITS OF LIABILITY		VEHICLE #	VEHICLE #	VEHICLE #	VEHICLE #
SINGLE AUTO LIABILITY (CSL)	\$	EA ACCIDENT		\$	\$	\$	\$
BODILY INJURY LIABILITY	\$ 50,000	EA PERSON \$ 100,000	EA ACCIDENT	\$ 163	\$ 133	\$	\$
PROPERTY DAMAGE LIABILITY	\$ 50,000	EA ACCIDENT \$	DEDUCTIBLE	\$ 60	\$ 50	\$	\$
MEDICAL PAYMENTS	\$	EA PERSON		\$	\$	\$	\$
UNINSURED MOTORISTS	CSL \$ 50,000	EA ACCIDENT		\$ 19	\$ 19	\$	\$
	BI \$ 50,000	EA PERSON \$ 100,000	EA ACCIDENT			\$	\$
	\$ 50,000	EA ACCIDENT \$	DEDUCTIBLE	\$	\$	\$	\$
UNDERINSURED MOTORISTS	CSL \$	EA ACCIDENT		\$	\$	\$	\$
	BI \$ Reject	EA PERSON \$ Reject	EA ACCIDENT			\$	\$
COMPREHENSIVE	DED \$	\$	\$ 250	\$	\$	\$	\$
COLLISION	DED \$	\$	\$ 250	\$	\$	\$	\$
ACV UNLESS AMOUNT STATED	\$	\$	\$	\$	\$	\$	\$
TOWING & LABOR	\$	\$	\$	\$	\$	\$	\$
TRANS EX/RENTAL RE	\$	\$	\$	\$	\$	\$	\$
ADDITIONAL COVERAGES/ENDORSEMENTS (Include limit, deductible, premium)				POLICY FEE \$	TOTAL PER VEHICLE	ESTIMATED TOTAL	DEPOSIT
						\$2073.35	\$462.79
							BALANCE DUE

RESIDENT & DRIVER INFORMATION (List all residents & dependents (licensed or not) and regular operators)									
NAME (AS IT APPEARS ON LICENSE)	SEX	DOB	DATE OF BIRTH	DOC	DATE LIC	STATUS (GOOD DAY, 30 DAY, 90 DAY)	ACCPREV	DRIVERS LICENSE #	SOCIAL SECURITY
1 Janet P. Webster	F	M	1/19/61	Admin				008092081 SC	247290
2 Jerry W. Webster	M	M	5/16/61	Mechanic				002070190 SC	
3 Roger Webster	M	S	10/15/60	Mechanic				002070480 SC	

ACCIDENTS/CONVICTIONS (Note: Your driving record is verified with the state motor vehicle department and other insurers)									
HAD ANY DRIVER SHOWN ABOVE HAD AN ACCIDENT, REGARDLESS OF FAULT, OR BEEN CONVICTED OF A MOVING VIOLATION WITHIN THE LAST 3 YEARS? YES ☒ NO ☐									
DATE OF ACCIDENT/CONVICTION	DESCRIPTION OF ACCIDENT OR CONVICTION				PLACE OF ACCIDENT/CONVICTION	IN OR OUT OF STATE	YES ☐ NO ☐	AMOUNT OF PROPERTY DAM.	

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

EXHIBIT

Huseby.com
TRADITION & EXCELLENCE
Short

71.51.4

ADDITIONAL INTEREST

VEHICLE	ADD'L INT	NAME AND ADDRESS	LOAN NUMBER
	LOSS PAY	None	
VEHICLE	ADD'L INT	NAME AND ADDRESS	LOAN NUMBER
	LOSS PAY		

EMPLOYMENT INFORMATION (* If less than 2 years, provide name of previous employer and previous occupation under Remarks)

APPLICANT'S EMPLOYER Kangwa Ins	ADDRESS OF EMPLOYMENT Lancaster SC	WORK PHONE NUMBER	YEARS TO CURRENT EMPLOYER	YEARS TO PREV EMPLOYER
APPLICANT'S EMPLOYER Webster's Garage	ADDRESS OF EMPLOYMENT	WORK PHONE NUMBER	YEARS TO CURRENT EMPLOYER	YEARS TO PREV EMPLOYER

PRIOR COVERAGE

PRIOR CARRIER AND PRODUCER General Accident	# OF YEARS W/ COMPANY 9 yrs	PRIOR POLICY NUMBER/EXPIRATION DATE RPA 87-758-521 1/10/0

GENERAL INFORMATION

EXPLAIN ALL "YES" RESPONSES IN REMARKS	YES	NO	EXPLAIN ALL "YES" RESPONSES IN REMARKS	YES	NO
1. WITH THE EXCEPTION OF ANY ENCUMBRANCES, ARE ANY VEHICLES NOT SOLELY OWNED BY AND REGISTERED TO THE APPLICANT?		X	9. ANY HOUSEHOLD MEMBER IN MILITARY SERVICE? (Driver number)		X
2. ANY CAR MODIFIED/SPECIAL EQUIPMENT? (Include customized vans/pickups and indicate cost)		X	10. ANY DRIVERS LICENSE BEEN SUSPENDED/REVOKED?		X
3. ANY EXISTING DAMAGE TO VEHICLE? (Include damaged glass)		X	11. ANY DRIVER HAVE PHYSICAL/MENTAL IMPAIRMENT? (List driver numbers)		X
4. ANY OTHER LOSSES INCURRED (not shown in Accident/Conviction area)?		X	12. ANY FINANCIAL RESPONSIBILITY FILING? (Driver number and date of filing)		X
5. ANY CAR KEPT AT SCHOOL?		X	13. HAS INSURANCE BEEN TRANSFERRED WITHIN AGENCY?		X
6. ANY CAR PARKED ON STREET?		X	14. ANY COVERAGE DECLINED, CANCELLED, OR NON-RENEWED DURING THE LAST 3 YEARS?		X
7. ANY OTHER AUTO INSURANCE IN HOUSEHOLD? (Include any provided by employer)		X	15. IS THIS BROKERED BUSINESS TO THE AGENT?		X
8. ANY OTHER INSURANCE WITH THIS COMPANY? (List policy number)		X	16. HAS AGENT INSPECTED VEHICLE?		X

REMARKS

We are submitting the homeowners to Natl Grange to apply acct chgs. We will be adding a 4th veh in May.

ATTACHMENTS

X STATESUPPLEMENT

YOUNG DRIVER QUESTIONNAIRE
DRIVER TRAINING CERTIFICATE
ANTI-THEFT DEVICE CERTIFICATE
MEDICAL STATEMENT
MOTOR VEHICLE REPORT
PHOTOGRAPH
BILL OF SALE

FOR COMPANY USE ONLY

BINDER/SIGNATURE

INSURANCE BINDER	IF THE "BINDER" BOX TO THE LEFT IS COMPLETED, THE FOLLOWING CONDITIONS APPLY:
EFFECTIVE DATE	THIS COMPANY BINDS THE KINO(S) OF INSURANCE STIPULATED ON THIS APPLICATION. THIS INSURANCE IS SUBJECT TO THE TERMS, CONDITIONS AND LIMITATIONS OF THE POLICY(IES) IN CURRENT USE BY THE COMPANY.
EXPIRATION DATE	THIS BINDER MAY BE CANCELLED BY THE INSURED BY SURRENDER OF THIS BINDER OR BY WRITTEN NOTICE TO THE COMPANY STATING WHEN CANCELLATION WILL BE EFFECTIVE. THIS BINDER MAY BE CANCELLED BY THE COMPANY BY NOTICE TO THE INSURED IN ACCORDANCE WITH THE POLICY CONDITIONS. THIS BINDER IS CANCELED WHEN REPLACED BY A POLICY. IF THIS BINDER IS NOT REPLACED BY A POLICY, THE COMPANY IS ENTITLED TO CHARGE A PREMIUM FOR THE BINDER ACCORDING TO THE RULES AND RATES IN USE BY THE COMPANY. THE QUOTED PREMIUM IS SUBJECT TO VERIFICATION AND ADJUSTMENT, WHEN NECESSARY, BY THE COMPANY.
TIME	
12:01 AM	
NOON	
COVERAGE IS NOT BOUND	

NOTICE OF INSURANCE INFORMATION PRACTICES

PERSONAL INFORMATION ABOUT YOU, INCLUDING INFORMATION FROM A CREDIT REPORT, MAY BE COLLECTED FROM PERSONS OTHER THAN YOU. SUCH INFORMATION AS WELL AS OTHER PERSONAL AND PRIVILEGED INFORMATION COLLECTED BY US OR OUR AGENTS MAY IN CERTAIN CIRCUMSTANCES BE DISCLOSED TO THIRD PARTIES. YOU HAVE THE RIGHT TO REVIEW YOUR PERSONAL INFORMATION IN OUR FILES AND CAN REQUEST CORRECTION OF ANY INACCURACIES. A MORE DETAILED DESCRIPTION OF YOUR RIGHTS AND OUR PRACTICES REGARDING SUCH INFORMATION IS AVAILABLE UPON REQUEST. CONTACT YOUR AGENT OR BROKER FOR INSTRUCTION ON HOW TO SUBMIT A REQUEST TO US.

ANY PERSON WHO KNOWINGLY AND WITH INTENT TO DEFRAUD ANY INSURANCE COMPANY OR ANOTHER PERSON FILES AN APPLICATION FOR INSURANCE CONTAINING ANY MATERIALLY FALSE INFORMATION, OR CONCEALS FOR THE PURPOSE OF MISLEADING INFORMATION CONCERNING ANY FACT MATERIAL THERETO, COMMITS A FRAUDULENT INSURANCE ACT, WHICH IS A CRIME AND SUBJECTS THE PERSON TO CRIMINAL AND CIVIL PENALTIES.

APPLICANT'S STATEMENT: I HAVE READ THE ABOVE APPLICATION AND ANY ATTACHMENTS. I DECLARE THAT THE INFORMATION PROVIDED IN THEM IS TRUE, COMPLETE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF. THIS INFORMATION IS BEING OFFERED TO THE COMPANY AS AN INDUCEMENT TO ISSUE THE POLICY FOR WHICH I AM APPLYING. IN ADDITION IF THE AUTO PLAN OR COMPANY DESIGNATED IN THIS APPLICATION IS NON-STANDARD, I CERTIFY THAT I UNDERSTAND THE RATES FOR THIS COVERAGE ARE HIGHER THAN NORMAL, AND THAT THEY ARE ACCEPTABLE TO ME AS I HAVE BEEN UNABLE TO OBTAIN COVERAGE DESIRED THROUGH THE NORMAL INSURANCE MARKET.

PRODUCER'S STATEMENT: I CERTIFY TO THE BEST OF MY KNOWLEDGE AND BELIEF THAT THE SIGNATURE OF THE APPLICANT IS THE PERSONAL SIGNATURE OF THE APPLICANT.

HOW LONG HAVE YOU KNOWN THE APPLICANT?

I UNDERSTAND THAT THE COVERAGE SELECTION AND LIMIT CHOICES INDICATED HERE OR IN ANY STATE SUPPLEMENT WILL APPLY TO ALL FUTURE POLICY RENEWALS, CONTINUATIONS AND CHANGES UNLESS I NOTIFY YOU OTHERWISE IN WRITING.

APPLICANT'S SIGNATURE	DATE (MM/DD/YYYY)	PRODUCER'S SIGNATURE
[Signature]	1/15/01	[Signature]

ACORD SOUTH CAROLINA AUTO SUPPLEMENT

MILES INSURANCE AGENCY, INC.

210 E. ARCH ST.
LANCASTER, SC 29720

APPLICANT(S) AND INSURED

Janet & Terry Webster

COMPANY:

POLICY:

Natl Grange Tier 1

EFFECTIVE DATE

1/1/2015

1. OFFER OF OPTIONAL ADDITIONAL UNINSURED MOTORIST COVERAGE AND OPTIONAL UNDERINSURED MOTORIST COVERAGE

The State of South Carolina's automobile insurance laws now allow any insurance company to refuse to underwrite your automobile liability insurance coverage. That refusal may be based upon a number of reasons. Automobile liability insurance coverage pays other motor vehicle drivers and their passengers whom you damage, for the damages which you cause and for which you are legally responsible. There are two types of automobile liability insurance coverage: bodily injury and property damage. Bodily injury coverage is coverage which pays people upon whom your motor vehicle inflicts bodily injury. Property damage coverage is, a coverage which pays people for damages your automobile causes to their motor vehicle or property.

Once any insurance company makes the business decision to underwrite your automobile liability insurance coverage, then it must provide to you at least \$15,000.00 of bodily injury coverage for each person whom you may injure in any single accident and \$30,000 of bodily injury coverage for two or more people whom you may injure in any single accident. The insurance company must also provide you with at least \$10,000 in property damage coverage for each accident which you may cause. You may have seen these limits described as \$15,000/\$30,000/\$10,000 or 15 - 30 - 10. These limits are commonly known as minimum limits. If you purchase automobile liability insurance, then in order to drive your automobile upon the roads of this State, you must have at least minimum limits. You may also comply with these requirements by purchasing a combined single limit of \$40,000.

There is no requirement under the laws of the State that an insurance company which underwrites your minimum limits of \$15,000/\$30,000/\$10,000 or a combined single limit of \$40,000 must also agree to underwrite higher than those minimum limits of automobile insurance coverage for you. If your insurance company does agree to offer to you more than the minimum limits, then you will be required to pay an increased automobile insurance premium for those increased limits of protection.

In addition, under the State's insurance laws once an insurance company agrees to underwrite your automobile liability insurance coverage for you, you must be offered, at your option, two additional automobile insurance coverages which will protect you in the event you are damaged in an automobile accident by an at fault automobile driver who either has no automobile insurance or whose automobile insurance liability limits are less than the damages which you suffer in that accident. These coverages are legally termed "additional uninsured motorist coverage" and "underinsured motorist coverage". You may also see them referred to within your automobile insurance policy as "UM" and "UIM". If you decide to purchase either of these two optional coverages, then you will be required to pay an additional 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 at least \$15,000/\$30,000/\$10,000 or a combined single limit of \$40,000. 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, 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 at-fault 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 underinsured motorist coverage in limits up to the limits of liability coverage, which you will carry under your automobile insurance policy. Some of the more commonly sold limits of underinsured motorist coverage, together with the additional premiums 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.

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

Please read this Form carefully. Your insurance agent or your insurance company must answer any questions which you may have. If you have any further questions, then you should contact the State of South Carolina

Department of Insurance. Its address and telephone number are:
Office of Consumer Services

State of South Carolina Department of Insurance
1612 Marion Street
Post Office Box 100105
Columbia, South Carolina 29202-3105
(803) 737-6180
(800) 768-3467
E-mail Address: CnsmMail@dol.state.sc.us

2. Offer of Additional Uninsured Motorist Coverage

Split Liability Limits

Bodily Injury/Property Damage

Amount of Increased Premium

\$ 15,000 /S 30,000 \$10,000

\$ 25,000 /S 50,000 \$10,000

\$ 50,000 /S 100,000 \$25,000

\$ 100,000 /S 300,000 \$50,000

\$ 250,000 /S 500,000 \$50,000

\$ _____ (other)

Minimum limits of uninsured motorist coverage are automatically provided by your insurance policy.

(These increased premium charges must be filled-in by your insurance agent prior to your decision and signature.)

Your Policy's Liability Coverage Limits:

\$ 50 /S 100 /S 50

Combined Single Limit

Amount of Increased Premium

\$ 40,000
\$ 50,000
\$ 100,000
\$ 300,000
\$ 500,000
\$ (other)

Minimum Combined Single Limit
(These increased premium charges must be filled-in by your insurance agent prior to your decision and signature.)

Do you wish to purchase additional uninsured motorist coverage? ☒ Yes ☐ No

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

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

I select 50/100/50

3. Offer of Underinsured Motorist Coverage

Solo Liability Limits

Bodily Injury/Property Damage

Amount of Increased Premium

\$ 15,000 / \$ 30,000 \$10,000
\$ 25,000 / \$ 50,000 \$10,000
\$ 50,000 / \$ 100,000 \$25,000
\$ 100,000 / \$ 300,000 \$50,000
\$ 250,000 / \$ 500,000 \$50,000
\$ (other)

Minimum limits of uninsured motorist coverage are automatically provided by your insurance policy.

(These increased premium charges must be filled-in by your insurance agent prior to your decision and signature.)

Your Policy's Liability Coverage Limits:

\$ _____ / \$ _____ / \$ _____

Combined Single Limit

Amount of Increased Premium

\$ 40,000
\$ 50,000
\$ 100,000
\$ 300,000
\$ 500,000
\$ (other)

Minimum Combined Single Limit
(These increased premium charges must be filled-in by your insurance agent prior to your decision and signature.)

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

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

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

I select reject ✓

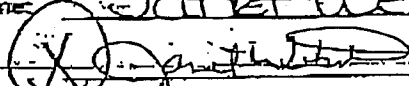
4. Applicant's Acknowledgement

I hereby acknowledge that I have read, or have had read to me, the above explanations and offers of additional insured motorist coverage and 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 explanations of these coverages are intended only to be brief descriptions of uninsured motorist coverage and 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.

Type or Print Your Name:

Janet Webster

Your Signature:



Your Address:

2203 Balmey Court
Lancaster SC

ZIP Code: 29720

AGENCY CUSTOMER ID:

4. Applicant's Acknowledgement

By my signature, I acknowledge that I have read, or I have had read to me, the above explanations and offers of additional uninsured motorist coverage and optional underinsured motorist coverage. I understand that the above explanations of these coverages are intended only to be brief descriptions of additional uninsured motorist coverage and optional underinsured motorist coverage, and that payment of benefits under any of these coverages is subject both to the terms and conditions of my automobile insurance policy and to the laws of the State of South Carolina.

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

Type or Print Your Name:

Janet or Jerry Webster

Your Signature:

(X) Janet Webster

Your Address:

2203 Balmy CourtLancaster SC ZIP Code: 29720

Today's Date:

08-27-2012

Effective Date:

08-27-2012

Effective 08/27/2012 adding: ✓
Underinsured Motorists

Coverage of \$50,000/100,000/50,000.

Also adding Medical Payments

Limit: \$10,000 per person

STATE OF SOUTH CAROLINA) IN THE CIRCUIT COURT
COUNTY OF LANCASTER)
JERRY WAYNE WEBSTER, et ux.,) 2015-CP-29-00810
PLAINTIFFS,)
VS.) DEPOSITION
THE MILES AGENCY, et al.,) OF
DEFENDANTS.) JANET POLSTON WEBSTER

DEPOSITION OF JANET POLSTON WEBSTER, TAKEN
BEFORE JAMES SCOTT, A NOTARY PUBLIC IN AND FOR THE STATE
OF SOUTH CAROLINA, COMMENCING AT THE HOUR OF 10:21 A.M.,
TUESDAY, JANUARY 20th, 2016, AT THE LAW OFFICES OF FRANCIS
L. BELL, Jr., 312 NORTH MAIN STREET, LANCASTER, SOUTH
CAROLINA.

COPY #010316

REPORTED BY JAMES SCOTT



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1 THE READING AND SIGNING OF THIS DEPOSITION IS
2 WAIVED BY THE DEPONENT AND COUNSEL FOR THE
3 RESPECTIVE PARTIES.

4 WHEREUPON,

5 JANET POLSTON WEBSTER, BEING DULY SWORN AND
6 CAUTIONED TO SPEAK THE TRUTH, THE WHOLE
7 TRUTH, AND NOTHING BUT THE TRUTH, TESTIFIED
8 AND DEPOSED AS FOLLOWS:

9 EXAMINATION

10 BY MS. KLINE:

11 Q Ms. Webster, my name is Adelaide Kline. I'm
12 with the law firm of Dougall and Collins in
13 Columbia. We represent National Grange Insurance
14 in this lawsuit that you have brought, and the
15 subject of the deposition today is to discuss
16 your insurance with the Miles Agency. The
17 purpose of the deposition is to get information.

18 There are some Rules of Civil Procedure that
19 I need to tell you, that I'm required to tell
20 you. You must answer out loud. Give verbal
21 "yes" or "no" answers; no shaking of your head.
22 Mr. Scott is taking down every word we all say.
23 This kind of testimony is the same as if you
24 would be in court, so you would always answer
25 affirmatively or negatively, "yes" or "no," no

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1 shakes of the head. Okay?

2 A Yes, ma'am.

3 Q If you would, let me complete my questions
4 before you start answering, and I'll give you the
5 same courtesy. If you don't understand a
6 question that I ask you, please ask me to
7 rephrase it or restate it. You may not speak
8 with your attorney after the deposition has
9 started, and I shall assume, if you answer my
10 question, that you understood my question. Okay?

11 A Okay.

12 Q Your attorney may, from time to time, object
13 to a question that I've asked you. He's doing
14 his job. It's okay, but you still have to answer
15 the question.

16 A Okay.

17 Q At any time you need to take a break, please
18 let me know. This is not an endurance contest.
19 We're not trying to prove how long we can ask or
20 answer questions. No questions are meant to
21 embarrass you, but I'm going to ask you some
22 questions that you're wondering why I'm asking
23 you. They're not to embarrass you; it's just
24 because, according to the Rules of Civil
25 Procedure, I have the right to ask you these

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1 things.

2 A Okay.

3 Q Are you feeling well and thinking clearly?

4 A Yes, ma'am.

5 Q Are you taking any medications that might
6 affect your ability to answer my questions?

7 A No.

8 Q Are you under the influence of drugs or
9 alcohol?

10 A No, ma'am.

11 Q Give me your full name, please.

12 A Janet Polston Webster.

13 Q Spell your middle name.

14 A P-O-L-S-T-O-N.

15 Q Ms. Webster, I'm going to ask you for your
16 Social Security number, and I'm going to ask the
17 court reporter to go off the record, so that it
18 is not in the transcript.

19 [OFF THE RECORD, VERY BRIEFLY, AT 10:25 A.M.]

20 [THE EXAMINATION BY MS. KLINE CONTINUES.]

21 Q And your present address?

22 A 2203 Balmy Court, Lancaster, South Carolina,
23 29720.

24 Q How old are you, Ms. Webster?

25 A Fifty-four.

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- 1 Q What is your date of birth?
- 2 A 12/9/61.
- 3 Q Where were you born?
- 4 A Lancaster, South Carolina.
- 5 Q Are you married?
- 6 A Yes, ma'am.
- 7 Q Is this your only marriage?
- 8 A Yes, ma'am.
- 9 Q And your spouse's name?
- 10 A Jerry Wayne Webster.
- 11 Q How old is Mr. Webster?
- 12 A Sixty-four.
- 13 Q What is his birthdate?
- 14 A 5/26/61.
- 15 Q And where was he born?
- 16 A Lancaster, South Carolina.
- 17 Q I can ask him all these questions, too. It's
- 18 not a test. When were you married?
- 19 A March 18th, 1984.
- 20 Q Do you have children born of this marriage?
- 21 A One; a daughter.
- 22 Q And her name?
- 23 A Meagan.
- 24 Q M-E-G-A-N?
- 25 A M-E-A-G-A-N, Webster Smith.

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1 Q How old is Meagan?
2 A Twenty-six.
3 Q Does she live in Lancaster County?
4 A Yes, ma'am.
5 Q Do you have other relatives living in
6 Lancaster County, who are related to you by blood
7 or marriage? And I would like to know their
8 names. If there are a lot of them, you can give
9 me family names. I'm most interested in your
10 immediate family -- your parents, your siblings,
11 aunts and uncles -- and the purpose of this is to
12 be sure that we do not place your relatives on a
13 jury, if this case should go to trial.

14 Mr. BELL: It's filed non-jury.

15 Ms. KLINE: Sir?

16 Mr. BELL: It's filed non-jury.

17 Ms. KLINE: It's filed non-jury? Okay.

18 Well, I still want to know who her relatives
19 are. Thank you.

20 [THE EXAMINATION BY Ms. KLINE CONTINUES.]

21 A I have a brother, Kenny Polston.

22 Q Where does Kenny live? Just the county.

23 A You don't have to know his address?

24 Q Oh, no. No.

25 A Lancaster.

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- 1 Q Lives in Lancaster; okay.
- 2 A He has two daughters; Jennifer Polston
- 3 Bridges.
- 4 Q Are they eighteen or older?
- 5 A Yes.
- 6 Q Bridges?
- 7 A Bridges, and she lives in Lancaster. His
- 8 other daughter, Jessica Polston Allen, lives in
- 9 Columbia. I have another nephew, Kevin Michael
- 10 Griffin, or Michael Kevin Griffin. He goes by
- 11 Kevin. I'm sorry --
- 12 Q That's okay.
- 13 A -- and he also lives in Lancaster. Do you
- 14 want their -- well, now, their children are
- 15 smaller, under eighteen.
- 16 Q Nobody under eighteen. Thank you.
- 17 A Let's see. I have an aunt, Patty Polston.
- 18 She lives in Lancaster. I have lots of cousins.
- 19 Charles Lee Polston.
- 20 Q All of them have Polston as their last name?
- 21 A Well, on that side, they do.
- 22 Q You don't need to list them all. Just the
- 23 family name is fine.
- 24 A Michael Polston and then Douglas, and he
- 25 spells his last name as P-O-S-T-O-N.

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- 1 Q But he's still --
- 2 A He's still --
- 3 Q -- a Polston?
- 4 A Yeah. There's a mix up there. Who else?
- 5 Gosh, there are so many of us. Thomas Polston.
- 6 Now, I don't know his sisters' -- all their last
- 7 names.
- 8 Q That's okay.
- 9 A Do you want their first names, or do you want
- 10 them?
- 11 Q No. We don't need to go there. Does Mr.
- 12 Webster work?
- 13 A Not at the present time.
- 14 Q When was the last time he worked?
- 15 A Can I restate that?
- 16 Q Sure.
- 17 A He does still work some. He is retired now,
- 18 but he still works at his -- we call it the
- 19 "racecar shop." He retired last year.
- 20 Q Do you belong to a church?
- 21 A Yes, ma'am. Zion United Methodist.
- 22 Q Any social organizations?
- 23 A No, ma'am.
- 24 Q Let's talk about your education a little.
- 25 Tell me about high school. Did you go to high

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1 school here?

2 A Yes, ma'am. Buford High School.

3 Q Spell that for me.

4 A B-U-F-O-R-D.

5 Q That's Lancaster High School?

6 A Well, it's in the country.

7 Q "It's in the country"?

8 A Yes, ma'am; but it is in -- I mean, it's

9 Lancaster. I graduated there.

10 Q What year?

11 A 1980.

12 Q Did you do any further education after high
13 school?

14 A No. Just some different classes and things,
15 but nothing -- no degree or anything.

16 Q Do you have any other training or education
17 after high school? You said you took some
18 courses.

19 A Just some different courses that I have taken
20 over the years with the company I work with.

21 Q And who is that?

22 A Well, I worked up until last February with
23 Kanawha Insurance Company.

24 Q Spell Kanawha.

25 A Well, it was Kanawha and they changed to

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1 Humana, so it's actually Humana.

2 Q Okay. Spell Kanawha for me.

3 A K-A-N-A-W-H-A.

4 Q And that became?

5 A Humana.

6 Q Do you still work for Humana?

7 A No, ma'am. I was laid off in February of

8 2015.

9 Q Have you found other employment?

10 A Yes, ma'am.

11 Q And where would that be?

12 A Key Benefit Administrators.

13 Q What do you do for Key Benefit

14 Administrators?

15 A I'm an auditor in the fulfillment department.

16 Q You're going to have to tell me what that

17 means.

18 A Basically, I audit the policies, make sure

19 that they have the correct benefits, and that the

20 benefits are correct in the system as to what has

21 been elected with the policy.

22 Q This would be what kind of insurance?

23 A Life, accident, health. It's like group

24 insurance. The majority of it is group. They

25 administer insurance for other companies.

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1 Q Would it be fair to say that you are familiar
2 with insurance policies?

3 A Those types. Yes, ma'am.

4 Q How long have you done those kinds of
5 auditing of policies?

6 A With them? I've just been there since August
7 of 2015.

8 Q Did you do any of that before, with Kanawha?

9 A No, ma'am. I was a programmer there.

10 Q Computer programmer?

11 A Uh-huh.

12 Q Did any of your work at Kanawha involve
13 working with insurance policies?

14 A Yes, ma'am.

15 Q Tell me about that.

16 A Well, I programmed the system to print the
17 policies. I mean, it was like accident and
18 health insurance.

19 Q Anything else about your work that you would
20 like to tell me?

21 A No, ma'am.

22 Q Do you have any military service?

23 A No, ma'am.

24 Q Do you have a criminal history?

25 A No, ma'am.

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- 1 Q Have you ever been involved in an automobile
2 accident?
- 3 A No, ma'am.
- 4 Q Have you ever been involved in any other
5 lawsuit of any kind?
- 6 A No, ma'am.
- 7 Q Your driver's license is a South Carolina
8 driver's license?
- 9 A Yes, ma'am.
- 10 Q Do you know your number?
- 11 A 0080908 -- is it 08 or 09? -- 081.
- 12 Q You did well. Has it ever been suspended or
13 revoked?
- 14 A No, ma'am.
- 15 Q You've never had a traffic ticket?
- 16 A Yes, ma'am.
- 17 Q For what?
- 18 A Speeding.
- 19 Q How many tickets?
- 20 A One.
- 21 Q Do you remember when?
- 22 A It was maybe eight or nine years ago.
- 23 Q Okay. That's basically the basic information
24 that we need. I would like to talk specifically
25 about your car insurance now. The accident that

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- 1 was in 2012, do you remember the date?
- 2 A June 30th.
- 3 Q And who was involved in the accident?
- 4 A My husband, Jerry Wayne; his brother, Roger
- 5 Webster; and the other person, Ethan -- I don't
- 6 know his last name.
- 7 Q The driver of the other vehicle?
- 8 A Right.
- 9 Q Where were you when the accident happened?
- 10 A At church.
- 11 Q Do you remember what time of day?
- 12 A It was maybe nine o'clock. It was before
- 13 lunch.
- 14 Q A.m.?
- 15 A Uh-huh.
- 16 Q We're not going to go into any details about
- 17 the accident. That's another matter. How did
- 18 you find out about the accident?
- 19 A My sister called me.
- 20 Q At work?
- 21 A At church.
- 22 Q Oh, you were at church.
- 23 A I was at church.
- 24 Q And what happened after that?
- 25 A I went home and got her, and we went to

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1 Columbia.

2 Q Mr. Webster had been airlifted?

3 A Right.

4 Q Which car was Mr. Webster driving?

5 A The '85 Chevrolet El Camino.

6 Q Describe an El Camino for me.

7 A It's a half-car, half-truck, to me, but that
8 one is -- it's a rare model. It's a choo-choo
9 model.

10 Q "Choo-choo"?

11 A Choo-choo. They only made so many of them in
12 the United States.

13 Q Like a train, "choo-choo," and how old was
14 that car -- that truck?

15 A The year, or how long had we had it?

16 Q Well, both, if you know.

17 A Well, it was an '85, but I don't remember how
18 long we'd had it. I can't recall.

19 Q Did you ever drive it?

20 A Yes, ma'am.

21 Q Anybody else?

22 A His brother, Roger.

23 Q Was it mostly his transportation for work?

24 A Yes, ma'am.

25 Q On a daily basis, he drove the El Camino?

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#010316

- 1 A Yes, ma'am.
- 2 Q After the accident on June --
- 3 A 30th.
- 4 Q -- 30th, 2012, what did you do about
- 5 reporting the accident?
- 6 A Well, I called the insurance company and
- 7 reported it to them.
- 8 Q Which insurance company did you call?
- 9 A Miles. Miles Insurance.
- 10 Q Do you remember who you spoke with?
- 11 A I don't recall. No, ma'am.
- 12 Q What did you tell them?
- 13 A That my husband had been involved in an
- 14 accident, and I needed to see what I needed to
- 15 do.
- 16 Q And what were you told?
- 17 A At that time, I was told that we didn't have
- 18 the underinsured -- well, no. What was I told?
- 19 Well, they told me I would have to file a claim,
- 20 because that was when I first knew, and that was
- 21 all.
- 22 Q So they told you that had to file a claim?
- 23 A Uh-huh.
- 24 Q And someone there, you don't remember who,
- 25 told you that you did not have underinsured

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1 motorist's coverage. Is that your testimony?

2 Help me, here.

3 A They didn't tell me. They didn't tell me
4 that I did not have underinsured at that time.
5 No.

6 Q So that's not --

7 A They just told me that I had to file a claim.

8 Q And you didn't discuss your coverages?

9 A No.

10 Q And you don't remember who you spoke with?

11 A No, ma'am.

12 Q Did you call the next day, or the next day?

13 A It was probably the next day, because -- no.
14 I couldn't have called that day, because it would
15 have had to have been Monday, because the
16 accident was on Saturday, so it would have to
17 have been Monday when I called them.

18 Q So that would have been July?

19 A Right. July the 2nd.

20 Q "30 days hath September, April, June, and
21 November." That's the only way I can remember.
22 June had 30 days that year; every year.

23 A Right.

24 Q So how did you file your claim? What did you
25 do?

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1 A Well, I didn't do anything after that, until
2 he was out of the hospital, and then, at that
3 point, we came to see Attorney Bell.

4 Q When did you file the claim?

5 A I didn't file a claim.

6 Q You did not file a claim then?

7 A No. I told her -- like I said, that was all
8 I did at that point. I told them about the
9 accident.

10 Q And this is July the 2nd, 2012?

11 A Right.

12 Q On Monday, you called them, and they said,
13 "You've got to file a claim," but you didn't file
14 a claim that day?

15 A No.

16 Q Your husband was in the hospital, in
17 Columbia?

18 A Right.

19 Q And how long was he in the hospital?

20 A He was down there for two weeks, and then he
21 was transported to CNC Rehab, and he was there
22 for another week.

23 Q And where is that?

24 A In Charlotte.

25 Q And then, after the rehab?

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#010316

1 A He came home.

2 Q So we're talking three weeks after the

3 accident, he's home. Is that correct?

4 A Yeah.

5 Q You said you filed the claim after he came

6 home. Is that what you said?

7 A No.

8 Q No?

9 A We came to Attorney Bell's.

10 Q Okay. That's --

11 A He wanted to come and see the attorney, to

12 see what we needed to do.

13 Q You don't need to tell me anything that you

14 discussed with Mr. Bell. That is privileged,

15 confidential information, but you did tell him

16 that there was an accident. Did you have an

17 accident report?

18 A Yes. I think. We should have had one at

19 that point. I can't recall for sure, but I'm

20 pretty sure we did.

21 Q And you brought that to Mr. Bell?

22 A Yes, ma'am.

23 Q Why did you choose Mr. Bell?

24 A He's been a family attorney for years. My

25 father always used him.

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1 Q And Mr. Bell told you to file a claim and
2 proceed, or did he file the claim?

3 A No.

4 Q Who filed the claim?

5 A After discussion with him, that's when we
6 found out that we didn't have the underinsured
7 insurance.

8 Q How did you find that out?

9 A He was looking at our policy. We had a
10 policy when we came to him.

11 Q So Mr. Bell told you that you did not have
12 underinsured motorist's coverage on your policy?

13 A Right.

14 Q And this is approximately three weeks after
15 the accident?

16 A Sometime. Like I say, it could have been
17 longer than that. Like I say, I was dealing with
18 his sickness and things.

19 Q Right. I'm so sorry that this happened, and
20 I'm sorry that we have to talk about it, because
21 I know it's not pleasant, but we have to.

22 A Yes, ma'am.

23 Q What was your knowledge of underinsured
24 motorist's coverage at that point? What did you
25 understand UIM to mean?

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1 A It would be somebody who didn't have enough
2 insurance. They have a limited amount of
3 insurance.

4 Q Did you say who was at fault in the accident?

5 A I haven't yet, but it was the other driver.

6 Q What did you do after you spoke with Mr. Bell
7 and learned that you did not have underinsured
8 motorist's coverage?

9 A I called my insurance company, Miles, and I
10 wanted them to check on the policy, because, at
11 that point, I had a newer car that we had
12 purchased, and it did not have the underinsured,
13 and, when I purchased that car, we had called and
14 told them we wanted complete coverage --
15 collision, comp, everything -- and so that was
16 not even on that car at that point. So I called
17 to check and make sure, and added the
18 underinsured to all our vehicles at that point.

19 Q When would that have been?

20 A I can't recall the date.

21 Q When did you buy a new car?

22 A Well, that was before the accident. That was
23 2011, was when we bought the newer vehicle.

24 Q How did you learn that you did not have UIM
25 insurance on that new car?

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1 A After discussions with Attorney Bell, and we
2 were looking at the policy.

3 Q He informed you that you also did not have
4 UIM on your new car that you had bought in 2011.
5 Correct?

6 A Right.

7 Q Who did you speak with at the insurance
8 company? Do you remember?

9 A I don't recall. No, ma'am.

10 Q At that point, did you file a claim? When
11 did you file your claim?

12 A Well, at that point, they had told us we
13 didn't have underinsured, and so we didn't file a
14 claim.

15 Q You never filed a claim. Is that correct?

16 A I mean, I didn't fill out any paperwork.

17 Q So it's your testimony that you never really
18 filed a claim with the Miles Agency about the
19 accident?

20 A I can't remember, but I know I called them
21 and we discussed it. When I discussed it, she
22 said because the accident was the other driver's
23 fault, that it would be his insurance's
24 responsibility. That's what it was.

25 Q So what did that mean to you?

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1 A Then, like I say, that's the point when we
2 were talking with Attorney Bell, because she had
3 told us that it was the other driver's fault, so
4 his insurance should cover the accident.

5 Q Were you given any information about keeping
6 records or keeping bills, or how -- how did you
7 handle the medical bills?

8 A Well, I made copies and would bring them up
9 here, or rather I would bring them up here to
10 Attorney Bell, and they would make copies of the
11 bills as we got them.

12 Q So you didn't really pay any bills. You just
13 brought everything to Mr. Bell?

14 A Right, and I kept a folder with the bills.

15 Q Do you remember anybody at Miles Agency that
16 you ever talked with?

17 A No -- well, they had different people. I
18 know, early on, when I dealt with them, I had
19 spoke with their son, the youngest son, Michael,
20 but I don't think he was there when the accident
21 happened. So, basically, it was whoever -- the
22 secretary or the bookkeeper, whoever was working
23 in the office would be -- you know, would come to
24 assist me, so...

25 Q I'm holding a document that I'm going to show

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1 to you, Mrs. Webster. Your attorney has a copy.
2 It's pre-marked as Defendant's Exhibit #1.

3 MARKED AS DEFENDANT'S EXHIBIT #1,
4 Deposition of Janet Polston Webster,
5 taken 1/20/2016. Copy of a document
6 entitled "South Carolina Auto
7 Supplement," effective date 1/10/2001,
8 with attendant documents (10 pages).

9 Q I wanted to ask you to look through these
10 pages -- I think there are ten -- and tell me if
11 you're familiar with any of this information.

12 A I'm familiar with some of it. Yes, ma'am.

13 Q Before we go to this document, let me ask you
14 a couple of more questions about your husband's
15 accident and what happened afterwards. Who made
16 insurance decisions at your home, for your
17 household?

18 A We both -- we discussed them together.

19 Q Did Mr. Webster go with you to the Miles
20 Agency, when you purchased your insurance for
21 your cars?

22 A No, ma'am.

23 Q He did not go?

24 A No.

25 Q It was just you?

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1 A Just me.

2 Q Who pays the bills at your house?

3 A I do. Do you mean write them out? We both

4 -- I write the bills out.

5 Q So you would have have paid the car insurance

6 bills?

7 A Uh-huh.

8 Q Do you know how many cars you had on your

9 policy?

10 A At the time of the accident?

11 Q Yes, ma'am.

12 A Seven.

13 Q But you had a new one that had not been

14 covered, or --

15 A That was one we added in 2011. It was

16 already on there.

17 Q It was on the policy, but it didn't have UIM?

18 A Right.

19 Q Exhibit #1 that I just asked you to look at,

20 these ten pages are from Miles Insurance Agency

21 in Lancaster. Do you see that on the top of the

22 first page?

23 A Yes, ma'am.

24 Q "To Janet and Jerry Webster. National Grange

25 Tier. Effective date, January 10th, 2001." Did

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1 I read that correctly?

2 A Yes, ma'am.

3 Q And it says, "Number One. Offer of optional
4 additional uninsured motorist coverage and
5 optional underinsured motorist coverage." Do you
6 know the difference?

7 A Yes, ma'am.

8 Q Tell me the difference.

9 A Uninsured is someone who has no insurance.
10 Underinsured, they have a limited amount of
11 insurance.

12 Q The second page is more information about the
13 South Carolina Department of Insurance, and then
14 we get to number two at the bottom of page 2.
15 Are you with me?

16 A Uh-huh.

17 Q "Offer of additional uninsured motorist
18 coverage," and your policy limits on that are --
19 would you read those for me, those numbers at the
20 bottom?

21 A "50," "100," and "50."

22 Q What was your understanding of "50," "100,"
23 and "50"?

24 A That was the limits. That's what would be
25 covered.

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- 1 Q By your policy?
- 2 A Right.
- 3 Q Do you remember reading this document that
- 4 day, at the insurance agency?
- 5 A I don't recall reading it. No. I don't
- 6 recall reading it.
- 7 Q Did you look at it?
- 8 A Yes, ma'am.
- 9 Q And you knew what you were doing?
- 10 A Yes, ma'am.
- 11 Q You were buying insurance for your cars?
- 12 A Right.
- 13 Q Go to page 3. Number three on that page is
- 14 "offer of underinsured motorist coverage." Is
- 15 that correct?
- 16 A Yes, ma'am.
- 17 Q Towards the bottom, there are one, two,
- 18 three, four questions. Would you read those for
- 19 me, starting with, "Do you wish to purchase..."?
- 20 A "Do you wish to purchase underinsured
- 21 motorist coverage?"
- 22 Q And what is checked?
- 23 A "No."
- 24 Q Is that your handwriting?
- 25 A That check's not.

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1 Q Whose is it?

2 A I'm assuming whoever filled the form out.

3 Q Do you know who that would be?

4 A No, ma'am.

5 Q Do you know anybody named Lois Taylor?

6 A I remember her. Yes, ma'am. She worked

7 there.

8 Q Did she assist you with this?

9 A I don't recall if that's who it would have

10 been, or not.

11 Q But you know her?

12 A Uh-huh.

13 Q And she helped you from time to time?

14 A Right.

15 Q Read the next line for me.

16 A "If your answer is 'no,' then you must" --

17 "then you must then sign here."

18 Q And what's next?

19 A "If your answer is 'yes,' then specify the

20 limits you desire. These limits cannot exceed

21 your automobile insurance liability limits."

22 Q Let's go back to, "If your answer is 'no,'

23 then you must then sign here." What do you see

24 next?

25 A My signature.

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1 Q Is there an X before it?

2 A Yes, ma'am.

3 Q Who put the X there?

4 A I don't know. I don't recall.

5 Q But that is your signature?

6 A That's my signature. Yes, ma'am.

7 Q Then, "If your answer is 'yes,' then specify

8 the limits which you decide. These limits cannot

9 exceed your automobile insurance liability

10 limits."

11 "I select..., " and what is on that line?

12 A "Reject."

13 Q Who wrote "reject"?

14 A I don't recall.

15 Q Is that your handwriting?

16 A No, ma'am.

17 Q Over on the next page, "Applicant

18 acknowledgment number four." It's kind of hard

19 to read these copies. "I hereby acknowledge that

20 I have read or have had read to me the above

21 explanations and offers of additional

22 underinsured motorist coverage and underinsured

23 motorist coverage. I have indicated whether or

24 not I wish to purchase each coverage in the

25 spaces provided. I further understand that the

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1 above explanations of these coverages are
2 intended only to be brief descriptions of
3 uninsured motorist coverage and underinsured
4 motorist coverage, and that payments and benefits
5 under any of these coverages is subject both to
6 the terms and conditions of my automobile
7 insurance policy and to the State of South
8 Carolina's laws. Type or print your name."

9 What is next?

10 A "Janet Webster."

11 Q Who wrote "Janet Webster"?

12 A I don't recall. It wasn't -- that's not my
13 writing.

14 Q The next line says "signature." Tell me what
15 you see next.

16 A An X-mark and my signature.

17 Q Is that your handwriting?

18 A The signature is mine.

19 Q The X?

20 A I didn't do that.

21 Q Who wrote your address?

22 A Whoever worked in the office. I don't
23 recall. That's not my writing.

24 Q What do you understand about the signature
25 that you "reject" underinsured motorist coverage

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- 1 on these documents, Ms. Webster?
- 2 A That you -- what's up there.
- 3 Q And "what's up there" says?
- 4 A That you don't want the underinsured.
- 5 Q So, on that date -- and the date on that
- 6 document is -- January 5th, 2001 is the date on
- 7 the other documents of your policy application.
- 8 Do you agree with me that it was January 5th,
- 9 2001?
- 10 A Yes, ma'am.
- 11 Q And January 5th of 2001 is the date you said,
- 12 "I don't want underinsured motorist coverage,"
- 13 and you signed the application. Correct?
- 14 A I didn't say that. They never read it to me
- 15 and they never explained it to me. They just
- 16 gave me the paper to sign.
- 17 Q What did she tell you you were signing?
- 18 A She -- she may have told me the underinsured,
- 19 that I was signing for the underinsured, but she
- 20 didn't explain that.
- 21 Q Did she read any of this application to you?
- 22 A No, ma'am.
- 23 Q She just handed you this piece of paper and
- 24 said, "Sign this," and you did?
- 25 A Yes, ma'am. I mean, I looked at what it was

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1 saying, but I didn't read all of that, because we
2 already had insurance with them.

3 Q This was a renewal?

4 A Well, they were going from one company to
5 another. We had it with General Accident through
6 them, and then it went to National Grange.

7 Q So this was a renewal of your automobile
8 insurance?

9 A Right. Correct.

10 Q Who was the previous company?

11 A General Accident.

12 Q And then it became?

13 A Then it moved to National Grange.

14 Q The agency switched companies, and you are
15 now with National Grange, and this is your
16 application with National Grange. Is that
17 correct?

18 A Yes.

19 Q Did you understand --

20 Mr. BELL: She didn't answer. She was
21 nodding her head.

22 THE COURT REPORTER: Actually, I heard a
23 "yes."

24 Ms. KLINE: Thank you.

25 Q Did you understand that you were reapplying

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1 for your automobile insurance?

2 A I didn't take it as "reapplying." I just
3 took it as they were moving it to another
4 company.

5 Q Why did you go to Miles Agency to do this?

6 A We'd already had insurance with them, and we
7 had -- our homeowners insurance was with them, so
8 we put everything with them, the autos and all.

9 Q Did they call and say, "You need to come down
10 and redo your insurance," or did you read your
11 policy and say, "I need to go redo my insurance"?
12 How did this happen?

13 A I honestly don't recall that. I would say
14 that it was time for our premiums. I could have
15 received a letter that we needed to come in, or
16 they told me that when I went into the office to
17 pay the premiums, that it was being changed to
18 another company.

19 Q And you knew that it was a different company?

20 A Yes, ma'am.

21 Q When you took your paperwork home, did you
22 read any of your insurance policy?

23 A No, ma'am.

24 Q And you were not aware that you did not have
25 underinsured until this accident in 2012. Is

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#010316

1 that correct?

2 A Yes, ma'am.

3 Q I'm going to show you a document. The upper
4 left-hand corner says "NGM Insurance Company,"
5 and the address is Keene, New Hampshire, and it's
6 a renewal. It says "effective January 10th,
7 2012," and this would be Defendant's Exhibit #3,
8 and I'm going to ask you to look at that.

9 Mr. BELL: Do I have a copy of that?

10 Ms. KLINE: I'm giving you one.

11 Mr. ELLIS: This is #2?

12 Ms. KLINE: It's actually #3.

13 Mr. ELLIS: So there's not a #2?

14 Ms. KLINE: Not right now. Just a little bit
15 out of order.

16 Mr. ELLIS: I think it's kind of fun.

17 Ms. KLINE: Keeps you on your toes.

18 Mr. BELL: I mean, what you gave me was ten
19 pages, and this is one of the ten pages?

20 Ms. KLINE: Yes, it is.

21 Mr. BELL: So she's already --

22 Ms. KLINE: She's already got it in there. I
23 just wanted to specifically talk about it, so
24 I'm reintroducing it.

25 Mr. BELL: She's seen it before.

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1 Ms. KLINE: I just want to be sure.

2 Mr. BELL: I think it's in her package, but I
3 wanted to make sure.

4 Ms. KLINE: It is. Same document. A lot of
5 them look alike, so be sure we're talking
6 about the right one.

7 Mr. BELL: Well, tell her which cars you're
8 covering, so she'll recognize it.

9 Ms. KLINE: Actually, it doesn't say.

10 Mr. BELL: It says what car.

11 Ms. KLINE: Okay. Got you.

12 Mr. BELL: I mean, I'm not trying to put
13 answers in her mouth, but that's what's on
14 the form.

15 [THE EXAMINATION BY MS. KLINE CONTINUES.]

16 Q We're looking at Exhibit #3, previously
17 marked, and you recognize that document. I'm
18 going to ask you some questions about it. If you
19 would, look at it carefully. "Description of
20 autos or trailers," tell me what that says.

21 A "'70 Chevrolet pickup," which is not correct.

22 Q What should that be?

23 A Oh. Wait a minute. That is right. An '85
24 Chevrolet El Camino pickup.

25 Q And that is the vehicle that was involved in

#010316

1 the accident. Is that correct?

2 A Yes, ma'am.

3 Q The El Camino. Okay. On down, it lists
4 "liability, 50,000 each person; 100,000 each
5 accident; property damage, 50,000 each accident."
6 Then it says "medical payments," and then it says
7 "uninsured motorists," and it gives the amount,
8 and then it says "underinsured motorists." Over
9 to the right, if you follow on straight across,
10 what does it say?

11 A "No COV."

12 Q What does that mean?

13 A "No coverage."

14 Q And what does the next line mean?

15 A "No coverage."

16 Q And that's under the '85 Chevrolet. Correct?

17 A Right.

18 Q So this document tells you that you did not
19 have underinsured motorist coverage as of January
20 10th, 2012?

21 A Correct.

22 Ms. KLINE: And, of course, I'd like to enter
23 that.

24 MARKED AS DEFENDANT'S EXHIBIT #3,

25 Deposition of Janet Polston Webster,

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#010316

1 taken 1/20/2016. Copy of an NGM renewal
2 form dated 12/6/2011 (1 page).

3 Q Also part of your package -- would you look
4 at page 5 of Exhibit #1? Tell me what is on this
5 document, number four, "applicant's
6 acknowledgment."

7 A Read it, or --

8 Q Glance at it and tell me if that's the same
9 thing I just read to you from a similar
10 application. Are those words the same? You're
11 acknowledging that you have read or had read to
12 you the above explanations of additional
13 underinsured and optional underinsured?

14 A Yes.

15 Q And "Type or print your name" is a blank.
16 Whose name is on there?

17 A "Janet or Jerry Webster."

18 Q Printed?

19 A Printed.

20 Q And then what's on the next line; your
21 signature?

22 A An X-mark and my signature, "Janet Webster."

23 Q Is that your signature?

24 A Yes, ma'am.

25 Q Who wrote in your address?

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- 1 A Not me. That's not my writing. Whoever
2 worked at the company.
- 3 Q But you don't remember who that was?
- 4 A No.
- 5 Q And it says, "Today's date is..." Read that
6 for me.
- 7 A "8/27/2012."
- 8 Q And the effective date is?
- 9 A 8/27/2012.
- 10 Q Then there's some handwriting on this page.
11 Would you read that for me?
- 12 A "Effective 8/27/2012, adding underinsured
13 motorist coverage of 50,000, 100,000, 50,000.
14 Also adding medical payments; limit, 10,000 per
15 person."
- 16 Q So it's your understanding that, on that
17 date, August 27th of 2012, you added underinsured
18 motorist coverage?
- 19 A Yes.
- 20 Q And this was the coverage, and you now have
21 underinsured motorist coverage?
- 22 A Yes.
- 23 Q This is after the accident and on the advice
24 of your attorney?
- 25 A Yes.

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1 Q When you went to Miles Agency on August the
2 12th, 2012, what did you tell Miles Agency?

3 A That I wanted to check my policies and get
4 the underinsured, make sure that we had
5 underinsured coverage, and that's when I was
6 telling them, showing them that my policy -- that
7 I had gotten the '08 Honda, and it didn't show it
8 on there.

9 Q Mrs. Webster, let's talk about your lawsuit a
10 little bit. Mr. Bell represents you in the
11 lawsuit, and you have filed a summons and
12 complaint, and, in that summons and complaint --
13 bear with me a minute. I'm trying to find
14 something.

15 You allege, in your lawsuit, under the first
16 cause of action, that the defendants "never made
17 a meaningful offer of underinsurance per section
18 3877160 of the Code of Laws of South Carolina,
19 1976 as amended to the plaintiff, Jerry Webster."

20 You're also a plaintiff in this case.
21 Correct?

22 A Yes, ma'am.

23 Q You're alleging that the defendants "never
24 made a meaningful offer of underinsurance," and
25 then you later alleged that Miles Agency,

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1 "defendant and therefore the defendant's
2 insurance companies actually filled out any form"
3 except for the signature of you, the plaintiff,
4 Janet Webster. Is that correct?

5 A Yes, ma'am.

6 Q Is that your allegation?

7 A Yes, ma'am.

8 Q And that's your testimony?

9 A Yes, ma'am.

10 Q But you did sign the documents?

11 A Yes.

12 Q And denied or said, "I reject underinsured
13 motorist coverage." That's under the second
14 cause of action. Correct?

15 A Yes, ma'am.

16 Q Ms. Webster, I think we've pretty much
17 covered it, but I have one big important
18 question. What do you want from your lawsuit?

19 A Justice.

20 Q What does that mean?

21 A My husband was in an accident of no fault of
22 his. We thought we had insurance, and then we
23 don't have coverage.

24 Q Anything else?

25 A No.

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1 Q Tell me why you thought you had insurance.

2 A I trusted them to fill the paperwork out
3 correctly and for me to be covered.

4 Q Are you saying --

5 A I assumed our coverage was correct on the
6 policy. We needed --

7 Q You trusted them to -- I'm sorry. Go ahead.

8 A We needed -- I mean, I assumed we had what we
9 needed when you have an accident.

10 Q You trusted them to fill out the paperwork
11 correctly. Is it your testimony that they did
12 not?

13 A No. They just didn't explain it to me.

14 Q So it's not totally accurate to say that they
15 didn't fill out your paperwork correctly?

16 A No, but -- well, no.

17 Q So you want -- what exactly do you want?

18 Mr. BELL: I'm going to object, if you're
19 asking her for a legal opinion.

20 Ms. KLINE: No. I'm not asking her for a
21 legal opinion. I'm asking her what she
22 wants.

23 Mr. BELL: The complaint sets out what she
24 wants, legally, and so I have to object to
25 that, from the standpoint that you're asking

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1 for a legal conclusion. She doesn't
2 understand the niceties.

3 Ms. KLINE: No. I'm not going to ask her for
4 a legal opinion. I just want to know exactly
5 what she wants.

6 [THE EXAMINATION BY MS. KLINE CONTINUES.]

7 Q Do you want money?

8 A To be reimbursed for the hospital bills and
9 things that we had to encounter.

10 Q Anything else that you've had to pay for?

11 A No -- I mean, just the hospital bills, and --
12 I mean, my husband still doesn't have a truck to
13 drive -- I mean, other than what we already had.

14 Q Do you know the amount of your hospital
15 bills, the total?

16 A No. It was well over 200 and something
17 thousand dollars.

18 Q Anything else that I haven't asked you, that
19 you would like to tell me about this?

20 A I mean, because of this accident, my husband
21 -- like I say, he's very fortunate to be alive,
22 first of all, and second, he has to take
23 medication now, due to the injury he had to his
24 brain, something that -- I mean, that affected
25 him and, like I say, it will affect him for the

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1 rest of his life.

2 Ms. KLINE: I don't have any other questions
3 at this time. I'm going to pass you along
4 and reserve the right to come back and ask
5 you any other questions.

6 Mr. Ellis?

7 Mr. ELLIS: Ms. Webster, I'm Bernie Ellis,
8 and I represent Miles Insurance Agency. I
9 don't have all a whole lot of questions for
10 you, I don't think, because a lot of it has
11 been previously asked.

12 Can we go off the record for just one
13 second?

14 [OFF THE RECORD FROM 11:20 A.M.
15 UNTIL 11:29 A.M.]

16 EXAMINATION

17 BY MR. ELLIS:

18 Q One thing I wanted to ask you, what is the
19 status of the other person's insurance in the
20 wreck that Mr. Webster had?

21 Mr. BELL: She probably can't answer that.

22 Mr. ELLIS: Okay. I didn't know.

23 Q Have you all received anything? Is the
24 lawsuit pending now?

25 A Yes.

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1 Q Okay. So the lawsuit is now pending, so you
2 all have not had a final determination of fault
3 by the other driver?

4 A No, sir.

5 Mr. BELL: Can I --

6 Mr. ELLIS: Yeah. Please.

7 Mr. BELL: She's not going to understand. On
8 the record, the lawsuit was filed in Kershaw
9 County, because that's where the defendant is
10 from and that's where the wreck occurred, and
11 it's being defended by his carrier. I don't
12 remember who it is. His limits are 25, 50,
13 25 and it is not settled. Money has been
14 offered, but it has not settled, and it has
15 actually been 40(j)-ed --

16 Mr. ELLIS: Really?

17 Mr. BELL: -- due to this, due to this suit
18 you're talking about, and I think -- I'll
19 have to go check the file, but -- I can't
20 remember when the 10 days is before the year
21 is up for me to file a motion, so I'll have
22 to -- it's somewhere in September or October,
23 somewhere in there.

24 Mr. ELLIS: And those are -- I'm glad you did
25 that, because there were some questions I

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1 had.

2 [THE EXAMINATION BY MR. ELLIS CONTINUES.]

3 Q Let me go over a little bit of what was
4 discussed before. When you were filling out the
5 forms in 2001 at Miles, tell me what you recall
6 about what happened. Did you go to Miles's
7 office and sit down at a desk?

8 A No.

9 Q What happened?

10 A I just always go in and stand at the counter
11 and talk with whomever.

12 Q Oh. Okay.

13 A Like I say, we were -- they were changing
14 companies. I was paying premiums, so I don't
15 recall filling out an application. They had our
16 information already.

17 Q How long have you had insurance with --
18 through the Miles Insurance Agency before?

19 A I don't recall the exact time.

20 Q Several years?

21 A I mean, several years.

22 Q Do you all have any other auto insurance
23 policies besides the NGM policy we're talking
24 about here?

25 A At that time? No, sir.

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1 Q Do you now?

2 A Well, we've moved insurance now.

3 Q But, at that time, you just had this one
4 policy to cover all seven cars. Is that right?

5 A Well, they always told me that they had --
6 you know, it would be like on different policies,
7 because we had so many vehicles. They couldn't
8 list them all on one, so I don't know if they
9 were like actually different policy numbers, but
10 they just couldn't be included all on one policy
11 listing, is what they told me.

12 Q Do you know if you actually, in fact, had two
13 policies?

14 A For the autos?

15 Q Right.

16 A Possibly, because the motorhome, I don't
17 think, fell under the same policy as the regular
18 vehicles, because it always came due at the end
19 of the year.

20 Q You may or may not know the answer to this.
21 I just wondered. Do you all have any kind of
22 umbrella policy or homeowners policy or anything
23 that has paid for any of Mr. Webster's medical
24 bills?

25 A No. We don't have anything; just the

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1 insurance where I work at.

2 Q Has that covered -- does that cover any of
3 his bills?

4 A Yes.

5 Q What kind of policy do you have there?

6 A Health insurance.

7 Q So has that paid for the medical bills?

8 A Yes.

9 Q Do you know how much of the medical bills
10 it's paid for?

11 A Well, the majority of them -- I mean, we had
12 to pay a deductible and everything on it. We had
13 to meet the deductible, but yes, but I don't work
14 there, like I say, now.

15 Q I'm sorry?

16 A I no longer work there now.

17 Q So this was the coverage you had with
18 Kanawha?

19 A Right.

20 Q Or Humana?

21 A Right.

22 Q So you guys submitted his medical bills on
23 that medical insurance policy, and they paid for
24 it in accordance with the policy?

25 A Right.

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1 Mr. BELL: Again, if you want that
2 information while you're here, I can -- I
3 have a breakdown in the tort file, but, of
4 course, we're not trying the tort case today.

5 Mr. ELLIS: Right. No.

6 Mr. BELL: If you want that information, I'll
7 be glad to provide it to you.

8 Mr. ELLIS: Okay.

9 [THE EXAMINATION BY MR. ELLIS CONTINUES.]

10 Q Let's go back to Exhibit #1. On the fourth
11 page that Ms. Kline referred to, that has your
12 signature, the fourth page, what did you -- what
13 did you think you were signing when you put your
14 signature on there?

15 A Just for the coverage. I mean...

16 Q But let me ask you this question. As you
17 read this, this paragraph, it says, "I hereby
18 acknowledged that I have read or have had read to
19 me the above explanations and offers of
20 additional uninsured motorist coverage and
21 underinsured motorist coverage. I have indicated
22 whether or not I wish to purchase such coverage"
23 -- "each coverage in the spaces provided." I
24 mean, is there anything about that that you don't
25 understand?

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1 A No. I mean, it's -- but it included the
2 uninsured, so I would have assumed I was signing
3 for that.

4 Q Well, it says "underinsured" as well.

5 A Right.

6 Q Well, I mean, my question is, though, you
7 come across as a very intelligent person, and you
8 had a job at a pretty high level at an insurance
9 company. I'm just asking, why wouldn't I expect
10 that you're capable of understanding this
11 paragraph?

12 A True.

13 Q You've been over this before, but you don't
14 recall if the person was -- and I understand.
15 We're going back to 2001, so that's a lot to ask
16 somebody to remember, but you don't actually
17 remember the person you talked to when you filled
18 out the application for NGM?

19 A No, sir.

20 Q Do you know many of the people who work
21 there?

22 A Like I say, they've had different ones at
23 different times. I went in there several times.
24 I remember Miss Lois. I remember the son. I
25 remember the other son that works in there, and

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1 his wife. I don't remember -- they didn't seem
2 to be in there as much when I first went in, but
3 -- I mean, they've had different ladies that
4 worked in there at different times.

5 Mr. ELLIS: I don't think I have anything
6 else to ask you, so I'm done.

7 Mr. BELL: I've got a few questions.

8 EXAMINATION

9 BY MR. BELL:

10 Q Let me explain this to you, first of all. Go
11 to -- I'm sorry. I'm not used to -- go to the
12 fifth page. I think that's it, and go back to
13 the page before that. Now, look at the bottom.
14 Read the page that we're calling the fourth page
15 of Exhibit #1, that probably was signed by you in
16 '01. What's on the bottom, as far as that form
17 number?

18 A "ACORD 61 SC" and "2000/01" in parentheses.

19 Q Going to page 5 of Exhibit #1, what's on the
20 bottom there?

21 A "ACORD 61 SC," and "2007/08" in parentheses.

22 Q So what does that mean to you, datewise?

23 A When this was done. This was prior.

24 Q What is "this," where you're pointing? What
25 document are you talking about?

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1 A Number four, that had 2000, and then '01
2 would have been covered on the policy in 2001,
3 and then page 5 would have been covering the
4 policy in 2007-2008.

5 Q But when did you sign page 5?

6 A 2012. August, 2012.

7 Q And you went to Miles specifically after a
8 conversation with me --

9 A Yes.

10 Q -- as your attorney?

11 A Yes, sir.

12 Q There's no doubt about that, and what they
13 wrote down, or what somebody wrote down on August
14 27th, is correct?

15 A Yes, sir.

16 Q Now, look at the top. I'm not allowed to
17 lead you, because you're my client, but look at
18 the top. Is there a difference between the 2001
19 number four and the -- well, it's an '08
20 document, but it wasn't filled out by you until
21 '12. Is there a difference in those two things
22 at the top?

23 A Yes, sir.

24 Q In 2012, did you have a layman's
25 understanding of what "un" and "underinsured"

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1 was, after talking to me?

2 A Yes, sir.

3 Q In 2001, as a layman, did you even know what
4 "under" and "uninsured" was in 2001?

5 A No, sir.

6 Q Now, the fact that you worked for Kanawha
7 that was bought out by Humana, did you ever have
8 any work experience dealing with automobile
9 insurance?

10 A No, sir.

11 Q Kanawha, later bought by Humana, sold what
12 type of product?

13 A Life and health insurance.

14 Q And this new company you're working for is
15 only life and health?

16 A Yes. They sell group.

17 Q You still don't know that much about
18 automobile insurance, do you?

19 A No, sir.

20 Q Now, go to -- I'm sorry -- go to the one
21 that, at the top, it says page 6, which is dated
22 1/5/01. Do you see that one?

23 A Yes, sir.

24 Q You've seen this document before today?

25 A Yes, sir.

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1 Q Do you actually remember the document as of
2 1/5/01? Can you go back and tell these lawyers
3 and the court reporter that you actually remember
4 this document?

5 A No, sir.

6 Q But, on that document, is any of this writing
7 on this document yours?

8 A No, sir.

9 Q You don't know who you talked with or dealt
10 with in '01?

11 A No, sir.

12 Q It could have been Mr. Miles. Did you know
13 him?

14 A I knew him, but I never dealt with him.

15 Q You knew he had two sons that were there.

16 A Yes, sir.

17 Q Do you remember their names?

18 A Michael and Richard.

19 Q Do you remember if you dealt with either one
20 of them?

21 A I had dealt with Michael at different times.
22 I mean, I had seen him in there and talked with
23 him.

24 Q And you've heard a female named today. What
25 was her name?

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- 1 A Lois or Louise.
- 2 Q Do you remember her?
- 3 A I remember her.
- 4 Q Have you got any idea who you dealt with,
5 going back through your memory cells, on --
6 excuse me -- yeah, 1/5/01, when you went in there
7 and started this process? Have you got any idea
8 who you dealt with at Miles; male or female?
- 9 A No, sir.
- 10 Q Therefore, do you have any idea if who you
11 dealt with at Miles was actually a licensed
12 insurance agent? Do you know that?
- 13 A If the person I spoke with was?
- 14 Q Yeah.
- 15 A No, sir.
- 16 Q But you're sure that this form, 1/5/01, dated
17 1/5/01, doesn't have any of your signature or any
18 of your handwriting?
- 19 A No, sir. It does not.
- 20 Q So the '70 Chevrolet El Camino, did that
21 vehicle exist?
- 22 A It's not an El Camino. It was just -- it was
23 a Chevrolet pickup.
- 24 Q The '85 Camino, it definitely existed?
- 25 A Yes, sir.

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#010316

1 Q It was in the wreck?

2 A Yes, sir.

3 Q Eleven years later?

4 A Yes, sir.

5 Q The Ford motorhome, it existed?

6 A Yes, sir.

7 Q And do you remember how many vehicles were

8 being asked to be insured for the first time

9 through Miles and dealing with what was then

10 called National Grange? How many vehicles did

11 you have?

12 A Seven.

13 Q Back in '01?

14 A Yes.

15 Q I'm asking you. I mean --

16 A Yes. Yes.

17 Q Go to the next page, which has something

18 about General Accident. That was your prior

19 company.

20 A Yes, sir.

21 Q And you were submitting -- in somebody's

22 writing, "We are submitting the homeowners to

23 National Grange to apply account credits. We

24 will be adding a sixth vehicle in May." Is that

25 your writing?

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57

1 A No, sir.

2 Q Does that language refresh your memory in any
3 way, for you to rethink about what was going on
4 on January 5th of '01, about the homeowners and
5 something about a sixth vehicle?

6 A I know we were remodeling our home at that
7 time, unless they were switching and putting more
8 limits or something on the home, because I know
9 that was the year my nephew was killed, was in
10 '01 --

11 Q Okay.

12 A -- but, other than that --

13 Q How about this, about a sixth vehicle? Does
14 that shake your mind up in any way?

15 A No, sir; unless it was the racecar truck. We
16 could have been adding the racecar truck in May,
17 because he only used it a limited time of the
18 year.

19 Q And once we go through all this paperwork,
20 something pops up as a "van." Is that what we're
21 talking about?

22 A Yes, sir.

23 Q All right. Well, go back to the first page
24 of Exhibit #1. The handwriting up there, "Janet
25 and Jerry Webster, National Grange, effective

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1 date 1/10," and then "Code 390646." Is any of
2 that writing yours?

3 A No, sir.

4 Q Do you have any remembrance of anybody
5 actually explaining to you what this page was
6 about?

7 A No, sir.

8 Q Can you honestly say you did read it?

9 A No, sir.

10 Q Page 2 of the same exhibit, the paragraph at
11 the top, but then we get down to number two.
12 Back in '01, did you, honest to God, even
13 understand what an offer of additional uninsured
14 motorists coverage was?

15 A No, sir.

16 Q Until this wreck, did you even know what
17 "uninsured" was?

18 A No, sir.

19 Q Do you know now?

20 A Yes, sir.

21 Q Because you told the National Grange lawyer
22 that you knew what it was, didn't you?

23 A Uh-huh.

24 Q Who did you learn that from?

25 A You.

#010316

1 Q Now, the writing, "50, 100, 50" on that page,
2 is that your writing?

3 A No, sir.

4 Q Go to the next page. When it reads, "Do you
5 wish to purchase additional uninsured motorist
6 coverage" there, is that your check?

7 A No, sir.

8 Q When you go down to "50, 100, 50" again, is
9 that your writing?

10 A No, sir.

11 Q Now, number three is "underinsured." On
12 January the 1st -- I'm sorry -- on January the
13 5th of 2001, did you even know what
14 "underinsured" stood for?

15 A No, sir.

16 Q Did anybody explain number three to you, in
17 particular give you any premium that would come
18 with that? Because there's nothing on the sheet
19 showing anybody wrote anything. Did anybody ever
20 tell you, "It costs additional money, and here's
21 the premium for this coverage"?

22 A I don't recall that. No, sir.

23 Q And there's nothing on the form. Right?

24 A Right.

25 Q And we come down to, "Do you wish to

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- 1 purchase," and it's got a check under "no." Is
2 that your check?
- 3 A No, sir.
- 4 Q The X, you've told us -- next question, "If
5 your answer is 'no,' then you must sign your X."
6 Is that your X?
- 7 A No, sir.
- 8 Q But it is your signature?
- 9 A Yes, sir.
- 10 Q You don't dispute that?
- 11 A Right.
- 12 Q And the word "reject," the last line, is that
13 your writing?
- 14 A No, sir.
- 15 Q Then we come to the acknowledgment that
16 existed in '01. You can read it now, but, even
17 if you read it -- if you read it in '01, did you
18 understand what "un" and "under" was?
- 19 A No, sir.
- 20 Q You didn't print your own name?
- 21 A No, sir.
- 22 Q You didn't put the X?
- 23 A No, sir.
- 24 Q But you did sign?
- 25 A Yes, sir.

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#010316

- 1 Q But you didn't print your own address?
- 2 A No, sir.
- 3 Q Is it not true that, of course, since this
- 4 '01 that may have only covered five cars -- it
- 5 doesn't matter. You did -- you all bought and
- 6 traded or added or took away different cars. Is
- 7 that correct?
- 8 A Yes, sir.
- 9 Q Again, as best you can tell, how many cars
- 10 were insured with National Grange through Miles
- 11 on the wreck date?
- 12 A Seven.
- 13 Q Seven, okay, and it included the '85 Camino
- 14 that was in the wreck?
- 15 A Yes, sir.
- 16 Q Did it include the motorhome?
- 17 A Yes, sir.
- 18 Q Did it include the van at that time?
- 19 A We're not sure about the van, because, like I
- 20 say, at the time it happened, I think he wasn't
- 21 driving it at that time, and we had dropped the
- 22 insurance coverage on it.
- 23 Q Well, for the benefit of these lawyers here,
- 24 who do not know you nor your husband, the van was
- 25 bought and/or taken offline when it was used for

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#010316

1 what specific purpose?

2 A To haul a racecar.

3 Q And we don't race twelve months a year, do

4 we?

5 A Right. It starts like in April and goes

6 through September, October.

7 Q Your husband actually had his own garage in

8 another part of town --

9 A Yes, sir.

10 Q -- for a good many years?

11 A Yes, sir.

12 Q And that's what he's retired from?

13 A Yes, sir.

14 Q The race garage was right near where you all

15 lived?

16 A Yes, sir.

17 Q In fact, he technically worked for your

18 daddy. Right?

19 A Yes, sir.

20 Q During the racing season?

21 A Yes, sir.

22 Q And you were asked, in the tort claim --

23 that's the wreck case -- we aren't asking for

24 money, are we?

25 A Yes, sir.

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#010316

1 Q Do you actually understand what we're asking
2 for, legally, in the suit we're here about today?
3 I'm putting you on the spot, because you haven't
4 ever read. They know it and I know it, but do
5 you actually understand what you're asking for?

6 A Coverage for the vehicles.

7 Mr. BELL: That's good enough. Answer any
8 questions somebody else may have.

9 Mr. ELLIS: (TO MS. KLINE) Do you want to
10 ask some follow-up questions?

11 Ms. KLINE: I just have a couple.

12 Mr. ELLIS: Same here.

13 Ms. KLINE: (TO MR. BELL) For the record,
14 County 29 is your county?

15 Mr. BELL: Yes, ma'am. It is.

16 Ms. KLINE: But the tort action is filed in
17 Kershaw?

18 Mr. BELL: The wreck was in Kershaw and he
19 was from Kershaw. So, under the venue
20 statute that the plaintiffs' lawyers wanted
21 but then didn't like anymore, from Hampton
22 County and so forth --

23 Ms. KLINE: We won't name any names.

24 Mr. BELL: -- that was the proper county to
25 bring it in.

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1 Ms. KLINE: Got you.

2 RE-EXAMINATION

3 BY MS. KLINE:

4 Q Ms. Webster, your attorney is a good
5 attorney, and he's asked you some questions about
6 the forms for the application of insurance in
7 2001. I want you to go back and think really
8 hard about this. In the ordinary course of
9 business, when you walk into an insurance agency,
10 do they hand you all these forms and ask you to
11 fill them out?

12 A They didn't. No.

13 Q Have they ever handed you all these forms,
14 these insurance forms, and asked you to fill them
15 out?

16 A No, ma'am.

17 Q So you wouldn't expect to go in there and
18 fill out those forms. Right?

19 A Uh-uh.

20 Q Somebody at the agency knows about insurance
21 forms, but you give them the information. Is
22 that correct?

23 A They got the information from the policy that
24 we already had with them.

25 Q What new information did you give them?

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1 A If we were adding a vehicle or taking off
2 one, I would give them the information for that
3 vehicle.

4 Q But they didn't hand you a form and say,
5 "Fill out this form"?

6 A No.

7 Q Have you ever signed a document, ever, in
8 your whole life, that somebody put an X on and
9 handed to you, like that to sign? Has anybody
10 ever done that to you?

11 A I guess. Yes.

12 Q Who might have done that?

13 A The bank.

14 Q Anybody else?

15 A I can't think of anybody else. I can't
16 recall anybody else.

17 Q Does somebody fill out your taxes for you?

18 A Yes.

19 Q Do they put an X and then hand it to you to
20 sign?

21 A Yes.

22 Q So it's not unusual for whoever is filling
23 out a document for you -- in this case, an
24 insurance coverage application -- to print an X
25 on a document and hand it to you and ask you to

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1 sign it. Correct?

2 A Yes.

3 Ms. KLINE: I don't have any other questions.

4 Mr. Ellis?

5 Mr. ELLIS: Just a brief follow-up.

6 RE-EXAMINATION

7 BY MR. ELLIS:

8 Q Mr. Bell asked you about this page, this page
9 number 6. It's part of Exhibit #1, and it's a
10 South Carolina personal auto application dated
11 January 5th, '01. There's a page following,
12 immediately following. I think it has a 7 at the
13 top.

14 A Uh-huh.

15 Q On page 7 at the bottom, where it says
16 "applicant signature," it says "Janet Webster."
17 That's your signature. Right?

18 A Yes, sir.

19 Q So you actually signed this form, and it
20 appears to me -- and I just want to verify this
21 -- if it appears to you that these documents that
22 have the fax page 6 and 7 at the top, that's all
23 part of one document. Right?

24 A Yes, sir.

25 Q Going back to this document, this page, it's

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1 -- let me see. One, two, three -- it says page
2 11 at the top. I think it's the fourth page of
3 the exhibit, but it's the original applicant's
4 acknowledgment. If you didn't understand what
5 you were signing, why did you sign the document
6 that says you do?

7 A I don't know. I just signed it.

8 Mr. ELLIS: I don't think I have anything
9 else for you. Thank you.

10 Ms. KLINE: For the record, may I go and
11 number the pages in Exhibit #1? I should
12 have done that. I apologize. It would have
13 made it a whole lot easier.

14 Mr. ELLIS: That's fine. Anything's fine
15 with me.

16 Mr. BELL: Yeah. That's fine.

17 FURTHER DEPONENT SAITH NOT.

18 [SIGNING WAIVED.]

19 (WHEREUPON, THE DEPOSITION WAS
20 CONCLUDED AT 12:00 P.M.)

21

22

23

24

25



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1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
 2 COUNTY OF LANCASTER) C.A. No. 2015-CP-29-00810
 3 JERRY WAYNE WEBSTER, and)
 4 JANET WEBSTER)
 5)
 6 Plaintiff,)
 7 vs.)
 8)
 9 MILES INSURANCE AGENCY,)
 10 INC., NATIONAL GRANGE)
 11 MUTUAL INSURANCE COMPANY)
 12 n/k/a NGM INSURANCE)
 13 COMPANY)
 14)
 15 Defendants.)

11 30(b)(6) DEPOSITION OF

12 BRIAN BRENNAN

13 Taken on behalf of the Defendants

14
 15 DATE TAKEN: Tuesday, November 15, 2016

16 TIME: 9:30 - 10:33 a.m.

17 LOCATION: NGM
 18 4601 Touchton Road
 19 Suite 3400
 Jacksonville, Florida

20 REPORTED BY: Kelly G. Broomfield
 21 Court Reporter, Notary Public
 22
 23
 24
 25

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STIPULATION

It was stipulated and agreed by and between counsel for the respective parties, and the witness, that the reading and signing of the deposition by the witness was waived.

- - -

BRIAN BRENNAN,

acknowledged having been duly sworn to tell the truth and testified upon his oath as follows:

THE WITNESS: Yes.

(Defendants' Exhibits 1 - 4 were marked for identification.)

DIRECT EXAMINATION

BY MR. ELLIS:

Q Good morning, would you state your name for the record, please.

A My name is Brian Joseph Brennan.

Q Okay. Mr. Brennan, my name is Bernie Ellis, I'm the attorney in South Carolina for the Miles Insurance Agency, Inc., and I am going to ask you a series of questions this morning about NGM's position into certain possible scenarios in this case. And the reason I worded my last sentence that way is NGM has stated a cost claim against Miles Insurance Agency which is based, in part, on the outcome of the claims by the

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1 Plaintiff against the co-Defendants. So if the
2 Plaintiff does not prevail against the co-Defendants,
3 then some of the things we're discussing here will not
4 necessarily come into play. But because this has all
5 been pled as part of one action, I need to go ahead and
6 ask you about this now in case at the trial of the case,
7 my assumption is everything will be tried together.

8 Have you ever had your deposition taken before?

9 A Yes.

10 Q Okay. Have you ever been a Rule 30(b)6 witness
11 before?

12 A Yes.

13 Q Okay. So you understand that under Rule 30(b)6
14 you are actually testifying as the company, NGM
15 Insurance, correct?

16 A Yes. Correct.

17 Q Okay. The South Carolina Rules of Civil
18 Procedure require that I tell you that if you have any
19 questions about my questions, if anything I say is
20 unclear, please ask me to clarify those and not NGM's
21 attorney, and I will be glad to do that. I do not
22 intend for this to be a very long deposition, but if at
23 any point you need to take a break, please tell me, and
24 we'll do that; is that okay?

25 A Agreed.



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1 Q That's fair enough?

2 A Fair enough. Sorry.

3 Q Yes. Okay. I'll get started. What is your
4 position at National Grange Mutual Insurance Company?

5 A I am the corporate litigation manager in the
6 claim department.

7 Q Okay. And how long have you been in that
8 position?

9 A Approximately, four years.

10 Q Okay. Let me jump right into the -- let me
11 jump right into the substance of the deposition. Well,
12 actually, let me ask you this before I get started, and
13 if you don't know the full details of this, I
14 understand, it's actually not in the notice, this is
15 just curiosity on my part. Sometimes in talking about
16 NGM I've seen the name Main Street come up?

17 A Right.

18 Q Is NGM a separate, free-standing insurance
19 company, is it the name -- is it a d/b/a? What actually
20 is it?

21 A NGM is the name of the company MSA Insurance
22 Company is a trade name.

23 Q Okay. Are there any other trade names that
24 might be relevant to this case?

25 A Potentially. We write policies under Old



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1 Dominion and we write policies with different companies
2 Grand Dealers, Ossi Mutual, but for this case, I believe
3 it's under NGM or Old Dominion name.

4 Q Okay. So I just wanted to be sure I knew who
5 we were talking about. In dealing with the -- in the
6 cross claim against Miles Insurance Agency, I think that
7 the position that NGM is taking is that if the Plaintiff
8 prevails in it's position that a meaningful offer of
9 coverage was not given to the Plaintiffs, then NGM is
10 taking the position that Miles Insurance Agency should
11 indemnify NGM for any damages, for whatever damages NGM
12 would incur as a result of the policy being reformed; is
13 that correct -- is that a correct summary?

14 A Yes.

15 Q To the best of your knowledge?

16 A Yes, it is.

17 Q Okay. Okay. And I take it that the position
18 would be that if the Plaintiff were to prevail, that
19 NGM's position would be that Miles Insurance Agency did
20 not do a correct -- did not correctly make the offer
21 because Miles Insurance Agency is the agency on the
22 ground, right?

23 A For most part, yes.

24 Q Yeah. Well, I mean, just -- and this is --
25 this is somewhat stating the obvious, but Miles



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1 Insurance Agency is actually the agency that deals
2 directly with the Plaintiffs when they first purchase
3 their policy, right?

4 A Miles Insurance is an independent agency that
5 NGM works with, but, yes, they work directly with the
6 customer, in this case, the Websters.

7 Q Okay. When a policy is issued by -- when a
8 policy is issued by NGM, and I'm going back to 2000,
9 2001, I talk about this in the notice, and here's why,
10 it is my understanding that now, when an agency such as
11 Miles writes a policy of automobile insurance, that this
12 is all automated, all done by computer, and the policy
13 coverage is immediately bound, and whatever NGM gets, it
14 gets by way of it being uploaded on a computer; is that
15 correct?

16 A I can answer for what happened in 2001 in the
17 circumstance.

18 Q Okay.

19 A Miles Agency --

20 Q I tell you what --

21 A Go ahead.

22 Q How about we assume my notice -- so why don't
23 you do that.

24 A At the time, Miles Agency had -- under the
25 contract with NGM had binding authority to write

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1 policies. Once the policy was written it would be
2 downloaded to NGM, and if it's within the provisions of
3 NGM's guidelines it would be automatically approved,
4 which in this case it was. So how the contract was
5 completed by the agency was within the parameters of
6 automatic approval by NGM. Then all that information
7 was given to NGM, which then wrote the policy, which
8 then delivered the policy to insured.

9 Q And what I want to understand in this case is I
10 think that the Plaintiffs' complaint in this case is
11 that in both Exhibits 2 and 3, the personal
12 auto application and the auto supplement, look at that,
13 the premium amount for additional underinsured motorists
14 coverage was not completed. There's nothing in there
15 for the premiums?

16 A Yes. On page 3 it wasn't completed on the
17 uninsured or underinsured provision, correct.

18 Q Sorry. What are -- you are looking at? You
19 are looking at what?

20 A On page 3.

21 Q Of which exhibit?

22 A Of Exhibit 3, I believe.

23 MR. DOUGALL: Yes.

24 BY MR. ELLIS:

25 Q Okay.



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1 A The last page on uninsured, where they
2 accepted, there wasn't any policy amounts on that. Then
3 as well as on the voluntary coverage, underinsured
4 motorist coverage, there wasn't any amounts under
5 increased premium on that as well.

6 Q Okay. And if you will look on Exhibit 2?

7 A Exhibit 2, correct.

8 Q Yeah, on the South Carolina personal
9 auto application?

10 A Yes.

11 Q On the front, on the first page of that, where
12 it says coverage premiums?

13 A Yeah.

14 Q It says, underinsured motorists, it says:
15 Reject. Reject.

16 A Yes.

17 Q Then it appears there are no premiums listed
18 there either, correct?

19 A That's correct.

20 Q Okay. And I take it that it is the Plaintiffs'
21 complaint that because those premium amounts were not
22 filled out, that the Plaintiffs get to argue that there
23 was not a meaningful offer of underinsured coverage
24 made, and it's based upon the fact that those premiums
25 are not there. And NGM and Miles together are taking

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1 the position that a meaningful offer was made. I just
2 want to put that on the record, particularly because Mr.
3 Bell is here with us, I want to make sure it's
4 understood that both NGM and Miles take the position
5 that a meaningful offer was made. But the Plaintiffs
6 are taking the position that in order to rely on the
7 Safe Harbor Provision of the insurance statute, the
8 additional premiums had to be set forth on the form. My
9 question to you is, when -- in 2001, when this form was
10 filled out and received by NGM, what was the process
11 that was gone through to see if this form had been
12 filled out correctly?

13 A Well, there isn't a process. There was not a
14 process. As long as the application was filled out
15 correctly, and we had parameters that would kick it out
16 for additional review, such as a Social Security number,
17 or if a mandatory coverage that's underinsured was
18 underneath -- or under the bodily injury limits, that
19 would kick it up and that would not be in consistency
20 with South Carolina policy. But on a voluntary
21 coverage, such as underinsured, it would not have been a
22 kick out provision that we would have reviewed in
23 accepting this policy.

24 Q And do you know why that's true?

25 A It was our guidelines.



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1 Q I recognize that's a very open-ended question. 12

2 I realize that, but I'm just ask you, do you know why?

3 A It was our accepted guidelines at the time, and
4 I believe currently.

5 Q Well, let me ask you -- and I sent this earlier
6 and if you need time to ponder this, I understand. I
7 sent earlier a link of the South Carolina Automobile
8 Insurance statute and I want to direct your attention to
9 Section 38.77350?

10 MR. DOUGALL: Down at the bottom, Section E.

11 MR. BELL: Which section?

12 BY MR. ELLIS:

13 Q Section 38.77350.

14 MR. BELL: That's what Tom and I both said
15 which section, I'm not sure which one you are using.

16 BY MR. ELLIS:

17 Q I probably did more harm than good by sending
18 that in advance. It's small print and a big statute.
19 What I want to direct your attention to under that
20 statute, this statute gives a list of what -- of what
21 can be in the -- of what is in the Safe Harbor Provision
22 when underinsured motorist coverage is being offered.
23 That if you have a form that has all of these things in
24 it, then a plaintiff cannot come back and say that a
25 meaningful offer was not made.



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1 And I take it that the Plaintiffs' position is
2 that Subsection A2, a list of available limits and the
3 range of premiums for the limits, is where they are
4 hanging their hat to say this form was not done
5 correctly. Under subsection E it says: If the insured
6 fails or refuses to return an executed offer form within
7 30 days to the insured, the insurer shall add on
8 uninsured motorist and underinsured motorist coverages
9 with the same policy limits as the insured policy
10 limits. Do you see that?

11 A I do see that, yes.

12 Q Okay. With that point in mind, does -- did
13 NGM -- I take from it what you are saying that NGM did
14 have some parameters to look at the forms to see if had
15 has been filled out properly. And if not, it got kicked
16 back, right?

17 A Correct.

18 Q But one of those parameters is not to see if
19 premiums for underinsured motorist had been filled out,
20 right?

21 A Correct.

22 Q Okay. How would, at the time -- and if this
23 goes beyond the scope of the notice, I'm pretty -- I'm
24 usually on the defense side of these things, so I'm
25 sensitive to that. If this gets beyond the scope of the



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1 notice, you can tell me that. But how would the Miles
2 Insurance Agency at that time have obtained that premium
3 information to put in the form?

4 A Well, there's several ways, one, there's
5 spot audits -- I'm not aware that there was a spot audit
6 done on this, done on this account, but, you know, also
7 is this form was completed and the coverage was rejected
8 and so when agency completes the application, there's,
9 you know, as completed, NGM has an understanding of this
10 form, so we understood when you said application was
11 completed that this form was -- this section of the form
12 was completed as well.

13 Q But you guys actually -- NGM in 2001, actually
14 got this form, right? It was actually faxed to NGM for
15 it to see the form?

16 A My understanding is yes.

17 Q Okay. And, you know, you can see on the front
18 page that the amount of premium, the one place that's
19 let's left off is for underinsured motorist. I'm trying
20 to --

21 A Sorry, I apologize. Go ahead. It's a little
22 difficult to try to answer questions, I can't see you,
23 so I'm trying to be careful.

24 Q I understand. No. You are great, I appreciate
25 it, and we're trying to -- telephone depositions have



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1 that problem then, so I get that. Thank you.

2 On the first page of Exhibit 2 you see that
3 there's not a number filled in for the premium? I mean,
4 and my question is just to confirm, which I think you
5 have, that when NGM actually gets this piece of paper
6 faxed to it and can see what's on it and what's not on
7 it, right?

8 A Correct.

9 Q Okay. But you guys did not have a parameter at
10 that time that this form should be kicked back if that
11 premium was not filled out?

12 A Well, it was filled out. It was rejected for
13 the underinsured motorist aspect of it. So that says --

14 Q Okay.

15 A -- in that sense there wouldn't be a premium.
16 I'm talking about the first page of Exhibit 2.

17 Q Yes.

18 A If it's rejected, there wouldn't be a premium
19 number next to it, because there wouldn't be a premium
20 charged.

21 Q Okay. Just in terms of -- just in terms of the
22 amount of the premium that's -- that it would have cost
23 to buy this, what does -- what does Miles Insurance
24 Agency in 2001, what do they have to do to get that
25 information? And, again, if that's outside of the scope

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1 for something you prepared for, I understand.

2 A I can't give you 100 percent exact answer to
3 that, I didn't prepare for that, but -- on that, so I'd
4 rather not give you that answer, because I don't want to
5 be 1 percent inaccurate on my answer.

6 Q That's fair enough. I appreciate that. Is
7 this typical of NGM, though, that if that you get a form
8 in -- was this typical in 2001 -- sorry. Was this
9 typical in 2001, though, strike that.

10 My question is, I take it what you are saying
11 is it does not surprise NGM that the amount of premiums
12 were not filled out for a rejected coverage; is that
13 right?

14 A I can't answer that, other than the fact when
15 the rejection on page 1 was rejected, that that's not a
16 premium listed. That's my answer.

17 Q Okay. Got ya. On Number 3, Exhibit 3, which
18 is a slightly different form.

19 A Exhibit 3. Okay.

20 Q Right.

21 A Okay.

22 Q On pages 2 and page 3, you've got the same
23 situation, and this time, actually, with uninsured as
24 well as underinsured, the amount of the premiums are not
25 filled out. Did NGM actually receive this form as well?



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1 A Yes.

2 Q Okay. Once again, if you know, the increased
3 premium amount is not filled out, and, again, I take it
4 that it is the Plaintiffs' position in this case that
5 since that premium amount is not filled out, you don't
6 get to rely on the Safe Harbor Provisions of the statute
7 regarding this form. Is your answer, with respect to
8 Exhibit 3, the same as with Exhibit 2, since it's
9 rejected, then there wouldn't be a premium?

10 A Correct.

11 Q Okay. And let me rephrase my prior question
12 this way, is -- was the amount of the increased premium
13 for underinsured, is that a calculation that has to be
14 done once somebody says they are interested in it or is
15 it just a number you can get?

16 A At that time we had pricing for each coverage,
17 so whatever the guidelines for pricing at that time if
18 that voluntary coverage was purchased there would be the
19 amount of the cost to buy that coverage set forth at
20 that time for that line of business in that state.

21 Q Okay. Did NGM at that time have any forms for
22 optional underinsured motorist coverage that just
23 automatically filled out that said if you are going to
24 get underinsured coverage up to 100 -- up to \$50,000,
25 the premium is going to be between X and Y and it's just



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1 already in the form that way?

2 A No, because it's a voluntary -- it's a
3 voluntary coverage therefore, we, you know, it's
4 separately done. So if it's added to the coverage, or
5 medical payment coverage is added, which was voluntary
6 as well, that would have been calculated at the time of
7 policy with the insured and the agent.

8 Q And if the question I'm about to ask is locally
9 ignorant, please pardon me, is the amount of
10 underinsured -- is the amount of the premium for
11 underinsured coverage, is that different in each
12 scenario for each person or is there a very set amount
13 in South Carolina for each level of liability?

14 A You know, the only way -- if I understand the
15 question correctly, for every tier of coverage under the
16 voluntary policy, underinsured, there's a different
17 charge. If you purchase the 50,000 and the 30,000,
18 there would be a good, you know, increased charge. If
19 it increases 25, 50, so on so forth, as the coverages
20 get bigger, so -- so there would be an increase in cost
21 if you went from 50 and 30 to the 250, 500.

22 Q Right. And my question goes -- is going a
23 little beyond that, which is that would say the Websters
24 have to pay, possibly, a different amount for their
25 coverage then someone else, then the Smiths, a



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1 hypothetical family called the Smiths, or is it a set
2 amount?

3 A It call depends -- my understanding is it
4 depends on driving history, driving records, there's
5 variables that are put into place.

6 Q I got ya. Okay. Thank you. All right. Let
7 me ask you if you would take a look at Exhibit 4,
8 please.

9 A All right. I just want to make sure I clean up
10 the first two so if I have to refer to it again, I don't
11 butcher it. Exhibit 4 is the MSA agency agreement?

12 Q Yes.

13 A Okay. I have it.

14 Q Okay. All right. Do you guys claim, NGM's
15 claims against Miles Insurance Agency is a claim for
16 indemnification if the policy is reformed, and I take it
17 that you guys would like for Miles to have covered all
18 of your expenses, even if the policy is not reformed; is
19 that a fair statement?

20 A Yes.

21 Q Okay. In looking at Exhibit 4, I think that it
22 is paragraph 11, Roman numeral 11, that NGM is relying
23 on for purposes of this cross claim. I think the page
24 is -- I think it's slightly out of order. If you need
25 to shuffle them to get them in the correct order, please

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1 do. Mine were out of order.

2 A It's not the sole, but it's one of them.

3 Q What are the other provisions you are relying
4 on in this to say that Miles Insurance Agency should
5 indemnify --

6 A Well --

7 Q -- NGM?

8 A -- if you look at the MSA agency agreement
9 under authority of the agent, if you look at part B, the
10 bind insurance, which we discussed earlier in my
11 testimony, then you have the duties of the agent. Then
12 if you go to indemnification, in particular, part C of
13 the indemnification, those are the three sections I'm
14 referring to that are in play, that are part of this
15 litigation matter.

16 Q Okay. So we're talking about 1B, 11A, and 11C;
17 is that correct?

18 A I'm looking at 1B, 1E, 1G. Then the part two,
19 duties of the agent. Then part 11, indemnification.

20 Q Okay. As far as when the -- and I realize
21 we're, again, we're kind of talking hypothetically,
22 obviously, if Defendants can show that the Plaintiffs
23 did receive a meaningful offer of insurance, which we're
24 permitted to do even if the form -- we're permitted to
25 attempt to do, even if the form was not filled out

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1 correctly. Assuming, though, that the Plaintiff were to
2 win the case, how does NGM believe that Miles violated
3 1B -- would have violated 1B?

4 A Not being a lawyer, but if you look at B,
5 buying insurance, contracts, counter signed binders,
6 customary endorsements, making policy changes, all in
7 accordance and subject to the limitations set forth in
8 the company manual as written? So if it -- and I say
9 if, because it's not up for me to decide, it's,
10 obviously, up to the court to decide. If it was found
11 that the forms weren't completed by the agent, and it
12 wasn't -- was not within the statute of what's mandated
13 by the state of South Carolina, then we'd use that -- it
14 would be one of the provisions we would say that the
15 agency would have been responsible, because it completed
16 the application, of not fulfilling to it's fullest under
17 the requirements of South Carolina law.

18 Q Well -- and let me ask you, though, we talked
19 about earlier, though, is that NGM did not have in it's
20 manuals or written or printed instructions anything with
21 reference to the amount of premium for underinsured
22 motorist coverage, that was not a parameter that would
23 cause -- that would raise red flags at NGM, whereas
24 others were. For example, if you were selling them more
25 underinsured motorist coverage then they were allowed to

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1 purchase under the statute, or something like that,
2 having the amount of premium in there was not the -- was
3 not something that was part of NGM's guidelines at the
4 time; isn't that correct?

5 A Could you rephrase the question, I'm not
6 sure -- I got a little confused by that.

7 Q Yeah. I don't blame you. Sorry about that.
8 Let me try to rephrase that. My understanding of what
9 NGM's position was in this case is that NGM -- sorry, is
10 that Miles is an agency that has the ability to buy and
11 sell and so forth with -- with NGM. NGM's position is
12 that if the Defendants lose the case because the form
13 was not filled out correctly, then that's all on Miles
14 Insurance Agency, that's your-all's position, right?

15 A Yes.

16 Q Okay. And I understand the position you are
17 taking, I think I do, we'll cover it in a minute. I
18 understand the position you-all are taking under
19 Provision 11A. I'm going to argue with you about that
20 in a few minutes in an appropriate way, but I understand
21 the position under 11A is that you guys believe that the
22 agent, if we lose the case, it will be because the agent
23 did not do things that the agent should have and could
24 have done. What I'm asking about, though, is that you
25 cited some other provisions and I just want to explore



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1 those with you?

2 A Okay.

3 Q Provision 1B. Provision 1B says that the agent
4 is authorized to --5 A Sorry, could you tell me where you are? I'm
6 sorry. I apologize.

7 Q Sorry. I'm under 1B under Exhibit 4.

8 A Okay.

9 Q And it says you can bind insurance -- sorry.
10 Says the agent can bind insurance contracts, counter
11 sign binders, policies, and customary endorsements
12 effecting policy changes, all in accordance with and
13 subject to the limitations set forth in the company's
14 manuals and written or printed instructions now and here
15 in after furnished to the agent. And what I'm trying to
16 understand is if provision 1B comes into play, is there
17 -- is there a provision in the MSA agency agreement or
18 manuals or wherever that requires that the premium
19 provision be filled out in the application, with respect
20 to underinsured motorist coverage?

21 A To that exact question, I don't see that exact
22 provision in the agency agreement, no, to this question.

23 Q Okay.

24 A But just to finish the answer, but I think if
25 you are going to indemnification, under part C, I think



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1 it might answer that question in that way, but not
2 exactly to the question you asked.

3 Q Okay. And as far as -- as far as 1E goes:
4 Exercises authority, personally or through his
5 authorized employees, that's -- how is that something
6 that Miles -- that NGM could say Miles failed to do?

7 A Well, the representative, the person who worked
8 with the Websters, if they didn't complete it properly
9 on behalf of the agency, I think that's what's it's
10 referring. That's my understanding what that part E
11 would be referring to.

12 Q Okay. Let's get over to -- let me get to the
13 concept of indemnification under paragraph 11.

14 A Okay.

15 Q Because just to establish at the outset, it's
16 my understanding of South Carolina law that if NGM
17 writes auto insurance in South Carolina, that if a
18 customer wishes to purchase underinsured motorist
19 coverage, that NGM has to sell that coverage?

20 A Correct.

21 Q And you would agree with that, right?

22 A Uh-huh.

23 Q I take it in this case, and this is, you know,
24 agree or disagree, I take it in this particular case,
25 that if the Websters had wanted additional underinsured



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1 motorist coverage, that NGM would have been required to
2 sell it to the Websters, right?

3 A Correct.

4 Q Okay. And NGM would have received the premium
5 for the coverage and had the accident occurred, the way
6 it did, that NGM would be fully liable -- and liable may
7 not be the right word, but NGM would have to pay out
8 whatever premium -- sorry, whatever proceeds have to be
9 paid out if the underinsured coverage were in effect?

10 A If the Websters elected the voluntary coverage
11 of the underinsured coverage?

12 Q Right.

13 A Depending on what limit they purchased, that
14 coverage would have been available to them and the claim
15 scenario that I understand pertains to this loss.

16 Q Okay. You repaired my question for me. I
17 appreciate that. What, then, would be NGM's damages,
18 other than the loss of the unpaid premiums, if it's
19 determined that this is -- this policy is reformed?

20 A The full coverage. Whatever --

21 Q Well, why?

22 A Because it's almost like if you go with that
23 scenario, that question, every insured would purchase
24 minimal limits if they could change is after the fact,
25 the damage just wouldn't be the premium, it would be the



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1 difference, A, not having coverage to having coverage,
2 which in this case, I understand potential exposure is
3 350,000. So because there wasn't a premium -- or
4 coverage selected, the damages to me would be the
5 coverage, which would be, in this case, \$350,000.

6 Q Well, but the reason I would disagree with your
7 characterization of that is insureds wouldn't do that,
8 because they would have to go win a lawsuit first,
9 claiming they actually wanted more coverage than they
10 got. Because the Websters -- our hope in this case,
11 that we share with NGM, is that the Websters don't
12 prevail in the case.

13 A I believe that the Websters rejected the
14 coverage and it wasn't in place at the time, therefore I
15 don't think they are entitled to the coverage. That's
16 my position.

17 Q Yeah, that's -- yes. That's our position as
18 well. Mr. Bell, who's on the phone, we will take it as
19 a given that he disagrees with our position, which is
20 what brings us all here today. My question to you,
21 though, is if NGM has to pay the coverage because it is
22 determined that the Websters really would have bought
23 the coverage had it been meaningfully offered to them,
24 I'm trying to figure out -- I'm trying to understand why
25 NGM had damages beyond the loss of the premiums, plus



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1 prejudgement interest that would have paid, because it
2 would have had to have sold this policy anyway?

3 A I go -- to answer your question, kind of a
4 two-part answer, I think it goes back to the MSA agency
5 agreement. I don't think that your -- I don't want to
6 be disrespectful, I don't believe that theory is
7 discussed in the agency agreement, and I think your
8 interpretation of what you believe the damage exposure
9 to be would be probably decided by the court, but my
10 opinion would be the full coverage obligation would be
11 the damage.

12 Q Okay. In looking at 11A --

13 A Okay.

14 Q The first part of 11A says, when the company
15 will hold the agent harmless against liabilities. And,
16 obviously, that's not in play here. The second sentence
17 says: Conversely, the agent will hold the company
18 harmless against liability it may incur to or on behalf
19 of its policyholder, actually alleged, based on error or
20 omission of the agent if the company has not contributed
21 to or compounded such error or omissions. Right?

22 A Okay. I don't understand your question,
23 though.

24 Q You read it the same way. My -- I'm sorry?

25 A I didn't say anything. I'm sorry.



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1 Q Oh, okay. My question to you, though, is as we
2 talked about before, that NGM actually received
3 a written application from Miles Insurance Agency signed
4 by the Websters that on the face of it does not have the
5 premium amount even filled out on the first page. And
6 Exhibit 3, the optional -- the offer of optional
7 additional coverage clearly does not have the premiums
8 filled out. How does -- if it is determined that was
9 improper, how does NGM take the position it would not
10 have had a role in that?

11 A Well, I guess, my position would be that it was
12 secured by the agency and the companies behind that had
13 binding authority, and that it was within the guidelines
14 of the companies thing, and responsibility of the
15 guidelines being filled out properly would be on the
16 agency. Then looking at the form on the first page, I
17 think there's two different positions in the form, I
18 think the issue of this case is the third page on this
19 what is required by the state, and that, you know, the
20 guidelines within the state and binding authority given
21 to the agency, which in my opinion would give the agent
22 the exposure if it wasn't filled out correctly.

23 Q Okay. You lost me a little bit. The third
24 page?

25 A Sorry, third -- I have --

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1 MR. DOUGALL: Exhibit 3. Sorry.

2 A Exhibit 3, I'm sorry, if you go to -- so sorry
3 about the paper rustling. Third page.

4 Q No, you are great. Okay. This is -- this
5 question maybe a little off the reservation, but -- and
6 I can find the answer to this if you don't know it. I'm
7 not going to bind the company to the question I'm about
8 to ask. If you don't know, you don't know. Is filling
9 out the amount of the increased premium for underinsured
10 motorist coverage, is that something that's required in
11 other states besides South Carolina?

12 A I don't know the answer to that question. We
13 work in 30 states, and to say that there's uniqueness
14 within 30 states would be probably the understatement of
15 the day.

16 Q I got ya. That's fair enough. Okay. So in
17 terms of 11C, it says the agent shall hold the company
18 harmless and reimburse the company for any loss,
19 expense, damage sustained by reason of any violation of
20 the provisions of this agreement or of the written
21 printed instructions furnished the agent by the company.
22 Are there -- are there written or printed instructions
23 for the agency, other than this agency agreement, about
24 filling out these forms?

25 A Well, the agency agreement -- and, you know,



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1 where it puts the binding that the forms are done within³⁰
2 the guidelines and the manual.

3 Q Okay. The manual -- the NGM manual that Miles
4 would have?

5 A Yes.

6 Q Okay. This is going back to -- going back to
7 Exhibit 2 or 3. And I may have asked you this before,
8 if so, I'm sorry. I'm actually about finished and I
9 just want to clear up a couple of things.

10 A Okay. I put both in front of me, is that all
11 right?

12 Q Of course. As far as with the range of
13 premiums, one thing that's just interesting to me is
14 that with respect to Exhibit 2, with respect to the
15 amount of the premium, with respect to liability that
16 they are getting, that's -- those numbers are spelled
17 out. That's obviously something that Websters -- or
18 Miles can plug in and you have it. With respect to
19 underinsured motorist coverages, it's not. Again, I'm
20 just, kind of, wondering, is that a -- was there a book
21 at the time or something that they could just go look
22 that up and fill that in or -- because it's not on
23 either form, so it's -- I don't know if it was just -- I
24 don't know why they didn't fill that out. And what I'm
25 wondering is is how available was that number, if you



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1 know?

2 A It would have been as available as the numbers
3 above.4 Q Okay. Just one second, I think I'm about done.
5 Give me just a second, I'm shuffling through some stuff.
6 Just avoid the uncomfortable silence, give me just a
7 minute or two.

8 (Break taken.)

9 MR. ELLIS: I'm finished with my part.
10 Francis, do you want to do your part?11 MR. BELL: Madame Court Reporter, this is
12 Francis Bell, I represent the Plaintiffs in this
13 case, Mr. and Mrs. Webster. I'll make sure you got
14 all my information, obviously, I'll need a copy of
15 this whenever we wrap up.

16 CROSS EXAMINATION

17 BY MR. BELL:

18 Q Mr. Brennan, I want to make sure I stay within
19 the 12B, it's real tricky, and not my comments that were
20 made by the deposition. But -- and you are the only
21 witness that's been listed. In reference to Exhibit 2,
22 is this a corporate litigation issue or is this a claims
23 issue in reference to that form? Whether or not it is
24 correct or incorrect, which is the application itself?

25 A It's both.



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1 Q Okay. Well, therefore there should be another
2 witness maybe out there as to -- who would -- Tom, you
3 stop me anytime if I'm wrong -- who would be the
4 potential witness that would be on the claims side?

5 MR. DOUGALL: Yes. Francis -- Mr. Bell is the
6 litigation manager for the claims department, so
7 he -- I'm sorry.

8 THE WITNESS: Brennan.

9 MR. DOUGALL: I'm sorry. What did I say?

10 MR. BELL: I'm sorry. I didn't mean agency
11 side. There's an agency side out there too. I
12 apologize.

13 BY MR. BELL:

14 Q Let's back up again. On Exhibit 2, is this a
15 claims form or is this an agency form that somehow binds
16 the company to issue the policy? That's what I'm
17 asking.

18 A It's an Acord form application from Miles
19 Agency on behalf of NGM, which was bound NGM to this
20 coverage.

21 Q All right. And what is the word Acord mean?

22 A Acord is a form on top of the page that is, I
23 guess lack of better term, an application. An
24 auto application which is headed South Carolina personal
25 auto application.



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1 Q I understand, but is Acord one of your own
2 internal words?

3 A I understand it to be an industry term. Beyond
4 that, I couldn't give you a better answer. I'm sorry.

5 Q Okay. So to go along with the Rule 30(b)6 of
6 where we are talking about procedures for reissuing and
7 issuing policies, this form is -- if it's reviewed, is
8 it reviewed by claims or by the agency side?

9 A Well, it's not reviewed by claims. It's given
10 to the -- agency has the binding authority to write
11 the application and the coverage, and it's
12 automatically --

13 Q All right. But when it -- I'm sorry.

14 A It's automatically approved by the company
15 because it's within the guidelines within the manual of
16 underwriting.

17 Q All right. Okay. There you go. That's what
18 I'm looking for, underwriting. So you don't have
19 anything to do with underwriting?

20 A My job as it states? No, I do not. But I work
21 with our underwriting department.

22 Q I understand. But, therefore, Exhibit 2 is
23 this something underwriting would review or corporate
24 litigation claims people would review?

25 A Well, prior to our claim, this is underwriting

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1 issue, but when a claim is made, or litigation is filed,³⁴
2 it becomes between underwriting and claims.

3 Q I understand. That's what I expected your
4 answer to be. All right. Well, in reference to
5 Exhibit 3, which is core supplement.

6 A Okay.

7 Q This is an NGM form; is that correct?

8 A It says on top the core of South Carolina auto
9 supplement with the Miles Agency and the person on it is
10 NGM on it.

11 Q Right. But that's why I'm asking the question,
12 as corporate litigation manager, is this an NGM form
13 that the agency is supposed to follow or is it something
14 that Miles Insurance Agency just came up with? I mean,
15 who's form is it?

16 A It's --

17 Q That's what I'm asking.

18 A I would -- to specifically answer that question
19 I would have to do some research. If it's a form that's
20 approved by the state, I would have to check if that's
21 the thing. If it's a form that was given to the agency
22 by our company, or if it's a form that the agency used
23 with multiple carriers, I don't have a firm answer with
24 regards to the Websters' case, so I would have to be
25 careful answering that question anymore decidedly.



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1 Q I understand. I understand. That's why I got
2 to come there and do a 30(b)6 on my own, because you are
3 telling me today, in reference to Exhibit 3, and this is
4 the point, as you correctly stated, we have suit over.
5 You can't tell me if it's your form or if it's an agency
6 form?

7 A I would have to confirm the exact creator of
8 the form. I don't have that answer for this deposition.

9 Q Okay. Well, that's what we got to find out. I
10 realize you are not a lawyer, but, again, as corporate
11 litigation management -- and stop me if I'm going beyond
12 the boundaries. Do you understand on the side of the
13 state law that these form have to be approved by the
14 Insurance Commission?

15 A Correct, I do understand that.

16 Q Can you tell me the date this form was so
17 approved back in 2001?

18 A Again, to get a definitive answer on it I'd
19 have to do research, but if the form is in play, it's
20 going to be my position that it was approved.

21 Q And the point is does this form, that we don't
22 know who's signed it, who issued it, we're assuming it's
23 approved, but this form does bind NGM either plus or
24 minus, either good or bad; is that a correct statement?

25 A Right, because this was the form that was used

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1 that we agreed to bind the insurance on.

2 Q Okay. All right.

3 MR. BELL: That's all I got, Tom. I'm going to
4 have to come up with some stuff and alert you, let
5 you figure out, you know, who's going to be the best
6 person beyond Mr. Brennan, if anybody.

7 MR. DOUGALL: Okay.

8 MR. BELL: So I'll get that out to you.

9 MR. DOUGALL: My back will thank you in advance
10 for another ten hours of driving down here and back.

11 MR. ELLIS: Yeah, you can e-mail mine.

12 MR. DOUGALL: You get the original too.

13 MR. ELLIS: I get the original, yeah.

14 Actually, I usually get a hard copy and an e-mail.

15 (Witness excused.)

16 (Deposition concluded at 10:33 a.m.)

17 - - -

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No. 1264 P. 6

DATE (MM/DD/YY)

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

EXHIBIT

2

11/15/16

Jan. 23, 2015 11:48AM

No. 1264 P. 7

ADDITIONAL INTEREST

VEHICLE	ADDITIONAL NAME AND ADDRESS	LOAN NUMBER
LOSS PAY	NAME AND ADDRESS	LOAN NUMBER

EMPLOYMENT INFORMATION (If less than 2 years, provide name of previous employer and previous occupation under Remarks)

APPLICANT'S EMPLOYER (Name of business if self-employed)	ADDRESS OF EMPLOYMENT	WORK PHONE NUMBER	YEARS IN CURRENT EMPLOYMENT	YEARS IN PREVIOUS EMPLOYMENT
Kanawha Ins	Lancaster SC			
CO-APPLICANT'S EMPLOYER (Name of business if self-employed)	ADDRESS OF EMPLOYMENT	WORK PHONE NUMBER	YEARS IN CURRENT EMPLOYMENT	YEARS IN PREVIOUS EMPLOYMENT
Webster's Garage				

PRIOR COVERAGE

PRIOR CARRIER AND PRODUCER	# OF YEARS WITH COMPANY	PRIOR POLICY NUMBER/EXPIRATION DATE
General Accident	9 yrs	BPA 87-758-521 1/10/0

GENERAL INFORMATION

EXPLAIN ALL "YES" RESPONSES IN REMARKS	YES	NO	EXPLAIN ALL "YES" RESPONSES IN REMARKS	YES	NO
1. WITH THE EXCEPTION OF ANY ENCUMBRANCES, ARE ANY VEHICLES NOT SOLELY OWNED BY AND REGISTERED TO THE APPLICANT?		X	9. ANY HOUSEHOLD MEMBER IN MILITARY SERVICE? (Driver's license)		X
2. ANY CAR MODIFIED/SPECIAL EQUIPMENT? (Include customized modifications and indicate cost)		X	10. ANY DRIVER'S LICENSE BEEN SUSPENDED/REVOKED?		X
3. ANY EXISTING DAMAGE TO VEHICLE? (Include damaged glass)		X	11. ANY DRIVER HAVE PHYSICAL/MENTAL IMPAIRMENT? (List driver's number)		X
4. ANY OTHER LOSSES INCURRED (not shown in Accident/Claim/Conviction and)?		X	12. ANY FINANCIAL RESPONSIBILITY SUIT? (Driver number and date of filing)		X
5. ANY CAR KEPT AT SCHOOL?		X	13. HAS INSURANCE BEEN TRANSFERRED WITHIN AGENCY?		X
6. ANY CAR PARKED ON STREET?		X	14. ANY COVERAGE DECLINED, CANCELLED, OR NON-RENEWED DURING THE LAST 3 YEARS?		X
7. ANY OTHER AUTO INSURANCE IN HOUSEHOLD? (Include any provided by employer)		X	15. IS THIS BROKERED BUSINESS TO THE AGENT?		X
8. ANY OTHER INSURANCE WITH THIS COMPANY? (List policy number)		X	16. HAS AGENT INSPECTED VEHICLE?		X

REMARKS

We are submitting the homeowners to Neal Grange to apply acct chgs. We will be adding a 6th veh in May.

ATTACHMENTS

X	STATE SUPPLEMENT
	YOUNG DRIVER QUESTIONNAIRE
	DRIVER TRAINING CERTIFICATE
	ANTI-THEFT DEVICE CERTIFICATE
	MEDICAL STATEMENT
	MOTOR VEHICLE REPORT
	PHOTOGRAPH
	BILL OF SALE

FOR COMPANY USE ONLY

BINDER/SIGNATURE

INSURANCE BINDER		IF THE "BINDER" BOX TO THE LEFT IS COMPLETED, THE FOLLOWING CONDITIONS APPLY: THIS COMPANY BINDS THE KIND(S) OF INSURANCE STIPULATED ON THIS APPLICATION. THIS INSURANCE IS SUBJECT TO THE TERMS, CONDITIONS AND LIMITATIONS OF THE POLICY(IES) IN CURRENT USE BY THE COMPANY. THIS BINDER MAY BE CANCELLED BY THE INSURED BY SURRENDER OF THIS BINDER OR BY WRITTEN NOTICE TO THE COMPANY STATING WHEN CANCELLATION WILL BE EFFECTIVE. THIS BINDER MAY BE CANCELLED BY THE COMPANY BY NOTICE TO THE INSURED IN ACCORDANCE WITH THE POLICY CONDITIONS. THIS BINDER IS CANCELLED WHEN REPLACED BY A POLICY. IF THIS BINDER IS NOT REPLACED BY A POLICY, THE COMPANY IS ENTITLED TO CHARGE A PREMIUM FOR THE BINDER ACCORDING TO THE RULES AND RATES IN USE BY THE COMPANY. THE QUOTED PREMIUM IS SUBJECT TO VERIFICATION AND ADJUSTMENT, WHEN NECESSARY, BY THE COMPANY.
EFFECTIVE DATE	EXPIRATION DATE	
TIME	1201 AM	
	NOON	
COVERAGE IS NOT BOUND		

NOTICE OF INSURANCE INFORMATION PRACTICES

PERSONAL INFORMATION ABOUT YOU, INCLUDING INFORMATION FROM A CREDIT REPORT, MAY BE COLLECTED FROM PERSONS OTHER THAN YOU. SUCH INFORMATION AS WELL AS OTHER PERSONAL AND PRIVILEGED INFORMATION COLLECTED BY US OR OUR AGENTS MAY IN CERTAIN CIRCUMSTANCES BE DISCLOSED TO THIRD PARTIES. YOU HAVE THE RIGHT TO REVIEW YOUR PERSONAL INFORMATION IN OUR FILES AND CAN REQUEST CORRECTION OF ANY INACCURACIES. A MORE DETAILED DESCRIPTION OF YOUR RIGHTS AND OUR PRACTICES REGARDING SUCH INFORMATION IS AVAILABLE UPON REQUEST. CONTACT YOUR AGENT OR BROKER FOR INSTRUCTION ON HOW TO SUBMIT A REQUEST TO US.

ANY PERSON WHO KNOWINGLY AND WITH INTENT TO DEFRAUD ANY INSURANCE COMPANY OR ANOTHER PERSON FILES AN APPLICATION FOR INSURANCE CONTAINING ANY MATERIALLY FALSE INFORMATION, OR CONCEALS FOR THE PURPOSE OF MISLEADING INFORMATION CONCERNING ANY FACT MATERIAL THERETO, COMMITS A FRAUDULENT INSURANCE ACT, WHICH IS A CRIME AND SUBJECTS THE PERSON TO CRIMINAL AND CIVIL PENALTIES.

APPLICANT'S STATEMENT: I HAVE READ THE ABOVE APPLICATION AND ANY ATTACHMENTS. I DECLARE THAT THE INFORMATION PROVIDED IN THEM IS TRUE, COMPLETE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF. THIS INFORMATION IS BEING OFFERED TO THE COMPANY AS AN INDUCEMENT TO ISSUE THE POLICY FOR WHICH I AM APPLYING. IN ADDITION, IF THE AUTO PLAN OR COMPANY DESIGNATED IN THIS APPLICATION IS NON-STANDARD, I CERTIFY THAT I UNDERSTAND THE RATES FOR THIS COVERAGE ARE HIGHER THAN NORMAL AND THAT THEY ARE ACCEPTABLE TO ME AS I HAVE BEEN UNABLE TO OBTAIN COVERAGE DESIRED THROUGH THE NORMAL INSURANCE MARKET.

PRODUCER'S STATEMENT: I CERTIFY TO THE BEST OF MY KNOWLEDGE AND BELIEF THAT THE SIGNATURE OF THE APPLICANT IS THE SIGNATURE OF THE APPLICANT.

HOW LONG HAVE YOU KNOWN THE APPLICANT?

I UNDERSTAND THAT THE COVERAGE SELECTION AND LIMIT CHOICES INDICATED HERE OR IN ANY STATE SUPPLEMENT WILL APPLY TO ALL FUTURE POLICY RENEWALS, CONTINUATIONS AND CHANGES UNLESS I NOTIFY YOU OTHERWISE IN WRITING.

APPLICANT'S SIGNATURE	DATE (MM/YY)	PRODUCER'S SIGNATURE
<i>[Signature]</i>	1/5/01	<i>[Signature]</i>

ACORD 80-56 (3/99)

Jan. 23. 2015 11:48AM

No. 1264 P. 8

AGORD SOUTH CAROLINA AUTO SUPPLEMENT

PRODUCER MILES INSURANCE AGENCY, INC. 210 E. ARCH ST. LANCASTER, SC 29720	APPLICANT/NAME/INSURED Janet & Terry Webster COMPANY Natl Grange Tiers EFFECTIVE DATE 11/10/07

1. OFFER OF OPTIONAL ADDITIONAL UNINSURED MOTORIST COVERAGE AND OPTIONAL UNDERINSURED MOTORIST COVERAGE

The State of South Carolina's automobile insurance laws now allow any insurance company to refuse to underwrite your automobile liability insurance coverage. That refusal may be based upon a number of reasons. Automobile liability insurance coverage pays other motor vehicle drivers and their passengers whom you damage, for the damages which you cause and for which you are legally responsible. There are two types of automobile liability insurance coverage: bodily injury and property damage. Bodily injury coverage is coverage which pays people upon whom your motor vehicle inflicts bodily injury. Property damage coverage is, a coverage which pays people for damages your automobile causes to their motor vehicle or property.

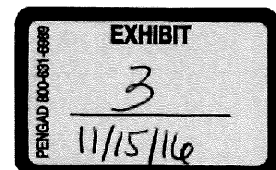
Once any insurance company makes the business decision to underwrite your automobile liability insurance coverage, then it must provide to you at least \$15,000.00 of bodily injury coverage for each person whom you may injure in any single accident and \$30,000 of bodily injury coverage for two or more people whom you may injure in any single accident. The insurance company must also provide you with at least \$10,000 in property damage coverage for each accident which you may cause. You may have seen these limits described as \$15,000/\$30,000/\$10,000 or 15 - 30 - 10. These limits are commonly known as minimum limits. If you purchase automobile liability insurance, then in order to drive your automobile upon the roads of this State, you must have at least minimum limits. You may also comply with these requirements by purchasing a combined single limit of \$40,000.

There is no requirement under the laws of the State that an insurance company which underwrites your minimum limits of \$15,000/\$30,000/\$10,000 or a combined single limit of \$40,000 must also agree to underwrite higher than those minimum limits of automobile insurance coverage for you. If your insurance company does agree to offer to you more than the minimum limits, then you will be required to pay an increased automobile insurance premium for those increased limits of protection.

In addition, under the State's insurance laws once an insurance company agrees to underwrite your automobile liability insurance coverage for you, you must be offered, at your option, two additional automobile insurance coverages which will protect you in the event you are damaged in an automobile accident by an at fault automobile driver who either has no automobile insurance or whose automobile insurance liability limits are less than the damages which you suffer in that accident. These coverages are legally termed "additional uninsured motorist coverage" and "underinsured motorist coverage". You may also see them referred to within your automobile insurance policy as "UM" and "UIM". If you decide to purchase either of these two optional coverages, then you will be required to pay an additional 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 at least \$15,000/\$30,000/\$10,000 or a combined single limit of \$40,000. 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.



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Underinsured 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 at-fault 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 underinsured motorist coverage in limits up to the limits of liability coverage, which you will carry under your automobile insurance policy. Some of the more commonly sold limits of underinsured motorist coverage, together with the additional premiums 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 these limits within this State, your insurance agent will fill in the amount of increased 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 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 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 to decrease your limits either of additional uninsured motorist or underinsured motorist coverage, then you must contact either your insurance agent or your insurance company. You will not be presented with another copy of this Form by your insurance agent or by your insurance company upon renewal of your automobile liability insurance policy.

Please read this Form carefully. Your insurance agent or your insurance company must answer any questions which you may have. If you have any further questions, then you should contact the State of South Carolina

Department of Insurance. Its address and telephone number are:
Office of Consumer Services

State of South Carolina Department of Insurance
1612 Marion Street
Post Office Box 100105
Columbia, South Carolina 29202-3105
(803) 737-6180
(800) 768-3467
E-mail Address: CnsmMail@dol.state.sc.us

2. Offer of Additional Uninsured Motorist Coverage

Spill Liability Limits

Bodily Injury/Property Damage

Amount of Increased Premium

\$ 15,000 / \$ 30,000 \$10,000

\$ 25,000 / \$ 50,000 \$10,000

\$ 50,000 / \$ 100,000 \$25,000

\$ 100,000 / \$ 300,000 \$50,000

\$ 250,000 / \$ 500,000 \$50,000

\$ _____ (other)

Minimum limits of uninsured motorist coverage are automatically provided by your insurance policy.

(These increased premium charges must be filled-in by your insurance agent prior to your decision and signature.)

Your Policy's Liability Coverage Limits:

\$ 50 is 100 is 50

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Combined Single LimitAmount of Increased PremiumMinimum Combined Single Limit

\$ 40,000

\$ 50,000

\$ 100,000

\$ 300,000

\$ 500,000

\$

(other)

(These increased premium charges must be filled-in by your insurance agent prior to your decision and signature.)

Do you wish to purchase additional uninsured motorist coverage? ☒ Yes ☐ No

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

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

I select

50/100/50

3. Offer of Underinsured Motorist Coverage

Soft Liability LimitsBodily Injury/Property DamageAmount of Increased Premium

Minimum limits of uninsured motorist coverage are automatically provided by your insurance policy.

\$ 15,000 / \$ 30,000 \$ 10,000

\$ 25,000 / \$ 50,000 \$ 10,000

\$ 50,000 / \$ 100,000 \$ 25,000

\$ 100,000 / \$ 300,000 \$ 50,000

\$ 250,000 / \$ 500,000 \$ 50,000

\$

(other)

(These increased premium charges must be filled-in by your insurance agent prior to your decision and signature.)

Your Policy's Liability Coverage Limits:

\$

/ \$

/ \$

Combined Single LimitAmount of Increased PremiumMinimum Combined Single Limit

\$ 40,000

\$ 50,000

\$ 100,000

\$ 300,000

\$ 500,000

\$

(other)

(These increased premium charges must be filled-in by your insurance agent prior to your decision and signature.)

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

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

X [Signature]

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

I select

Reject

ACORD 61 5C (2000/01)

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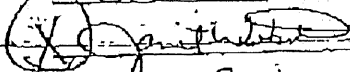
4. Applicant's Acknowledgement

I hereby acknowledge that I have read, or have had read to me, the above explanations and offers of additional uninsured motorist coverage and 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 explanations of these coverages are intended only to be brief descriptions of uninsured motorist coverage and 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.

Type or Print Your Name:

Janet Webster

Your Signature:



Your Address:

2203 Bulmy Court
Lancaster SC ZIP Code: 29720

ACORN 61 SC (2000/01)

- ☒ NGM Insurance Company Jacksonville, Florida
☒ Main Street America Assurance Company of Jacksonville, Florida
☒ Old Dominion Insurance Company of Jacksonville, Florida
☐ MSA Insurance Company of South Carolina

MSA AGENCY AGREEMENT

Each of the member companies of the Main Street America Group ("MSA") identified by an "X" in the adjacent box above, hereinafter individually and collectively (if applicable) called the "Company" and 390646

MILES INSURANCE AGENCY INC Of LANCASTER, SC
 hereinafter called the "Agent", mutually agree to the following:

I. AUTHORITY OF AGENT

The Agent is an independent contractor, not an employee of the Company and, subject to requirements imposed by law and the terms of this Agreement, is authorized to:

- a. Solicit the kinds of insurance for which a commission is specified in the Schedule(s) of Commission attached hereto and made a part hereof.
- b. Bind insurance contracts and countersign binders, policies and customary endorsements effecting policy changes, all in accordance with and subject to the limitations set forth in the Company's manuals and written or printed instructions now or hereinafter furnished to the Agent.
- c. Provide all usual and customary services of an insurance agent on all insurance contracts placed by the Agent with the Company.
- d. Collect and receipt for premiums and, as full compensation, to retain commissions out of premiums so collected as specified in the Schedule(s) of Commission (subject to the provisions herein with regard to Direct Billed business.)
- e. Exercise his authority personally or through his authorized employees.
- f. Represent other companies.
- g. Exercise exclusive and independent control of his time and the conduct of his agency.

II. DUTIES OF AGENT

The Agent agrees to:

- a. Adhere to the published instructions, rules and regulations of the Company and any special written or printed instructions that may be communicated to the Agent.
- b. Forward to the Company copies of all applications, binders, policies, certificates and endorsements issued by the Agent, or otherwise notify the Company of all liability accepted, not later than the fourth succeeding business day following the inception date of coverage.
- c. Promptly report all claims to the Company.
- d. Account for and pay over to the Company premiums in accordance with the accounting procedures as hereinafter set forth.
- e. Keep and retain, throughout the term of this Agreement and for two years after its termination, a complete record and account of all transactions relating to the business transacted by the Agent which shall be accessible to any duly authorized representative of the Company at any reasonable time while this Agreement is in force, or within two years after the termination hereof.

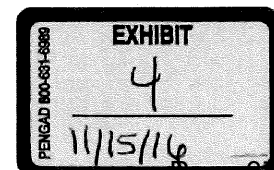
- f. Keep and maintain an agent's errors and omissions policy of insurance in force at all times, with the minimum limit of liability of Five Hundred Thousand (\$500,000.) Dollars, which covers the acts of the agent and the agent's employees.
- g. Keep and retain for all insurance business electronically transmitted throughout the term of this Agreement, all original (or the scanned and electronically stored copy of such original) signed applications, exclusions, rejections or choices of optional coverage, any waiver/rejection/reduction statements or requests, and any warranties, assurances, explanations or statements by the Insured(s) that were required by or relied upon by the Company before it would agree to provide the insurance coverage or limit(s) of coverage afforded by any binder, policy or renewal, and not discard or destroy any such documents for seven (7) years without the prior written consent of the Company.
- h. The Agent agrees to provide any and all of the documents described in subsection g., above, as the Company may reasonably request within five (5) business days of such request. The Agent agrees to grant the Company access to any of its facilities for the purpose of inspecting or auditing the Agent's processes for retaining such documents, and to provide the Company with reasonable assistance in performing such inspection or audit.

III. PREMIUM ACCOUNTING

All premiums received by the Agent on business placed with the Company shall be held by the Agent in trust for the Company until remitted to the Company. The Agent shall not mingle such premiums with the Agent's own funds or funds held by the Agent in any other capacity, without the express written consent of the Company. Nothing herein contained shall be deemed to require the Agent to maintain a separate bank account for the premiums of the Company, as long as the premiums of the Company held by the Agent are ascertainable from the books of accounts and records of the Agent. The Agent's privilege of deducting commissions from premiums before remitting, and the keeping of an account with the Agent on the Company's books, similar to a creditor and debtor account, shall not be construed as changing or affecting the status of the Agent as trustee.

- a. The following provisions are applicable to business other than Direct Billed business placed by the Agent with the Company:
 1. All premiums on such business shall be charged to the Agent's account.
 2. Except as otherwise provided herein, the Agent shall be obligated to pay to the Company all premiums chargeable to the Agent's account, whether or not the Agent has or is able to collect from the Insured.
 3. Return premiums shall be credited to the Agent's account and the Agent shall promptly make refund to the Insured.

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4. The Company shall prepare monthly statement showing the transactions resulting in charges and credits to the Agent's account. By mutual agreement, in writing signed by the Agent and the Company, the statements may be prepared by the Agent.
5. The balance shown in the statement due the Company, or due the Agent, shall be paid the Company or the Agency respectively, not later than 45 days after the end of the account month for which such statement was prepared.
6. Unless the Agent gives the Company written notice that a premium charge, which is overdue on the Agent's account, has been collected by the Agent, the Company may proceed on the assumption that the premium has not been collected and cancel the policy to which the premium charge applies.
7. The omission of any item(s) from a monthly statement shall not affect the responsibility of either party to account for and pay all amounts due the other, not shall it prejudice the rights of either party to collect all such amounts due from the other.
8. If any interim or final additional premiums developed by audit cannot be collected by the Agent, the Company shall undertake direct collection and the Agent shall not be responsible for such premium provided.

- b. The Agent has made every effort to obtain and retain an adequate deposit premium.
- c. The Agent has made every effort to collect the additional premium and notifies the Company within sixty (60) days of the date of the audit/billing that he has been unable to do so and has requested cancellation of the coverage.
- d. No commission will be earned on items turned over to the Company for collection.
- e. The following provisions apply to business placed by the Agent with the Company and designated by the Company as Direct Billed.
 1. The Company shall be responsible for billing and collecting premiums.
 2. The Agent shall not be responsible for earned premiums except in those cases where the Agent has, either by advancing premiums on behalf of the insured or otherwise extended the time for payment beyond that authorized by the Company. In such cases the Agent shall be obligated for the full earned premium incurred and such premiums shall be paid by the Agent within 30 days after billing by the Company.
 3. The Company shall make refunds of return premiums directly to the insured's.

IV. COMMISSIONS

It is agreed that:

- a. The Agent will accept, and the Company will pay as full compensation for all services rendered under this Agreement, the percentages of commissions as specified in the Schedule of Commission applicable for each Individual Company subject to this Agreement.
- b. The terms of this Agreement shall not prohibit the negotiation of special commission rates on individual policies by mutual agreement of the Agent and the Company.
- c. Commissions on Direct Billed premiums shall be paid to the Agent within 30 days after the end of the month in which such premiums are received and recorded by the Company, subject

to offset by the Company of any return commissions or other amounts due the Company from the Agent.

- d. The Agent agrees to pay the Company a return commission on all return premiums at the same rates at which the Agent was originally compensated.

V. DESIGNATION OF AGENT BY POLICYHOLDER

- a. If a conflict exists as to which producer is authorized to represent an existing or prospective policyholder, the policyholder's written statement designating his agent or broker shall be binding upon the Agent and the Company.
- b. Such designation on an unexpired policy will be effective as of the date specified upon receipt by the Company of a reasonable written agreement between the producers involved determining who shall be:
 1. Responsible for collection of premiums.
 2. Entitled to receive commissions.
 3. Responsible for the refund of return commissions.

VI. AGENCY SALE, TRANSFER OR MERGER

The agent agrees to give 60 days notice to the Company of any sale, merger or transfer of his business, or its consolidation with a successor firm, in order that the Company may, at its election and with the consent of the parties of interest, enter into a new Agency Agreement with the successor.

VII. COMPANY ACQUISITION

If the Company, or any affiliate, gains management control through acquisition or other means of any insurance company with which the Agent does business, the Company or its affiliate shall not reduce or eliminate the underwriting capacity of either company on business produced by the Agent, subject to:

- a. Rating plans, policy forms and underwriting rules of the Company, and
- b. Continuation by others of reinsurance arrangements with such companies.

VIII. CHANGES IN AGENCY AGREEMENT

- a. This Agreement may be revised at any time by mutual agreement of the Agent and the Company.
- b. This Agreement may be revised by the Company only after it gives the Agent at least 60 days advance notice, which:
 1. Sets forth the proposed revision and its effective date, and
 2. Offers to meet with the Agent at least 30 days before such effective date in order to discuss the purpose and reasons for such revision.

The Company agrees to make an authorized representative available at any reasonable time and place for such requested conference. Upon compliance by the Company with the foregoing procedures, the requested revision shall then become effective on the date specified in the notice without further action being required of either party.

3. The Company agrees to make no change in any individual rate of commission as specified in any Schedule(s) of Commission until such rate of commission has been in effect for a period of not less than one year.
- c. The Agent and the Company each agree that in the interest of proper recordkeeping all communication done to effect the

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operation of subsections a. and/or b., e, shall be done in writing.

IX. POLICY CANCELLATION OR NONRENEWAL

Subject to requirements imposed by law and compliance with the applicable provisions contained in this Agreement and within the policy:

a. At the agents' request, the Company shall:

1. Cancel any policy.
2. Decline to renew any policy and, upon the Agent's request, give advance written notice of non-renewal to the policyholder.

b. Any authority granted the Agent pursuant to this Agreement, shall not be construed as a waiver by the Company of its rights to decline an application for insurance, cancel a policy, or decline to renew a policy.

X. TERMINATION OR SUSPENSION

a. The Company reserves the right to withdraw authority from the Agent to write any particular line of insurance and to decline or accept a risk or class without previous notice. The Agent shall promptly change the conditions of any insurance bound or issued hereunder, in conformity with any request of the Company.

b. This agreement shall terminate:

1. Automatically if any public authority cancels or declines to renew the Agent's license or certificate of authority.
2. Automatically on the effective date of the sale, transfer or merger of the Agent's business, or its consolidation with a successor firm.
3. Immediately upon either party giving written notice in the event of delinquent payment of accounts, breach of binding authority, abandonment, fraud, insolvency or gross and willful misconduct on the part of the Agent.
4. Upon either party giving at least 90 days advance notice to the other provided, however, that if the Agent has represented the Company continuously for three or more years, the Company will, if requested to do so in writing by the Agent, renew policies that meet the Company's underwriting requirements expiring during the 9 month period following the termination date of this Agreement.

c. The Company may elect to exercise the provisions of this Section X on either an individual Company basis or on a collective Company basis (if applicable), as it shall choose and specifically communicate to the Agent.

d. The Company will pay commissions to the Agent as specified in the applicable Schedule(s) of Commission on the premiums paid to Company, within one year following the termination of this Agreement, for continuous non-cancellable policy or policies which the Company is required by law to renew.

e. In the event of the suspension of the Agent's authority or the termination of this Agreement, and provided the Agent has and continues to promptly and properly account for and pay over to the Company premiums as provided under the terms of this Agreement; the Agent's records, use and control of expirations, shall remain the property of the Agent and be left in his possession. Otherwise, the records, use and control of expirations shall be vested in the Company.

f. During the term of this Agreement and after its expiration, as long as the records and control of expirations are vested in the Agent, the Company shall not:

1. Refer or communicate the names of policyholders and expiration dates to any other Agent, broker or person for purposes of solicitation.

2. Use, or permit the use of, its records of business placed by the Agent to solicit individual policyholders for the sale of other lines of insurance, products or services, without the Agent's authorization. When the Agent grants such authorization, he shall be allowed the applicable commission or fee on such sales resulting from the use of such records.

g. After termination of this Agreement:

1. The obligations of the Company and the Agent to account for and pay premiums, commissions, return premiums and return commissions on policies existing at the time of the termination of this Agreement or renewed pursuant to this Agreement, and any endorsements, audits and installment billings on such policies shall be determined and governed by Sections "III Premium Accounting", "IV Commissions", and "VIII Changes in Agency Agreement" herein except that:

a. If this Agreement is terminated because the Agent is delinquent in remitting premiums to the Company, or subsequent to the termination of this Agreement, the Agent is delinquent in remitting premiums to the Company, all unpaid premium charges for policies other than Direct Billed policies shall immediately become due and payable.

b. The Agent shall not receive a commission on, or be obligated to collect, premiums for policies renewed more than one year after the termination of the Agreement (because of the Company's legal obligation to renew) or premiums which become due on continuous non-cancellable policies more than one year after the termination of this Agreement.

2. The Agent shall have authority to service unexpired policies but the Agent shall have no authority to accept new business, bind coverage, renew policies or issue endorsements. All requests for endorsements shall be submitted by the Agent to the Company's underwriting office for acceptance.

3. The Company shall provide the ordinary Company underwriting, claims, engineering and premium audit services for the unexpired policies.

4. The Company agrees to provide the Agent detailed expiration information on Direct Billed policies within 90 days after termination of this Agreement.

XI. INDEMNIFICATION

a. The Company will hold the Agent harmless against liability resulting from loss to policyholders based on error or omission of the Company in processing or handling of policies if the Agent has not contributed to or compounded such error or omission. Conversely, the Agent will hold the Company harmless against liability it may incur to or on behalf of its policyholder, actual or alleged, based on error or omission of the Agent if the Company has not contributed to or compounded such error or omission.

b. The Company agrees to hold the Agent harmless against civil liability for damages and expenses, including the costs of defense, which he may be obligated to pay as a direct result of the failure of the Company to comply with the requirements of the Fair Credit Reporting Act, except in the case of willful or intentional act or omission on the part of the Agent.

c. The Agent shall hold the Company harmless and shall reimburse the Company for any loss, expense of damage sustained by reason of any violation of the provisions of this

Agreement or of the written or printed instructions furnished the Agent by the Company.

- d. The Company and the Agent both agree that, except for willful or intentional acts or omissions of the other party, each shall hold the other harmless for any loss, expense or damages of any kind which may arise as a result of the transfer of any corrupted or destructive software, program or data (including a computer virus) from one party to the other party.
- e. Each party shall promptly notify the other of any claim or the commencement of any action which could result in a claim for indemnification under this Agreement.

XII. GENERAL PROVISIONS AND CONDITIONS

- a. The Company shall clearly and prominently identify the Agent by name when transmitting policies, premium notices and cancellation notices to policyholders.
- b. The Company will furnish from its own stock to the Agent all such publications of the Company comprising blanks, circulars and other printed matter as in its judgment may be necessary for the development of said Agency. The Agent must not use any advertising, circular matter or forms other than those furnished or approved by the Company. Postage remittances, telegrams, telephone costs and transportation of parcels shall be paid for by the sender.
- c. All undelivered policies and bond forms, supplies, equipment, manuals, books of accounts, premium book registers, documents and other papers furnished by the Company to the Agent at the Company expense shall be returned by the Agent upon demand and shall at any and all times be subject to the inspection of its officers or other representatives, duly authorized, and be freely exhibited to them for the purpose of examination, and at the termination of said agency, from any cause whatever, shall be upon demand surrendered to the Company or its authorized representative.

- d. The Agent shall furnish to the Company if demanded, and as often as required, a good and sufficient indemnity bond.
- e. The Agent shall not appoint any sub-agent, or submit business from other producers, without the knowledge of the Company. The Agent assumes full responsibility for all acts of commission or omission of any of his sub-agents insofar as such acts of such persons affect the Company.
- f. This Agreement shall not apply to any policy issued by the Company as a result of assignment by any governmental agency or through any assigned risk plan, FAIR plan or similar plan however designated.
- g. In the event that any provision of this Agreement conflicts with any statute of the state in which this Agreement is to be performed and is more restrictive than the provisions of such statute, the provisions of the statute shall prevail and define the rights, duties and obligations of the Company and the Agent.
- h. The term policy or policies as used throughout this Agreement shall mean insurance policies and fidelity and surety bonds.
- i. This Agreement shall apply to, and be binding upon, the heirs, next of kin, distributees, legal representatives, successors and assigns of the parties hereto.
- j. This Agreement supersedes all previous Agency Agreements, whether written or oral, between the Company and the Agent and:
 1. Shall be effective December 17, 2007
 2. Shall remain in full force and effect until suspended or terminated as provided herein.

In Witness Whereof the Agent and the Company have caused this Agreement to be executed on this 20th day of Dec. 2007

FOR THE AGENT BY:

Jerry B. Miles
President
 (Title)

FOR THE COMPANY BY:

James E. Mack
Corporate Secretary
 (Title)

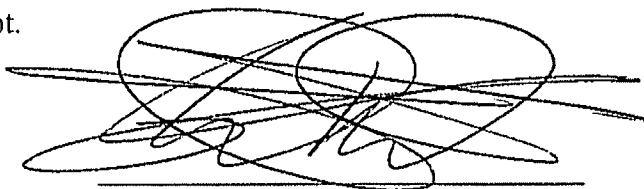
STATE OF SOUTH CAROLINA	) IN THE COURT OF COMMON PLEAS
	)
COUNTY OF LANCASTER	) Civil Action No. 2018-CP-29-00794
	)
NGM Insurance Company,	)
	)
Plaintiff,	) AFFIDAVIT OF RICHARD IN
	) MILLES IN OPPOSITION TO
v.	) PLAINTIFF'S MOTION FOR
	) SUMMARY JUDGMENT
Miles Insurance Agency, Inc.,	)
	)
Defendant.	)
	)

Personally appeared before me Richard Miles who, first being duly sworn, deposes and states as follows:

1. I am over the age of 21, and I have personal knowledge of the matters set forth herein.
2. I am the president of Miles Insurance Agency, Inc.
3. At the time the application for automobile insurance coverage at issue in this case was submitted to NGM Insurance Company, original applications including UM/UIM selection forms were sent to NGM Insurance via US mail for all new risk. The carrier processed the policies and issued them since they were not automated at the time. Miles Insurance Agency had binding authority and had to have the application in the carrier's hands within 10 days of the effective date.
4. It was my understanding that NGM underwriting reviewed all applications to make sure the risk was acceptable per underwriting guidelines. If the application, including rejections of insurance coverage, were not acceptable, it was up to NGM to reject the application and demand that it be resubmitted.

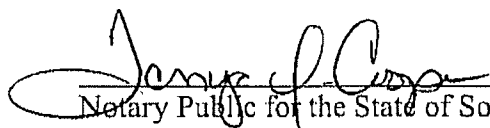
5. In this matter, as in all matters for NGM in the relevant time period, NGM reviewed the application as signed by the insured and could have returned it to us and requested that it be completed correctly.

Further Affiant Sayeth Not.

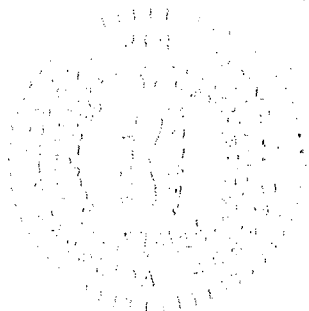


Richard Miles

Sworn to subscribed before me
This 1st day of March, 2019


Notary Public for the State of South Carolina

My commission expires 9-7-2026



THOMAS F. DOUGALL
ALSO ADMITTED IN TEXAS
CERTIFIED MEDIATOR IN SC

ADELAIDE DENNIS KLINE
OF COUNSEL

WILLIAM A. COLLINS, JR.

ROBERT M. PEELE, III

December 4, 2015

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CON
Bernie W. Ellis, Esq.
The McNair Firm, P.A.
Post Office Box 447
Greenville, SC 29602

Re: Jerry Wayne Webster, et ux. v. Miles Insurance Agency, Inc., et al.; Civil Action Number: 2015-CP-29-00810

Dear Bernie:

At the request of NGM Insurance Company I am hereby tendering the defense of the above referenced matter to your client, Miles Insurance Agency, Inc.

As you are aware the gravamen of the Webster's Complaint is that Miles Agency, Inc. did not make a meaningful offer of UIM coverage to the Webster's in accordance with §38-77-160, S.C. Code Ann. (as amended). NGM has denied these allegations; however, as the agent for NGM, it was the agent's duty to obtain and maintain proper declinations of UIM coverage. I have also enclosed a copy of the South Carolina Auto Supplement obtained by Miles Agency from Mrs. Webster. Accordingly, if plaintiff's allegations are found to have merit then Miles Agency will be liable for any monies paid to the Webster's.

Additionally, Miles Insurance Agency entered into an Agency Agreement with NGM Insurance Company. I have attached a copy of the Agency Agreement. Paragraph XI.c that requires Miles Insurance Agency, Inc. to hold NGM harmless and reimburse NGM for any loss or expenses sustained by the agent's violation of the procedures of the Agreement or of the written or printed instructions furnished to Miles Insurance Agency, Inc.

NGM is incurring attorney's fees and costs in the defense of this matter that should be borne by Miles Insurance Agency, Inc. Further, should the plaintiffs' prevail in this lawsuit, then any damages awarded to them, particularly reformation of the policy, will be the direct result of actions or failures of Miles Insurance Agency, Inc. for which NGM should be reimbursed per the Agency Agreement.

Accordingly, NGM Insurance Company hereby tenders this matter to Miles Insurance Agency, Inc. and requests that Miles Insurance Agency assume the defense of this matter, reimburse NGM Insurance Company for its fees and

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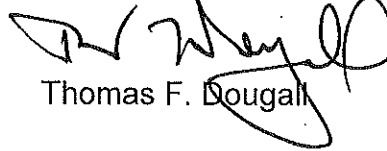
expenses incurred to date, and defend and indemnify NGM Insurance Company for any and all claims asserted by the Websters.

I await your response.

With kind regards,

Sincerely,

DOUGALL & COLLINS



Thomas F. Dougall

TFD/mdh

Enclosures

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MCNAIR
ATTORNEYS

February 22, 2016

Bernie W. Ellis

bellis@mcnair.net
T 864.271.4940
F 864.271.4015

Thomas F. Dougall, Esq.
Dougall & Collins
1700 Woodcreek Farms Road
Elgin, South Carolina 29045

Re: Webster, et ux. v. Miles, Insurance Agency, Inc. et al.; Civil Action No.
2015 CP-29-00810

Dear Tom:

Thank you for your letters of December 4, 2015 and February 16, 2016.

After thorough consideration of the matter, Miles Insurance Agency, Inc. does not intend to accept the defense of the above-referenced matter on behalf of NGM Insurance Company.

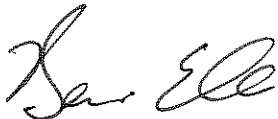
Miles used the form provided by NGM in offering UIM coverage to Mrs. Webster. If the application was not completed correctly, then it was NGM's duty to issue UIM coverage to Mr. and Mrs. Webster in accordance with S.C. Code Ann. § 33-77-350(E). Further, in any suit for indemnification against Miles, NGM will not be able to show that it would not have accepted UIM coverage for the Websters as NGM would have been required to do so.

Thank you for your attention to this matter.

With kind regards, I am

Very truly yours,

McNAIR LAW FIRM, P.A.



Bernie W. Ellis

McNAIR LAW FIRM, P.A.
Poinsett Plaza, Suite 700
104 South Main Street
Greenville, SC 29601

Mailing Address
Post Office Box 447
Greenville, SC 29602

mcnair.net

ELECTRONICALLY FILED - 2019 Feb 15 11:06 PM - LANCASTER - COMMON PLEAS - CASE#2018CP2900794

DOUGALL & COLLINS
ATTORNEYS AND COUNSELORS AT LAW**THOMAS F. DOUGALL**
ALSO ADMITTED IN TEXAS
CERTIFIED MEDIATOR IN SC**WILLIAM A. COLLINS, JR.****MICHAL KALWAJTYS****ADELAIDE DENNIS KLINE**
OF COUNSEL

April 6, 2018

Bernie W. Ellis, Esq.
The McNair Firm, P.A.
Post Office Box 447
Greenville, SC 29602**Re: Jerry Wayne Webster, et ux. v. Miles Insurance Agency, Inc., et al.; Civil Action Number: 2015-CP-29-00810**

Dear Bernie:

As you are aware, the court recently ruled that your client, Miles Insurance Agency, failed to make a meaningful offer of UIM insurance to the Websters, because your client did not properly complete the UIM rejection form that NGM relied upon when issuing the series of policies to the Websters. The court then reformed the policies to include UIM coverage, equal to the policy's liability limits of \$50,000. There were seven vehicles on the policy.

Mr. Webster, as a named insured, is considered a Class I insured under South Carolina law. Accordingly, he could stack the coverage on all seven vehicles for a total UIM limit of \$350,000.

The underlying lawsuit, filed in Kershaw County, has settled. The at-fault driver's insurance company paid its limits of \$25,000. NGM then settled the UIM claim on a compromise basis at \$300,000 thereby mitigating the damages caused by your client's failure to properly document the Websters' rejection of UIM coverage.

Miles Insurance Agency entered into an Agency Agreement with NGM Insurance Company. I have attached a copy of the Agency Agreement. Paragraph XI.c requires Miles Insurance Agency, Inc. to hold NGM harmless and reimburse NGM for any loss or expenses sustained by the agent's violation of the procedures of the Agreement or of the written or printed instructions furnished to Miles Insurance Agency, Inc.

In addition to the loss of \$300,000 paid to settle the Websters' UIM claim, NGM has incurred attorney's fees and costs in the defense of the declaratory judgment action that should be borne by Miles Insurance Agency, Inc.

NGM Insurance Company hereby demands that Miles Agency immediately remit payment for \$300,000 for the UIM coverage and \$21,894.46 in

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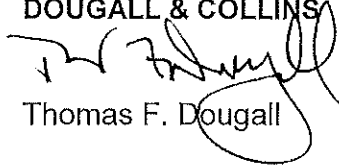
payment for its attorney's fees and costs in defending the declaratory judgment action. NGM Insurance Company requests payment of the total sum of \$321,894.26 within twenty days of receipt of this demand. Should your client not pay the demand, NGM Insurance Company will pursue its action against Miles Agency and now that the sum is liquidate will request interest on the amount due.

I await your response.

With kind regards,

Sincerely,

DOUGALL & COLLINS



Thomas F. Dougall

TFD/mdh

Enclosures

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01119537

**COMPROMISE SETTLEMENT AGREEMENT, POLICY RELEASE,
GENERAL RELEASE, AND RELEASE OF UNDERSINSURED MOTORIST CLAIM**

WE, the undersigned **JERRY WAYNE WEBSTER and JANET WEBSTER**, individually and as husband and wife,

FOR AND IN CONSIDERATION OF the payment to us of the total sum of **Three Hundred Thousand (\$300,000.00) Dollars**, paid by or on account of **NGM INSURANCE COMPANY**, and their agents, servants, employees, successors, and assigns the receipt and sufficiency of which is hereby acknowledged, do,

HEREBY COMPROMISE, SETTLE, RELEASE, ACQUIT, AND FOREVER DISCHARGE **NGM INSURANCE COMPANY**, and their agents, servants, employees, successors, and assigns,

OF AND FROM ANY AND ALL CLAIMS, demands, debts, rights, actions, causes of action, costs, claims for losses of service, claims for losses of companionship, claims for losses of consortium, claims for property damage, fees, expenses, and compensation of whatsoever nature, now existing or which may hereafter accrue, and all known and unknown, foreseen and unforeseen damages, and the consequences thereof which heretofore have been, or which hereafter may be, sustained by us because of, or as a result of, any personal injury, illness, disease, or disability suffered by us as a result of an automobile accident on or about June 30, 2012 in Kershaw County, South Carolina which was the subject of a certain lawsuit filed in Kershaw County, South Carolina and captioned *Jerry Wayne Webster and Janet Webster, Plaintiffs v. Ethan Scott Austin, Defendant*, Civil Action Number 2016-CP-28-00911, formerly Civil Action Number 2014-CP-28-01144.

COMPROMISE SETTLEMENT AGREEMENT AND GENERAL RELEASE - 1
RELEASE(UIM_WEBSTER).doc

IN FURTHER CONSIDERATION OF THE ABOVE PAYMENT, WE AGREE that we will never at any time make any claim or demand, or commence, prosecute, cause or permit to be prosecuted, any action or proceeding whatsoever against **NGM INSURANCE COMPANY**, and their agents, servants, employees, successors, and assigns, for any damages sustained by me because of, or as a result of, any personal injury, illness, disease, or disability suffered by us as a result of the aforesaid incident.

IN FURTHER CONSIDERATION OF THE ABOVE PAYMENT, WE AGREE to forever hold harmless and defend **NGM INSURANCE COMPANY**, and their agents, servants, employees, successors, and assigns, from any and all claims, debts, actions, causes of action, suits, damages, judgments, and/or demands whatsoever, in law or in equity, which have existed, now exist, or may later come into existence against **NGM INSURANCE COMPANY**, and its agents, servants, employees, successors, and assigns, arising out of or in any way related to the above described claims.

WE AGREE that the money now being paid us is fair and equitable under all circumstances. We accept it as a full and final settlement of all claims, rights, and damages which we now have or may have against **NGM INSURANCE COMPANY**, and their agents, servants, employees, successors, and assigns, for any damages sustained by us because of, or as a result of, any personal injury, illness, disease, or disability as a result of the above described incident.

WE UNDERSTAND AND AGREE that this settlement is a compromise settlement of a doubtful and disputed underinsured motorist claim against **NGM INSURANCE COMPANY**, and their agents, servants, employees, successors, and assigns for all

COMPROMISE SETTLEMENT AGREEMENT AND GENERAL RELEASE - 2
RELEASE(UIM_WEBSTER).doc

damages we have suffered and it is further agreed that the amount paid by or on account of **NGM INSURANCE COMPANY**, and their agents, servants, employees, successors, and assigns in connection with this settlement is not to be considered as an admission of any responsibility whatsoever, in whole or in part, by **NGM INSURANCE COMPANY**, and their agents, servants, employees, successors, and assigns but is made solely to end the underinsured motorist claim made against **NGM INSURANCE COMPANY** as a result of the aforementioned underlying accident in this matter.

WE UNDERSTAND AND AGREE that the consideration paid in this compromise and settlement is and shall be a complete bar to any subsequent action or proceeding to set aside or vacate this instrument because of a mistake in fact or otherwise.

WE UNDERSTAND AND AGREE that this agreement may be pled as a complete defense by **NGM INSURANCE COMPANY**, and their agents, servants, employees, successors, and assigns, in bar of any action brought, instituted by, or on behalf of us, on account of any claim or claims described hereinabove against the said **NGM INSURANCE COMPANY**, and their agents, servants, employees, successors, and assigns, based on or arising out of or in any way connected with any damages sustained by us as a result of any and all personal injury, illness, disease, or disability, suffered by me as a result of the above described incident.

WE SPECIFICALLY UNDERSTAND AND AGREE that the amount specified above is all the money we will receive as a result of our claims, as described above, against **NGM INSURANCE COMPANY**.

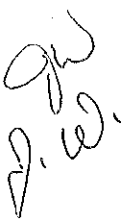
COMPROMISE SETTLEMENT AGREEMENT AND GENERAL RELEASE - 3
RELEASE(UIM_WEBSTER).doc

WE SPECIFICALLY UNDERSTAND AND AGREE that all costs of this suit shall be taxed against the party incurring such costs.

WE UNDERSTAND AND AGREE that any liens, assignments, or rights of subrogation asserted by any medical care provider or medical health insurer shall be our full responsibility and we agree to indemnify, protect, save, and hold harmless **NGM INSURANCE COMPANY** for any expenses incurred in connection with such claims.

WE STATE that in making this agreement we have not relied on statements or representations regarding my rights, claims for damages, facts of the injury, and nature and extent of the injury by **NGM INSURANCE COMPANY**, and their agents, servants, employees, successors, and assigns. On the contrary, we have considered all these matters ourselves and have relied entirely on our own judgment.

WE FURTHER STATE that this Compromise Settlement Agreement, Policy Release, General Release, and Release of Underinsured Motorist Claim contains the entire agreement between us and **NGM INSURANCE COMPANY**, and their agents, servants, employees, successors, and assigns, and that the terms of this agreement are contractual, and not merely a recital.

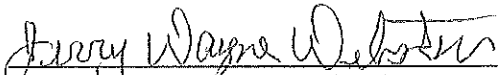
 WE FURTHER STATE that this Compromise Settlement Agreement, Policy Release, General Release, and Release of Underinsured Motorist Claim is only an agreement among **JERRY WAYNE WEBSTER, JANET WEBSTER, and NGM INSURANCE COMPANY** and their agents, servants, employees, successors, and assigns, and it is not intended to, and should not in any manner be read to have any affect on any claims that NGM Insurance Company may have against Miles Insurance Agency, Inc. in a

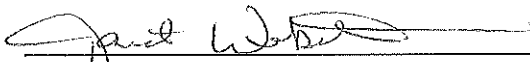
COMPROMISE SETTLEMENT AGREEMENT AND GENERAL RELEASE - 4
RELEASE(UIM_WEBSTER).doc

matter currently pending in Lancaster County, South Carolina and captioned Jerry Wayne Webster and Janet Webster, Plaintiffs v. Miles Insurance Agency, Inc. and National Grange Mutual Insurance Company n/k/a NGM Insurance Company and Jerry Wayne Webster and Janet Webster, for the consideration contained herein, do hereby assign any rights they may have against Miles Agency, Inc. to NGM Insurance Company as to its causes of action against Miles Agency, Inc. in the Kershaw County civil action.

WE FURTHER STATE that we have read the foregoing and know the contents thereof and understand the same and sign the same as our own free act.

IN WITNESS WHEREOF, **JERRY WAYNE WEBSTER** and **JANET WEBSTER**, have set their hands this 28th day of March, 2018.


JERRY WAYNE WEBSTER


JANET WEBSTER

STATE OF SOUTH CAROLINA)

COUNTY OF LANCASTER)

On this 28th day of March, 2018, before me personally appeared, **JERRY WAYNE WEBSTER and JANET WEBSTER**, known to me to be the persons who executed the foregoing instrument, and who acknowledged that they executed the same as their own free act and deed, with full knowledge of the contents thereof, and for the sole consideration therein expressed.



Notary PublicMy Commission Expires: 11-26-23

COMPROMISE SETTLEMENT AGREEMENT AND GENERAL RELEASE - 6
RELEASE(UIM_WEBSTER).doc



THE MAIN STREET AMERICA GROUP RECORD ON APPEAL

Appellate Case No. 2019-001685

0929437

51-44
119

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NGM Insurance Company
Old Dominion Insurance Company
Main Street America Assurance Company
MSA Insurance Company
Grain Dealers Mutual Insurance Company
Spring Valley Mutual Insurance Company
Austin Mutual Insurance Company
Main Street America Protection Insurance Company

Janet Webster
INSURED

6/30/2012
DATE OF LOSS

FOR
PAYMENT OF Settlement

01119537-01
POLICY NUMBER

BRANCH

39646

AGENTS NO.

DATE 3/19/2018

VALID FOR 5 MONTHS ONLY

PAY Three Hundred Thousand and 00/100 *****

\$ 300,000.00

TO THE ORDER OF

Jerry & Janet Webster
and the Francis Bell Law Firm in Trust

THROUGH
Bank of America

BY

AUTHORIZED SIGNATURE

50-131 (8/17)

ELECTRONICALLY FILED - 2019 Feb 20 4:43 PM - LANCASTER - COMMON PLEAS - CASE#2018CP2900794

39-646

AGENCY AGREEMENT

The National Grange Mutual Insurance Company of Keene, New Hampshire, hereinafter called the "Company" and _____
Miles Insurance Agency, Inc. of Lancaster, MA JC

hereinafter called the "Agent", mutually agree to the following:

I. AUTHORITY OF AGENT

The Agent is an independent contractor, not an employee of the Company and, subject to requirements imposed by law and the terms of this Agreement, is authorized to:

- a. Solicit the kinds of insurance for which a commission is specified in Schedule A attached hereto and made a part hereof.
- b. Bind insurance contracts and countersign binders, policies and customary endorsements effecting policy changes, all in accordance with and subject to the limitations set forth in the Company's manuals and written or printed instructions now or hereinafter furnished to the Agent.
- c. Provide all usual and customary services of an insurance agent on all insurance contracts placed by the Agent with the Company.
- d. Collect and receipt for premiums and, as full compensation, to retain commissions out of premiums so collected as specified in Schedule A (subject to the provisions herein with regard to Direct Billed business).
- e. Exercise his authority personally or through his authorized employees.
- f. Represent other companies.
- g. Exercise exclusive and independent control of his time and the conduct of his agency.

II. DUTIES OF AGENT

The Agent agrees to:

- a. Adhere to all the published instructions, rules and regulations of the Company and any special written or printed instructions that may be communicated to the Agent.
- b. Forward to the Company copies of all applications, binders, policies, certificates and endorsements issued by the Agent, or otherwise notify the Company of all liability accepted, not later than the fourth succeeding business day following the inception date of coverage.
- c. Promptly report all claims to the Company.
- d. Account for and pay over to the Company premiums in accordance with the accounting procedures as hereinafter set forth.
- e. Keep and retain, throughout the term of this Agreement and for two years after its termination, a complete record and account of all transactions relating to the business transacted by the Agent which shall be accessible to any duly authorized representative of the Company at any reasonable time while this Agreement is in force, or within two years after the termination thereof.

III. PREMIUM ACCOUNTING

All premiums received by the Agent on business placed with the Company shall be held by the Agent in trust for the Company until remitted to the Company. The Agent shall not mingle such premiums with the Agent's own funds or funds held by the Agent in any other capacity, without the express consent of the Company. Nothing herein contained shall be deemed to require the Agent to maintain a separate bank account for the premiums of the Company, as long as the premiums of the Company held by the Agent are ascertainable from the books of accounts and records of the Agent. The Agent's privilege of deducting commissions from premiums before remitting, and the keeping of an account with the Agent on the Company's books, similar to a creditor and debtor account, shall not be construed as changing or affecting the status of the Agent as trustee.

- a. The following provisions are applicable to business other than Direct Billed business placed by the Agent with the Company:

1. All premiums on such business shall be charged to the Agent's account.
2. Except as otherwise provided herein, the Agent shall be obligated to pay to the Company all premiums chargeable to the Agent's account, whether or not the Agent has or is able to collect from the insured.
3. Return premiums shall be credited to the Agent's account and the Agent shall promptly make refund to the insured.
4. The Company shall prepare monthly a statement showing the transactions resulting in charges and credits to the Agent's account. By mutual agreement, in writing signed by the Agent and the Company, the statements may be prepared by the Agent.
5. The balance shown in the statement due the Company, or due the Agent, shall be paid the Company or the Agency respectively, not later than 45 days after the end of the account month for which such statement was prepared.
6. Unless the Agent gives the Company written notice that a premium charge, which is overdue on the Agent's account, has been collected by the Agent, the Company may proceed on the assumption that the premium has not been collected and cancel the policy to which the premium charge applies.
7. The omission of any item(s) from a monthly statement shall not affect the responsibility of either party to account for and pay all amounts due the other, nor shall it prejudice the rights of either party to collect all such amounts due from the other.

8. If any interim or final additional premiums developed by audit cannot be collected by the Agent, the Company shall undertake direct collection and the Agent shall not be responsible for such premium provided:

- a. The Agent has made every effort to obtain and retain an adequate deposit premium.
- b. The Agent has made every effort to collect the additional premium and notifies the Company within sixty (60) days of the date of the audit billing that he has been unable to do so and has requested cancellation of the coverage.
- c. No commission will be earned on items turned over to the Company for collection.

- b. The following provisions apply to business placed by the Agent with the Company and designated by the Company as Direct Billed:

1. The Company shall be responsible for billing and collecting premiums.
2. The Agent shall not be responsible for earned premiums except in those cases where the Agent has, either by advancing premiums on behalf of the insured or otherwise extended the time for payment beyond that authorized by the Company. In such cases the Agent shall be obligated for the full earned premium incurred and such premiums shall be paid by the Agent within 30 days after billing by the Company.
3. The Company shall make refunds of return premiums directly to the insureds.

IV. COMMISSIONS

It is agreed that:

- a. The Agent will accept, and the Company will pay as full compensation for all services rendered under this Agreement, the percentages of commissions as specified in Schedule A.
- b. The terms of this Agreement shall not prohibit the negotiation of special commission rates on individual policies by mutual agreement of the Agent and the Company.
- c. Commissions on Direct Billed premiums shall be paid to the Agent within 30 days after the end of the month in which such premiums are received and recorded by the Company, subject to offset by the Company of any return commissions or other amounts due the Company from the Agent.
- d. The Agent agrees to pay the Company a return commission on all return premiums at the same rates at which the Agent was originally compensated.

V. DESIGNATION OF AGENT BY POLICYHOLDER

- a. If a conflict exists as to which producer is authorized to represent an existing or prospective policyholder, the policyholder's written statement designating his agent or broker shall be binding upon the Agent and the Company.
- b. Such designation on an unexpired policy will be effective as of the date specified upon receipt by the Company of a reasonable written agreement between the producers involved determining who shall be:
 1. Responsible for collection of premiums.
 2. Entitled to receive commissions.
 3. Responsible for the refund of return commissions.

VI. AGENCY SALE, TRANSFER OR MERGER

The Agent agrees to give 60 days advance notice to the Company of any sale, merger or transfer of his business, or its consolidation with a successor firm, in order that the Company may, at its election and with the consent of the parties of interest, enter into a new Agency Agreement with the successor.

VII. COMPANY ACQUISITION

If the Company, or any affiliate, gains management control through acquisition or other means of any insurance company with which the Agent does business, the Company or its affiliate shall not reduce or eliminate the underwriting capacity of either company on business produced by the Agent, subject to:

- a. Rating plans, policy forms and underwriting rules of the Company, and
- b. Continuation by others of reinsurance arrangements with such companies.

VIII. CHANGES IN AGENCY AGREEMENT

- a. This Agreement may be revised at any time by mutual agreement of the Agent and the Company.
- b. This Agreement may be revised by the Company only after it gives the Agent at least 60 days advance notice which:
 1. Sets forth the proposed revision and its effective date, and
 2. Offers to meet with the Agent at least 30 days before such effective date in order to discuss the purpose and reasons for such revision.

The Company agrees to make an authorized representative available at any reasonable time and place for such requested conference. Upon compliance by the Company with the foregoing procedures, the requested revision shall then become effective on the date specified in the notice without further action being required of either party.

3. The Company agrees to make no change in any rate of commission as specified in Schedule A until such rate of commission has been in effect for a period of not less than one year.

- c. The Agent and the Company each agree that in the interest of proper recordkeeping, but not as a condition, to confirm in writing and sign any revisions of this Agreement.

IX. POLICY CANCELLATION OR NONRENEWAL

Subject to requirements imposed by law and compliance with the applicable provisions contained in this Agreement and within the policy:

- a. At the Agent's request, the Company shall:
 1. Cancel any policy.
 2. Decline to renew any policy and, upon the Agent's request, give advance written notice of nonrenewal to the policyholder.
- b. Any authority granted the Agent pursuant to this Agreement, shall not be construed as a waiver by the Company of its rights to decline an application for insurance, cancel a policy, or decline to renew a policy.

X. TERMINATION OR SUSPENSION

- a. The Company reserves the right to withdraw authority from the Agent to write any particular line of insurance and to decline or accept a risk or class of risk without previous notice. The Agent shall promptly change the conditions of any insurance bound or issued hereunder, in conformity with any request of the Company.

- b. This Agreement shall terminate:
1. Automatically if any public authority cancels or declines to renew the Agent's license or certificate of authority.
 2. Automatically on the effective date of the sale, transfer or merger of the Agent's business, or its consolidation with a successor firm.
 3. Immediately upon either party giving written notice in the event of delinquent payment of accounts, breach of binding authority, abandonment, fraud, insolvency or gross and willful misconduct on the part of the Agent.
 4. Upon either party giving at least 90 days advance notice to the other provided, however, that if the Agent has represented the Company continuously for three or more years, the Company will, if requested to do so in writing by the Agent, renew policies that meet the Company's underwriting requirements expiring during the 9 month period following the termination date of this Agreement.
- c. The Company will pay commissions to the Agent as specified in Schedule A on the premiums paid to the Company, within one year following the termination of this Agreement, for continuous non-cancellable policies or policies which the Company is required by law to renew.
- d. In the event of the suspension of the Agent's authority or the termination of this Agreement, and provided the Agent has and continues to promptly and properly account for and pay over to the Company premiums as provided under the terms of this Agreement, the Agent's records, use and control of expirations, shall remain the property of the Agent and be left in his possession. Otherwise, the records, use and control of expirations shall be vested in the Company.
- e. During the term of this Agreement and after its expiration, as long as the records and control of expirations are vested in the Agent, the Company shall not:
1. Refer or communicate the names of policyholders and expiration dates to any other Agent, broker or person for purposes of solicitation.
 2. Use, or permit the use of, its records of business placed by the Agent to solicit individual policyholders for the sale of other lines of insurance, products, or services, without the Agent's authorization. When the Agent grants such authorization, he shall be allowed the applicable commission or fee on such sales resulting from the use of such records.
- f. After termination of this Agreement:
1. The obligations of the Company and the Agent to account for and pay premiums, commissions, return premiums and return commissions on policies existing at the time of the termination of this Agreement or renewed pursuant to this Agreement, and any endorsements, audits and installment billings on such policies shall be determined and governed by Sections "III Premium Accounting", "IV Commissions" and "VIII Changes in Agency Agreement" herein except that:
 - a. If this Agreement is terminated because the Agent is delinquent in remitting premiums to the Company, or subsequent to the termination of this Agreement, the Agent is delinquent in remitting premiums to the Company, all unpaid premium charges for policies other than Direct Billed policies shall immediately become due and payable.

- b. The Agent shall not receive a commission on, or be obligated to collect, premiums for policies renewed more than one year after the termination of the Agreement (because of the Company's legal obligation to renew) or premiums which become due on continuous noncancellable policies more than one year after the termination of this Agreement.
2. The Agent shall have authority to service unexpired policies but the Agent shall have no authority to accept new business, bind coverage, renew policies or issue endorsements. All requests for endorsements shall be submitted by the Agent to the Company's underwriting office for acceptance.
3. The company shall provide the ordinary Company underwriting, claims, engineering and premium audit services for the unexpired policies.
4. The Company agrees to provide the Agent detailed expiration information on Direct Billed policies within 90 days after termination of this Agreement.

XI. INDEMNIFICATION

- a. The Company will hold the Agent harmless against liability resulting from loss to policyholders based on error or omission of the Company in processing or handling of policies if the Agent has not contributed to or compounded such error or omission. Conversely, the Agent will hold the Company harmless against liability it may incur to or on behalf of its policyholder, actual or alleged, based on error or omission of the Agent if the Company has not contributed to or compounded such error or omission.
- b. The Company agrees to hold the Agent harmless against civil liability for damages and expenses, including the costs of defense, which he may be obligated to pay as a direct result of the failure of the Company to comply with the requirements of the Fair Credit Reporting Act, except in the case of willful or intentional act or omission on the part of the Agent.
- c. The Agent shall hold the Company harmless and shall reimburse the Company for any loss, expense or damage sustained by reason of any violation of the provisions of this Agreement or of the written or printed instructions furnished the Agent by the Company.
- d. Each party shall promptly notify the other of any claim or the commencement of any action which could result in a claim for indemnification under this Agreement.

XII. GENERAL PROVISIONS AND CONDITIONS

- a. The Company shall clearly and prominently identify the Agent by name when transmitting policies, premium notices and cancellation notices to policyholders.
- b. The Company will furnish from its own stock to the Agent all such publications of the Company comprising blanks, circulars and other printed matter as in its judgment may be necessary for the development of said Agency. The Agent must not use any advertising, circular matter or forms other than those furnished or approved by the Company. Postage remittances, telegrams, telephone costs and transportation of parcels shall be paid for by the sender.
- c. All undelivered policies and bond forms, supplies, equipment, manuals, books of accounts, premium book registers, documents and other papers furnished by the

Company to the Agent at the Company expense shall be returned by the Agent upon demand and shall at any and all times be subject to the inspection of its officers or other representatives, duly authorized, and be freely exhibited to them for the purpose of examination, and at the termination of said agency, from any cause whatever, shall be upon demand surrendered to the Company or its authorized representative.

- d. The Agent shall furnish to the Company if demanded, and as often as required, a good and sufficient indemnity bond.
- e. The Agent shall not appoint any sub-agent, or submit business from other producers, without the knowledge of the Company. The Agent assumes full responsibility for all acts of commission or omission of any of his sub-agents insofar as such acts of such persons affect the Company.
- f. This Agreement shall not apply to any policy issued by the Company as a result of assignment by any governmental agency or through any assigned risk plan, FAIR plan or similar plan however designated.

g. In the event that any provision of this Agreement conflicts with any statute of the state in which this Agreement is to be performed and is more restrictive than the provisions of such statute, the provisions of the statute shall prevail and define the rights, duties and obligations of the Company and the Agent.

h. The term policy or policies as used throughout this Agreement shall mean insurance policies and fidelity and surety bonds.

i. This Agreement shall apply to, and be binding upon, the heirs, next of kin, distributees, legal representatives, successors and assigns of the parties hereto.

j. This Agreement supersedes all previous Agency Agreements, whether written or oral, between, the Company and the Agent and:

1. Shall be effective April 15, 19 94
2. Shall remain in full force and effect until suspended or terminated as provided herein.

In Witness Whereof the Agent and the Company have caused this Agreement to be executed this 28th day of April, 19 94.

FOR THE AGENT BY:

Guy B. Miller
President
(Title)

FOR THE COMPANY BY:

John C. Streyer
Dist Marketing Mgr
(Title)

39-646

SCHEDULE A

PERSONAL

NEW/RENEWAL

DWELLING FIRE & LANDLORD	20 %
PERSONAL UMBRELLA	15
HOMEOWNERS	20
INLAND MARINE	20
PERSONAL AUTO	15
MASS. AUTO—VOL. & FAC.	PER REGULATION
COMP. PERSONAL LIAB.	20
S.C. FACILITY	10
NH FACILITY	PER REGULATION

COMMERCIAL

NEW/RENEWAL

BUSINESSOWNERS	20 %
COMMERCIAL UMBRELLA	15
FIRE	20
INLAND MARINE	20
BUSINESS AUTO	15
MASS. AUTO—VOL. & FAC.	PER REGULATION
GARAGE LIABILITY	15
MULTI-PERIL	20
WC-PREM THRU \$1000	10
WC-PREM THRU \$1001 - \$5000	7½
WC-PREM OVER \$5000	5
MISC. LIABILITY	20
BURGLARY	20
FIDELITY	20
SURETY	30
S.C. FACILITY	10
N.H. FACILITY	15

Commissions apply only in states where agent is licensed to write, and where line of business is filed.

NEW BUSINESS DEFINED — Any line or class of coverage not currently carried by the insured and/or any former insured whose line or class of coverage has not been in effect for a period of ninety days.

RENEWAL DEFINED — Any other line or class of coverage will be considered renewal business.

Effective April 15, 19 94, the Schedule of Commissions becomes a part of the Agency Agreement entered into on April 15, 19 94, between Miles Insurance Agency, Inc.

and the National Grange Mutual Insurance Company. This Schedule supersedes all previous Schedules of Commissions.

FOR THE AGENT BY:

Geny B. Miles
President
(Title)

FOR THE COMPANY BY:

John C. Arroyo
Dist. Marketing Mgr.
(Title)

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

Kristi F. Curtis, Circuit Court Judge

Appellate No. 2019-001685

RECEIVED

Jun 17 2020

SC Court of Appeals

NGM Insurance Company..... Appellant,

v.

Miles Insurance Agency, Inc.. Respondent.

CERTIFICATE OF COUNSEL

I, the undersigned counsel for the appellant, NGM Insurance Company, certify, in accordance with Rule 210(g), SCACR, that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

June 17, 2020



Thomas F. Dougall

✓ Michal Kalwajtys

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Elgin, SC 29045

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Attorneys for Appellant