THE STATE OF SOUTH CAROLINA
In The Court of Appeals

_____

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Jocelyn Newman, Circuit Judge

_____

Case No. 2020-000160

_____

RECEIVED
Jul 27 2020
SC Court of Appeals

Clayton M. Somers,

Appellant,

v.

Darrell W. Harper,

Respondent.

_____

RECORD ON APPEAL

_____

Graham L. Newman
W. Hugh McAngus, Jr.
James D. George, Jr.
Chappell Smith & Arden, P.A.
Post Office Box 12330
Columbia, South Carolina 29211
(803) 929-3600

Attorneys for Appellant

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Attorney for Respondent

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STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Stacy Somers, Individually and as Guardian ad Litem of Clayton Matthew Somers, a Minor Over the Age of Fourteen (14) Years,

Plaintiff,

v.

Darrell W. Harper,

Defendant.

IN THE COURT OF COMMON PLEAS
IN THE FIFTH JUDICIAL CIRCUIT

CIVIL ACTION NO.: 2016-CP-40-07399

RICHLAND COUNTY FILED
2016 DEC 16 PM 3:14
JEANNETTE W. MCBRIDE C.C.P. & G.S.

ORDER APPROVING SETTLEMENT

This matter comes before me on the verified Petition of Stacy Somers Guardian ad Litem and Mother of her minor child, Clayton Matthew Somers, in the above referenced action, praying approval by this Court of an offer of settlement made by Darrell W. Harper.

At a hearing held before me on this date, it appeared that an accident occurred on or about July 13, 2016 at or about 3:23 p.m. in Richland County, South Carolina, when the minor Clayton Matthew Somers was driving a vehicle going East on Secondary Road 52 (Killian Road), Darrell W. Harper was driving a vehicle going North on Ricky Lane, and Darrell W. Harper pulled out and in front of Clayton Matthew Somers, causing the vehicles to collide in the intersection of Killian Road and Ricky Lane.

The minor Clayton Matthew Somers suffered injuries, including but not limited to, a forehead and scalp laceration, closed-head injury with scalp hematoma and concussion, headaches, fatigue, pain in the hip, arm and right eye area, and blurry vision, as a result of the accident. The Petitioner believes Clayton Matthew Somers has reached maximum healing. Stacy Somers has incurred medical bills for treatment rendered for the benefit of her minor child, Clayton Matthew Somers.

While Darrell W. Harper admits that an accident occurred, it is denied that the injuries suffered by the minor Plaintiff were the result of any negligence or recklessness on his part. In spite of the Defendant's denial, Darrell W. Harper, nevertheless, in the interest of compromise, has offered to the minor Plaintiff, Clayton Matthew Somers, the total sum of TWENTY-FIVE THOUSAND AND 00/100 ($25,000.00) DOLLARS to be paid by or on behalf of the Darrell W. Harper in the following manner:

A. TEN THOUSAND FOUR HUNDRED TWENTY-THREE AND 92/100 ($10,423.92) DOLLARS to Stacy Somers, as Guardian ad Litem for Clayton Matthew Somers, for her minor child's sole use and benefit; and

B. FOURTEEN THOUSAND FIVE HUNDRED SEVENTY-SIX AND 08/100 ($14,576.08) DOLLARS to Stacy Somers for medical expenses past and future, incurred for the treatment of her minor child, attorney's fees, if any, incurred in the handling of this claim and for any other claims which she might have as a result of injuries to Clayton Matthew Somers.

this total sum also being in exchange for a Covenant Not To Execute for any and all claims which the minor has or may have against the Defendant as a result of being injured on or about July 13, 2016.

The outstanding medical bills are TWO THOUSAND NINETY-TWO AND 39/100 ($2,092.39) DOLLARS. Stacy Somers, as Guardian ad Litem of minor Clayton Matthew Somers, will be solely responsible for paying any medical bills or medical liens for medical treatment for her minor child for this accident. Any medical bills or medical liens will be paid from the settlement funds in this case. Stacy Somers, as Guardian ad Litem of minor Clayton Matthew Somers, is aware of a medical lien with Blue Cross/Blue Shield in the amount of TWO THOUSAND TWO HUNDRED SIXTY THREE AND 46/100 ($2,263.46) DOLLARS for medical treatment for her minor child for this accident. This medical lien will be paid from the settlement funds in this case. Titan Indemnity Company will not be responsible for paying or satisfying any medical bills and/or medical liens for Clayton Matthew Somers for this accident.

The attorney's fees are EIGHT THOUSAND THREE HUNDRED THIRTY-THREE AND 33/100 ($8,333.33) DOLLARS.

The costs are ONE HUNDRED TWENTY-SEVEN AND 95/100 ($127.95) DOLLARS.

Stacy Somers' out-of-pocket expenses for lost wages, mileage, and payments for medical bills are ONE THOUSAND SEVEN HUNDRED AND FIFTY-EIGHT AND 95/100 ($1,758.95).

It appears that the Petitioner has been fully advised and informed as to the issues herein considered. It further appears that the ultimate result of this litigation would be uncertain and that under the circumstances, the settlement proposal among the parties hereto is fair and just and in the best interest of the minor Plaintiff; accordingly;

IT IS ORDERED, ADJUDGED AND DECREED that the settlement proposed herein be and hereby is approved, and that upon payment of the total sum of TWENTY-FIVE THOUSAND AND 00/100 ($25,000.00) DOLLARS, and the Defendant shall be protected by a covenant not to execute from any and all further liability to the minor Plaintiff arising from the incident described herein above. Chappell, Smith & Arden is directed to hold the net settlement proceeds in trust for the benefit of the minor until he reaches the age of majority. The Petitioner is hereby authorized to consummate this settlement and execute a proper receipt and satisfaction and covenant not to execute, which shall be binding upon the minor Plaintiff.

IT IS SO ORDERED.

Presiding Judge
RICHLAND County

Dec. 14, 2016.

ELECTRONICALLY FILED - 2020 Jan 14 2:58 PM - RICHLAND - COMMON PLEAS - CASE#2017CP4003520

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND Clayton M. Somers, Plaintiff, v. Darrell W. Harper, Defendant.	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT Civil Action No. 2017CP4003520 **ORDER GRANTING PLAINTIFF'S MOTION FOR COSTS AND DENYING PLAINTIFF'S MOTION TO ALTER AND/OR AMEND JUDGMENT**

This matter came before the Court upon "Motion for Costs" and "Motion [to] Alter and/or Amend Judgment," both filed by Plaintiff on November 26, 2019. The Court GRANTS the motion for costs and DENIES the motion to amend the judgment without oral argument, pursuant to Rule 59(f) of the South Carolina Rules of Civil Procedure.

COSTS

Plaintiff filed his Motion for Costs, along with a supporting affidavit, on November 26, 2019. Defendant opposed the motion in a December 12 filing, in which he argues that Plaintiff is not a "prevailing party," that Plaintiff's request for trial exhibit costs is excessive, and that the sum proposed for witness fees exceeds the amount allowable by Rule 45(b), SCRCP.

I. Prevailing Party

Despite Defendant's objection, the Court finds Plaintiff to meet the definition of a "prevailing party" in this case. Black's Law Dictionary defines prevailing party as "[a] party in whose favor a judgment is rendered, regardless of the amount of damages awarded." BLACK'S LAW DICTIONARY 1145 (7th ed. 1999). Similarly, while not dispositive of the issue, Plaintiff would meet the definition of "prevailing party" under other statutes. *See, e.g., Hueble v. S.C.*

ELECTRONICALLY FILED - 2020 Jan 14 2:58 PM - RICHLAND - COMMON PLEAS - CASE#2017CP4003520

Dep't of Natural Resources, 416 S.C. 220, 785 S.E.2d 461 (2016) (finding that where appellant accepted an offer of judgment in a case brought pursuant to 42 U.S.C. §1983, he was a "prevailing party" because he obtained an enforceable judgment in his favor which materially altered the legal relationship between the parties); *see also Sloan v. Friends of Hunley, Inc.*, 393 S.C. 152, 711 S.E.2d 895 (2011) (where an action was filed alleging a FOIA violation but information was produced in advance of trial, requestor was still the "prevailing party" because the filing of the action was necessary to get the requested relief). Thus, the Court is satisfied that Plaintiff in this action was the "prevailing party" despite the fact that liability was conceded by Defendant.

II. Trial Exhibits

Plaintiff seeks reimbursement of costs for trial exhibits in the amount of $327.78. Defendant objects to this amount, arguing that Plaintiff's request is not specific and not substantiated by receipts and that only fifteen single-page exhibits were introduced at trial. The Court agrees.

Rule 54(e)(6) of the South Carolina Rules of Civil Procedure allows for the reimbursement of the cost of "one copy of a photograph introduced into evidence." Having reviewed the records of the Clerk of Court, the Court finds that Defendant's recollection is correct – the only exhibits offered or introduced into evidence at trial were fifteen photographs. Each of them was approximately 8 ½ by 11 inches in size.

Based on the foregoing, plus the fact that Plaintiff has failed to provide the Court with any details of his request, the Court is left to use its best judgment to determine the sum allowable for trial exhibits. The Court denies Plaintiff's request for $327.78 and awards Plaintiff seventy-five dollars for trial exhibits (at a generous five dollars per photograph).

ELECTRONICALLY FILED - 2020 Jan 14 2:58 PM - RICHLAND - COMMON PLEAS - CASE#2017CP4003520

III. Witness Appearance Fees and Mileage

Finally, Plaintiff seeks reimbursement of $6,079.36 for witness appearance fees and mileage. Defendant objects to this request pursuant to Rule 45(b)(1), SCRCP, arguing that, at most, Plaintiff should be awarded five hundred dollars.

Rule 54 of the South Carolina Rules of Civil Procedure allows for reimbursement of witness fees and mileage as set forth in Rule 45(b)(1), SCRCP. *See* Rule 54(e)(5), SCRCP. Rule 45(b)(1), SCRCP, specifically provides for a $25 per diem for each witness, plus mileage. *See* Rule 45(b)(1), SCRCP. No exception is made for expert witnesses. *See, e.g., Black v. Roche Biomedical Laboratories*, 315 S.C. 223, 433 S.E.2d 21 (Ct. App. 1993) (interpreting an earlier, similar version of the relevant rule).

In this case, exclusive of the parties, six witnesses testified at trial – Stacey and Matthew Somers of Wake Forest, North Carolina; Lance Corporal Tyler Morgan Bigg of the South Carolina Highway Patrol; Drs. Matthew Pollack and Nicholas Lind via video deposition; and Dr. Randolph Waid of Mt. Pleasant, South Carolina. Again, Plaintiff has offered no substantiation of his request, leaving the Court to make an award using its best judgment. Therefore, the Court awards witness fees and mileage totaling $870.36, as follows:

- Stacey Somers = $303.40 ($25 + 480 miles at 58 cents/mile)
- Matthew Somers = $303.40 ($25 + 480 miles)
- L/Cpl. Bigg = $48.20 ($25 + a generous estimate of 40 miles)
- Dr. Matthew Pollack = $25 (without mileage, as he appeared via video)
- Dr. Nicholas Lind = $25 (without mileage, as he appeared via video)
- Dr. Randolph Waid = $165.36 ($25 + 242 miles)

ELECTRONICALLY FILED - 2020 Jan 14 2:58 PM - RICHLAND - COMMON PLEAS - CASE#2017CP4003520

AMENDING THE JUDGMENT

In Plaintiff's Motion [to] Alter and/or Amend Judgment, he asks that the Court reconsider its decision to apply a setoff of $25,000 in favor of the underinsured motorist carrier (UIM) pursuant to S.C. Code Ann. §38-77-160 and *Cobb v. Benjamin*, 325 S.C. 573, 482 S.E.2d 589 (Ct. App. 1997) (allowing UIM carriers to credit the full amount of liability limits against their insured's damages). This request is DENIED. Further, to the extent that Plaintiff seeks a written explanation of the Court's reasoning, he is invited to procure a copy of the court transcript.

CONCLUSION

IT IS, THEREFORE, ORDERED that Plaintiff's Motion for Costs is GRANTED, and the Court awards Plaintiff costs in the amount of $1,366.42.

IS IT FURTHER ORDERED that Plaintiff's Motion [to] Alter and/or Amend Judgment is DENIED.

AND IT IS SO ORDERED.

ELECTRONICALLY FILED - 2020 Jan 14 2:58 PM - RICHLAND - COMMON PLEAS - CASE#2017CP4003520

Richland Common Pleas

Case Caption: Clayton M Somers vs Darrell W Harper

Case Number: 2017CP4003520

Type: Order/Costs

So Ordered

Jocelyn Newman

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2017CP4003520

CLAYTON M. SOMERS
PLAINTIFF(S)

DARRELL W. HARPER
DEFENDANT(S)

Submitted by: Newman, J.	Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☒ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☒ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
CLAYTON M. SOMERS	DARRELL W. HARPER	$ 35,000.00
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

2757
Judge Code

November 19, 2019
Date

ELECTRONICALLY FILED - 2019 Nov 20 10:18 AM - RICHLAND - COMMON PLEAS - CASE#2017CP4003520

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

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

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

ELECTRONICALLY FILED - 2019 Nov 20 10:18 AM - RICHLAND - COMMON PLEAS - CASE#2017CP4003520

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND)
)
CLAYTON M. SOMERS) CIVIL ACTION COVERSHEET
Plaintiff(s))
) 2017CP4003520
vs.)
)
DARRELL W. HARPER)
Defendant(s))

Submitted By: W. Hugh McAngus, Jr. **SC Bar #:** 74941
Address: Chappell Smith & Arden **Telephone #:** 803-929-3600
P.O. Box 12330 **Fax #:** 803-929-3604
Columbia, SC 29211 **Other:**
E-mail: hmcangus@csa-law.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (*Check all that apply)*

***If Action is Judgment/Settlement do not complete**

☒ **JURY TRIAL** demanded in complaint. ☐ **NON-JURY TRIAL** demanded in complaint.
☐ This case is subject to **ARBITRATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is subject to **MEDIATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (*Check One Box Below*)

Contracts
- ☐ Constructions (100)
- ☐ Debt Collection (110)
- ☐ General (130)
- ☐ Breach of Contract (140)
- ☐ Fraud/Bad Faith (150)
- ☐ Failure to Deliver/ Warranty (160)
- ☐ Employment Discrim (170)
- ☐ Employment (180)
- ☐ Other (199) _____

Torts - Professional Malpractice
- ☐ Dental Malpractice (200)
- ☐ Legal Malpractice (210)
- ☐ Medical Malpractice (220)

Previous Notice of Intent Case # 20____-NI-_____-_____
- ☐ Notice/ File Med Mal (230)
- ☐ Other (299) _____

Torts – Personal Injury
- ☐ Conversion (310)
- ☒ Motor Vehicle Accident (320)
- ☐ Premises Liability (330)
- ☐ Products Liability (340)
- ☐ Personal Injury (350)
- ☐ Wrongful Death (360)
- ☐ Assault/Battery (370)
- ☐ Slander/Libel (380)
- ☐ Other (399) _____

Real Property
- ☐ Claim & Delivery (400)
- ☐ Condemnation (410)
- ☐ Foreclosure (420)
- ☐ Mechanic's Lien (430)
- ☐ Partition (440)
- ☐ Possession (450)
- ☐ Building Code Violation (460)
- ☐ Other (499) _____

Inmate Petitions
- ☐ PCR (500)
- ☐ Mandamus (520)
- ☐ Habeas Corpus (530)
- ☐ Other (599) _____

Administrative Law/Relief
- ☐ Reinstate Drv. License (800)
- ☐ Judicial Review (810)
- ☐ Relief (820)
- ☐ Permanent Injunction (830)
- ☐ Forfeiture-Petition (840)
- ☐ Forfeiture—Consent Order (850)
- ☐ Other (899) _____

Judgments/Settlements
- ☐ Death Settlement (700)
- ☐ Foreign Judgment (710)
- ☐ Magistrate's Judgment (720)
- ☐ Minor Settlement (730)
- ☐ Transcript Judgment (740)
- ☐ Lis Pendens (750)
- ☐ Transfer of Structured Settlement Payment Rights Application (760)
- ☐ Confession of Judgment (770)
- ☐ Petition for Workers Compensation Settlement Approval (780)
- ☐ Other (799) _____

Appeals
- ☐ Arbitration (900)
- ☐ Magistrate-Civil (910)
- ☐ Magistrate-Criminal (920)
- ☐ Municipal (930)
- ☐ Probate Court (940)
- ☐ SCDOT (950)
- ☐ Worker's Comp (960)
- ☐ Zoning Board (970)
- ☐ Public Service Comm. (990)
- ☐ Employment Security Comm (991)
- ☐ Other (999) _____

Special/Complex /Other
- ☐ Environmental (600)
- ☐ Automobile Arb. (610)
- ☐ Medical (620)
- ☐ Other (699) _____
- ☐ Sexual Predator (510)
- ☐ Permanent Restraining Order (680)
- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Out-of State Depositions (650)
- ☐ Motion to Quash Subpoena in an Out-of-County Action (660)
- ☐ Pre-Suit Discovery (670)

Submitting Party Signature: _____ **Date:** 6/1/2017

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

Effective January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

Pursuant to the ADR Rules, you are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.

2. The initial ADR conference must be held within 300 days after the filing of the action.

3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs.

4. Cases are exempt from ADR only upon the following grounds:

    a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;

    b. Requests for temporary relief;

    c. Appeals

    d. Post Conviction relief matters;

    e. Contempt of Court proceedings;

    f. Forfeiture proceedings brought by governmental entities;

    g. Mortgage foreclosures; and

    h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.

5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.

6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: **You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS CIVIL ACTION NO.:
CLAYTON M. SOMERS Plaintiff, vs. DARRELL W. HARPER Defendant.	**SUMMONS** **(JURY TRIAL REQUESTED)**

JUN -6 PM 4:11

TO: DARRELL W. HARPER, THE DEFENDANT, ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to said complaint upon the subscriber, at his office at 2801 Devine Street, Suite 300, Columbia, South Carolina 29205, within thirty (30) days after the service thereof, exclusive of the day of such service, and if you fail to answer the complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the complaint.

CHAPPELL, SMITH & ARDEN, P.A.

W. Hugh McAngus, Jr.
Mark D. Chappell, Jr.
Attorney for the Plaintiff
Post Office Box 12330
Columbia, South Carolina 29211
(803) 929-3600

June 1, 2017

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS CIVIL ACTION NO.:
CLAYTON M. SOMERS, Plaintiff, vs. DARRELL W. HARPER, Defendant.	**COMPLAINT**

2017 Jun -6 PM 4:11

The Plaintiff would respectfully show unto the Court that:

1. The Plaintiff is a citizen and resident of the County of Richland, State of South Carolina.

2. Upon information and belief, the Defendant is a citizen and resident of the County of Richland, State of South Carolina.

3. Venue is proper in the County of Richland pursuant to S.C. Code Ann. § 15-7-30, because a substantial part of the acts and/or omissions giving rise to this Complaint occurred in the County of Richland, State of South Carolina.

4. On or about July 13, 2016, Plaintiff was travelling east on Killian Road in Richland County, South Carolina. As Plaintiff approached the intersection of Killian Road and Ricky Lane, Defendant attempted to cross the intersection on Ricky Lane and pulled directly into Plaintiff's lane of travel, resulting in a collision.

5. Plaintiff did not contribute to this accident.

6. There were no obstructions between Plaintiff and Defendant.

7. As a result of the collision, the Plaintiff suffered the following injuries and damages:

a. extensive pain, mental anguish, suffering and discomfort;

b. disability for a period of time, past and future;

c. money spent for medical care and treatment, past, present and future;

d. inability to carry on normal activities;

e. permanent injuries and partial disability;

f. emotional trauma and distress;

g. loss of enjoyment of life; and,

h. lost wages.

8. The injuries and damages incurred by the Plaintiff were directly and proximately caused by the Defendant's careless, negligent, grossly negligent, willful, wanton, reckless, and unlawful acts in one or more of the following particulars:

a. in failing to apply the brakes of the vehicle and/or maintain them in proper working condition;

b. in failing to steer or take other evasive action so as to avoid the collision;

c. in failing to keep a proper lookout;

d. in failing to yield as required by law;

e. in operating the vehicle too fast for existing conditions; and,

f. in failing to observe the condition of traffic.

9. The Defendant's careless, negligent, willful, wanton, reckless and unlawful acts were the direct and proximate cause of the collision and resulting injuries and damages to the Plaintiff.

10. The Plaintiff is informed and believes that he is entitled to judgment against the Defendant for actual and punitive damages in an appropriate amount.

WHEREFORE, the Plaintiff prays for judgment against the Defendant for actual and punitive damages in an appropriate amount to be determined at trial, the costs of this action, and for such other and further relief as the Court may deem just and proper.

CHAPPELL, SMITH & ARDEN, P.A.

W. Hugh McAngus
Mark D. Chappell, Jr.
Attorneys for Plaintiff
Post Office Box 12330
Columbia, South Carolina 29211
803/929-3600

June 1, 2017

Part of the CSA-LAW NETWORK

CHAPPELL, SMITH & ARDEN

Licensed to practice
in South Carolina,
North Carolina,
Georgia and the
District of Columbia

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800.531.9780
www.CSA-LAW.com

June 1, 2017

Richland County Clerk of Court
P.O. Box 2766
Columbia, SC 29202

Re: Clayton Matthew Somers v. Darrell William Harper
Case No:

Dear Sir or Madam:

Enclosed please find an original and one copy of a Summons and Complaint in the above-referenced matter. We would appreciate your filing the original and returning the clocked copy along with the issued Summons to us in the enclosed self-addressed envelope. I am also enclosing our firm's check in the amount of $150.00 which represents the fee associated with filing the Complaint.

Thank you for your assistance in this matter.

Yours truly,

Bonnie L. Sluce

Bonnie L. Sluce
Paralegal to W. Hugh McAngus, Jr.
Graham Newman and Mark Chappeil, Jr.
bsluce@csa-law.com

/bls
Enclosure

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	Civil Action No.: 2017-CP-40-03520
	)	
Clayton M. Somers	)	
	)	
Plaintiff(s),	)	
vs.	)	
	)	**CONDITIONAL ANSWER**
Darrell W. Harper	)	
	)	
Defendant(s).	)	
	)	
	)	
	)	

FILED
2017 JUL 26 PM 3:41
JEANNETTE W. McBRIDE
C.C.P. & G.S.

Allstate Fire and Casualty Insurance Company, an alleged underinsured motorist carrier, appearing under a reservation of rights and defending in the name of Defendant, above-named, pursuant to authority granted it by South Carolina Law, answering the Complaint of the plaintiff, above named, allege and say as follows:

1. The allegations for paragraphs 1 and 2 are admitted, upon information and belief.

2. The allegations of paragraph 3 are conclusions of law and, therefore, no response is necessary to the same.

3. Allstate lacks sufficient information to form an opinion as to the truth or falsity of the allegations of paragraphs 4, 5, 6, 7, including all its subparts, 8, including all its subparts, 9, and 10.

4. Each and every allegation of the Complaint which is not specifically admitted, qualified or explained is denied and strict proof is demanded thereof.

FOR A FIRST DEFENSE
(Reservation and Non-Waiver)

5. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

6. Defendant has not had an opportunity to conduct a thorough investigation or to engage in sufficient discovery regarding the circumstances of the Plaintiff's allegations. Accordingly, Defendant reserves the right to amend this Answer to assert additional defenses as may arise during the discovery process.

FOR A SECOND DEFENSE
(Punitive Damages Unconstitutional - Procedural Due Process)

7. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

8. To the extent that the Complaint seeks punitive or exemplary damages, it violates the rights of the Defendant to procedural due process under the Fourteenth Amendment of the United States Constitution and the Constitution of the State of South Carolina, and therefore fails to state a cause of action upon which either exemplary or punitive damages can be awarded.

FOR A THIRD DEFENSE
(Punitive Damages Unconstitutional - Substantive Due Process)

9. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

10. To the extent that the Complaint seeks punitive or exemplary damages, it violates the Defendants' rights to substantive due process as provided in the Fifth and Fourteenth Amendments of the United States Constitution and the Constitution of the State of South Carolina, and therefore fails to state a cause of action upon which either exemplary or punitive damages can be awarded.

FOR A FOURTH DEFENSE
(Comparative Negligence)

11. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

12. That the injuries and damages sustained by the Plaintiff, if any, were due to and caused by and were the direct and proximate result of the negligence, carelessness, recklessness, willfulness and wantonness of Plaintiff, and recovery should be barred or reduced in proportion to Plaintiff's negligence as provided by law. That the Plaintiff was comparatively negligent in one or more of the following particulars:

a. In failing and omitting to use due care;

b. In failing and omitting to maintain a proper lookout;

c. In failing to properly observe the road and traffic conditions;

d. In failing to take evasive action to avoid the accident;

e. In failing to apply brakes or failing to apply them in a timely manner;

f. In traveling at an excessive rate of speed too fast for the conditions then and there prevailing;

g. In failing to keep the subject motor vehicle under proper control;

h. In failing to take any evasive action, by any means, to keep from striking the Defendants' vehicle;

i. In failing to properly equip the subject motor vehicle with adequate and safe steering mechanisms, and if so properly equipped, in failing to properly utilize them;

j. In failing and omitting to take any precaution whatsoever to avoid being struck by the subject vehicle;

k. In failing to use the degree of care and caution that a reasonably prudent person would have used under the circumstances then and there prevailing;

l. Upon such additional grounds as shall become evident through discovery and further development of the facts and issues, reserving all rights to make such further objections or arguments as shall be warranted.

FOR A FIFTH DEFENSE
(Comparative Negligence Reduction)

13. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

In the event the alleged negligence of the Defendant operated as a fifty (50%) percent or greater proximate cause of the accident, which is expressly denied and admitted solely for the purpose of this defense, Defendant is entitled to a reduction of any amount awarded to Plaintiff in an amount equal to that percentage of his negligence, recklessness and carelessness.

WHEREFORE, having fully answered the Complaint of the Plaintiff, Allstate Fire and Casualty Insurance Company prays for a trial by jury and that the Plaintiff's Complaint be dismissed, together with the costs and disbursements of this action and for such other and further relief as this Court may deem just and proper.

Willson Jones Carter & Baxley, PA

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Columbia, South Carolina

July 19, 2017

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	
COUNTY OF RICHLAND	)	**C.A. No.: 2017-CP-40-03520**
	)	
Clayton M. Somers,	)	
	)	
Plaintiff	)	
vs.	)	**CERTIFICATE OF SERVICE**
	)	
Darrell W. Harper,	)	
	)	
Defendant	)	
	)	

RICHLAND COUNTY FILED
2017 JUL 24 PM 2:05
JEANETTE W. McBRIDE C.C.P. & G.S.

I hereby certify that a copy of the herein below listed pleading was served upon all counsel of record by depositing in the United States Mail, proper postage affixed thereto, a true and accurate copy thereof on July 20, 2017 as follows:

PLEADING(S): Notice of Appearance and Conditional Answer
Defendant's First Set of Interrogatories to Plaintiff
Defendant's First Request for Production to Plaintiff

PARTY(IES) SERVED:

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By: Amy A Kelly
Amy A. Kelly
Paralegal to Robert L. Brown

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

CLAYTON M. SOMERS,	)	
	)	
PLAINTIFF,	)	2017-CP-40-03520
	)	
	)	EXCERPT OF
-VS-	)	TRANSCRIPT OF RECORD
	)	
DARRELL W. HARPER,	)	
	)	
DEFENDANT.	)	
	)	**COPY**

NOVEMBER 18 - 19, 2019
COLUMBIA, SOUTH CAROLINA

B E F O R E:

THE HONORABLE JOCELYN NEWMAN

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

ATTORNEY FOR PLAINTIFF:

W. HUGH McANGUS, JR., ESQ.
JAMES D. GEORGE, JR., ESQ.

ATTORNEY FOR DEFENDANT:

ROBERT L. BROWN, ESQ.

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

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Monday, November 18, 2019:

THE COURT: We're now ready to begin with the trial of the case. I'd call Mr. McAngus for his opening statements.

MR. McANGUS: Thank you, Your Honor. May it please the Court?

A driver's got to watch the road and see what's there to be seen. If he does not, and as a result hurts someone, he's responsible for the harm.

Let me tell you the story of what happened in this case. July 13, 2016, Clemson and Killian Road area in Blythewood right near Lowe's Home Improvement store, it's mid afternoon, skies are clear, roads are dry, Defendant Darrell Harper leaves the Lowe's Home Improvement and drives his truck up to the stop sign to make a left onto Killian Road. To his left was an approaching Ford Explorer. Behind that Ford Explorer was a black pick-up truck.

Mr. Harper waits for the Ford Explorer to pass him and then he pulls out into two lanes of traffic to try to cross to make a left onto Killian Road. That's the first time Mr. Harper sees that black pick-up truck.

The black pick-up truck was traveling in the left lane of Clemson Road. Harper pulled his truck directly into that black pick-up truck's path of travel, and an impact occurs completely within the lane of the black pick-up truck, smashing in the front quarter panel of that black pick-up

truck.

Inside that truck is 17 year old Clayton Somers who was, at the time, on his way to a part-time job at Chick-fil-A. The impact, that caused Clayton's head to slam into the windshield of the car, it caused a gash in his forehead from here to here. As he came to after the wreck and realized what had happened, he began to feel something wet coming down his forehead and all into his face and it began to cover his eyes.

We're suing Darrell Harper for three reasons. First, Harper chose to violate the safety rule that simply says drivers look before you enter traffic, then you can see what's there to be seen. If Harper had looked to his left and seen this approaching black pick-up truck, he shouldn't have pulled into the road and caused what happened.

Second, we're suing Harper for choosing to violate the highway safety rule that simply says yield the right-of-way to approaching motorists when they have control of their lane. If Harper yielded the right-of-way of Plaintiff's vehicle, he wouldn't have pulled out and made this left, and this wreck wouldn't have happened.

The final reason we're suing Darrell Harper is because he failed to take responsibility for what he has done and render full and fair compensation to the Plaintiff. So we're forced to bring him to trial.

Now your job in this case is going to be to listen to the

witnesses and determine the nature and extent of the injuries that Clayton suffered. If you find that he was injured, your verdict should then return to Clayton the value of what he lost in this wreck, the value of what was taken from him. So we're going to present evidence and facts to try to show you what injuries occurred in this wreck and what this wreck has fully taken from Clayton. Let's talk about that.

One of the first things you're going to hear is on the date of this wreck you're going to hear testimony from Clayton about sounds of this crash, the coming to afterwards, the feeling of warm liquid coming down his head. He's going to talk to you about his trip to the ER, the way it took one, two, three, four, five staples, and, I believe, one, two, three, four, five, six, seven stitches just to put his head back together.

You're going to hear from his mother about that day and about the shape that she found him in and just how bad off he was hurt. You're going to hear about the scar he now has on his head. And he does a good job, you can see right now, covering it up. But there's a scar that every morning when he takes a shower and looks in the mirror, every time he goes to the bathroom he sees is there and is a reminder that this wreck happened.

You're going to hear from his father who's sitting in the stands today. And we'll see if later on through his life that

scar becomes more visible and more prominent as Clayton gets older.

We're also going to hear that that blow to his head that led to those staples, that led to those stitches also caused a concussion. We're going to hear that a concussion is also known as a brain injury. And it is an injury to someone's brain.

You're going to hear from Stacey, Clayton's mother, who's going to talk about the days after this wreck, just the immediate days after this, about how the side of his temple swelled up and had piercing headaches. He couldn't go out in the bright light. He didn't want to leave his room. Couldn't turn the lights on in the house. He couldn't go to school.

She's going to tell you that it got so bad they had to take him back to the emergency room within a couple of days, back to his pediatrician, who referred him to an orthopaedic, sports medicine practice that treats concussions. They treat athletes, people that are injured who have concussions.

You're going to hear from Dr. Pollack from that doctors' practice. And they're going to talk about the concussion protocol that they put Clayton through. You're going to hear Dr. Pollack describe for us that a concussion is, in fact, a brain injury, a literal and physical injury to someone's brain.

You're going to hear from Dr. Pollack how Clayton went

through an immediate course of treatment to solve these headaches, and dizziness, and sensitivity to light that he was having immediately after this wreck. They treated him for 118 days until November 9, 2016.

They treated him with medication. They limited his schoolwork. They limited his ability to work. They put him on rest. And they put him through something called vestibular therapy.

You're going to hear from the Plaintiff and his family and from Dr. Pollack that Clayton complied with that treatment. He went through that therapy. And he went back on November 9, 2016 and told the doctor my headaches feel better. I feel like I can go back to normal life.

You're going to hear that the doctors released him from that concussion protocol on November 9, 2016. On that day Clayton and his family hoped that this matter was over. They hoped that he could now go back to a full life, go back to full school, go back to full work and put this wreck and these injuries behind him.

And what you're also going to hear is in the coming months Clayton's family, people that see him most often, started to just notice that something didn't seem quite right. He was forgetting to do things that he knew he had to do, chores around the house, things his parents were asking.

He was having a problem concentrating at work. He was

having emotional outbursts to his family, things that hadn't happened before. And his headaches came back.

And that went on for such a long time that in the fall of 2017, Stacey, the Plaintiff's mom, called back up to Dr. Pollack's office saying he's having these headaches again. Can we come see you? And he went to see Dr. Pollack in February of 2018. Saw Dr. Pollack, told him about the headaches.

Dr. Pollack is going to talk about this and tell you he addressed the headaches, but he said a headache is just -- it's hard to tell where they come from. I can't say for certainty that these headaches were because of lingering effects from this wreck or whether they were from when Clayton was younger he got treated for some headaches when he was early -- going through puberty, or a teenager, or anything else. It could be -- he said he couldn't tell that for sure.

The Somers respected Dr. Pollack's opinion and followed Dr. Pollack's advice, which also said things like you need to cut down on caffeine. But what Dr. Pollack didn't address and what they didn't get an answer for were the other problems and the changes in Clayton's behavior, how he interacted with his family, what he remembered to do at the house, again, the way he dealt with people who knew him best. Something had changed.

And so Clayton went and saw a gentleman, Dr. Nick Lind.

You're going to hear from Dr. Lind. He is a neuropsychologist. He works at a group here in Columbia called Post Trauma Resources where a group of counselors and psychologists evaluate and treat people after traumatic events. They evaluate and treat people with traumatic brain injuries.

Dr. Lind is going to tell us that over and above the psychological practice he's got extra training in neuropsychology where he's been trained to do testing to test and diagnose for brain injuries, and for brain functioning, and cognitive tests. He's also going to tell us he did in the Air Force for a number of years where he treated airmen and servicemen who came back from oversees with all kinds of levels of brain injuries, more minor to more severe. He puts that use of practice in his private practice.

Dr. Lind reviewed every single piece of paper and medical record Clayton had. He did a 90 minute clinical interview, about a whole day running a series of neuropsychological tests that are designed and accepted to determine whether someone has a brain injury and whether they have a cognitive deficit recovery.

We're going to hear from Dr. Lind that Clayton does, in fact, have a traumatic brain injury that is causing him some cognitive deficits. He's not going to tell us he has a catastrophic brain injury.

Clayton now has graduated high school. He's in college right now. He's hopeful he'll go to law school. But Dr. Lind's testimony will cross the whole spectrum of tests that he ran, identify a few areas of Clayton's brain that he has cognitive deficits and impairments that seem to mirror the symptoms his parents have seen.

Dr. Lind is going to talk to us and tell us how a brain can be injured in a wreck like this. He's going to discuss something called a Coup-Contrecoup injury where even if you don't strike your head like Clayton did, or you jostle back and forth, or the brain in your skull inside, it literally crashes into the sharp edges of your skull, that can cause stretching, which can cause something like a very tiny minute level of axonal shearing. I think that's definitely where your brain sends signals.

He's going to tell us about the deficits that he found in Clayton that were caused by this wreck that include mostly what Dr. Lind will call, he has problems inhibiting his most dominant social responses. He's going to have inconsistent attention, which manifests itself in the ways his parents have seen.

Dr. Lind describes Clayton as an intelligent, relatively high functioning individual. And Dr. Lind is going to tell us that these deficits in those types of people can cause real problems.

And the things that he says that if you just meet someone on the street and talk with them for a few minutes, you're not going to pick up on that. It's the things that your close family or close friends will notice when they interact with you for a long period of time. They'll pick up on things that just don't seem right.

Dr. Lind will tell that -- he describes it as a picture, a scratch on a car. You put a scratch on a half a million dollar Bugatti versus a scratch on a beat up old '70 something Yugo, I think is what he said, that scratch -- same scratch on a Bugatti, you're going to recognize the damage to it. That's going to do more to the value -- to diminish the value of that Bugatti than one more scratch on an old beat up car.

So you're going to hear from all these witnesses. You're going to hear from Clayton's mother. You're going to hear from Clayton's father. You're going to hear from Clayton. You're going to hear from Dr. Pollack. You're going to hear from Dr. Lind. All who have seen, talked to, evaluated, treated, met Clayton.

The good news is you're going to hear that he's in college, graduated high school. He was going into his senior year when this wreck happened. And he made it through high school. He's in college.

He's got a job in college right now. He's doing okay. He wants to go to law school after this. And his family hopes

he can do it. But they're also going to tell you that they do have some concerns about these deficits that Dr. Lind's going to tell us they're permanent and whether they're going to cause him problems in the future.

Is he going to have an area of attention where it most matters? Is he going to have some forgetfulness on the biggest test of his life? Is he going to have an emotional outburst that might cause -- cause him significant problems in his life?

These are the concerns his family has and they're going to continue to have. Clayton's working hard to get better. He's working through school. But these are all things that the Defendant has taken from him.

So your job is to decide if you believe Clayton, you believe his family, you believe his doctors, then you should return a verdict that recognize the injuries he suffered that include the injuries on the date of this collision, that include his active 118 days getting over the initial concussion and that include a recognition that he does have real, you know, not catastrophic, but real cognitive deficits that he's working through, but they're real.

All those things the Defendant caused, the things he took from Clayton all have significant value, which will mean at the end of this case when we come back we're going to have to ask you for a significant verdict. Thank you for your time.

THE COURT: Mr. Brown.

MR. BROWN: May it please the Court?

Something old, something new, or some combination of the two is what you are here to decide. My name is Robb Brown. I represent Richard Harper, who caused this wreck. He admits that he caused this wreck.

I can assure you that if he had a magic wand, he would wave it to make this wreck have never occurred because he was also hurt. And nobody sets out for that. He acknowledges that Clayton Somers was hurt. Nobody denies that. I cannot sit here and tell you that that large gash in Clayton Somers' head came from anything but this wreck. And I'm not going to.

The fact of the matter is it was a bad impact. Clayton hit his head. He got a concussion just like my client did. He went to the emergency room twice. He followed up like he should with his regular doctor, his pediatrician, and he was referred to a specialist, probably the best in South Carolina, or at least in Columbia for concussion protocol. They put him under the concussion protocol.

But he missed a few days of work in July of 2016. He was referred to physical therapy for his other injuries as well as all of this. Let's get him better. It's a young man. He's got a head injury. Let's make sure he is okay. And they do that.

He goes through that treatment. And he treats from the

date of this accident, July 13th, 2016, through November 7th of 2016, and November 11th of 2016, three years ago. Those dates are important because if Clayton tells you the truth, and I expect him -- I like Clayton. I have found him to be enjoyable. He's a good kid. He works at Chick-fil-A, which I think says a lot for him, or worked at Chick-fil-A. He now works at a law firm. He's doing well.

But if he tells you the truth, and he's going to say that in November of 2016 he was back to work, he was back to school, he had no headaches, he had no limitations, he had no symptoms, he was better. More importantly what you're going to hear is from the medical experts.

And you're going to hear from a number of them in this case who are going to tell you that when somebody gets a concussion, what you generally expect is that they have symptoms from anywhere from two weeks to two months on average for the most part. I think it was Dr. Pollack who said that they'd extended it a little more. It used to be a little bit less than that. It used to be about 45 days, but they've now extended it out.

We see everything that is in the forefront of the concussion research, especially with football and football related injuries in the NFL. And if you've seen the movie Concussion you'll understand concussions are a big deal, and the doctors now know what to do to treat for them. And so

they do it. They go through the vestibular therapy. They make sure that he's good.

He enrolls, actually, at Carolina, not in the fall of 2016 when this accident happened, but a whole year later. He's a freshman in the fall of 2017. It's not until February of 2018 that he goes back to see Dr. Pollack. Not February of 2017, three months after this accident, 450 days later he goes to see a doctor.

And he said I've been having these issues, trouble concentrating. I've got these headaches since November of 2017. No issue from November of 2016 to November of 2017, but all of a sudden in November of 2017 these issues come back. And you're going to hear these doctors who have testified that say usually what we see is when concussion symptoms resolve, they don't come back. It's not normal to see these concussion symptoms just come back on their own a year later.

Yeah, sometimes you get people who have symptoms and they continue. They don't get better in that two month period. Absolutely there are people who have ongoing symptoms, but it's rare for you to see somebody who is -- tells their doctors and their physical therapist, I'm at a zero out of ten. I can do my homework. I can work at my job with no limitations. I have no headaches. And then all of a sudden, out of the blue they've got symptoms again, a year later.

I believe that Mr. And Mrs. Somers, Clayton's parents,

genuinely believe that the symptoms that he is going to testify that he experiences are related to this wreck. But, ladies and gentlemen, here's the thing, when y'all come into this courtroom, you do not check your common sense at the door. You do not check your life experience at the door. Listen to the testimony and ask yourself does it make sense the way the Plaintiff is presenting their case? Because they have the burden of proof to prove to you that Mr. Harper was negligent or had a duty to be responsible, that he breached that duty, somehow made a mistake, and that the injuries claimed were caused by that breach.

He absolutely caused this wreck. He will tell you that. He's going to tell you that. He is sorry for that. He knows that he shouldn't have pulled out in front of a truck. He never saw the truck. He'll tell you, I can assure you, if I'd seen that truck, I wouldn't have pulled out. He didn't set out to get in a wreck that day.

So the issue that you've got to decide is were the injuries that are claimed caused by this wreck? I'm going to sit here and tell you right now that from July 13th, 2016 through November the 11th of 2016, absolutely related. No question.

Now, the issue of medical bills, not for you to decide. He was a minor. They were incurred by his parents. Not for you to decide. Your issue is pain and suffering, loss of

enjoyment of life. What value does that have? It has a value without question. The issue you've got to decide is does it have a value for four months or for the rest of his life?

There's going to be evidence of what happened in that year before he started to have these symptoms again that explain why he started to have these symptoms. There's going to be testimony about issues he had before this wreck, unrelated to this wreck, a history of very similar symptoms that he had prescription medication for from his doctor. Not just once or twice, but in '09, in 2010, 2011, 2012, 2013 and 2014. You're going to hear evidence that he had this history before and he's now got some issues again.

But you're also going to hear that he's doing well now. He is in college. He works for a law firm and wants to go to law school. Is that really somebody that has all of these debilitating issues caused by this car wreck? Or is that somebody who has natural life issues like each and every one of us has? They're all a little bit different. That now that things have changed, everybody's looking for an excuse for. The reason that these symptoms exist will come out in this trial. They are not because of this wreck.

I appreciate y'all listening to me. I appreciate the time that you have given both Mr. Somers and Mr. Harper. And in the end of this case I'm going to ask you to return a verdict for the Plaintiff in an amount of money, much less

than what they're going to ask for because the evidence is going to tell you that, yeah, he was hurt, he did his treatment, and he got better in November of 2016. And anything that he is complaining of today in November of 2019, or in November of 2018, or in November of 2017 has nothing to do with this wreck and everything to do with other issues. Thank y'all.

****

THE COURT: Who is your next witness, Mr. McAngus?

MR. McANGUS: The Plaintiff calls Stacey Somers.

Stacey Somers, being duly sworn testified as follows;

MADAM CLERK: Please have a seat. State your full name for the record.

MRS. SOMERS: Stacey Arlene Somers.

Direct Examination by Mr. McAngus:

Q. Good afternoon, Stacey. I'm going to move over here since we're talking to the jury. Are you Clayton's mother?

A. I am.

Q. Where do you live?

A. In Wake Forest, North Carolina.

Q. And how long have you lived in Wake Forest, North Carolina?

A. Six months.

Q. And what do you do there?

A. I'm an accountant at North Carolina State University.
Q. And, I'm sorry, how long have you lived in the Wake Forest area?
A. Six months.
Q. Okay. Before that where did you live?
A. We lived in Blythewood.
Q. And how long did you live in Blythewood?
A. Seven years.
Q. Did you work while you lived in Blythewood?
A. I did, but I was at University of South Carolina.
Q. And what did you do there?
A. I was the business manager in the School of Music.
Q. Okay. And how long did you work for USC?
A. Since 2011. I guess nine years.
Q. And I believe -- is that your husband Matt Somers there out in the -- in the ---
A. It is.
Q. --- courtroom?
A. Yes.
Q. How long have you and Matt been married for?
A. Twenty-eight years in April.
Q. What does Matt do for a living?
A. He is the risk director ---
Q. For ---
A. --- for Advance Auto Parts.

Q. Okay. And did he work for Advance Auto Parts when you lived here in Blythewood?
A. He did not.
Q. Okay. What took y'all to make the move from Blythewood to Wake Forest? Was that a job move or ---
A. Job move.
Q. Whose job changed?
A. His.
Q. Do y'all have any children other than Matt -- other than Clayton?
A. We do.
Q. Okay. A boy or a girl?
A. Olivia. She's 16.
Q. She in high school?
A. She is. A junior.
Q. Tell the jury a little bit -- they don't know Clayton. They haven't met him. Just in general, let's go back before this wreck, growing up in high school, what kind of kid Clayton was, what were his interests? What did he do in high school?
A. He was in the band. He was very active, very social.
Q. What instrument did he play?
A. Pardon me?
Q. What instrument did he play?
A. The saxophone.

Q. Okay.
A. Very life of the party, very smart, very caring, very caring.
Q. The jury's heard that Clayton worked with Chick-fil-A about the time this wreck happened.
A. Yes.
Q. And how old was he when the wreck happened?
A. He was 16, 17.
Q. How long had he been working at Chick-fil-A?
A. A year.
Q. Okay. And was that a part-time after school, ---
A. Yes.
Q. --- summertime? Was that something he did all year around or ---
A. He worked all year. It was part-time, but he worked during school and summer.
Q. And which Chick-fil-A was that?
A. It was the one on Two Notch Road, Spring Valley.
Q. Did he enjoy working there?
A. He did.
Q. Did he have any other hobbies?
A. He liked to fish, hunt.
Q. What kind of fishing did he like to do? And if I should ask Matt ---
A. You probably should ask Matt. Trout, I think. I'm not

sure.

Q. What kind of student was he?

A. He was a very smart student. Very studious.

Q. Did you see Clayton on the day of this wreck, like before the wreck happened ---

A. I did. I did.

Q. Okay. When was the last time you saw him before this wreck?

A. It was that afternoon. I had stayed home actually to clean my house, had taken the day off. He -- that afternoon he came and said that he was getting ready to go to work. He was headed out the door. I told him, I love you, be careful, as I always do. And then he headed out the door.

Q. And what was the next contact you got from Clayton?

A. It was just shortly after that I got a phone call. And I thought he had forgotten something or was going to tell me about his schedule because I was always asking him, and I didn't get a chance to ask him, you know, what time he was getting off. But he called me and said he had been in an accident, his head was cut open and he was bleeding. And I asked him where he was. He said he didn't know where he was.

Q. How did you find out where he was?

A. I have a tracker on my phone, so I was able to track. And then I finally was able to kind of ask him about where he was. And then he said Lowe's. And so I knew ---

Q. Was that an area of town that he was unfamiliar with?
A. No.
Q. Okay. Was it odd to you that he wasn't able to tell you where he was? Is that a road he travels all the time to go to work?
A. It was. I was a little bit concerned that he didn't know where he was. But, no, he was familiar with that road because he would go to Lowe's on Saturday with his dad to get yard stuff and all kinds of stuff that they would work on on the weekends and stuff.
Q. Did you go to the actual scene of the collision?
A. I did.
Q. Did you -- was Clayton there?
A. He was.
Q. Where was he when you got there?
A. He was sitting in the fire truck.
Q. And tell the jury what you saw.
A. He was just very nervous, crying, scared that he was going to die, not sure really what had happened. He wanted to know if his -- if dad knew yet because dad was actually out of the country. He told me that he loved me because he was -- he was just kind of shaking and scared.
Q. Had EMS arrived when you got to the scene or just the fire truck?
A. I believe they arrived just shortly after I got there.

It seemed like it took them a little bit for them to get there.

Q. Did you see any visible injuries on him?

A. Yes. His head -- his head -- he had a rag on his head. And it was, I guess, covered in blood.

Q. Did you ever actually see the gash on his head before it was stitched up?

A. Not before it was stitched up, no. Well, I guess as the -- as we were in the hospital room.

Q. And briefly, real quick before we move on, you were at the scene of the wreck and saw Clayton's car? Saw ---

A. Yes.

Q. --- the truck?

A. Yes.

Q. Okay.

A. I had to get the stuff out of it.

MR. BROWN: No objection.

(Whereupon Plaintiff's exhibits 7 and 8 were marked for identification)

THE COURT: And give me exhibit numbers.

MR. McANGUS: 7 and 8, Your Honor.

THE COURT: Okay. Plaintiff's 7 and 8 are admitted without objection.

(Whereupon Plaintiff's exhibits 7 and 8 were admitted into evidence)

Q. Briefly, what are -- tell the jury what exhibits 7 and 8 are.
A. This one is the airbag that was deployed after the collision.
Q. What's that that's on there?
A. Pardon me?
Q. What is on it?
A. That's his -- that's blood that is splattered on the airbag.
Q. And exhibit 8, is that a picture of the damage of Clayton's truck again?
A. Well, 8 is the airbag. And ---
Q. Oh, ---
A. --- 7 is the damage to the truck.
Q. You recall how long y'all stayed on the scene?
A. Several minutes. Probably 30 minutes or so before he was transported.
Q. And how did y'all leave the scene of the wreck?
A. He left in an ambulance. And I left -- a friend had met me there to take me to the hospital because I -- we had no need for any hospital, so I wasn't sure where the hospital was exactly. So a friend transported ---
Q. What hospital did they take him to?
A. Richland County.
Q. Did you go with Clayton to the hospital?

A. I did. I met -- yes.
Q. The jury's seen the picture of Clayton's staples and stitches in his head. Did he get -- was that the night that he got the staples and those stitches put in ---
A. Yes.
Q. --- put in his head?
A. Yes.

MR. McANGUS: Your Honor, I'm asking the court reporter to mark exhibits 9 and 10. And then 11.

(Whereupon Plaintiff's exhibit 9, 10 and 11 were marked for identification)

THE COURT: Has Mr. Brown seen those?

MR. McANGUS: Yes, Your Honor.

MR. BROWN: No objection, Your Honor.

THE COURT: Okay. So Plaintiff's 9, 10 and 11 are admitted without objection?

MR. McANGUS: Yes, Your Honor.

(Whereupon Plaintiff's exhibits 9, 10 and 11 were admitted into evidence)

A. These are -- can I show them?
Q. Um-hum (affirmative).
A. These are pictures of him in the emergency room as they were stitching up his head.
Q. You mentioned earlier that -- I think you told me that Clayton was scared he was going to die or something to that

effect.
A. Um-hum (affirmative).
Q. Was he -- was he pretty upset this day?
A. Yes. He was very ---
Q. Emotionally upset?
A. Very -- just frantic and very worried, I guess.
Q. Since it's part of this case, at least on the day of this wreck, once you saw Clayton, did this appear to be a painful injury as well, too?
A. Oh, yes. Yes.
Q. Had Clayton ever gotten staples or stitches like this before?
A. No. No. He actually -- I think the first time he ever got sick, he was scared he was going to die. So this really, I guess, really upset him.
MR. McANGUS: And exhibit number 11, that's just, for the record, that's the blow-up the jury's already seen, I think, already admitted into evidence.
Q. So you're at the hospital with him. What -- tell the jury about the next -- the next day, how was he doing?
A. The next day I kept watching him. He, of course, slept. He didn't want to do anything, naturally. He did, I guess, complain of pain and, you know, his head was hurting. He was -- he was worried that he was going to die.
Q. Anything else over the next few days that he experienced

that you saw?

A. We were worried. The next few days we went back to the emergency room because the side of his face had swelled up and his eye was swelling. We were very concerned that there were some additional problems. So we went back to the emergency room.

Q. And when you say his face was swelling, what do you mean?

A. It was very puffy, very kind of black, blue, really, I mean, it wasn't the normal size face. It was ---

Q. Did y'all take a picture of that?

A. I think so. I don't ...

(Whereupon Plaintiff's exhibit 12 was marked for identification)

MR. McANGUS: I think that's Plaintiff's 12, Robb. Any objection?

MR. BROWN: No objection.

THE COURT: Plaintiff's 12 is admitted without objection.

(Whereupon Plaintiff's exhibit 12 was admitted into evidence)

Q. And Matt may be a better person to ask, but is this -- does that photo show the swelling as you explained it to the jury?

A. Yes. It doesn't show the full -- but, yes, that's the swelling. His face, it was not normal for what we were used to seeing. But, yes, Matt took the picture.

Q. And how many days after the wreck was that?
A. Three, I believe. It was on a Friday after he had gotten back in the country.
Q. And after that emergency room visit did they make any referrals?
A. I believe it was to go back to see the orthopaedic doctors.
Q. Let's talk about the -- the jury's heard that he did go through a concussion protocol at Palmetto USC. Is that correct?
A. Um-hum (affirmative). Yes.
Q. And who was the doctor that initially treated him?
A. Dr. Murphy.
Q. And did you go with Clayton with those -- on those visits?
A. I did.
Q. Where was their office located?
A. Downtown by the hospital, I believe.
Q. And when you took -- went with Clayton to those initial ---
A. No, it was actually out by Columbiana.
Q. Okay. And at that point in time what kind of problems was he having when he was going through that concussion protocol?
A. He was having some problems concentrating. The light was

really bothering him.
Q. And the concentration, how did that manifest itself? How did y'all see that? Explain that.
A. He -- on some of his studies he'd kind of get agitated really easy in trying to understand things. He wouldn't stick with something very long. He would be working on something with his dad, get frustrated a whole lot easier. It just seemed like he didn't stay with anything like he used to.
Q. Did that appear to be a change from before ---
A. Oh, yes. Yes.
Q. Did you mention sensitivity to light?
A. Yes.
Q. And what do you mean by that? Tell the jury what you mean and how that affected ---
A. He wears sunglasses constantly. Even in his room we would have to pull the shades because the light would come in and it would -- it would be very bright. And our house had a lot of windows. And we had to make sure we pulled all the shades -- all the blinds to keep it darker in the house.
Q. Now did you make sure Clayton went to all of his doctor's appointments, ---
A. Yes.
Q. --- sports medicine doctors?
A. Yes.
Q. Did you make sure he followed the advice they gave him?

A. Yes.
Q. Did you make sure he went through the vestibular therapy?
A. Yes. I'm the rule follower. So, yes, he followed them.
Q. Did Clayton do everything the doctors asked of him during that -- for those four months after the wreck?
A. Yes.
Q. And then I believe y'all -- we've heard that y'all went back to the doctor on November 9, 2016?
A. Yes.
Q. And at that point in time did it appear that the headaches, the problems had resolved?
A. Yes.
Q. Okay. And did Clayton tell the doctors that?
A. Yes.
Q. And at that point in time what did y'all think? Were you hopeful that this was over?
A. We were hopeful that it was over, that it was behind us, that we were done.
Q. While he was in that active concussion treatment did the doctors limit his daily activities?
A. They did. They limited his activity, they cut his work hours way back. He was only allowed a certain number of hours.
Q. And then when he was released back to full duty in November 2016 ---

A. He -- I believe he worked, you know, 20 hours a week or so just like normal.

Q. And after that did there come a time when y'all began to suspect that maybe he wasn't just back to normal?

A. There were bits and pieces that came up, I guess, along the way that we eventually kind of thought, we think this has something to do with -- with the concussion.

Q. Okay. Tell the jury, we need to let them know, what are the things that y'all are seeing in him? Give them some specific examples. What did you see that was different?

A. From -- I noticed it when we -- we had gone to Navarre Beach every year for, I guess, gosh, we'd gone for 12 years in a row. He was always excited to be there wanting to get out in the water and, you know, just really excited. And I noticed that summer he just sat on the beach, didn't really want to engage in getting in the water or really any of the activities.

He and his dad like to fish. There's a big fishing pier. And he really just didn't seem interested in it. For me, I guess that was kind of the turning point for me. He also seemed a little bit more snippy, a lot easier agitated more so than I had ever noticed.

Q. Any other examples that you can tell the jury, put some specificity to it?

A. No.

Q. Was there something -- you gave an example when y'all went down to the beach. But was it just one time or was that just an example of ---

A. That's just an example. It seemed like he wasn't as interested in things. He lost interest in band. He lost interest in sports. He played some sports when he was younger. He just -- he seemed to have lost interest in those things.

Q. And eventually did you call and make an appointment for him to go back and see the concussion protocol doctors?

A. I did.

Q. Dr. Pollack, I believe?

A. Yes.

Q. Okay. And did Clayton at that point tell Dr. Pollack what symptoms he was having?

A. He did. He said that he was having some kind of -- some headaches. To me, I still think that he was having problems concentrating. But, yes, he did mention the headaches.

Q. We've heard that he finished high school and he's at Carolina now. Was his schoolwork affected at all?

A. Not drastically. It was affected. I think -- I just think his concentration is not what it used to be.

Q. When is he set to graduate?

A. Next May.

Q. And what ---

A. In 2021, I believe.
Q. I told the jury that he might want to go to law school. Things change sometimes with kids. Is that still what he hopes to do to your knowledge?
A. To my knowledge that is, yes.
Q. Since y'all moved up to Wake Forest -- or strike that. Before y'all moved to Wake Forest about how often did you see Clayton?
A. We pretty much saw him every -- every weekend, sometimes two or three times a week.
Q. And how often do you see him now?
A. About once a month, maybe.
(Whereupon Plaintiff's exhibit 13 was marked for identification)
MR. McANGUS: And, Your Honor, we'd move this in without objection.
MR. BROWN: That's correct.
THE COURT: Plaintiff's 13 is admitted without objection.
(Whereupon Plaintiff's exhibit 13 was admitted into evidence)
Q. Stacey, what's that a picture of?
A. This is a picture of his scar.
Q. Is that what it looks like now?
A. Yes.
Q. And now if you'd kind of show the jury. Does it extend

up beyond his current hair line?

A. It does.

Q. How far back up does it go?

A. Probably, I guess, half way up his head.

Q. Stacey, I think before you came up here maybe y'all had marked some photographs. Have I covered the photographs you wanted to talk to this jury about or are there some that we missed?

A. I believe that I had mentioned it, but I don't -- there's a picture of him.

(Pause)

(Whereupon Plaintiff's exhibits 14 and 15 were marked for identification)

MR. McANGUS: And, Your Honor, we'd move exhibits 14 and 15 in, I believe, without objection.

MR. BROWN: Without objection.

THE COURT: Plaintiff's 14 and 15 are admitted without objection.

(Whereupon Plaintiff's exhibits 14 and 15 were admitted into evidence)

Q. All right. Stacey, here are exhibits 14 and 15. Tell the jury why those are important.

A. These are important because this was the summer, I guess, that I noticed he just was sitting there on the beach not interested in participating in any of the activities that we

were doing. We usually go out for long periods of time. And he just pretty much just sat there.

He and his sister always played, goofed around, and throws sand and seashells, I guess, at each other. And he just wasn't interested in any of that.

Q. Have there been any times where, I don't want to call them outbursts, but just where he had trouble controlling his emotions?

A. Yes. I may tell him, you know, don't forget to do something, and it seems like just a simple reminder will kind of set him off, I guess.

Q. And was that different than before this wreck?

A. Yes.

MR. McANGUS: Beg the Court's indulgence one moment, Your Honor.

THE COURT: Yes, sir.

MR. McANGUS: Your Honor, I think those are all the questions I have for Mrs. Somers.

THE COURT: Cross-examination.

Cross-examination by Mr. Brown:

Q. Good afternoon, Mrs. Somers. Was it difficult to see your son injured the way that you saw him on the date of the accident?

A. Yes.

Q. That's something that will stick with you, I'm sure,

forever?
A. Oh, yes. Yes.
Q. You were actively involved in Clayton's life before this accident, were you not?
A. Yes.
Q. I want to talk to you briefly about Clayton's migraines when he was younger. Clayton had suffered from headaches for some period of time before this accident, is that fair to say?
A. Um-hum (affirmative). Yes.
Q. In looking at his records, the first mentioned, maybe, 2009 or so?
A. Yes.
Q. And when was Clayton born?
A. February of '99.
Q. So roughly when he's ten years old he starts having these migraines, is that fair?
A. Yes.
Q. And y'all go to his doctor, his pediatrician, and he starts a course of treatment for headaches that he's having fairly consistently, right?
A. Yes.
Q. And he continues to be on this course of treatment in 2009 into 2010, correct?
A. Yes.
Q. During the time that he's going to his pediatrician and

treating, he's given a prescription called Amitriptyline, is that right?

A. Yes.

Q. And he takes that on a regular basis for these headaches?

A. Yes.

Q. And you're at these visits at his pediatrician with him, right?

A. Yes, either myself or his father.

Q. So you're able, I mean, Clayton at that point's ten years old. So you're relaying what you're seeing and things like that, is that fair?

A. Correct. Um-hum (affirmative).

Q. And he continues to take that same medication in 2010?

A. Yes.

Q. 2011?

A. Yes.

Q. 2012?

A. Yes.

Q. '13?

A. At some point he went off of it, yes.

Q. Right. And before this accident he was not actively treating for migraines, was he?

A. No.

Q. But he had treated over a course of at least about five, maybe, six years?

A. Yes.
Q. Did you go with Clayton to his doctor's appointments after the accident?
A. Yes.
Q. And did you go to all of them?
A. Yes.
Q. You went to his physical therapy treatments?
A. Not every -- just the first physical therapy treatment and then ...
Q. And how about when he was going to his concussion doctor?
A. Yes.
Q. And you were able to talk to the doctors about how he was doing from your vantage point, weren't you?
A. Yes.
Q. And they would ask you questions about how's he doing? What are you seeing versus what he's able to relay to them, is that fair?
A. Yes.
Q. And so this accident happened in July of 2016. Do you remember telling the doctor in October that his mood seemed normal?
A. At the time, probably, yes.
Q. And do you remember him taking the SAT during that time?
A. He would have taken it, yes.
Q. And that was the SAT he took to get into Carolina?

A. Yes.
Q. And in October he's back working at Chick-fil-A?
A. Yes.
Q. And he's a senior at Spring Valley High School?
A. Yes.
Q. How was Clayton as a student in high school?
A. He was very good academically, very studious.
Q. Was he the kind of -- the kind of student that had to work hard to get good grades or did it kind of come naturally to him? What kind of -- what kind of -- as far as that, what kind of challenge did he see when he was in high school?
A. It typically came natural for him.
Q. Did you go back to the doctor with him in November when he discontinued treatment?
A. Yes.
Q. Do you remember it being reported to his physical therapist and to his regular doctor that he was at a zero out of ten, no migraines anymore, back to normal, if you will?
A. Yes.
Q. And is that what you saw in his life?
A. At that point, yes.
Q. And so fast-forward some point later, I think you said in the summer of 2017 you start to see some issues, but he's not complaining of headaches at that point, is that fair?
A. Probably not that I can recall.

Q. And so by then he's graduated from Spring Valley. He's getting ready to go to Carolina as a freshman?
A. Correct.
Q. All right. Did he live at home his freshman year?
A. For part -- half of it.
Q. All right. First half or second half?
A. The first half.
Q. And then he moved and moved off -- lived ---
A. Off campus.
Q. --- at an apartment or something like that?
A. Yes. We were getting ready to sell our house, so we had to find him housing.
Q. Okay. And it wasn't until February of 2018 that you actually took him back to see a doctor, is that right?
A. Correct.
Q. So even when you saw him in July, or August, or the summer of 2017, you saw these things, didn't go to the doctor, did you?
A. We did not.
Q. Didn't send him to the doctor by himself?
A. (Negative nod).
Q. And then I think you relayed to the doctor in February of 2018 that all of a sudden he's got migraines again starting in November of 2017, is that accurate?
A. Yes.

Q. So even when you started to see these migraines in November of 2017 you still didn't go see Dr. Pollack?
A. We did not. We probably didn't, maybe, put the two and two together at that point.
Q. It wasn't until February of 2018 that you put two and two together?
A. Yes.
Q. And I think you heard Mr. Harper say that this lawsuit was filed in June of 2017. Is that accurate?
A. Yes.
Q. Thank you, ma'am.

THE COURT: Anything further from this witness?

MR. McANGUS: No, Your Honor.

THE COURT: Okay. Thank you. You may step down.

****

MR. McANGUS: Your Honor, the Plaintiff's next witness is Matt Somers.

MADAM CLERK: Place your left hand on the Bible and raise your right hand.

Matthew Somers, being duly sworn testified as follows;

MADAM CLERK: Thank you. Have a seat on the witness stand.

MR. SOMERS: I'm Matthew Somers.

Direct Examination by Mr. McAngus:

Q. Mr. Somers, we heard from your wife that you guys live in Wake Forest now. What do you do for a living?

A. I am the national risk director for a large retail company.

Q. And what retail company would that be?

A. Advance Auto Parts.

Q. And what does it mean to be a risk management -- risk manager?

A. Well, so I'm responsible for the commercial insurance program for Advance Auto. So I research, benchmark, develop, purchase all the insurance products for the company.

There's a large fiduciary responsibility that goes along with risk management. So in modern times we talk about risks both in terms of judicial risk management -- transfer to insurance, but then also the fiduciary side of risk management was risk to the business from like cyber breach or something that could cause an impact to the business and stock. So ---

Q. Are you the director of risk management for all Auto Zones?

A. Advance Auto?

Q. Advance Auto. I'm sorry ---

A. We don't like to talk about the orange, but -- so I am the -- I am the risk director for the whole company.

Q. And how long have you had that position?

A. A little over two years.

Q. And how long have you been with the company overall?
A. A little over two years.
Q. And what kind of work did you do before -- before that?
A. I was the global director of risk management, environmental compliance for a large tool manufacturer.
Q. Okay. And what tool manufacturer would that be?
A. Apex Tool Group.
Q. And how long did you have that job?
A. Ten years.
Q. Okay. And who -- when you and your family were living in Blythewood were you working for the tool company or did you move to the auto company?
A. At the time of the accident I was working for Apex Tool Group.
Q. It's my understanding it was you changing jobs is what kind of precipitated y'all's move to North Carolina?
A. Yeah. Person that I had worked for before earlier in my career at Apex took a senior level executive position at Advance and asked me to come there.
Q. The jury's heard a few witnesses talk about some similar stuff. I'm going to try to cut to the chase with you, Matt, on some stuff that you may have some specific knowledge about. And one of the things I think you -- that you recall specifically is what led up to what's depicted in this Plaintiff's exhibit number 12.

A. Yeah. So when Clayton got hurt, I was out of the country. I was in Mexico working. And when I got back I took the photos of the gash in his head. So that was -- I got back late in the afternoon.

We weren't allowed to travel in interior Mexico alone, so I had to wait on an escort to get me out of the country. And I was deep in Mexico. So I don't think -- I got home the day after the accident, but it was about five or 6:00 in the afternoon.

I'd been up all afternoon -- or all night, and Clayton came into the bedroom to show me the gash in his head. And we talked a minute, and I took that picture. And he pulled the blind shut because we had to open them to take the picture, but the light was bothering his eyes. So over the next couple of days he didn't do much. He didn't eat a lot. He stayed in his bedroom.

And on this particular morning he got up and came back up into the bedroom and his -- what you can't really see in the picture is that this is kind of purple. And it's the side of his face that's on the -- the cut was more on one side than the other and blood had drained down into his temple. And so it being, you know, his temple, it kind of scared us, so we went back to the -- to the ER.

Q. Stacey told us earlier that Clayton has always -- has been a fisherman, but said you might can give us a little bit

more insight into that. Are you the guy that taught Clayton how to fish?

A. Yeah. We -- we moved from Arkansas when he was pretty small. And I had always been a duck hunter. And, you know, when you -- the difference between duck hunting in South Carolina and Arkansas is pretty vast. And so that opportunity wasn't really there for us.

So we had to learn how to deer hunt, which is -- like we deer hunted in Arkansas when he was small. We were members of a club. But in Arkansas you go to deer camp in a two week period in between the two duck seasons. So it's just to have something else to do. But we had to learn how to, you know, had to do something. So we learned how to deer hunt.

And then we have spent a lot of time in Florida over the, I guess, the entire life of the kids. And he and I picked up salt water and pier fishing, bottom fishing in Florida. So we liked to fish for black tip shark, and mackerel, and lady fish and whatnot.

The place where we go is not very -- not very well known. And it has the largest fishing pier on the gulf of Mexico. So we spent a lot of time there.

Q. And how often would y'all go?

A. In later years, several times a year. You know, at least once a year, twice a year.

Q. And is that something Clayton enjoyed?

A. Oh, yeah.
Q. Is that some activity y'all did together?
A. Oh, yeah.
Q. Well, tell the jury -- I've got exhibits 15 and 14. Tell them why those are -- why those stick out to you.
A. So this -- this picture, so I took that. And it's just that he just -- this was the summer after the accident. So he was just kind of melancholy.

And you can see he's -- he had built this pier cart. You know, we didn't normally used to go down into the octagon into the end of the pier to fish where they, you know, where they throw for tarpon and stuff like that because we just didn't -- we didn't carry that much gear with us. But I guess this was probably '17. He wanted to -- he wanted to fish down there. So we bought a Yeti and he built this -- he cobbled this cart together.

And, you know, we drive down there because we take a lot of stuff with us. So he had to take all this stuff apart and then put it all back together when we got down there so that it could ride in a pick-up truck, you know, with a bed cover on it.

So on this particular day it -- the fish were biting. It was raining. And they were catching bonita, which, you know, are kind of trashy fish, but they fight real hard, so they're a lot of fun to catch. And he just wasn't really interested

in it that day.

I mean, pretty much what he was interested in was the fact that there were some boys and a couple of girls at the end of the pier that were catching remora and they were killing them and just throwing them back. So they were sticking them on the pier.

You know, remora is a fish that has a sucker scale on the top of its head and sticks to the bottom of sharks and whales. So that's the little fish that are stuck on those fish when you see them.

Well, they were catching them off the end of the pier and sticking them onto the pier and then taking a pocket knife and stabbing them and then throwing them back into the water. So he got really aggressively upset about that, and we ended up leaving for the day.

Q. And was that out of the ordinary?

A. Yeah. Yeah, a little bit out of the ordinary. He's not ever, you know, never before and, I guess, maybe not ever even since then have I seen that kind of stuff out of him on the fishing pier.

Q. What about the other exhibit?

A. Well, this is just unusual because his mom -- Stacey takes a lot of pictures when we go to the beach. And she took this picture. And, I mean, he's just kind of, you know, he's just kind of sitting there. He's not really animated and he's

pale.

And he should be really suntanned because normally he would be out in the water and what, you know, but he didn't -- he didn't play much that year on the beach.

Q. And what year was that?

A. I believe this is '17.

Q. Now were those -- are those similar to some overall symptoms, or problems, or just things you've noticed in Clayton after this wreck and after he was released from ---

A. Well, what -- I think what led us to, you know, things developed over time. So in the initial time after he had the accident, he was sick for a while. He did bounce back.

I think the scariest thing that happened during that time for me was when he went to the -- and I have trouble with the names of the therapy, but when he started the vestibular therapy stuff. The reason that they did that to him is because his eyes didn't focus correctly at the same time. And he noticed it just looking in the mirror, you know, and noticed that his pupils didn't focus right, and you could see it. And that continued, I believe, even after they discharged him.

But they told us that it was not permanent, you know, and it would -- it would eventually correct itself. And it did. You know, I guess we got used to it, you know, during the months that he went to therapy. But that's really what that

-- those eye exercises are -- because that messes up all your coordination, your balance and stuff.

Q. Now also -- let's shift gears, kind of shift gears and focus on the time after -- after he was released from treatment by Dr. Pollack's practice group. So going into late 2016, into 2017, what were some of the -- any other changes that you noticed in Clayton or some specific examples you could tell this jury about ---

A. Yeah ---

Q. --- what y'all witnessed?

A. Yeah. So, you know, the -- it is natural, and we've dealt with it. We had dealt with it a long time when he was small. So when a person has migraines, you know, they're not really -- they don't really want you to mess with them a whole lot.

If they're truly, I mean, Clayton has headaches just like any other normal person does, too, you know, that I've got a headache and, you know, I function my whole day with that. But when he has a migraine, it's debilitating. And, you know, he can't really stand light. And he doesn't eat and, you know, he doesn't like really anybody to talk to him. You know, so you can, you know, you can imagine he's kind of a bit of a bear.

There was a period of time where that had cleared up. We had the wreck. He had immediate symptoms after the wreck.

And then over time and after that we started to see not just headaches show up and not just the migraines come every now and then, but a more manifestation of this -- of irritability and aggression that didn't necessarily have to accompany a headache.

It just had to accompany somebody pushing at him a little bit to do something like Clayton, mow the yard for me and, you know, that could turn into a really -- more than just, aw, dad, I'll do it later, you know. Me tell him for days on end to get the yard mowed and then finally have to -- have to have a blow-down, you know, blow-up argument about it to get it done.

You know, you can, you know, if you pressure him to, you know, to make a decision, or to give you an answer, or to, you know, or to do something that you want done that maybe he doesn't want done, or he doesn't see as important, I can get, you know, a pretty violent response pretty quickly. And it's worse with his mother.

So she's not as vocal about those things as I am, but, you know, they -- what's gone on since this time has probably affected their relationship more than -- more than mine and his. And it's -- it's not easy.

Q. Can you tell the jury a little bit more about that? What do you mean it's not easy, his relationship with his mother?

A. Well, they, you know, they get along pretty well right

now because they don't -- they're not in each others orbit very much. But they can get under each other's skin just because she's a mom and, you know, she asks questions like why did you stay out til 3:00 in the morning last night or 4:00 in the morning last night? Because she still carries the app on her phone so she can see where he's at. And she does ask those things from time to time.

She ignores it a lot now, but, you know, when that comes up, that can elicit a really strong response. You know, and -- he's 20. So he should be pulling away. And we've allowed those things to happen.

He is -- he is totally and completely financed by us except for his scholarships at school. So there is still some reason why we should be concerned and connected to what he's doing and, you know, where he's going and coming to. So -- and I don't tend to have those discussions with him as much as she does. But I'm not his mother, I'm his dad. So ...

Q. Now let me ask you this question, too. After -- in the months after he was released by -- from active concussion protocol in December -- January -- November of '16, when y'all first started seeing things that you thought were just something not quite right, why didn't y'all run out and go immediately to the doctor? Why didn't you -- why didn't you do that?

A. Because we're not amateur parents. We've got kids. And

they're not always broken, you know. So, you know, we've never -- even when they were small, I mean, my parents were Depression Era people. And my dad was born October 29th, 1929. And my mother was born in '33. So I had a parent born literally into the Depression and one born as a New Deal baby.

So -- and they were successful people. So they didn't -- they didn't run us to the doctor every time we had a fever or sniffle. We didn't go to the emergency room and that kind of stuff. I mean, I went to the emergency room two times in my life. And both times I was cut, I mean, I had to go get stitches or something. So Stacey and I just didn't do those things.

When we got concerned with behavioral changes, I guess, is when we -- and it was his mother that took him, you know, because I travel all the time. And I probably wasn't even aware that he went to the doctor when he went.

Q. Any other emotional or behavioral changes you noticed in Clayton?

A. No, it's mostly an anger management thing. And you never know what's going to bring it on.

You heard -- we've said several times today that Clayton wants to go to law school. Well, you know, I mean, doing the work that I do, I deal with attorneys quite a bit. You know, part of my job is to be responsible for all the insurance defense that goes on in large corporation. So that's most of

my day every single day.

And, you know, I get to be the guy that demands, you know, I want you to do this, or this, or this, you know. And I sometimes put really what are more or less sometimes unreasonable demands on our defense counsel. And I know that I'm doing that because I know that I'm going to get not all that, right? But I want to influence the outcome and the quality of work. I want them to roll their sleeves up and go to work. So I'm pretty demanding.

When an attorney is faced with -- and on the other side of that, when I deal with claims, one of the first things that I'm always going to ask my defense counsel is does plaintiff have control of his client? Well, there's give and take in that, right? So my counsel has to be able to control me, too.

If you don't have the right temperament for that, you're not going to be able to get that done. And, you know, you wouldn't be able to deal with somebody like me and give a measured and calculated legal response.

Because these guys don't -- they don't react to questions or to -- or to somebody to have a strong personality the same way that somebody else -- that I might, you know, because that's how they make their living and that's what they're paid to do. So it's a certain personality that goes along with it.

And people change, but the measured response part of it doesn't. So I have some concerns that that could affect him

on down the road. And, you know, that's -- it bothers me.

MR. McANGUS: One moment, Your Honor.

(Pause)

Q. Have you noticed anything that is related to Clayton's, I'll call it, attentiveness or ability to focus?

A. Yeah. So there are a couple of things that are really obvious if you are around him in a private setting or, you know, any -- if he is -- if he's trying to tell a story, all of the emotions that go along that he felt maybe when he felt with the story are coming back out. So if it's anger, I'm extremely mad, and I'm just doing nothing but telling you the story. So that's one thing.

And then the other thing that just drives me nuts is he paces constantly. So if he's on the telephone, he is -- he would walk a path in the floor. And we have a new, you know, we have a newly constructed home.

And for some reason the -- of course, our kids will -- they have a room at our house, and they always will. So he's got a -- he got a brand new room and the floor squeaks over our kitchen. So when he's home, he'll get up there and get on the telephone with his buddies or whatever, and I don't know what they're talking about, but, I mean, I can hear that crack, crack, crack, crack, crack, crack, you know, because he's pacing a track.

And rooms, you know, we downsized quite seriously when we

moved to Raleigh or to Wake Forest. So rooms are not very large. So he doesn't have a whole lot of room in this room. He's got a king bed in there, so he doesn't have a whole lot of room to be pacing. So he's only got one little track that he's walking. But he'll -- he'll go up and down that thing, you know, 50 times.

Q. And, Matt, with you and Stacey being his parents and he was living with you at the time this happened, y'all probably saw him more than anybody else?

A. Yeah. The ---

Q. At that point in time?

A. Probably the worst time for us was -- and this was -- it was probably our mistake, but the worst time was when he started college and he lived part of the first semester of college in our house. Now we had a completely -- we had a big house. And it had a -- it had a basement that had a full living area in it. So he had a kitchenette and he had his own refrigerator/freezer.

He had everything but a washer and dryer. And he could have had that, I just never got it put in before he -- before he moved out. He had a full game room. He had a bedroom, you know, huge bedroom with a separate sitting area in it and then an en suite bathroom. And he had his own garage. So, you know, in the basement.

So he -- he didn't really have to really interact with us

that much, you know, if he didn't want to. Now, mom was not going to allow that to happen when you come home at 4:00 in the morning from fraternity parties. So that turned into a disaster very quickly.

But the -- the attitude was really evident during that period of time probably more than it has been since. But, then again, I mean, you know, the separation, distance, and things like that have helped.

MR. McANGUS: Your Honor, I don't have any further questions.

THE COURT: Mr. Brown.

MR. BROWN: I don't have any questions for this witness.

THE COURT: All right. Thank you, sir. You may step down.

A. Do I take these?

THE COURT: No, leave everything there.

(End of Requested Testimony for November 18, 2019)

Tuesday, November 19, 2019:

(Whereupon the jury entered the courtroom at 9:34 am)

THE COURT: Good morning, folks.

THE JURY: Good morning.

THE COURT: We are going to resume the trial of the case. I hope you had a good night. As you know, we were going to order lunch for you just to get this done. We should -- we will finish this case today.

So rather than sending you out for lunch, we just figured we'd order you a little something. It will be here at lunchtime, but, of course, we will take a break for it whenever it makes sense to take a break. Hopefully that's sort of at the end of the case. But with that, you'll give Mr. McAngus your undivided attention as he calls his next witness.

MR. McANGUS: Your Honor, the Plaintiff calls Clayton Somers.

Clayton Somers, being duly sworn testified as follows;

MADAM CLERK: Please have a seat. State your name for the record.

MR. SOMERS: My name is Clayton Matthew Somers.

Direct Examination by Mr. McAngus:

Q. Good morning, Clayton.

A. Good morning.

Q. The jury heard a good bit about you yesterday from your family. But just by -- just by way of background, tell us again when you -- when this wreck happened, how old were you?
A. Seventeen.
Q. And were you in school at the time?
A. Yes, sir.
Q. Where did you go to school?
A. Spring Valley High School.
Q. Okay. What kind of -- were you taking any kind of special classes there?
A. I was in AP and Honors all throughout high school.
Q. And this wreck happened between the summer between -- what year was it?
A. Between junior and senior year.
Q. And did you also have a part-time job at that point in time?
A. Yes, sir.
Q. Where was that?
A. It was at Chick-fil-A on Two Notch.
Q. And before this wreck happened how much time were you spending like per week working at Chick-fil-A in addition to going to school?
A. During the school year it was anywhere between like I want to say like 25 and 35 hours because I'd work from four to 11, which really meant like 12 at night. And then during the

summers it was basically full-time.

Q. And you are now a student?

A. Yes, sir.

Q. And where are you a student?

A. University of South Carolina.

Q. And what are you studying?

A. Political Science.

Q. And you're in school. Are you also -- do you have a job outside of school right now, too?

A. Yes, sir.

Q. And what kind of job is that?

A. I'm a runner at McAngus Goudelock & Courie on Main Street.

Q. All right. Is that a law firm?

A. Yes, sir.

Q. Okay. And we've heard from your mother and your dad that -- is it true that you're thinking about trying to become a lawyer when you get out of school?

A. At the moment, yes, sir.

Q. What makes you want -- what makes you want to go to law school and be a lawyer?

A. I mean, my dad's been around lawyers for several years now. And I've like gotten to interact with several attorneys on the corporate side. And it just interests me and really just seems like I would be good at it or something I'd like to

do.

Q. Your dad mentioned yesterday you were in a fraternity at school?

A. I was, yes, sir. I've since dropped it, but, yes.

Q. What kind of fraternity was it?

A. It was Beta Upsilon Chi, which is the -- it's a Christian fraternity and it's nationwide, stands for brothers under Christ. And it's a completely dry fraternity. I know my dad had mentioned coming home at 4 am from a fraternity party, but it was not the kind of fraternity party, I'm sure, a lot of you were thinking.

Q. Clayton, let's go back to the day of the wreck, briefly. Where were you headed?

A. The day of the wreck?

Q. Yes.

A. I was headed to work.

Q. Okay. At Chick-fil-A?

A. Yes, sir.

Q. And just briefly tell the jury in your own words what you remember happening.

A. So I was going down -- my parents lived out in Blythewood. I don't know if any of you know Blythewood, but it was in Ashley Oaks off Fulmer Road over there behind Westwood. So I was taking, I guess, Fulmer to Wilson to go down Killian Road, took Killian Road all the way down to get

on Two Notch near the Chick-fil-A to go to work.

And as I was -- I don't know if it was before Killian switches to Clemson or not, I don't know what the intersection rules there are, but whatever the Lowe's is over there on Killian and Clemson Road. I was in the left hand lane. It's four lanes, so two on the right, two on the left, and there's a turning lane in the middle. And I was in the left hand lane going towards Two Notch Road from Blythewood.

And at the stop sign was Mr. Harper. And he pulled out. The first time I like remember seeing his car was when he was in the right hand lane. I was right here and trying to avoid him to go into the turn lane/oncoming traffic lanes because there's a red light a block up. And it was red, so there was no traffic in the oncoming traffic lanes.

So I tried to avoid him. I obviously didn't have enough time to do so. And we ended up -- I ended up T-boning him. I don't remember the like wreck, so to speak. I remember like seeing him pull out and realizing that this was about to happen and then coming to shortly after the wreck. I don't think that I passed out, but I just don't remember it.

And like my first reaction was -- there was blood coming out of my head. And I was dazed. And I got out of the truck. And my truck was black. So it was like bright and sunny. So I looked -- when I got out of the truck I looked in the reflection because my rearview mirror was knocked off in the

wreck.

I looked in the reflection of my truck to see my head and there was blood all over the side of my truck. And my head was gushing blood. And this guy came up to me at some point. I don't remember if it was before I went to Mr. Harper's truck and asked him if he was okay or after. I was kind of dazed and in shock. He handed me a rag.

Q. Let me ask you this. Plaintiff's exhibit number 8 that the jury has seen, it's a picture of your airbag?

A. Yes, sir.

Q. The blood that got on that airbag, was that from your head impact there?

A. No. I don't -- my head didn't impact the airbag at all.

Q. How did that blood get on the airbag?

A. It was just kind of squirting everywhere. And if you -- you can kind of see like in the carpet and on the seat, there's blood down there, and on the seat, and on the center console as well.

Q. Your mom mentioned yesterday that when you called her you told her that you thought you might be dying or that you were dying. Tell -- explain that and your thought process ---

A. I know that now that it probably seems a little bit dramatic, but in the moment of the wreck there were no EMTs or anybody out there that would really tell me like how bad the gash on my head was. So I was freaking out about, I mean, I

know I had a pretty giant wound on my head and didn't know how bad it was or what the extent of the injury was. And there was nobody really to explain that to me at that time.

Q. At the time did you know it was that big?

A. I did not.

Q. Now without you having to repeat some stuff we went over yesterday, but after this when you went through the concussion protocol with Dr. Murphy and Dr. Pollack, did you attend all of your appointments with the doctors?

A. Yes, sir.

Q. Did you go to all the therapy appointments?

A. Yes, sir.

Q. Did you give your best effort to complete that therapy?

A. Yes, I did.

Q. When you went to those doctors and you reported your symptoms were you honest and truthful with them?

A. Yes, sir.

Q. When you went to the doctor on November 9th, 2016 were you honest and truthful when you told the doctor that at that point your headaches had gone and you felt like you were back to normal?

A. Yes.

Q. Were you trying to get back to normal?

A. Yes, I was. I mean, when I -- when I went back to the doctor in November and I explained like I was fine, I -- sorry

-- I like genuinely thought that I was fine and everything was back to normal.

I assumed like I could resume normal life duties and be okay. I was ready to be done with the accident, ready to be done with all the health issues that came with all that. So, I mean, I was truthful when I told him that I was fine because I felt okay, fine when I went to the doctor.

Q. Yesterday you sat over there on that table as your parents got up and talked to 12 strangers about some of the problems they saw. How was that to listen to?

A. I mean, I don't think that it was easy. I don't think anybody would think that it was easy to watch your parents kind of get up and quote, unquote, air out your dirty laundry, if you want to call it that, and stuff that goes on in your own house.

And it definitely wasn't easy to watch my dad cry, you know. I've only seen the man cry probably three times in my entire life. So it's not a much fun thing to sit here and experience.

Q. And now the jury's heard a little bit from what your parents have seen, but the issues that are going on after you got released from the concussion protocol that your parents have talked about, the attentiveness, the sometimes inability -- those kind of things. Tell the jury, I mean, from your perspective, from inside Clayton, give us an example of what

it's like to be living through that, some examples of what you go through when that manifests itself.

A. I mean, I -- it's kind of hard looking in like on your own self to notice like when certain things are happening. I feel like that the testimony my parents gave, you know, painted a pretty good picture of that.

I mean, it's difficult to notice things that are happening like in your own day-to-day life, being more irritable than you used to be because to me it just seems like I'm just being me. But there are times where it gets very noticeable.

Like I'm being extremely agitated and irritable like more easily than I should have been as, you know, they so eloquently put yesterday, asking me to mow the yard or do whatever, I mean, -- and when I'm faced with, I mean, mental problems as Dr. Lind will explain, when I was at his office for nine hours doing cognitive tests, it was frustrating and angering when I like couldn't complete the cognitive tests that were presented to me that I should have been able to complete before this happened. And it just manifests itself as being agitated and expressing that verbally and externally.

Q. And when I got up when we had the opening statements we told -- I at least told the jury that you're not here claiming this is something that absolutely is ruining every aspect of your life, but they need to hear from you. You're still in

school, you're still functioning, but tell the jury, is this something that is a complete disability for you?

A. It's -- I wouldn't say, I mean, as my dad got up and showed pictures of fishing trips. My mom got up and showed pictures of me at the beach. It's not a complete and total disability. I don't think anybody, myself included, is claiming that it's a complete and total like loss of enjoyment of life and disability or anything. But I will say that like there is certain levels to that.

And as the pictures showed, I wasn't as happy at this point in time or wasn't happy at this point in time when I was supposed to be doing stuff to like -- made me happy to be -- like before all this happened or like -- I don't think that anybody -- and I'm definitely not trying to claim a complete total loss of enjoyment of life at all, but it is something that I deal with.

Q. And you're still working hard at school right now?

A. Yes, sir.

Q. Your grades are still pretty good?

A. For the most part, yes.

Q. And what -- do you share any of those worries or concerns that your dad expressed yesterday about things in the future that may happen?

A. Yes, I do. I mean, as -- I mean, my mom got up here and said when I was in high school, pretty much coasted through

it, and high school was not as difficult. And now I'm in -- college is definitely not high school. I'm not trying to say that college and high school are the same, but things are definitely more difficult than I like think they should be for me to understand things, for me to like -- just to memorize things. When you're in high school, a lot of it's strictly memorization.

Like History class -- I'm a Political Science Major, with a lot of Political Science classes, a lot of it's strictly memorization. And like going through all of that and knowing how I used to memorize things before the wreck and how I memorize things now, there's definitely a deficit in all that. So, yes, I would say that I share the -- I guess concerns is the correct word from my dad with that side of it. And I guess with the emotional outbursts, if that's what you want to call them, emotional handling. I don't know the correct way to phrase that. But, yeah, I share the concerns, yes.

Q. And you said yesterday was kind of difficult hearing your parents talk about these things. Tell me how often do you get up -- here you are in front of 12 strangers. Is this something you get up and talk about to people normally?

A. No.

Q. Is this just -- another thing I told the jury in opening statement is that you see your scar at least once a day. Do you have a scar on your forehead?

A. Yes, I do. It's right here.
Q. And do you actually see that scar every single day when you look in the mirror?
A. Yes, sir, I do. I ---
Q. Do you see it ---
A. Go ahead.
Q. --- more than -- once a day? More than once a day?
A. I mean, I see it first thing when I wake up. And like my hair has just a bad tendency to kind of look like Jimmy Neutron in the morning when I wake up. So I definitely see it at that point in time and then when I like get out of the shower and I'm brushing my hair and stuff.
Q. And when you see that every single day does it bring up -- what does that make you think of?
A. I mean, I'm not going to say that it, you know, debilitates my ability to have a good day or anything like that, but it definitely, I mean, I remember what I went through. I remember the wreck. I remember like what it came from.

And I remember, you know, and think about my parents and what my mom, especially, experienced that day. I mean, that's not -- I don't think about my mom every time. I'm not trying to embellish that. But I do like remember the wreck and everything every time I see it, yes.

MR. McANGUS: One moment.

(Pause)

Q. Clayton, I think those are all the questions that I've got for you. Please answer any questions Mr. Brown has.

Cross-Examination by Mr. Brown:

Q. Clayton, good morning.

A. Good morning.

Q. You mentioned that you're a runner now for a law firm, is that right?

A. Yes, sir, it is.

Q. And what law firm is that?

A. McAngus Goudelock and Courie.

Q. How did you get that job?

A. Personal connections.

Q. All right. What personal connections were those?

A. My father knows Hugh McAngus, Sr., Rusty Goudelock, Jay Courie, several other attorneys at that law firm.

Q. All right. And Hugh McAngus, Sr., that's the dad of your lawyer for this case, right?

A. Yes, sir, it is.

Q. All right. I want to talk about this wreck. You talked about the scar on your head and the gash on your head. How did you get that cut on your head?

A. I hit -- it's still unclear whether or not it was solely caused by the windshield or by the rearview mirror in the truck.

Q. Your head hit something, ---
A. Yes, sir, it did.
Q. --- either the windshield or the rearview mirror?
A. Yes, sir.
Q. And you went to the hospital and you were diagnosed with a concussion, is that right?
A. No.
Q. You were not diagnosed with a concussion?
A. Not that day, no, sir.
Q. All right. But you continued to have some symptoms with the way your head was feeling, and the dizziness, and light sensitivity, and that kind of thing, and so you went to your regular doctor?
A. Well, when we went to the ER the consensus was -- and I state in my deposition they just handed me Tylenol, stapled me up, told me to have a good night, but to go see my doctor, I guess, the next day. So that's what my mom did. And we went into the doctor. And he spent three seconds looking at me and told me I had a concussion.
Q. So your mom took you to your doctor the next day, ---
A. Yes, sir.
Q. --- and that day you were diagnosed with a concussion?
A. Yes, sir.
Q. And your doctor referred you to a specialist for a concussion protocol, right?

A. Yes, sir.
Q. And that was over at USC. And they referred you to some vestibular therapy for the concussion?
A. Yes, sir.
Q. You were put through a concussion protocol not undifferent than any football player or anybody else who has a concussion, is that right?
A. To the best of my knowledge, yeah. I don't know what football players go through, but, yes.
Q. And you went to that therapy regularly. You missed -- you didn't miss any appointments?
A. (Negative nod).
Q. During that period you actually took the SAT, didn't you?
A. Yes. I don't know the exact date of when I took the SAT, but I'm assuming -- I took it multiple times. But, yes, I may have.
Q. All right. In November of 2016 you were discharged from both your therapy and from your concussion doctor, is that fair?
A. Well, the November 16?
Q. No, November of 2016.
A. Yes, sir.
Q. And at both -- both visits, the visit with your therapist and the visit with Dr. Murphy, you told them you were good to go. Do you remember that?

A. Yeah, I remember that. Yes, sir.
Q. I'm my normal self. I'm able to do my work without any issues. I'm able to do school without any headaches. You told your doctors that, right?
A. Yes, sir, I did.
Q. You were in your senior year of high school at Spring Valley?
A. Yes.
Q. You continued through your senior year and graduated?
A. That's correct.
Q. Graduated with good grades?
A. For the most part, yes.
Q. That summer did you continue to work at Chick-fil-A?
A. Yes.
Q. And in the fall you started Carolina as a freshman, is that right?
A. That's correct.
Q. And I think you told me earlier, a while back, or you told that the symptoms, the new symptoms didn't start until September or October of 2017, is that right?
A. Yeah, I believe that is correct, what I said, yes, sir.
Q. So from November of 2016 through Christmas, through your senior year, second semester, through the summer, you maintained you were still good to go. Hadn't seen any doctors.

A. Well, I believed that within that time-frame I did go -- I don't remember exactly when I went to the NWC, like anger management counseling, that my parents like wanted me to go to because they had seen no shifts. I believe that was within that time-frame of the November '16 to September, October of '17. But other than her, no, I don't recall going to any doctors.

Q. Let me ask you, do you remember giving a deposition back March of 2018?

A. Yes, sir, I do.

Q. All right.

MR. BROWN: Your Honor, may I approach?

THE COURT: Yes, sir. The deposition of Clayton Matthew Somers taken Thursday, March 8th, 2018. All right. Yes, sir.

Q. Clayton, I'm going to hand you this transcript. I'm going to ask you if you'd turn to page 16 for me.

A. Page 16?

Q. 16.

A. Okay.

Q. Make sure you remember, March 8, 2018, so we're talking about more than a year ago. Do you remember giving that deposition? You were asked some questions. You were under oath, sworn to tell the truth. Do you remember that?

A. Yes, sir, I do.

Q. Were you telling the truth that day?

A. Yes, sir, I was.
Q. All right. Was there anything that impaired your ability to understand the questions that were being asked of you?
A. No, sir, there were not.
Q. All right. I'm going to ask you to read lines 7 through line 13.
A. 7 through 13?
Q. Yes.
A. Okay. Yes. So like I had concussion therapy from -- it was -- can I paraphrase or do I need to say all the likes ---
Q. Read it word-for-word, please.
A. Okay. Yes. So like my -- I had concussion therapy from like -- it was in 2016 throughout Christmas break of like 2016. And then after Christmas break going into second semester of my senior year of high school, it was like January, I stopped going to concussion therapy. So like from January through September, October, I was fine.
Q. All right. And you're then asked, so for that nine or ten month period, and your answer is?
A. Yeah, whatever, however long that is.
Q. All right. So you were asked back in 2018 and then asked a clarifying question, after your concussion therapy, which we've established actually ended in November of 2016, through September or October of 2017 you were fine?
A. That is correct.

Q. And that's when these new symptoms started to show themselves?

A. Yes.

Q. All right. I want to go back and talk about the migraines you had as a child. Your mother testified yesterday that you had had them starting in about 2009 and treated, took a prescription medicine through about 2014, is that right?

A. To the best of my knowledge, that's correct. I don't really remember when they started or when I got off the medicine, but, yes.

Q. All right. You were born in '99. So 2009 you would have been ten. In 2014 you would have been 14, 15 years old, ---

A. Yeah.

Q. --- 13, 14 years old, is that fair?

A. That's correct. Yes, sir.

Q. All right. And do you remember what would cause those migraines?

A. I believe in my deposition I said that it was -- there was -- when I was a kid the migraines -- there was never really, I said, triggers that were ever established. The doctors -- I went numerous times over the course of those five or six years to try and get answers. And there was never really a concise or -- there was never really an answer as to what caused them. It was just basically that I had them.

And then after the wreck things like mental activity,

stress, physical activity, it would either trigger them or if I already had one, contribute to making it worse, and light sensitivity and other things.

Q. And I think you testified light, noises would do the same thing. Stress would make them worse.

A. Yes, sir.

Q. And those are all things that were before this wreck in 2016, right?

(Pause)

Q. Those migraines and the things that exacerbated those migraines, those were all symptoms that existed before back from 2009 to 2014 ---

A. To a certain extent, yes.

Q. Now after this wreck and after this lawsuit was filed you saw a Dr. Linds [sic]. Do you remember seeing Dr. Linds?

A. Yes, I do.

Q. All right. And the jury's going to hear from Dr. Linds in a minute. Who sent you to see Dr. Linds?

A. Hugh McAngus.

Q. Not your boss, Hugh McAngus, ---

A. Hugh McAngus, Jr.

Q. Now Dr. Linds gave you a battery of tests over the course of a day, is that right?

A. That is correct, yes.

Q. He -- you knew why you were taking those tests, is that

fair?
A. Yes.
Q. Had you ever taken tests like that before?
A. No.
Q. Had you ever been asked to be -- to take tests like that before?
A. No.
Q. Have you taken any tests like that since?
A. No.
Q. Have you ever been treated or tested for ADD or ADHD?
A. No.
Q. I want to go back to make sure I understand. Graduated from high school 2017, spring of 2017?
A. Correct.
Q. That year you had taken AP classes, Honors classes. Those are generally difficult classes, was that fair?
A. Yes.
Q. Worked during the summer. It's your first year of kind of freedom?
A. Yes, sir.
Q. And you started college in 2017?
A. Um-hum (affirmative).
Q. When you started at USC you continued to work, didn't you?
A. Yes, sir.

Q. And you were working at Chick-fil-A, is that right?
A. Quite a bit, yes, sir.
Q. And where were you living at the time?
A. In my parents' basement.
Q. So you were going to school, working at Chick-fil-A, living at home, ---
A. For the first semester, yes, sir.
Q. You said just a minute ago you were working quite a bit. How much were you working?
A. Like it's the same -- well, it may have been a little bit less, but I'm still going to use the same range that I used earlier as I was in high school. It was 25 to 35 hours or so. I'm not sure of the exact hours, but I think that sounds about right.
Q. And when did you rush your fraternity?
A. First semester of freshman year.
Q. So your first semester of your freshman year you're going to class, you're working, you've rushed a fraternity. You involved in any other social activities?
A. Yes. I was involved in, I still am, in Shandon College Ministry. I -- I mean, that's about it. And also the -- I -- can I clarify the rushing of the fraternity real quick?
Q. (Affirmative nod).
A. The fraternity that I was in was not IFC, which is the International Fraternity Council. So it's not -- it's more --

it's a social fraternity, basically. It was -- to clarify more, it was more of a glorified Bible study. It was -- the rush was not like what a typical rush is thought of.

It's not like going to frat parties, going to mixtures, binge drinking, hazing, none of that. It was more of like -- and the whole message behind the fraternity was growing brotherhood in Christ and all that. So I don't want -- I just want to clarify the rush, that it's not the typical group-like-rush.

It was -- we went -- played pool, had a barbeque. You had to go out to lunch with every single one of the other brothers and like get to know them, share testimonies. That was our rush week. It was three or four days of just like talking, meeting people, meeting brothers, and spending like fellowship and time together.

Q. Yeah. I by no means want to mislead the jury that this is anything like a regular -- this is a Christian based fraternity, but it was still an organization separate ---

A. Yes.

Q. --- and distinct from your schoolwork, right?

A. Yes.

Q. Separate and distinct from your work engagement at Chick-fil-A, right?

A. Yes, sir.

Q. And it was -- it involved you spending some time where

you weren't studying, where you weren't working outside of the classroom and outside of the home, right?

A. Yes, sir.

Q. And you were also involved in the Shandon College Ministry. You were spending time doing that.

A. Yes, sir.

Q. And you were enjoying being a freshman at college. You could kind of come and go as you pleased, right?

A. Yes.

Q. And, in fact, I think your mom mentioned that there were times, because she was tracking you, where you were coming home at three or 4:00 in the morning. Did she give you the business because of that?

A. She's not really the one that gave me the business. My dad kind of gave me the business on that one. There was a curfew put in place for freshman year of college, which was kind of annoying, but ...

Q. Their house, their rules?

A. That's correct.

Q. And then they moved away?

A. No. The process started of them moving. So my dad was in Raleigh. My mom and my sister still lived in the house in Blythewood, but they didn't know how long it was going to take for them to sell the house, and when the house was going to get sold, so they went ahead.

And I moved in with, actually, one of my fraternity brothers in an apartment downtown second semester of freshman year because that's when the process of my dad got a job in Raleigh and they were -- parents' move all began. That ended up taking a lot longer than expected. But that -- they were still in Blythewood at the time, yes.

Q. So the second semester of your freshman year you had moved out and you're living with a friend. I think you actually described him as your best friend.

A. Yes.

Q. Y'all are having a good time enjoying each other's company and were involved in some of the similar things?

A. Yes, sir.

Q. You were still working?

A. Yes.

Q. Still involved in your fraternity?

A. Yes.

Q. Still involved in going to school and going to class?

A. For the most part, yes.

Q. That's all the questions I have for you, sir. I appreciate your time.

A. Yes, sir.

THE COURT: Any redirect?

MR. McANGUS: No, Your Honor.

THE COURT: Okay. Thank you, sir. You may step down.

A. Thank you. Do I take any of this or ...

THE COURT: Leave all that right there.

A. Okay.

THE COURT: Thank you.

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THE COURT: All right. You can bring the jury, please.

(Whereupon the jury entered the courtroom at 1:21 pm)

THE BAILIFF: The jury is seated, Your Honor.

THE COURT: Thank you. All right, folks, hope you enjoyed your lunch. It is now time for closing arguments. Please give Mr. McAngus your full attention.

MR. McANGUS: May it please the Court?

THE COURT: Yes, sir.

MR. McANGUS: In a few minutes you're going to go back to y'all's jury room and start deliberations on this case. And you're really going to have a couple of jobs. But I'm going to spend the next, hopefully short time, walking you through the steps, I think, that will help you do your job.

Now your number one job when you get to the jury room is to follow the law that the Judge gives to you. Each of you took an oath when this case started to follow the law as the Judge gives it to you.

When you go back to the jury room each of you have the right to let others know if they're not following the law that the Judge gives you, if they're talking about things that you

didn't hear in evidence, if they're going contrary to what the Judge said. Each and every one of you swore an oath to do that. Each one of you can do that. So please, when you go back in there, first and foremost, each make sure you follow the law the Judge gives you and apply that to the facts and to the facts that you've heard, not things that you don't know about the case.

The second thing is is to answer the question that the Judge is going to give you. This is a copy of the verdict form. It simply says please state the amount of actual damages sustained by Plaintiff as a proximate cause of the Defendant's negligence.

There's a reason it says that one simple statement that tells you what to do. And let's remember, this is a case that was started on Monday, the Defendant -- the first thing they said, they admit that they caused this wreck, that Clayton did not cause this wreck, that they are at fault, that the Defendant negligently pulled out from the side road into oncoming traffic and caused this crash. That's why you don't have to answer the question as to who was negligent. That question has been answered for you.

But remember, the reason for that is clear, is that Clayton did not do anything to cause this wreck. The Defendant said it was his fault, it was his negligence. Your only job is to determine the amount of damages. The reason

also that there's not a way for you not to determine damages, the Defendant himself sat on the stand and told us yesterday, yes, I agree that Clayton was hurt in this wreck. Fault has been proven. Injuries have been proven.

Your one job is then going to be to tell each other why you think and what you think the value of what has been taken from Clayton. And I'm going to spend the next few minutes going over some suggestions of potentially how to do that.

When you get started and you go in that room the Judge is going to charge you, you've heard before, burden of proof. We're here in a civil case today. Y'all might have heard or seen criminal cases. Criminal cases has a very high burden of proof before you send someone into jail. You have to have proof beyond a reasonable doubt. If you have a reasonable doubt, someone's not guilty in criminal law. That's not the standard we have in civil court.

In civil court, the standard is something different called the preponderance of the evidence. The Judge will tell you what that is. It just simply means what's the greater weight of the evidence. Do you believe the Plaintiff a little bit more? Or the Defendant a little bit more?

If you believe the Plaintiff a little bit more, your verdict should be for the Plaintiff. But it doesn't have to be absolute certainty. It's a lower burden in this case.

The Judge is also going to talk to you about what kind of

damages are recoverable in a case like this. And the damages are just what we've said, is the value of what was taken from Clayton.

She's going to go through categories of damages for you that are going to include things like physical pain and suffering that he went through on the day of the wreck and afterwards. It's going to be -- or the mental suffering that you have to go through when you have an injury like this; scarring, disfigurement, or loss of enjoyment of life when you can't do the things you could do.

What I would like y'all to think about -- oh, before I do that. Clayton is 20 years old right now. This is his one time to come into court, his one time to get a verdict, no matter how old he gets.

The Judge is going to charge you that under the law Clayton and everybody -- there's a Life Expectancy Table. She's going to charge you on the Life Expectancy Tables. She's going to tell you that the law in South Carolina says that for a 28 -- a 20 year old male, the law says you can expect to live -- you can expect to live another 57 years.

That breaks down to 684 months. It breaks down to 20,805 days. So if you find that any of these losses Clayton has are going to go for the rest of his life, you've got to think, that's a long time. But you've got to make that decision today.

And let's talk about those losses for a minute. And it might seem like they're a little bit harder than -- you know, you heard from Dr. Lind. He mentioned the scratch on the Yugo and the scratch on the Bugatti. But he came in today and he said if Clayton's case were about damage to a 1974 Yugo worth three hundred dollars ($300.00), y'all could easily put a value on what was lost of three hundred dollars ($300.00).

If he was driving a half million dollar Bugatti and that wreck, which was caused by the Defendant, it'd be relatively easy to get a car appraiser to come in and say that car's worth half a million dollars, that's what was lost, that's what he's owed. It's a little bit harder when you're talking about physical injuries or mental injuries, but it's not impossible. It's not beyond y'all's reasoning. I'll put this up here for you.

Here's what I want to talk to y'all about today, which is what I think matches up with the injuries that y'all've heard testimony about. Clayton's verdict should include the value of the losses for his immediate injuries on the day of this wreck that we see right there in that picture. I'm going to talk about those. That includes that the Defendant admits the active concussion treatment for the four months after this accident. That was an injury caused by this wreck.

Clayton's going to have scarring for the rest of his life that he looks at. He's going to look at it at least 20,000

more times in his life. That's something for you to consider. And finally we talked about that brain functioning and emotional status. These are the four areas of loss that Clayton presented testimony on.

And let's talk about how y'all can come up with a value for these things. And I'd suggest to you you look at -- take these from these categories, how long did it last? How severe is the injury? How much interference did it have in his life? And we know how long each one of these categories is. So you can put a value on it by the day and come up with a verdict range.

Let's talk about, first, the day of the wreck. We've seen that picture. We don't have one of this picture of his head as it was gaping open, but we know that a 17 year old's, you know, at that point in time, a kid, comes to his car after this wreck with blood pouring down his face. And he said not even just pouring down, shooting out onto the airbag, onto his car. Knew he had a head injury. Didn't know how bad. Didn't know how severe. No one there would tell him.

Goes to the hospital and gets six different staples down his scalp, five or six more stitches. As far as the severity of things go in this case, just the gruesome nature of it, the blood pouring down him, the interference for the rest of his day. I've never personally had staples on my head. There's pictures of it you're going to see when he goes back laying on

there getting staples. That is a pretty severe injury for that day, for a 17 year old.

How much interference? That one, there's testimony that it interfered with his thought process. He didn't quite know what happened. He didn't know how bad this wound was. He didn't know if he was going to live or die until he went to the hospital. He spent the rest of the day in the hospital getting stitched up. I'd say that's a pretty -- pretty high on the interference chart.

Now, you as the jury's got to say, all right, that is a nasty wound. That is a big cut. Staples to the head. Gushing blood, squirting out onto his airbag. What's the loss for that day? Was that a loss from that one day a -- is that a hundred thousand dollar ($100,000.00) loss? I don't think so. I think that's too much for that one day.

But as you start to scale down even -- is that -- one day to go through that, is that seventy-five thousand dollars ($75,000.00)? Is that sixty thousand dollars ($60,000.00)? Frankly, Clayton thinks that's too much as well, too.

If you start going down and you're getting -- you get in a range, for someone to have their head split open, blood pouring down, he's a teenager, never had this happen. His mom said he's never had a real injury. He's never had staples. He thought he was going to die. Forty-five thousand dollars ($45,000.00)? Some people might start thinking that's

reasonable.

Clayton's going to posit to you, and I will, that there's a reasonable range for the most severe and the most interfering day that this wreck is about. We think that you could return a verdict of thirty to forty thousand dollars ($40,000.00) for what he went through that one day to get his head stapled up at the hospital. That is a reasonable value for what he went through that day.

Let's turn then from that to the concussion treatment. What else changed after that? Well, that's when he got his staples removed. And that's when he had to go through the time where his blood pooled into his scalp and started swelling. And he had to taken an ER trip, active concussion treatment.

You heard that he did everything he was supposed to do. This was a young man who was trying to get better. Did it interfere with much of his life as this did? No. But he still couldn't work. I mean, how many high school kids actually really have a job these days and work 20 hours a week? He did. He couldn't take off work. Or he had to take off work.

It interfered with his other activities. The doctors limited his schoolwork. He had to go to, I think, they said 26 different therapy sessions. That interfered. Not as much as this day. That's an admitted injury that needs a value.

That's an admitted loss for that time in that young man's life.

The summer before his senior year in high school, not supposed to be dealt with going to 26 concussion protocol treatments. Not supposed to have staples being removed from your head. Not supposed to be written out of work at 17 years old.

Now if we're going through this scale, is that going to be worth the math on that? A hundred and eighteen days. Is that worth thirty to forty thousand dollars ($40,000.00) a day? No. Clayton's not going to tell you it is. Is it worth, you know, five thousand dollars ($5,000.00) a day? No. Clayton's not going to ask you for that.

He manned up and went to the doctor. And everyone has told you he went to his treatment. He was truthful to the doctors. He wanted to get better. He was actively involved. He doesn't think five thousand dollars ($5,000.00) per day is -- this isn't sufficient for that. But this is real.

And some people might start thinking five hundred dollars ($500.00) a day is enough. If you think five hundred dollars a day is enough, you could tell people in the jury room. We're getting in that range.

What is reasonable? Clayton's going to tell you that he thinks for that whole time period, just not even close to what this was, two to three hundred dollars ($300.00) a day for

that time period.

What does that turn into for a verdict? Twenty-three, six hundred (23,600). For 118 days this 17 year old's life was actively impacted by headaches, sensitivity to light, headaches, therapy appointments, limited activities, limited lifestyle. Is it worth what he went through that day? No. But it's worth something significant.

The scarring, that is going to be a scar for the rest of his life. Clayton, he wants to be a lawyer. Like every 20 year old, he looks like a college kid. If he goes to law school, he'll have to trim his hair up a little bit. If he's going to be anything like his dad, that scar might be quite visible in a few years.

The scar isn't something that he said was embarrassing. It's not something that he really dwells on. But it's the fact that at least -- he said at least once a day he's got to look up in the mirror and notice that scar and think about this wreck, and think about this injury, and think about what it put his family through. He will be doing that every single day for the rest of his life. He said a couple of times, maybe three times a day.

At least when you go to the bathroom, the older he gets, he's going to look at that every time he goes to look in the mirror, and he's going to think about this wreck, he's going to think about his head, he's going to think about what it put

his family through.

Is there a value to that? Absolutely. Is it very severe? Not terribly. Does it interfere? No, it's more of a thought process. But to have the anchor around your neck that you're going to have to think about this.

You can't -- how are you going to put behind you a scar that's literally the representation of an event? He's got this permanently tattooed on his skull. He's got to remember this event for the rest of his life.

I was trying to think what's the lowest amount almost you can do. A dollar a day? A dollar a day. He's going to see that one to three times a day. Simply a dollar a day, one to three times, or a dollar each time he looks at it.

Fifty-seven years is a long time. For 57 years he's going to look at that scar and think about this wreck. Is a range of twenty thousand, eight oh five (20,805) to sixty-two thousand, four hundred and fifteen dollars ($62,415.00) a reasonable value for what was taken from him? We think so.

All of this, all of that is admitted to you by the Defendant. I don't think they're going to get up and argue that they didn't cause those injuries.

They're likely going to say that the value of loss wasn't as much. But you've seen the pictures. You've heard the testimony. You can think and know going forward how much Clayton's going to have to see that scar going ahead. We

posit to you this is a reasonable value for what was taken from him.

And one of the harder questions is this last one. That's really at the end of the day what this case is about. Clayton, and his family, and Dr. Lind have told y'all about brain functioning and emotional status losses that he had.

Are they severe? Honestly, they are not severe. This is not a severe brain injury. And we've told you that from day one of this case. Absolutely been a hundred percent clear this is not debilitating.

But the real injuries, Dr. Lind explained to us how those injuries were caused on that axontal level when you have a wreck like this. He told us it's not unusual for a period of time to go by before you pick up on those things.

It's easy to know you're hurt when something's cut on the forehead. That is absolutely easy to know. You can see why it takes some time for the people around him to get to know Clayton and to recognize the things that they're seeing in him might not just be a high schooler. It might not just be outbursts.

When you put the whole story of Clayton Somers, he's a kid with AP classes in high school, working part-time 25 -- 20 hours a week in high school to get to college where he doesn't go to party, he goes and joins a Christian fraternity where he continues to work. He's exhibiting the same kind of good

characteristics in his life that he did when he went to the doctors.

He doesn't want to come in and complain about this. He didn't want to come in here and talk about this. But the Defendant's going to get up and argue that this doesn't -- didn't happen, it's not real. He had to come up here and explain this to you to get the value of what was taken from him because it is real.

And because it may interfere with his life, Clayton told you about the worries he's going to have. He's trying his best to get over it. He's working hard in school.

But Dr. Lind told us too about how it almost -- it's more tough for the F16 fighter pilot who just comes back down to where all the rest of us live to sometimes mentally deal with that than it is for a severe injury because he looks normal. He looks absolutely normal when you talk to him. He's doing his best to get through this. The question is what is the value of what was lost for the next 20,805 days that Dr. Lind said he could be dealing with?

I'll address briefly the last witness y'all heard, Dr. Waid. Dr. Waid told y'all he was competent to, capable of, and would have performed the full neuropsychological evaluation on Clayton that Dr. Lind did, which is why we saw the lawyers I've worked with have hired him in the past to do just that. The reason he didn't do it in this case is the

reason he -- it's because he wasn't paid to do it.

And you might want to ask yourselves if you're going to go to court and call a witness, why not get him to do the test that he's competent to do that he does every time? It might be because you're afraid of the answer.

For the next 20,805 days Clayton's going to have to make sure he keeps his concentration. He's going to have to take extra notes. He's going to have to do more work than the rest of the attorneys normally do. Is that completely debilitating? No. He's going to try his hardest.

You've seen the last three days the kind of young man he is. He doesn't give up. Every single doctor, he's been truthful about his symptoms. He's worked hard to get better. He didn't exaggerate the symptoms. He wanted to get better. He's going to continue to do that. He's going to do what it takes.

He's going to do what it takes, but this wreck has taken from him the ability to do it the way he used to could. It's going to take extra effort. It's going to take extra work. He's got to try harder not to screw up than the average person and the person he was.

There's a value to that, to being someone who could have -- go to law school if he wanted to. He's crashing back the average like Dr. Lind talked about, the F16 pilot. He'll still be successful, but it's going to take extra work and

extra time.

And that's what this part of this case is about. Not to tell you he's not going to get a job. Not going to tell you he won't be able to go to work. It is to tell you that he has been impacted and he's lost something that he used to have.

And the loss of that value is something real. Is that two hundred to three hundred dollars ($300.00) a day for this? No. Is he asking thirty, forty thousand dollars ($40,000.00) a day for that? No. But what is reasonable probably is the cost of a cup of Starbucks coffee, four to six dollars ($6.00) a day for the rest of Clayton's life. But, remember, Dr. Lind said it could be permanent.

But it's hard to come into a court of law like this and ask 12 strangers to listen -- to open up your life to them and to ask them to listen openly and honestly about what you've been through. But doing that and asking for a money verdict is all that the law allows. Does Clayton wish he could go back to July 13th, 2016 and this wreck would never have happened? Absolutely.

When you take and you add these figures up, the range of a hundred and fifty-seven thousand dollars ($157,000.00) to two hundred and sixty-two thousand dollars ($262,000.00).

If Clayton could wave a wand to go back and someone said, hey, we'll give you two hundred thousand dollars ($200,000.00), all you'd have to do is run head-first into a

truck, let your scalp get busted open in this car, take staples to the head, have a permanent scar, lose time from work, and maybe we're going to make -- change your brain functioning and emotional status for the rest of your life, he wouldn't ask for that to happen. And nobody would.

But the wreck did happen and he was injured. He does have these losses. And he's going to ask you to return the verdict in the range -- I'm going to even suggest a range -- in the range of a hundred and fifty-seven (157) to two hundred and sixty-two thousand dollars ($262,000.00) for what he's been through on the day of and the months after, the scar he's going to carry with him for the rest of his life and to give some value to the fact that he has had emotional status and brain functioning changes.

So when you go back to your verdict [sic] room, talk about these issues. Your only job is to put a total value for what Clayton has lost. And we think that that range is a reasonable value for everything he lost in this wreck. Thank you.

THE COURT: Mr. Brown.

MR. BROWN: May it please the Court?

THE COURT: Yes, sir.

MR. BROWN: It became quite clear during that closing argument that I had a very different upbringing than Clayton Somers has had. That's probably why I'm not willing to spend

four to six dollars ($6.00) for a Starbucks coffee. I don't dock you if you are. I don't particularly love coffee. But even if I did, that's just different than what I encountered.

But when in the words of his father, when your life is financed by your dad, you have no concept of money, which is why it's very easy for his lawyer to sit up and say thirty to forty thousand dollars ($40,000.00) for one single day, a hundred and fifty-seven thousand (157,000) to two hundred and sixty-two thousand (262,000). Let's be quite clear, that is more than a quarter of a million dollars for this accident. Ladies and gentlemen, that's more than most people make in a year.

I want to talk to you for a moment about the burden of proof. The Judge is going to give you a charge on the law. So y'all get to decide the facts in this case. Y'all get to hear the evidence, and y'all get to decide what to do with that. But you have to do it within the rules, within the guidelines that she's going to give you.

And what she's going to tell you is that the burden of proof is on the Plaintiff. That means they've got to prove their case. They've got to prove that it's more likely than not that these injuries were related to this accident. They've got to prove to you that his immediate injuries were related, which we've conceded. They've got to prove that his concussion treatment afterwards was related, just ever so

slightly, which we've conceded.

They've got to prove to you that he's going to have a scar for the rest of his life. But more than that, that it's actually going to impact him on a daily basis.

And they've got to prove to you that he's got some brain functioning, or emotional dysfunction, or something like that. They've got to prove to you that more likely than not he has these things and that they were caused by this wreck.

If you go back into the jury room and you go, you know, I just don't know, I can see both sides, I don't understand, I just don't -- I can't decide, the Plaintiff has not met their burden of proof.

The Defendant has to do nothing. We don't have to prove to you anything. We don't have to disprove anything. The Plaintiff has to convince you of what their injuries are.

The Judge is going to charge you that medical expenses in this case aren't an issue. You're not to -- not to consider them. You didn't hear any evidence about them. That was an expense, because he was an minor, that his parents bore and are not to be something considered. So what you're considering is really just what we call pain and suffering, loss of enjoyment of life.

I want to summarize. Y'all have been attentive. I'll tell ya, I've tried a bunch of cases, and I think y'all have been one of the more attentive juries I've ever seen. And I

want to summarize the evidence because you've heard a lot. We've had a break in the evening, a couple of breaks during the day.

So what do we know? We know that on July the 13th, 2016 there was a really bad wreck. Richard Harper pulled out in front of Clayton Somers, no doubt about it. Didn't mean to. Certainly didn't set out to. Nobody asked for this to happen. Everybody wishes it didn't happen, least of all, Richard Harper, but it did.

We know that the EMS showed up and that Clayton had this cut on his head. He knew where he was. He knew who he was. He knew what had happened. He was taken to the emergency room and he was given some testing and he was sent home.

He followed up with his regular doctor, which was the best thing he could do, which was recommended by the emergency room physician. They then sent him on to physical therapy and to a concussion protocol program, probably the best in Columbia, who monitored him day after day, week after week to make sure that he was getting better. And he was. He was.

As y'all have heard through multiple witnesses, he was compliant. He made all his appointments. He did a good job. And he worked hard. And his brain did what you hope that it does after this kind of injury, which is it recovered and healed.

He quit taking his medication before he even had to

because he was getting better. He went back to work. He continued on with his senior year of high school at Spring Valley. He even, in October, took the SAT.

And in November, November 9th from the sports medicine clinic and November 11th from physical therapy he was discharged. He was at a zero out of ten. He was symptom free, back to baseline like he was before this accident.

By that time he was already working. He was already going to school. He was taking hard tests. He was being challenged. And there was no indication of any of this at all. None. If there was you would have heard about it. And you didn't.

In fact, Dr. Waid talked about the fact that they have the SCAT 2, this sports concussion test that they -- they reviewed. And it tests all of this. It tests -- are you having the somatic injuries of the head -- that occurred? Do you have the cognitive dysfunction? Your memory issues, are you confused? They did that in every test during this four month period.

And every time it got better, which is what you would expect to happen. Which is why Dr. Pollack, and Dr. Lind, and Dr. Waid all said the same thing. What you'd expect after a concussion is somebody has some -- the symptoms for two weeks to two months. Dr. Waid even said four to five months, which was longer than the treating physician said. At the end of

which he had no symptoms.

Fast-forward 447 days later, a lawsuit has been filed and we show up on a docket. And we get -- claim injuries from November, just prior, which would have been a year between when we have symptoms. Every single doctor said that's unusual. Why would they say that if it wasn't true?

What other testimony did we hear? I want to talk to it very briefly. You heard from Mrs. Somers. Said my son had migraines from '09 to '14. I took him to the doctor and he got the Amitriptyline. At school, he was smart, he was studious, and school came easy.

She went to the visits with him. She agrees that in November of 2016 at those last visits, he had no issues. She didn't notice any issue despite the fact that he's living at home. She sees him day in, she sees him day out. Until the summer of 2017, he was a little withdrawn at the beach. Didn't want to throw seashells and play in the sand with his sister. And finally in February she takes him to the doctor.

You heard from his father, who is the national risk director for Advance Auto Parts, a man who analyzes injury risks for a major corporation, that he didn't see anything after November of 2016 until the next summer. But he also admitted that he really wasn't around. He traveled a lot with his job. Mom took him to the appointments.

He's worried that Clayton's not going to be a lawyer

because he doesn't have the temperament to deal with people like me. Maybe what they are seeing is Clayton is just a little more like his dad than his mom.

He also said that his eyes weren't focused after the discontinuation of treatment. Not a single medical provider mentioned that at all. If his eyes aren't focused, why would Dr. Pollack say that he was back to baseline? Why would Dr. Lind say that he was back to baseline? Why would Dr. Waid say that? Why would they have said that?

It doesn't make sense. Symptom free, back to work, back to school, yet he's still showing symptoms? It makes me question a lot of other things when you mislead.

So let's hear -- talk about what Clayton said. Clayton said this was a bad wreck and scary. He went through the concussion protocol like he was supposed to. He took the SAT.

Certainly, if he's having a cognitive dysfunction and an inability to understand he would have said, mom, I don't want to take the SAT. Dad, I don't want to take the SAT. Because he said he took it a while. He's AP classes, Honors classes, both before this wreck and after this wreck. He continued to make good grades.

Then he went to school at USC. He's in college. He rushed a fraternity. It's a different kind of a rush than what we all think about normally, but he's involved in extracurricular activities, a good group of people. He's

working at a church. He's working 25, 35 hours at a Chick-fil-A.

And then we heard from three medical professionals, people who were each qualified with no objection to be qualified to render their opinions. Dr. Pollack says, yeah, he has a concussion. And he gets better and he gets back to baseline.

Dr. Pollack says, it's possibly related. It's hard to say. With the history of migraines and the overlap in symptoms, it's just hard to say. It's tricky. That was the word he used. Y'all may remember that, the word tricky. Because, ladies and gentlemen, the symptoms are the exact same. The symptoms that Clayton described before this wreck that were exacerbating his migraines are the same symptoms that he now complains of.

I want to talk to you about a theory, something that exists, I would say that I'm a little guilty of, of helicopter parenting. Y'all may have heard the term, parents who kind of watch over their child.

I've got a nine year old. She's my only one. I like to joke with people who have more than one kid, that they get a back-up. If something were to happen to mine, I don't know what I would do. I understand how people lose their mind. So I watch over her.

I don't like her playing in the front yard. I'm

constantly worried what's going to happen. But what I've realized as she's gotten older is that if you never let her fall, she doesn't learn how to get back up. And dadgum if that's not a hard thing for a parent.

But what it has generated is a theory called hothousing, a hothouse child. It's not something I'd actually ever heard until last night. I happened to be reading on an internet site called Reddit. They call it the front page of the internet. It's a bunch of useless junk that gets me through the evening while my wife watches TV.

And I was reading about hothousing. And it comes from the term of somebody who raises orchids. Orchid is a very delicate, beautiful flower. My aunt in Miami raised them because they have the right temperament. But people who live outside of tropical areas raise them in a hothouse.

But they're super, duper temperamental. If scenarios and the conditions are not perfect, the orchid will wilt. And so if we are creating a situation where everything in our children's lives are perfect, as soon as it's not, they struggle. They wilt just like an orchid taken out of a hothouse.

So let's talk about if this wreck didn't cause these symptoms, didn't cause these issues, what did? What was going on in Clayton's life? He was a teenager. His senior year of high school. His hormones are different. He is transitioning

from a child into an adult. He is getting his first taste of freedom. His first taste of independence. But yet his mom is still tracking him on her phone. She's still tracking him today at 20.

He then goes to college. Y'all, college is harder. It's just harder. Not only is it harder, he's working 25 to 35 hours a week on top of that. He's socializing on top of that. He's going to the church on top of that.

I don't knock him for any of this stuff because I think Clayton is actually a good kid. But that's what was going on in Clayton's life to the point that he's drinking six cups of coffee a day and energy drinks just to get through. Lack of sleep.

Every doctor has said that the symptoms of a concussion don't resolve and then come back. Dr. Lind says you'd expect him to manifest that executive dysfunction during the initial treatment. SCAT 2 doesn't support that that happened.

His parents talk about he's getting angered, he's getting mad with them. And Dr. Lind says that what you would expect is when somebody gets challenged and their cognitive areas are messed up, that's when they have these mood swings, these changes -- his anger.

Y'all, that's not where we saw that. That's not what was testified to. He got mad at his dad for cutting the grass -- wanting him to cut the grass, not about school, and not about

work. A seemingly mundane task. But that's not where Dr. Lind, their paid professional, said you would see it.

He got mad at some boys and girls at the end of the pier who were killing a fish, not when he was taking the SAT, not when he was studying for a test, not when he was having to work extra hours or working at 11 or 12:00 at night. It doesn't line up with what their own expert said you would expect to see. He's making good grades, but it's taking extra effort. Of course that's the case, he's in college.

These are parents who have put in an immense amount of time effort and love into raising Clayton. In fact, Mrs. Somers is probably hyper aware, highly aware of the things -- any small change in his life. Remember, this is a mom that's tracking her son, his every move. She's intimately involved. And I don't fault her for that. But she's acutely aware of even minute changes.

When you graduate from high school, you change. You're a little bit different each year, each month and so on. And then he goes to college. And that's when you really hear about this struggle. He says September/October. His mom says November. That's when you see this struggle in his life. It can't just be life. That can't just be the explanation. Not Clayton. Clayton has always done well. School has always come easy. There has to be something else.

But which makes more sense? That something that three

experts medically said is unlikely and unusual to happen? Or that he encountered some adversity and didn't respond well to it?

Is it more likely that a migraine condition that he had for five or six years, for which he took a medicine, came back, which his doctor acknowledged is not unusual? Or that he was symptom free from a concussion for a year and then all of a sudden had symptoms again?

Remember what he was going through. He was graduating from high school. How many seniors or rising freshmen want to play at the beach with their little sister? Right or wrong, we've seen moody teenagers before. I was one. Y'all might have been one. It happens. Doesn't necessarily mean it has to do with this wreck.

I understand why they want to point the finger at this wreck. I get it. It is the solution. It is the easy solution. But, ladies and gentlemen, we're not here to award his parents. We're not here to reward them. They are not parties to this lawsuit.

None of these doctors have said more likely than not that he's going to have these issues forever. The closest that you heard was that it's possible he could have some of these -- this executive dysfunction forever, maybe. But we're not even sure it's related.

Ladies and gentlemen, if you don't believe it's related,

you don't consider this. And that's what I submit you should do. They have not met their burden of proof to prove to you that, (a), he's going to have a permanent executive dysfunction -- brain functioning and emotional status issue.

They have to prove he's going to have something every single day. We haven't heard any testimony about him day in and day out right now. We've heard about a short period in '17, early '18. They have not proven that even if he's going to have it that it's related to this wreck and not his migraine issue or just life.

Yes, he has a scar that he sees, but it doesn't interfere with his daily activities. I wish my hair looked that good. It doesn't. But you don't even see the scar. That doesn't mean it's not there.

So if you think that there's a value to having that scar in his head, award him an amount. Twenty thousand dollars ($20,000.00) for something that he said I have no intention of doing anything about? It just seems, again, to lack an appreciation and an understanding of money.

Two hundred to three hundred dollars ($300.00) a day for what we know is a period of time where he couldn't work and couldn't go to school for a couple of weeks, but by October was good enough to take the SAT, was not taking any medicine, and then was back to school and back to work well enough to be able to tell his doctors by this date I'm doing all these

things? I'll bet that he didn't make two hundred or three hundred dollars a day working at Chick-fil-A.

When I worked at McDonald's I don't think I made two hundred or three hundred dollars ($300.00) a week. And then the one day where he would like you to award an amount double, almost triple the national poverty average for yearly income.

This case very clearly, very quickly became about money. If it was about anything else, these numbers would be very different.

Is he entitled to a verdict? Absolutely. Because this happened and this happened. It's for you to decide what amount that is. There are a number of ways to do it. They have shown you one with some grossly inflated numbers. There are others.

Ladies and gentlemen, when I sit back and I hear all the evidence in this case, what I realize is that Mr. Somers doesn't need money, he needs a coping mechanism. Life is tough, and has been tough, and it's going to be tough, but it's not because of this wreck. Thank y'all for your time. Thank you for your patience. And thank you for your attention. We appreciate it.

THE COURT: Mr. McAngus.

MR. McANGUS: I now realize just how thoughtless and how insincere the admission of fault and apology we heard from the Defendant was yesterday. That his lawyer stayed up last

night searching the Reddit, RES, to find an excuse to not pay this young man for the value for what was taken from him.

He doesn't need a coping mechanism. He needs somebody to stand up and say, that man over there, who we didn't trash, we didn't come in and trash his family. I didn't ask him one question about his upbringing, his family, what he was doing that day, what his coping mechanisms are.

If there's not a Reddit thread, it's parents that encourage their child to go to school, and to work, and to have a job, and raise someone right when they go to join Christian fraternities instead of partying through college.

He doesn't need a coping mechanism. He needs somebody to get into this Defendant's head and say maybe, just maybe this wreck that you caused to this 17 year old, maybe, just maybe that is the explanation for what we're seeing. Maybe that is what's causing some of these problems.

No, it's a hothouse, orchid growing? It's helicopter parenting? I am insulted, personally, for what was just done to this family who has not said a bad word about this young man who just came in and opened up what has happened to their son who is not sitting at home whining and crying. He is not saying whoa is me. I can't cope. I'm a wilting flower. Please, mom, dad, come help me.

He is coping as best he can through this and came up here to try to credibly tell you, although it's not a major, major,

you know, disability, it is something real. And it has value. And he has lost some things. This Defendant would have scraped and crawled to find any answer he could to escape any of this verdict.

You know why -- what else he didn't say? Gave him all the opportunity in the world. Why didn't he pay his expert to do the work he needed to do to do the testing to confirm what Dr. Lind did? I wonder why he didn't do that.

Dr. Lind's testing confirmed this was consistent with a brain injury, the area of the head that he hit. His own bought and paid for doctor could have done that testing. Said he gladly has done it. Does it all the time when he's assessing brain functioning and emotional status.

The reason they're searching Reddit, RES, the reason they're blaming these good parents, the reason they didn't pay their expert to do the work that he really needed to do to get to the answer of this is because they don't want to know the question [sic] because there's nothing that we could put up to make that man come in here and take responsibility for what he really did to this young man. And it was substantial.

And, yes, he has to ask for money. You can't ask -- that's all he has to ask for. Your verdict can tell them that he -- what he lost had value. That's the only thing he can do.

I'm not a wilting violet. I'm not going to shy away from

what he's asking for these real injuries. I stand by every number that's up on this board. Clayton does, too. And if you really believe what he said, and if you're offended as I am by what was just said about this family, your verdict should be in the higher range.

This is a young man who doesn't know the value of money. He's been working since he was a teenager. He works right now. This is a good family. Yeah, something bad happened to him caused by that young man who sends his lawyer to blame everything in the world except this big car crash for what happened to him. Don't let them do it. Return a full verdict for Clayton Somers.

THE COURT: All right, folks. It's now time for me to charge you the law that applies to this case.

I remind you that during this trial you and I have certain duties to perform. As the trial judge it is my responsibility to preside over the trial of this case. And I also have the duty to rule on the admissibility of evidence offered during this trial.

You are to consider only the evidence before you, including the testimony which has been presented from the witness stand, any exhibits which have been made a part of the record in this case, and any stipulations of counsel. I have the additional duty to charge you the law applicable to this case.

It is your duty as jurors to accept and apply the law as I now state it to you. If you think you have any idea as to what the law is or what the law ought to be and it does not agree with what I tell you the law is, you must forget that idea because you were sworn to accept the law and apply the law exactly as I state it to you.

In every case tried in this court before a jury, the jury becomes the sole and exclusive judge of the facts. A trial judge cannot comment on or make any statement about the facts in a case.

Since you are the sole judges of the facts, do not think that any -- sorry -- do not think by anything that I have said during this trial that I have any opinion about the facts in this case. The law does not allow me to have an opinion about the facts.

The burden of proof in this case is by a preponderance of the evidence. A preponderance of the evidence simply means the greater weight of the evidence. It is evidence which as a whole shows that the facts sought to be proved is more likely true than not true.

This can be illustrated by imagining a set of scales. When the case begins the scales are even. After all of the evidence has been presented, if the scales remain even or if they tip even slightly in favor of the Defendant, then the Plaintiff has failed to meet the burden of proof. If, on the

other hand, the scales tip even slightly in favor of the Plaintiff, the Plaintiff will have met the burden of proof and your verdict would be for the Plaintiff.

The preponderance of evidence is not determined by the number of witnesses. Instead, it must be determined by the greater weight of all of the evidence.

There are two types of evidence generally presented during a trial, direct evidence and circumstantial evidence. Direct evidence is the testimony of a person who claims to have actual knowledge of a fact such as an eyewitness. It is evidence which immediately establishes the main fact to be proved.

Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact. It is evidence which immediately establishes collateral facts from which the main fact may be inferred.

Circumstantial evidence is based on inference and not on personal knowledge or observation. It is proof that does not actually establish the fact in question, but that asserts or describes something else from which you may either reasonably infer the truth of the fact or at least reasonably infer an increase in the probability that the fact is true.

For circumstantial evidence to be sufficient to warrant a finding of fact, the circumstances must lead to that fact with reasonable certainty. The facts and circumstances should be

considered in light of ordinary experience and common sense. The existence of a fact cannot be based on speculation, surmise, or conjecture.

The law makes absolutely no distinction between the weight or value to be given to either direct or circumstantial evidence. Nor is a greater degree of certainty required of circumstantial evidence than of direct evidence.

Necessarily, you must determine the credibility of witnesses who have testified in this case. Credibility simply means believability. It becomes your duty as jurors to evaluate the evidence and determine which evidence convinces you that it is true.

In determining the believability of witnesses who have testified in this case you may believe one witness over several witnesses or several witnesses over one witness. You may believe a part of the testimony of a witness and reject the remaining part of the testimony of that same witness. You may believe the testimony of a witness in its entirety or reject the testimony of a witness in its entirety.

You may consider whether the witness has an interest in the result of the trial, whether the witness is prejudiced for either the Plaintiff or the Defendant, the opportunity for the witness to have seen the matters and things about which the witness may testify and the way the witness acts on the witness stand.

The rules of evidence ordinarily do not permit witnesses to testify to opinions or conclusions. An exception to this rule exists for witnesses we call expert witnesses. A witness who by education and experience has become expert in some art, science, or profession may give an opinion as to the subject the witness claims to be an expert in and may also give the reasons for the opinion.

You should consider any expert opinion given by a witness and, like any other evidence, give it the weight you think it deserves. If you decide that an expert witness' opinion is not based on sufficient education and experience, or if you decide that the reasons given in support of the opinion are not sound, or that the opinion is outweighed by other evidence, you may disregard the opinion entirely.

An expert witness' testimony is to be given no greater weight than that of other witnesses simply because the witness is an expert. And you do not have to accept an expert's opinion even though it is uncontradicted.

Now, the Plaintiff claims that the Defendant was negligent and should compensate the Plaintiff for the injuries the Plaintiff suffered as a result of the Defendant's negligence. Negligence means that a person has done something that a reasonable person would not have done or has failed to do something that a reasonable person would have done in the same situation.

Typically, in a negligence case the Plaintiff must prove four things by a preponderance or greater weight of the evidence. However, in this case the Defendant admits three of the four things, that he owed the Plaintiff a duty of care, that he breached that duty of care by a negligent act or omission, and that his negligence proximately caused at least some injury to the Plaintiff.

Therefore, in this case the Plaintiff must only prove by the preponderance or greater weight of the evidence the extent of damages that were proximately caused by the Defendant's breach of duty. Proximate cause is something that produces a natural chain of events which in the end brings about the injury. It is the direct cause of the injury.

To prove that the Defendant's negligence proximately caused the Plaintiff's injury, the Plaintiff must first prove causation in fact. This is proven by showing that the injury would not have occurred but for the Defendant's negligence.

The Plaintiff must also prove legal cause. Legal cause is proven by showing that the injury was foreseeable. This means that the injury occurred as a natural and probable consequence of the Defendant's negligence.

The Plaintiff must prove that some injury from the Defendant's negligence was foreseeable but does not have to prove that the particular injury that occurred was foreseeable. However, the Defendant cannot be held

responsible for things which could not be expected to happen.

Proximate cause does not mean the only cause. The Defendant's act can be a proximate cause of the Plaintiff's injury if it was at least one of the direct concurring causes of the injury.

Actual damages are to compensate the Plaintiff for the Plaintiff's injuries or loss and to put the Plaintiff as near as possible in the same position that he was in before the incident occurred. In other words, actual damages would be the actual losses and expenses which the Plaintiff has suffered because of the Defendant's negligence.

This amount may include past, present, and future damages for pain and suffering, loss of enjoyment of life, or alteration of lifestyle, mental anguish, mental distress and anxiety, impairment of health or physical condition, and scarring or disfigurement. The Plaintiff bears the burden of proving each of these elements by the preponderance or greater weight of the evidence.

Pain and suffering compensates the Plaintiff for physical discomfort and emotional response to the sensation of pain caused by the injury itself. There is no definite standard by which to compensate the Plaintiff for pain and suffering. Pain and suffering have no market price.

You have the authority to determine the amount, if any, to be allowed for pain and suffering using calm and reasonable

judgment to insure that the damages are just and reasonable in light of the testimony and evidence presented in the case. In doing so you may consider the nature and extent of the injuries and the suffering occasioned by them and their duration or perspective duration, the age, health, habits, and condition of the injured party before the injury as compared with his condition afterwards and the Plaintiff's use of sedatives or other drugs to relieve pain and their effect.

Loss of enjoyment of life compensates the Plaintiff for limitations on the Plaintiff's ability to participate in and derive pleasure from the normal activities of daily life. Damages for loss of enjoyment of life compensate the Plaintiff not only for the subjective knowledge that he can no longer enjoy all of life's pursuits, but also for the objective loss of the ability to engage in these activities.

Mental suffering, apprehension, shock, fright, emotional upset, humiliation, and anxiety, either present or expected in the future, can properly be considered as an element of damages. The amount of damages for mental suffering cannot be exactly measured.

An injured party may recover for those future damages that are reasonable sure to result from the injuries. The principle underlying compensation for future damages is that only one action can be brought, and, therefore, only one recovery had. It is proper to include in the estimate of

future damages compensation for loss of capacity to work or attention to the Plaintiff's ordinary business, and pain and suffering, which will, with reasonable certainty, result.

Any future damages must be reasonably calculated to have resulted from the alleged injury or damage sustained in this case. Future damages must be reduced to their present cash value.

If you find that the Plaintiff was permanently injured as a result of the Defendant's actions, you must then decide how, if at all, that injury will affect the rest of Plaintiff's life. A person's life expectancy is determined by a Life Expectancy Table, which is a part of the laws of this State. The Life Expectancy Table is only an estimate of the probable average remaining length of the life of all persons in our State of a given age.

The Plaintiff is a 20 year old male with a life expectancy, according to the Life Expectancy Table, of 57.23 years. This fact is to be considered by you along with any other facts and circumstances in evidence bearing on the Plaintiff's life expectancy including occupation, habits, and health at the time of the injury in deciding the amount of damages to be awarded to the Plaintiff.

The Defendant claims that the Plaintiff had a preexisting injury or condition prior to the date that the Plaintiff claims that the Defendant injured him. If you find that the

Plaintiff received an injury as the result of the negligence of the Defendant and is entitled to recover for that injury, the fact that the Plaintiff had a preexisting injury or condition would not prevent the Plaintiff from recovering.

The Defendant is responsible for all ill effects, which considering the Plaintiff's condition of health when the Plaintiff was injured, naturally and necessarily follow the injury. The Defendant takes the Plaintiff as the Plaintiff is found, whether the Plaintiff is in perfect health, in poor health, or somewhere in between.

A defendant's liability is in no way lessened or affected because of the fact that the injury would not have resulted or would not have been as serious or severe if the Plaintiff had been in good health or that the injuries were aggravated and rendered more difficult to cure by reason of the fact that the Plaintiff was not in good health. In other words, if the presence of a preexisting injury or condition aggravates and prolongs the injury and increases the damages, the Plaintiff should be compensated for the increase added -- increased or added damages.

A person with a preexisting injury or condition is not, however, entitled to any compensation for the preexisting injury or condition. In addition, if the problems are the result of the natural progression of the worsening of a preexisting injury or condition, then the Plaintiff would not

be entitled to be compensated for those problems.

Now, generally, a plaintiff is entitled to receive an award of actual damages for all medical expenses, which the Plaintiff has suffered because of the Defendant's negligence, including costs for physicians, hospitals, medicine, physical therapy, and rehabilitation. However, in this case, the Plaintiff was a minor at the time of the collision, and those medical expenses were borne by his parents.

Therefore, medical expenses are not being claimed as a part of this lawsuit. And you should not award damages for medical expenses in this case.

A plaintiff is never entitled to recover conjectural or speculative damages. But if you find the Plaintiff is entitled to a verdict for actual damages, your verdict should include an amount to cover any past, present, and future damages which were proximately caused by the Defendant. Actual damages need not be proven to a mathematical certainty or be based on evidence of the precise amount of damages the Plaintiff has suffered. Instead, the evidence must allow you to determine what amount of damages is fair, just, and reasonable.

I charge you that the mere fact that an injury or damages occur does not show negligence. The burden of proof rests with the Plaintiff to establish that by the preponderance or greater weight of the evidence.

Now, all 12 of you must agree on the verdict. Your verdict cannot be based on sympathy, passion, prejudice, emotion, or any other consideration which is not in evidence in this case.

Now, Mr. Foreperson, you will be in charge of presiding over the jury's deliberations in the jury room, but also completing the verdict form. There's one question on the verdict form. It asks for the amount of actual damages you find that the Plaintiff sustained as a proximate result of the Defendant's negligence.

You will fill out that amount, sign your name on the line as foreperson on behalf of the jury, and you'll knock on the door and let the bailiffs know that you've reached a verdict. At that time we will receive you back into the courtroom for your verdict.

At this time I'm going to ask you to return to the jury room, but do not begin your deliberations until you have received the verdict form and all the evidence in this case. Once you do, that will be your sign to begin deliberating. It'll just take three minutes, maybe. And you will deliberate until you've reached a verdict. Thank you.

(Whereupon the jury exited the courtroom at 2:27 pm)

THE COURT: All right. Any objections to the jury charge from the Plaintiff?

MR. McANGUS: No, Your Honor.

THE COURT: From the Defense?

MR. BROWN: No, Your Honor.

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Post-Trial Motion:

THE COURT: Any post-trial motions from the Plaintiff?

MR. McANGUS: Yes, Your Honor. I think we mentioned it briefly in your chambers before trial started, as far as to the final verdict as to the UIM carrier. Previous settlement, the liability carrier allocated ten thousand, four hundred twenty-three dollars and ninety-two cents ($10,423.92) to Stacey Somers as guardian ad litem for the benefit of Mr. Somers. The remainder of the twenty-five thousand dollars ($25,000.00) in liability insurance was paid to Stacey Somers individually for medical expenses.

Our position is that that's akin to the Riley v. Ford case where it's an allocation to the wrongful death and survival action. Since Clayton could not have brought, himself, that claim for medical expenses, then the set-off that the UIM carrier should get should just be the ten thousand, four twenty-three ninety-two (10,423.92) that was previously paid to Clayton. So the final collectable verdict against the UIM carrier should be forty-nine thousand, five seventy-six and seventy-eight cents ($49,576.78) if I'm doing my math correctly.

THE COURT: Okay. Mr. Brown.

MR. BROWN: Judge, I have to honestly say it's not a situation I've ever encountered and have not had an opportunity to research it. It would be our position -- in all honesty, I don't necessarily disagree.

She got medical -- medical expenses were paid to the parents. They didn't claim medical expenses as part of this. If I could have some time to research it, honestly, I'm just kind of at a loss having never dealt with it before.

I understand his position, but it's a indivisible -- you know, it's an indivisible injury that all culminated from one occurrence. And so twenty-five thousand dollars ($25,000.00) was paid on behalf of the minor. Whether he incurred those medical bills or not, the parents incurred them, but on his behalf.

And so the total claim was for the benefit of the minor, the medical expenses and the pain and suffering. If he were an adult, then it would have all been his claim.

And so it's essentially kind of like a derivative claim in that the amount that was paid was twenty-five thousand (25,000) was on behalf of the minor. Now, granted it was paid directly to the adult, to the parent, but in their capacity as the guardian ad litem because the minor can't enter into a contract. And so it would be our position that the entire verdict of sixty thousand dollars ($60,000.00) is subject to an off-set for twenty-five thousand (25,000), which is what

the liability paid.

Before, in the alternative, we're entitled to twenty-five thousand dollars ($25,000.00) because the parents would have a claim and the minor would have a claim and they didn't settle for twenty-five thousand dollars ($25,000.00) of the 25/50 liability policy. I'm not sure how you part and parcel those out.

MR. McANGUS: Judge, it may help to -- I've got -- I don't know if I gave you a copy Monday. This was before we were e-filing. I don't know if it's going to be on the record. If I could give you a copy of that order approving the previous one, it may help. But if we ---

THE COURT: I understand.

MR. McANGUS: --- if we claimed medical expenses here today -- this jury -- specifically said do not consider medical expenses in your reward. That's what the previous settlement says, fourteen thousand, five hundred and seventy-six (14,576) to Stacey Somers for medical expenses, past, present, and future incurred for minor child. We didn't claim that or get reimbursed that. They shouldn't get credit for it. Can't have it both ways. But I think Riley v. Ford is on point. And I've got a copy of that if Your Honor would like.

THE COURT: Yeah, let me take a copy because I forgot to bring my laptop out. And reading it on my phone is not so easy.

(Pause)

THE COURT: I think this case is distinguishable from Riley versus Ford Motor Company because this really deals with the allocation of, I assume, policy limits. I can't tell right off. But allocation between two separate causes of action -- and maybe I'm reading it incorrectly, but ---

MR. McANGUS: Judge, I believe just factually, it's one defendant and it's wrongful death and survival, which are similar here -- similar plaintiff in name, but different claims. Similar plaintiff in name, but the parents have a claim for medical expenses, not the minor. Just like the claim for wrongful death damages is different than a claim for survival action damages. I'd be happy to take a deeper look, but I do think it's directly on -- it's close as I can get on point.

THE COURT: Well, the reason I think it's distinguishable is because it's allocation between wrongful death and survival, two different claims. And I understand the analogy, but is it not the purpose of underinsured motorist coverage to provide coverage above the limits of the liability policy?

In other words, it does not matter whether the Plaintiff, and I know he was a minor, but the Plaintiff settled or received policy limits for a dollar or somewhere in between from the liability policy because is it not the case that UIM doesn't kick in until you get beyond the limits of the

liability policy?

MR. McANGUS: Correct. Which we have between what was paid to Clayton directly and what was paid to satisfy the medical expenses. That adds up to the twenty-five thousand dollar ($25,000.00) limits of ---

THE COURT: No. I understand. What I'm saying is it doesn't -- let's take the parents' claim out of it, the medical expenses claim. Even if the Plaintiff only settles for ten thousand dollars ($10,000.00), less than he could have settled for on the liability policy, doesn't UIM just pay beyond what he maybe could have settled for?

MR. McANGUS: I think there's been more akin to maybe multiple claimants. Oftentimes they have one policy and there's multiple claimants that each get less than the liability limits. The UIM carrier only gets a credit for each individual claims portion of the liability proceeds.

And, again, if we wouldn't even have gotten credit, he could, you know, he's getting -- All State would be getting credit for something he did not even claim here, nor get reimbursed for, nor that the jury rewarded him for. I think that's the point.

Generally, the plaintiff comes and puts those same medical expenses in front of the jury, same lost wages, his one injury. But the jury hears all the evidence, renders a verdict that includes medical expenses even if UIM had already

paid. Then, yes, then they get the full -- the full credit because it makes sense because he's claiming those medical expenses.

Clayton, by law, those were his parents' necessary medical expenses, not his. And the jury's specifically told not to award them, therefore, his portion of the liability -- settlement paid that All State gets credit for should only be the portion that went to him, not to the parents' claim for medical expenses.

Because we couldn't bring that here. And he could not have brought that here in front of the jury. They were his parents' claims. And we didn't put them forward here. We didn't have the jury, you know, add them up. They weren't part of the verdict at all.

THE COURT: Right. But if they're two separate claims, then arguably -- I don't know the details of the policy, but the liability policy could have paid limits to the parent and limits to the Plaintiff in this case, right? So the fact that he settled for less than the policy limit is immaterial, is it not? UIM -- whether it's twenty-five thousand (25,000) or whatever else, the first twenty-five thousand (25,000) is deducted from any award before they start having to pay.

MR. McANGUS: And it has been -- that's why the parents have brought this claim to you as well. If they'd put those medical expenses in, then you'd deduct the full twenty-five.

The only thing he got paid out of that portion of the settlement was the ten thousand dollars ($10,000.00).

It's a new issue. And if we need to -- frankly, like I told you Monday, this came to me over the weekend. I'm happy to let us do a little more briefing before you make a decision if you want us to.

THE COURT: No, but the argument could be made that even though he only recovered ten thousand (10,000) to the extent that they are separate claims, he maybe could have recovered twenty-five thousand (25,000). And it's not All State's fault that he didn't recover the full twenty-five thousand (25,000). Because each of them could have gotten twenty-five thousand (25,000). Because I'm sure it's, you know, ---

MR. McANGUS: I obviously don't know the answer -- I've got to look at the policy, truth be told, Judge.

THE COURT: I don't know the answer to that either. But if the argument is they really are two separate claims, and they are because it was individually and then as guardian ad litem for the minor.

MR. McANGUS: We also have a claim that Robb -- as a derivative. Derivative claims, you still split that same twenty-five. You don't split 25/25 or 50 occurrence for derivative claims. That's more akin as to what this is is a loss, you know, it's a derivative claim. And, frankly, I think we might have to look at the All State policy and how

this comes up.

I'd just say either way, we may go on appeal, depending on which way it goes. I'd just say if you'll give us a little bit of time to brief it to make sure we get it right.

THE COURT: I mean, I -- I know y'all haven't briefed it, but you knew it was an issue as of yesterday, right? And I have read certain case law that I believe supports my ruling that I will enter judgment in favor of the Plaintiff in the amount of thirty-five thousand dollars ($35,000.00) based on the jury's award of sixty thousand (60,000) less a set-off of twenty-five thousand (25,000) for the liability policy, which results in a thirty-five thousand dollar ($35,000.00) judgment.

MR. McANGUS: Understood.

THE COURT: Okay.

MR. McANGUS: And I will, just for the record, I'll be submitting court costs. Give me ten days. I don't have them here with me today. If I can do that.

THE COURT: Yes, sir.

MR. McANGUS: That's it.

THE COURT: Okay. Thank you.

MR. BROWN: Thank you, Your Honor.

THE COURT: Thank you.

(End of Requested Excerpt of Transcript)

Certificate of Reporter

I, the undersigned, Susan W. Hudgins, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete excerpt of transcript of record of all the proceedings requested and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Richland County, South Carolina, on the 18th - 19th day of November 2019.

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

March 24, 2020

Susan W. Hudgins

Circuit Court Reporter

ELECTRONICALLY FILED - 2019 Nov 20 10:18 AM - RICHLAND - COMMON PLEAS - CASE#2017CP4003520

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND Clayton M. Somers, Plaintiff, v. Darrell W. Harper, Defendant.	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT Civil Action No. 2017-CP-40-03520 **VERDICT**

Please state the amount of actual damages sustained by Plaintiff as a proximate result of Defendant's negligence.

$ 60,000.00

November 19, 2019
Columbia, South Carolina.

ELECTRONICALLY FILED - 2019 Nov 26 10:22 AM - RICHLAND - COMMON PLEAS - CASE#2017CP4003520

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND Clayton M. Somers, Plaintiff(s), vs. Darrell W. Harper, Defendant(s).	IN THE COURT OF COMMON PLEAS CIVIL ACTION NO.: 2017CP4003520 **MOTION FOR COSTS**

Plaintiff Clayton Somers, by and through his undersigned attorney, hereby respectfully moves the Court, pursuant to Rule 54(d) of the *South Carolina Rules of Civil Procedure* for payment of Court Costs, as verified and explained in the attached Affidavit.

Plaintiff asserts that he was the prevailing party at the trial of this case and that he incurred $6,828.20 in necessarily incurred court costs.

Therefore, pursuant to Rule 54 of the South Carolina Rules of Civil Procedure, Plaintiff respectfully requests that the costs be included in the judgment in this matter

Respectfully submitted November 26, 2019.

CHAPPELL, SMITH & ARDEN, P.A.

s/W. Hugh McAngus, Jr.
W. Hugh McAngus, Jr.
Attorneys for the Plaintiff
Post Office Box 12330
Columbia, South Carolina 29211
(803)929-3600

ELECTRONICALLY FILED - 2019 Nov 26 10:22 AM - RICHLAND - COMMON PLEAS - CASE#2017CP4003520

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND Clayton M. Somers, Plaintiff(s), vs. Darrell W. Harper, Defendant(s).	IN THE COURT OF COMMON PLEAS CIVIL ACTION NO.: 2017CP4003520 **AFFIDAVIT OF COSTS**

Plaintiff, Clayton Somers, the prevailing party in the above action, incurred the following Court Costs in the above-named action. In accordance with Rule 54 of the *South Carolina Rules of Civil Procedure* for payment of Court Costs, Plaintiff Clayton Somers submits that the following costs are correct and were necessarily incurred in the above-named action:

Summons and Complaint Filing Fee	$ 150.00
Service of Process Fees	$ 25.00
Court Motion and Filing Fees	$ 246.06
Trial Exhibits	$ 327.78
Witness Appearance Fees and Mileage	$6,079.36
TOTAL COSTS:	**$6,828.20**

SIGNATURE BLOCK ON FOLLOWING PAGE

Respectfully submitted November 26, 2019.

CHAPPELL, SMITH & ARDEN, P.A.

W. Hugh McAngus, Jr.
Attorneys for the Plaintiff
Post Office Box 12330
Columbia, South Carolina 29211
(803)929-3600

SWORN to before me this

26th day of November, 2019.

NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 11-30-20

ELECTRONICALLY FILED - 2019 Nov 26 10:22 AM - RICHLAND - COMMON PLEAS - CASE#2017CP4003520

ELECTRONICALLY FILED - 2019 Nov 26 10:22 AM - RICHLAND - COMMON PLEAS - CASE#2017CP4003520

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND Clayton M. Somers, Plaintiff, vs. Darrell W. Harper, Defendant.	IN THE COURT OF COMMON PLEAS CIVIL ACTION NO.: 2017CP4003520 **MOTION ALTER AND/OR AMEND JUDGMENT**

INTRODUCTION

Plaintiff Clayton Somers, hereby moves the Court pursuant to Rule 59(e), SCRCP, for an order altering or amending the Judgement entered in this matter on November 20, 2019. The grounds for this motion are that the Court applied an incorrect set-off in favor of the UIM Carrier or, in the alternative, that the Court should clarify the its denial of Plaintiff's motion to determine set off and its entering of a final judgment of $35,000.00.

PROCEDURAL HISTORY

This UIM motor vehicle negligence case was tried to a jury verdict of $60,000.00. After the verdict was read and the jury was excused, Plaintiff moved to apply a set off of $10,423.92 dollars in favor of the UM Carrier leaving a final verdict due and owing from the UIM Carrier in the amount of $49,576.08.

The Court orally denied Plaintiff's motion, applied a set off of $25,000, and entered a final judgment in favor of the defendant and owing from the UIM Carrier in the amount of $35,000.00. The Court's Form 4 Order does not contain a record of the Court's

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reasoning or basis for denying Plaintiff's motion, nor any notation that Plaintiff made such a motion and that it was denied by the Court

Plaintiff respectfully requests that the Court Alter and/or Amend its order, grant Plaintiff's motion for setoff and enter a final verdict due and owing by the UIM Carrier of $49,576.08; or in the alternative amend its November 20, 2019, judgment to include its denial of Plaintiff's motion, including the reasons and basis for the denial.

RELEVANT FACTUAL BACKGROUND

This wreck occurred on July 13, 2016, when Plaintiff Clayton Somers was 17 years old. All medical treatment rendered and medical expenses incurred related to his injuries occurred while he was 17 years old.

Plaintiff filed this lawsuit after turning 18 years old and did not include, nor request from the jury, medical expenses incurred during his minority. Plaintiff's parents did not file a direct action for reimbursement of Plaintiff's medical expenses incurred during his minority, but did make an insurance claim against Defendant's liability carrier for those medical expenses and a December 16, 2016 Order Approving Settlement was filed that specifically paid "FOURTEEN THOUSAND FIVIE HUNDRED SEVNTY-SIX AND 08/100 ($14,576.08) to Stacy Somers for medical expenses past and future incurred for the treatment of her minor child . . . ." That Order also paid "TEN THOUSAND FOUR HUNDRED TWENTY THREE AND 92/100 ($10,423.92) for Stacy Somers as, Guardian ad Litem for Clayton Matthew Somers, for the minor child's sole use and benefit." (Ex. 1, page 2).

Plaintiff did not enter his minority-incurred medical expenses as exhibits at trial and the Court's instructions specifically told the jury not to consider Plaintiff's childhood

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medical expenses in their verdict. At trial Plaintiff requested damages for pain and suffering, loss of enjoyment of life, scarring and disfigurement, mental suffering and future damages. Following the verdict, Plaintiff timely moved to the Court to apply a setoff of $10,423.92 and enter a final verdict due and payable by the UIM Carrier of $49,576.08. The Court orally denied that motion and entered judgment of $35,000.00.

ARGUMENT

Because the UIM Carrier should only receive credit for liability payments made to Clayton Somers and which were considered by the jury, the Court should alter its Judgment, grant Plaintiff's post-trial motion, and enter judgment against the Defendant and due and payable by the UIM Carrier in the amount of $49,576.08; or in the alternative amend its order to deny Plaintiff's motion and state the basis for its denial of and decision to enter a verdict in the amount of $35,000.00.

First, at the time of the collision, Plaintiff was a minor and all medical expenses incurred as a result of the collision were incurred during his minority. "[T]he amount paid for medical care and treatment by the parent is not an element of damage'' in a cause of action brought by the minor, but rather ''the parent has a cause of action for the recovery of the medical expenses which he has incurred for the care and treatment of such minor.'' *Hughey v. Ausborn*, 249 S.C. 470, 154 S.E.2d 839 (1967). Parental responsibilities include the legal obligation to pay their child's medical expenses. S.C. Code Ann. § 63-5-20 & - 30 (2010). "Because of that obligation, parents own a substantive right to recover damages for those expenses." *Patton v. Miller*, 804 S.E.2d 252, 257 (S.C. 2017). "A minor's medical expenses already incurred at the time of trial can be sued for by the minor's parents in their individual capacity." *Patton*, 804 at 258.

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This matter concerns Plaintiff's personal injuries and not the medical expenses incurred for his injury related treatment during his minority.

Stacy Somers presented a claim for Plaintiff's past medical expenses incurred while Plaintiff was a minor and specifically received settlement funds reimbursing her for those medical expenses.

The facts of this case are similar to *Kizer v. Kinard,* 602 S.E.2d 783 (S.C. Ct. App. 2004). "Mrs. Kizer suffered severe personal injury [in a motor vehicle collision.] Her husband, Charles F. Kizer, also suffered loss of consortium . . .; however, Mr. Kizer never filed a loss of consortium action." *Id.* at 784. The liability carrier, GEICO exhausted its $50,000 per person limits to the Kizer's allocating $25,000 to Mrs. Kizer's injury claim and $25,000 to Mr. Kizer's loss of consortium claim. *Id*. The Kizer's UIM carrier argued that as to Mrs. Kizer's personal injury claim it was entitled to a setoff of its full $50,000 per person limits, not the $25,000 paid to Mrs. Kizer. The UIM carrier "assert[ed] that GEICO's payment of its policy limits between Mr. and Mrs. Kizer does not alter [the UIM carrier's right to a setoff of the entire $50,000 against any claim by Mrs. Kizer." *Kizer* at 785. The Court of Appeals disagreed, and found that:

> the $50,000 per person injury limit in Kinard's GEICO liability policy was exhausted by the combined payment of $25,000 to Mrs. Kizer for her physical injuries and $25,000 to Mr. Kizer for his loss of consortium due to Mr. Kizer's injuries. Accordingly, we conclude that Horace Mann is entitled to a setoff of the $25,000 GEICO paid to Mrs. Kizer.

Id.

Here, the $25,000 per person injury limit in Harper's liability policy was exhausted by the combined payment of $10,423.92 to Plaintiff for his personal injuries

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and $14,576.08 to Mrs. Somers for her claim to medical expenses due to Plaintiff's injuries. Therefore, Allstate should be entitled to a setoff of the $10,423.92 paid to Plaintiff, and not the $25,000 per person limits, just as the UIM Carrier was only entitled to setoff $25,000 of the $50,000 per person limits in *Kizer*.

Second, "the reason for allowing such a credit is to prevent an injured person from obtaining a second recovery of that part of the amount of damages sustained which has already been paid him. Or differently stated, it is almost universally held that there can be only one satisfaction for an injury or wrong." *Hawkins v. Pathology Asssoc. of Greenville, P.A.*, 498 S.E.2d 395, 406-407 (1998)(*quoting Truesdale v. S.C.D.O.T.*, 213 S.E.2d 740 (1975). Here, Plaintiff did not enter his minority-incurred medical expenses as exhibits, did not seek recovery for them, and the jury was specifically instructed not to consider medical expenses in its verdict. Therefore, applying a UIM setoff of $10,423.92 will not result in a second recovery for damages previously paid to him. Instead, it would provide a windfall to the UIM Carrier, as the jury was specifically instructed not to consider medical expenses in its verdict.

"[W]here a settlement involves more than one claim, the allocation of settlement proceeds between various causes of action impacts the amount a non-settling defendant may be entitled to offset." *Riley v. Ford Motor Co.*, 777 S.E.2d 824, 830 (2015).

> A plaintiff who enters into a settlement with a defendant gains a position of control and acquires leverage in relation to a nonsettling defendant. This posture is reflected in the plaintiff's ability to apportion the settlement proceeds in the manner most advantageous to it. Settlements are not designed to benefit nonsettling third parties. They are instead created by the settling parties in the interests of these parties. If the position of a nonsettling defendant is worsened by the terms of a settlement, this is the consequence of a refusal to settle. A defendant who fails to

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> bargain is not rewarded with the privilege of fashioning and ultimately extracting a benefit from the decisions of those who do.

Riley, at 831 (internal citations omitted).

Here, Plaintiff, his mother, and the Defendant entered into a settlement agreement, approved by the Court that allocated the Defendants' $25,000 per person liability limits between Plaintiff's claim for personal injuries and his mother's claim for his childhood medical expenses. The UIM Carrier should not be rewarded with the privilege of fashioning and ultimately extracting a benefit from the decisions of those who chose to settle.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court Alter its previous judgment, GRANT Plaintiff's Motion to Determine Setoff, and enter judgment against the UIM Carrier in the amount of $49,576.08. In the alternative, Plaintiff requests that the Court Amend its Judgment to specifically deny Plaintiff's motion, and to include the basis and reasoning for the calculation of the November 20, 2019, $35,000.00 Judgment.

CHAPPELL, SMITH & ARDEN, P.A.

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November 26, 2019

ELECTRONICALLY FILED - 2019 Dec 12 3:29 PM - RICHLAND - COMMON PLEAS - CASE#2017CP4003520

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF RICHLAND)	
)	Civil Action No.: 2017-CP-40-03520
Clayton M. Somers)	
)	
Plaintiff(s),)	
vs.)	
)	**ALLSTATE INSURANCE COMPANY'S RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION FOR COSTS**
Darrell W. Harper)	
)	
Defendant(s).)	
)	
)	
)	
)	

This matter proceeded to trial beginning November 18, 2019, before the Honorable Jocelyn Newman. Trial concluded on November 19, 2019, at the conclusion of which the jury returned a verdict in the amount of $60,000, which was subsequently reduced to $35,000 as a result of a set-off awarded to Allstate by virtue of Plaintiff's prior settlement with Defendant Harper's liability insurance carrier. Following the trial, Plaintiff moved for costs pursuant to Rule 54(d) of the South Carolina Rules of Civil Procedure. Under Rule 54(d), "costs shall be allowed as of course to the prevailing party unless the court otherwise directs". Rule 54(e) outlines those costs that can be awarded.

Plaintiff has produced an affidavit of costs identifying $6,828.20 in costs that they seek an award for. Allstate Insurance Company, an underinsured motorist insurance carrier who appeared pursuant to S. C. Code of Laws § 38-77-160, hereby objects to the award of costs as requested, on the following grounds.

Prevailing Party

As an initial matter, it should be noted that the issue at trial regarding injury and proximate cause, to an extent, was conceded by Defendant. It is therefore questionable whether

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Plaintiff can be considered to have "prevailed" at all when the jury was allowed to only return a verdict in favor or Plaintiff for an amount of damages. Further, Plaintiff suggested a range of award from $157,625 to $262,645. The jury returned a verdict of $60,000. Upon information and belief, the jury did not award any amount to Plaintiff for his alleged permanent injury in brain functioning and emotional status.[1] To award costs to Plaintiff on the theory that Plaintiff "prevailed" on an issue that was conceded by Allstate's counsel at trial, and for which the jury was not given an option but to award a monetary amount, would violate the spirit of the rule, which is to reward a party for prevailing on a contested issue.

Allowable Costs

Additionally, Allstate further objects to the Costs as requested in that they exceed those costs that are taxable under Rule 54(e), SCRCP. To the extent the Court intends to award costs, Allstate concedes that Plaintiff can recover for Summons and Complaint Filing Fee, Service of Process Fees, and Court Motion and Filing Fees (although counsel is not aware of what these specific fees are as a result of, and would ask the Court to inquire).

Allstate specifically objects to an award of $327.78 in that Plaintiff presented for "trial exhibits". Plaintiff has not delineated what trial exhibits he is claiming, nor has he provided receipts for said exhibits. Upon information and belief, the only exhibits put into evidence were 15 single page exhibits. Upon information and belief, the amount sought as costs includes oversized demonstrative pictures that were shown to the jury. Defendant contends that these are merely demonstrative, and not a recoverable cost.

[1] Following trial, Counsel for Allstate spoke to the jury foreman, Joel S. Hughes, a member of the South Carolina Bar, who indicated that the jury unanimously agreed that the Plaintiff had not suffered a permanent brain injury as alleged, and the award of damages was based on Plaintiff's initial treatment, and the scar to his head.

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Allstate further objects to the award of costs for witness appearance fees and mileage beyond that amount allowable under SCRCP 45(b)(1). Plaintiff presented testimony from five witnesses: Clayton Somers, Matthew Somers, Stacy Somers, Dr. Andrew Lind, and Dr. Matthew Pollack. Allstate was not provided with any witness subpoenas, and therefore does not know which witnesses were actually subpoenaed for trial, a requirement under SCRCP 54(e)(5). Further, only the fees allowable under SCRCP 45(b)(1) are recoverable for these witnesses. These witness fees are limited to $25.00 per person, plus mileage from their home to the site where they are compelled to appear. Defendant would contend that there is no way that these costs could exceed $500 total, for all five witnesses.

Accordingly, Defendant would first object to the award of costs on the grounds that Plaintiff was not the prevailing party in the spirit of the rule, and Defendant would further object to the award of costs as requested, and as the Court inquire further as to those costs that are claimed, that would actually qualify under SCRCP 54.

Willson Jones Carter & Baxley, PA

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December 2, 2019
Columbia, South Carolina

ELECTRONICALLY FILED - 2019 Dec 12 3:29 PM - RICHLAND - COMMON PLEAS - CASE#2017CP4003520

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF RICHLAND)	
)	Civil Action No.: 2017-CP-40-03520
Clayton M. Somers)	
)	
Plaintiff(s),)	
vs.)	
)	**Allstate's Reply in Opposition to Plaintiff's Motion to Alter or Amend Judgment**
Darrell W. Harper)	
)	
Defendant(s).)	
)	
)	
)	
)	

INTRODUCTION AND BACKGROUND

This matter arises out of a motor vehicle accident that occurred on July 13, 2016, when a vehicle driven by Clayton Somers, Plaintiff, collided with a vehicle driven by Darrell W. Harper, Defendant, on Killian Road in Richland County South Carolina. At the time of the collision, Plaintiff was a minor. Prior to filing suit, settlement was reached with Defendant's liability insurance carrier wherein they tendered $25,000.00 to Stacey A. Somers, Plaintiff's Mother individually, and as Guardian ad Litem for Plaintiff. This settlement was approved by the Honorable L. Casey Manning by written Order dated December 16, 2016, in an action bearing civil action number 2016-CP-40-07399.

Thereafter, Plaintiff turned eighteen and filed his Summons and Complaint on June 6, 2017, in the Richland County Court of Common Pleas. Allstate Fire and Casualty Insurance Company appeared in the name of Defendant pursuant to its contract of underinsured motorist insurance coverage and S.C. Code Ann. § 38-77-160 (1994). The matter proceeded to jury trial beginning November 18, 2019, before the Honorable Jocelyn Newman. Trial concluded on November 19, 2019. At trial, the parties stipulated that the medical bills incurred by Plaintiff's

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Mother, and indemnified in the prior action, were not recoverable as damages by Plaintiff. The jury was charged that they were not to award any damages for medical bills. Evidence was presented that medical bills were incurred and that those bills were paid for by Plaintiff's parents. No evidence was presented as to the value of these medical bills. Plaintiff sought recovery for pain and suffering, loss of enjoyment of life, scarring and disfigurement, mental suffering permanent injury, and future damages.

At the conclusion of trial, the jury returned a verdict in the amount of $60,000.00. Plaintiff moved to apply a set off in the amount of $10,423.92 dollars in favor of Allstate, leaving a final verdict due and owing from the UIM Carrier in the amount of $49,576.08. The court denied Plaintiff's motion, and instead applied a set off of $25,000, and entered a final judgment in favor of Defendant and reducing the amount owed by the UIM Carrier to the amount of $35,000.00. The court did not enter any written justification for its award, and Plaintiff has now moved to Alter and/or Amend the Judgment, which Defendant opposes. This brief follows.

Argument

This appears to be an issue of first impression in South Carolina. Underinsured motorist coverage is optional coverage provided when the insured sustains damages in excess of the at-fault driver's liability coverage, recovery being in addition to any recovery from the at-fault motorist, the total recovery not to exceed the damages sustained. *Broome v. Watts*, 319 S.C. 337, 341, 461 S.E.2d 46, 48 (1995). The UIM statute, S.C. Code Ann. § 38-77-160 (1994), does not require payment of the applicable policy limits as a precondition to collecting UIM benefits; however, a UIM carrier is entitled to credit for any amount of liability coverage not exhausted in settlement. *Cobb v. Benjamin*, 325 S.C. 573, 589, 482 S.E.2d 589, 597 (Ct.

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App. 1997). The question in this case is what is the measure of the liability coverage not exhausted in the previous settlement, if any? Allstate contends the full measure of liability insurance was exhausted in the previous settlement and that the court properly awarded a setoff in the amount of $25,000.00.

There is no current precedent addressing this issue. "[T]he amount paid for medical care and treatment by a parent is not an element of damage" in a cause of action brought by the minor, but rather "a parent has a cause of action for the recovery of the medical expenses which he has incurred for the care and treatment of such minor." *Hughey v. Ausborn*, 249 S.C. 470, 476 154 S.E.2d 839, 841 (1967). "A minor's medical expenses already incurred at the time of trial can be sued for by the minor's parents in their individual capacity." *Patton v. Miller*, 804 S.E.2d 252, 257 (S.C. 2017). However, this claim arises directly out of the *statutory duty* owed by a parent for the care and keeping of their child. *Id.*. Parental responsibilities include the legal obligation to pay a child's medical expenses. S.C. Code Ann. § 63-5-20 & - 30 (2010). "Because of that obligation, parents own a substantive right to recover damages for those expenses." *Patton* at 257. A father is bound to provide the "necessities of life" for his minor child, including necessary medical treatment and hospitalization, and his right to recover is based in that obligation. *Hughey* at 476.

A parent has two separate and distinct claims against a tort-feasor who caused injury to a spouse or child: 1) the compensatory damages for medical expenses incurred for the care and treatment of the injuries sustained by the spouse or child; and 2) the consequential damages arising from his *own* loss of consortium. *Hughey* 249 S.C. at 475-476. The first right of action for the medical expenses is based solely on his obligation to furnish them, his second cause of action is based on his own personal injury *Id.* at 477.

ELECTRONICALLY FILED - 2019 Dec 12 3:29 PM - RICHLAND - COMMON PLEAS - CASE#2017CP4003520

Here, Plaintiff's Mother brought a claim individually and as Guardian Ad Litem of Plaintiff. Her individual claim was for the medical bills that she paid for the treatment of Plaintiff's injuries arising out of the subject accident. Her claim Guardian Ad Litem was for Plaintiff's pain and suffering as a result of the subject accident. Both claims arise out of the injuries to Plaintiff, not a separate injury to Plaintiff's Mother. The claim for medical expenses is inextricably tied to the injury to Plaintiff's own claim for consequential damages.

Defendant's liability insurance coverage provided for bodily injury liability coverage of $25,000 per person, up to $50,000 per accident, such that Stacy Somers had $25,000 of available liability insurance coverage from Defendant, and Clayton Somers had $25,000 of available liability insurance coverage from Defendant. Thus, by only accepting $10,423.92 on behalf of Clayton Somers, Stacy Somers as Clayton's Guardian ad Litem, did not exhaust the policy limits of the available liability insurance policy. And, whereas the UIM carrier is entitled to a credit for any amount of liability coverage not exhausted in settlement, here Allstate Fire and Casualty Insurance Company is entitled to a credit for the whole amount paid on behalf of Mr. Somers, and the amount of remaining liability coverage not exhausted in settlement -- $25,000.00. *See Cobb v. Benjamin*, 325 S.C. 573, 589, 482 S.E.2d 589, 597 (Ct. App. 1997).

/s/ Robert L. Brown
Robert L. Brown
(SC Bar No: 73568)
E-mail: rlbrown@wjlaw.net
3600 Forest Drive, Suite 204
Columbia, SC 29204
(803) 509-8071
(803) 782-2527

Renewal auto policy declarations

Platinum Gold Standard Value Plan

Allstate. You're in good hands.

Your policy effective date is January 20, 2016

Total Premium for the Policy Period

Please review your insured vehicles and verify their VINs are correct.

Vehicles covered	*Identification Number (VIN)*	*Premium*
2014 Toy. Truck Tundra	5TFAW5F17EX408154	$1,328.68
2005 Toy. Truck Tacoma	5TEMU52N45Z115283	1,705.06
2013 Honda Pilot	5FNYF3H58DB013217	872.16

If you pay in installments*	**$3,905.90**
If you pay in full (includes FullPay® Discount)	**$3,577.55**

**If you pay less than the Pay in Full amount, you will be charged an installment fee(s).*

Discounts (included in your total premium)

Multiple Policy	**$242.29**	Antilock Brakes	**$341.05**
The Good Hands People® Program	**$103.04**	New Car	**$146.79**
Good Payer	**$181.52**	Early Signing	**$181.52**
Preferred Package	**$757.17**	Allstate eSmart®	**$181.52**
Driver Training	**$159.70**	Good Student	**$386.43**

Total discounts **$2,681.03**

Discounts per vehicle

2014 Toy. Truck Tundra **$824.10**

Multiple Policy	$82.34	Antilock Brakes	$114.43
The Good Hands People® Program	$35.24	New Car	$146.79
Good Payer	$62.10	Early Signing	$62.10
Preferred Package	$259.00	Allstate eSmart®	$62.10

2005 Toy. Truck Tacoma **$1,436.95**

Driver Training	$159.70	Good Student	$386.43
Multiple Policy	$101.60	Antilock Brakes	$159.73
The Good Hands People® Program	$46.17	Good Payer	$81.34
Early Signing	$81.34	Preferred Package	$339.30
Allstate eSmart®	$81.34		

2013 Honda Pilot **$419.98**

Multiple Policy	$58.35	Antilock Brakes	$66.89

(continued)

Information as of December 17, 2015

Summary

Named Insured(s)
Matthew J and Stacy A Somers

Mailing address
[redacted]

Policy number
968 940 048

The company issuing the policy is:
Allstate Fire and Casualty Insurance Company
2775 Sanders Road
Northbrook, IL 60062-6127
1-800-ALLSTATE (1-800-255-7828)

Policy period
Beginning **January 20, 2016** through **July 20, 2016** at 12:01 a.m. standard time

Your Allstate agency is
Kellie Ballentine
162 Langford Rd
Blythewood SC 29016
(803) 691-3000
kellieballentine@allstate.com

Some or all of the information on your Policy Declarations is used in the rating of your policy or it could affect your eligibility for certain coverages. Please notify us immediately if you believe that any information on your Policy Declarations is incorrect. We will make corrections once you have notified us, and any resulting rate adjustments, will be made only for the current policy period or for future policy periods. Please also notify us immediately if you believe any coverages are not listed or are inaccurately listed.

SC01ORBD

Discounts per vehicle (continued)

2013 Honda Pilot			**$419.98**
The Good Hands People® Program	$21.63	Good Payer	$38.08
Early Signing	$38.08	Preferred Package	$158.87
Allstate eSmart®	$38.08		

Surcharges (included in your total premium)

Chargeable Accident • 2014 Toy. Truck Tundra	$177.78
Minor Violation • 2014 Toy. Truck Tundra	$169.27
Total surcharges	**$347.05**

Listed drivers on your policy

Matthew Somers
Stacy Somers
Clayton Somers

Excluded drivers from your policy

None

Coverage detail for 2014 Toy. Truck Tundra

Coverage	*Limits*	*Deductible*	*Premium*
Automobile Liability Insurance			
Bodily Injury	$250,000 each person $500,000 each accident	Not applicable	$393.13
Property Damage	$100,000 each accident	Not applicable	$186.84
Uninsured Motorists Insurance			$23.71
Bodily Injury	$250,000 each person $500,000 each accident	Not applicable	
Property Damage	$100,000 each accident	$200	
Auto Collision Insurance	Actual cash value	$500	$449.88
Auto Comprehensive Insurance	Actual cash value	$250	$150.20
Rental Reimbursement	up to $30 per day for a maximum of 30 days	Not applicable	$21.46

(continued)

SC010RBD
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Renewal auto policy declarations
Policy number: 968 940 048
Policy effective date: January 20, 2016
Your Allstate agency is Kellie Ballentine
(803) 691-3000

Allstate. You're in good hands.

Coverage	*Limits*	*Deductible*	*Premium*
Towing and Labor Costs	$100 each disablement	Not applicable	$6.80
Underinsured Motorists Insurance		Not applicable	$96.66
Bodily Injury	$250,000 each person $500,000 each accident		
Property Damage	$100,000 each accident		
Automobile Medical Payments	**Not purchased***		
Customizing Equipment - Collision	**Not purchased***		
Customizing Equipment - Comprehensive	**Not purchased***		
Sound System	**Not purchased***		
Tape	**Not purchased***		
Total premium for 2014 Toy. Truck Tundra			**$1,328.68**

This coverage can provide you with valuable protection. To help you stay current with your insurance needs, contact your Allstate agent to discuss coverage options and other products and services that can help protect you.

VIN 5TFAW5F17EX408154

Rating information
- Owns residence
- This vehicle is driven over 7,500 miles per year, 10 - 20 miles to work/school, married male age 46

Coverage detail for 2005 Toy. Truck Tacoma

Coverage	*Limits*	*Deductible*	*Premium*
Automobile Liability Insurance			
Bodily Injury	$250,000 each person $500,000 each accident	Not applicable	$665.98
Property Damage	$100,000 each accident	Not applicable	$315.63
Uninsured Motorists Insurance			$23.71
Bodily Injury	$250,000 each person $500,000 each accident	Not applicable	
Property Damage	$100,000 each accident	$200	
Auto Collision Insurance	Actual cash value	$500	$455.91
Auto Comprehensive Insurance	Actual cash value	$250	$108.09
Rental Reimbursement	up to $30 per day for a maximum of 30 days	Not applicable	$32.28
Towing and Labor Costs	$100 each disablement	Not applicable	$6.80

(continued)

SC010RBD

Renewal auto policy declarations
Policy number: **968 940 048**
Policy effective date: January 20, 2016
Your Allstate agency is Kellie Ballentine
(803) 691-3000

Coverage	*Limits*	*Deductible*	*Premium*
Underinsured Motorists Insurance		Not applicable	$96.66
Bodily Injury	$250,000 each person $500,000 each accident		
Property Damage	$100,000 each accident		
Automobile Medical Payments	**Not purchased***		
Customizing Equipment - Collision	**Not purchased***		
Customizing Equipment - Comprehensive	**Not purchased***		
Sound System	**Not purchased***		
Tape	**Not purchased***		
Total premium for 2005 Toy. Truck Tacoma			**$1,705.06**

**** This coverage can provide you with valuable protection. To help you stay current with your insurance needs, contact your Allstate agent to discuss coverage options and other products and services that can help protect you.***

VIN 5TEMU52N45Z115283

Rating information
- Owns residence
- This vehicle is driven over 7,500 miles per year, 10 - 20 miles to work/school, unmarried male age 16, good driver rate

Coverage detail for 2013 Honda Pilot

Coverage	*Limits*	*Deductible*	*Premium*
Automobile Liability Insurance			
Bodily Injury	$250,000 each person $500,000 each accident	Not applicable	$258.22
Property Damage	$100,000 each accident	Not applicable	$121.39
Uninsured Motorists Insurance			$23.71
Bodily Injury	$250,000 each person $500,000 each accident	Not applicable	
Property Damage	$100,000 each accident	$200	
Auto Collision Insurance	Actual cash value	$500	$222.35
Auto Comprehensive Insurance	Actual cash value	$250	$121.57
Rental Reimbursement	up to $30 per day for a maximum of 30 days	Not applicable	$21.46
Towing and Labor Costs	$100 each disablement	Not applicable	$6.80
Underinsured Motorists Insurance		Not applicable	$96.66
Bodily Injury	$250,000 each person $500,000 each accident		
Property Damage	$100,000 each accident		

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Renewal auto policy declarations
Policy number: 968 940 048
Policy effective date: January 20, 2016
Your Allstate agency is Kellie Ballentine
(803) 691-3000

Allstate.
You're in good hands.

Coverage	*Limits*	*Deductible*	*Premium*
Automobile Medical Payments	**Not purchased***		
Customizing Equipment - Collision	**Not purchased***		
Customizing Equipment - Comprehensive	**Not purchased***		
Sound System	**Not purchased***		
Tape	**Not purchased***		
Total premium for 2013 Honda Pilot			**$872.16**

**** This coverage can provide you with valuable protection. To help you stay current with your insurance needs, contact your Allstate agent to discuss coverage options and other products and services that can help protect you.***

VIN 5FNYF3H58DB013217

Lienholder
American Honda Fin Corp (Retail)

Rating information
- Owns residence
- This vehicle is driven over 7,500 miles per year, 10 - 20 miles to work/school, married female age 47, good driver rate

Your policy documents

Your automobile policy consists of this Policy Declarations and the documents in the following list. Please keep these together.

- South Carolina Auto Policy - AFA24
- Claim Satisfaction Guarantee Amendatory Endorsement - AP4878
- Amendatory Endorsement - AP4838-1
- Dividend Provision - PDU79

Important payment and coverage information

Here is some additional, helpful information related to your coverage and paying your bill:

▶Your rate is lower because you are insuring multiple cars.

Allstate Fire and Casualty Insurance Company's Secretary and President have signed this policy with legal authority at Northbrook, Illinois.

Steven P. Sorenson
President

Susan L. Lees
Secretary

SC010RBD

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Important notices

Policy number: 968 940 048
Policy effective date: January 20, 2016
Your Allstate agency is Kellie Ballentine
(803) 691-3000

Allstate.
You're in good hands.

Are You Eligible for New Discounts?

Did you know that you may now qualify for discounts that you previously were not eligible to receive? For instance, in many states, Allstate offers discounts for:

- Drivers who are age 55 and older who are no longer working;
- Young drivers, including students under the age of 25;
- Drivers who have completed approved driver training courses; and
- Drivers who also insure their homes with Allstate.

Please contact your Allstate representative for additional information about discount qualifications, as well as other discounts that may be available.

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Privacy Statement

Policy number: 968 940 048
Policy effective date: January 20, 2016
Your Allstate agency is Kellie Ballentine
(803) 691-3000

Allstate.
You're in good hands.

Thank you for choosing Allstate. We value you, respect your privacy and work hard to protect your personal information.

This statement is provided on behalf of Allstate Insurance Company and the affiliates ("Allstate") listed at the end of this notice. We would like to explain how we collect, use and share the information we obtain about you in the course of doing business.

Our Privacy Assurance

- We do not sell your personal or medical information to anyone.
- We do not share your information with non-affiliate companies that would use it to contact you about their own products and services, unless permitted pursuant to a joint marketing agreement.
- We require persons or organizations that represent or assist us in servicing your policy and claims to keep your information confidential.
- We require our employees to protect your personal information and keep it confidential.

As you can see, protecting your personal information is important to us. In addition to the practices described above, we use a variety of physical, technical and administrative security measures that help to safeguard your information. For Social Security Numbers (SSN), this includes restricting access to our employees, agents and others who use your SSN only as permitted by law: to comply with the law, to provide you with products and services, and to handle your claims. Also, our employees' and agents' access to and use of your SSN are limited by the law, our policies and standards, and our written agreements.

Our privacy practices continue to apply to your information even if you cease to be an Allstate customer.

What Personal Information Do We Have and Where Do We Get It

We gather personal information from you and from outside sources for business purposes. Some examples of the information we collect from you may include your name, phone number, home and e-mail addresses, driver's license number, Social Security Number, marital status, family member information and healthcare information. Also, we maintain records that include, but are not limited to, policy coverages, premiums, and payment history. We also collect information from outside sources including, but not limited to, insurance support organizations that assemble or collect information about individuals for the purpose of providing to insurance companies. This information may include, but is not limited to, your driving record, claims history, medical information and credit information.

In addition, Allstate and its business partners gather information through Internet activity, which may include, for example, your operating system, links you used to visit allstate.com, web pages you viewed while visiting our site or applications, Internet Protocol (IP) addresses, and cookies. We use cookies, analytics and other technologies to help:

- Evaluate our marketing campaigns
- Analyze how customers use our website and applications
- Develop new services
- Know how many visitors have seen or clicked on our ads

Also, our business partners assist us with monitoring information including, but not limited to, IP addresses, domain names and browser data, which can help us to better understand how visitors use allstate.com.

How We Use and Share Your Personal Information

In the course of normal business activities, we use and share your personal information. We may provide your information to persons or organizations within and outside of Allstate. This would be done as required or permitted by law. For example, we may do this to:

- Fulfill a transaction you requested or service your policy
- Market our products
- Handle your claim
- Prevent fraud
- Comply with requests from regulatory and law enforcement authorities
- Participate in insurance support organizations

The persons or organizations with whom we may share your personal information may include, among others:

- Your agent, broker or Allstate-affiliated companies
- Companies that perform services, such as marketing, credit card processing, and performing communication services on our behalf
- Business partners that assist us with tracking how visitors use allstate.com
- Other financial institutions with whom we have a joint marketing agreement
- Other insurance companies that play a role in an insurance transaction with you
- Independent claims adjusters
- A business or businesses that conduct actuarial or research studies

Privacy Statement
Policy number: 968 940 048
Policy effective date: January 20, 2016
Your Allstate agency is Kellie Ballentine
(803) 691-3000

- Those who request information pursuant to a subpoena or court order
- Repair shops and recommended claims vendors

The Internet and Your Information Security

We use cookies, analytics and other technologies to help us provide users with better service and a more customized web experience. Additionally, our business partners use tracking services, analytics and other technologies to monitor visits to allstate.com. The website may also use Web beacons (also called "clear GIFs" or "pixel tags") in conjunction with cookies. If you prefer, you can choose to not accept cookies by changing the settings on your web browser. Also, if you would like to learn about how we gather and protect your information over the Internet, please see our online privacy statement located at the bottom of the allstate.com homepage.

To learn more, the allstate.com Privacy Statement provides information relating to your use of the website. This includes, for example, information regarding:

1) How we collect information such as IP address (the number assigned to your computer when you use the Internet), browser and platform types, domain names, access times, referral data, and your activity while using our site;
2) Who should use our website;
3) The security of information over the Internet; and
4) Links and co-branded sites.

How You Can Review and Correct Your Personal Information

You can request to review your personal information contained in our records at any time. To do this, please send a letter to the address below requesting to see your information for the previous two years. If you believe that our information is incomplete or inaccurate, you can request that we correct it. Please note we may not be able to provide information relating to investigations, claims, litigation, and other matters. We will be happy to make corrections whenever possible.

Please send requests to:
Allstate Insurance Company Customer Privacy Inquiries
P.O. Box 40047
Roanoke, VA 24022-0047

Your Preference for Sharing Personal Information

We would like to share your personal information with one or more Allstate affiliates in order to make you aware of different products, services and offers they can provide. However, you can request that Allstate and its affiliate companies not share your personal information with our affiliates for marketing products and services.

To request that we not allow other Allstate affiliates to use your personal information to market their products and services, you can contact us by calling 1-800-856-2518 twenty-four hours a day, seven days a week. Please keep in mind that it may take up to four weeks to process your request. If you previously contacted us and asked us not to allow other Allstate affiliates to use your personal information, your previous choice still applies and you do not need to contact us again. If you would like to change your previous choice please call the number above at any time.

We Appreciate Your Business

Thank you for choosing Allstate. We understand your concerns about privacy and confidentiality, and we hope this notice has been helpful to you. We value our relationship with you and look forward to keeping you in Good Hands®.

If you have questions or would like more information, please don't hesitate to contact your Allstate agent or call the Allstate Customer Information Center at 1-800-ALLSTATE.

We reserve the right to change our Privacy practices, procedures, and terms.

Allstate Insurance Company

Allstate entities on which behalf this notice is provided and amongst which information may be shared:

The Allstate family of companies, LSA Securities, Deerbrook General Agency, Inc., Deerbrook Insurance Company, North Light Specialty Insurance Company, Northbrook Indemnity Company.

Please Note: Allstate affiliates American Heritage Life Insurance Company, Castle Key Insurance Company and Castle Key Indemnity Company participate in information sharing with the affiliates listed above, but have a separate privacy notice for their customers.

(ed. 10/2015)

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Allstate Fire and Casualty Insurance Company Auto Policy

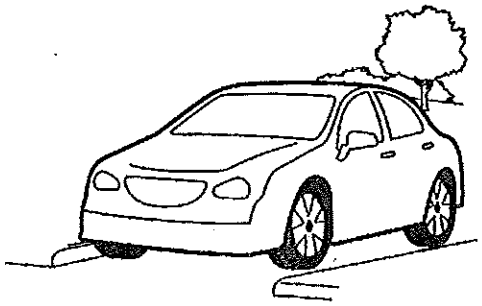
SOUTH CAROLINA

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Allstate Fire and Casualty Insurance Company
The Company Named in the Policy Declarations
A Stock Company---Home Office: Northbrook, Illinois 60062

AFA24

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The Company Named in the Policy Declarations
A Stock Company
Home Office: Northbrook, Illinois 60062

General

Agreements We Make With You
This policy is a legal contract between **you** and **us**. A coverage applies only when a premium for it is shown on the Policy Declarations. If more than one **auto** is insured, premiums will be shown for each **auto**. If **you** pay the premiums when due and comply with the policy terms, **we**, relying on the information **you** have given **us**, makes the following agreements with **you**.

When And Where The Policy Applies
Your policy applies only during the policy period. During this time, it applies to covered losses to the **auto**, accidents, and occurrences within the United States Of America, its territories or possessions or Canada, or between their ports. The policy period is shown on the Policy Declarations.

Insurance Coverage in Mexico
Prior to entering and driving in Mexico, **you** must check with the appropriate Mexican authorities regarding automobile insurance requirements.

Automobile accidents in Mexico are subject to the laws of Mexico, NOT the United States. In Mexico, an automobile accident can be considered a CRIMINAL OFFENSE as well as a civil matter.

In some cases, part or all of this policy may NOT be recognized by Mexican authorities and **we** may not be allowed to provide any insurance coverage at all in Mexico. For **your** protection, **you** should consider purchasing automobile insurance coverage from a licensed Mexican insurance company before driving into Mexico.

However, when permitted, protection will be afforded under those coverages for which a premium is shown on the Policy Declarations for an insured **auto** while that insured **auto** is within 75 miles of the United States border and only for a period not to exceed ten days after each separate entry into Mexico.

If loss or damage occurs which may require repair of the insured **auto** or replacement of any part (s) while the insured **auto** is in Mexico, the basis for adjustment of the claim will be as follows: Any amount payable resulting from any covered loss or damage occurring in Mexico shall be payable in the United States. **We** will not be liable for more than the cost of having the repairs made or parts replaced at the nearest point in the United States where repairs or replacements can be performed. The costs for towing, transportation, and salvage operations of the insured **auto** while within Mexico are not covered under this policy.

Definitions Used In This Section

1. **We, Us** or **Our** means the company shown on the Policy Declarations.

2. **Auto** means a land motor vehicle with at least four wheels designed for use on public roads.

3. **Resident** means a person who physically resides in **your** household with the intention of continuing residence there.

4. **You** or **Your** means the policyholder named on the Policy Declarations and that policyholder's **resident** spouse.

Changes

When **we** broaden coverage during the policy period without charge, **you** have the new features if **you** have the coverage. Otherwise, the policy can be changed only by endorsement.

The premium for each **auto** is based on information in **our** possession. Any change in this information will allow **us** to make an adjustment of the policy premium.

Any calculation of **your** premium or changes in **your** coverage will be made using the rules, rates, and forms on file, if required, for **our** use in **your** state.

Duty To Report Policy Changes

You must tell **us** within 30 days when **you** acquire an additional or replacement **auto**. If **you** do not, certain coverages of this policy may not apply.

Combining Limits Of Two Or More Autos Prohibited

If **you** have two or more **autos** insured in **your** name and one of these **autos** is involved in an accident, only the coverage limits shown on the Policy Declarations for that **auto** will apply. When **you** have two or more **autos** insured in **your** name and none of them is involved in the accident, **you** may choose any single **auto** shown on the Policy Declarations and the coverage limits applicable to that **auto** will apply. The limits available for any other **auto** covered by the policy will not be added to the coverage for the involved or chosen **auto**.

Transfer

This policy cannot be transferred to anyone without **our** written consent. However, if **you** die, coverage will be provided until the end of the policy period for:

1. **your** legal representative while acting as such; and
2. persons covered on the date of **your** death.

Payment

If **your** initial premium payment for **your** first policy period is by check, draft, or any remittance other than cash, such payment is conditional upon the check, draft, or remittance being honored upon presentation. If such check, draft, or remittance is not honored upon presentation, this shall be deemed void from its inception. This means that **we** will not be liable under this policy for any claims or damages which would otherwise be covered had the check, draft, or remittance been honored upon presentation.

Conditional Reinstatement

If **we** mail a cancellation notice because **you** didn't pay the required premium when due and **you** then tender payment by check, draft, or other remittance which is not honored upon presentation, **your** policy will terminate on the date and time shown on the cancellation notice and any notice **we** issue which waives the cancellation to reinstates coverage is void. This means that **we** will not be liable under this policy for claims or damages after the date and time indicated on the cancellation notice.

Misrepresentation, Fraud or Concealment

We may void this policy if it was obtained by misrepresentation, fraud or concealment of material facts. If **we** determine that this policy is void, all premiums paid will be returned to **you** since there has been no coverage under this policy.

Cancellation

You may cancel this policy by writing **us** the future date **you** wish to stop coverage.

We may cancel part or all of this policy by mailing notice to **you** at **your** last known address. **Our** notice will include the specific reason(s) for cancellation. The date of cancellation will be at least 15 days after the date of mailing.

Proof of mailing the notice will be proof of notice. A refund, if due, will be in proportion to the time **your** policy has been in effect. Cancellation will be effective even if the refund is not made immediately.

We may cancel this policy for any reason during the first 90 days of the original policy period. After **your** original policy has been in effect 90 days, **we** will not cancel **your** policy during the policy period unless:

1. **you** do not pay the premium when it is due; or

2. **you** or any other operator who either resides in the same household or customarily operates a motor vehicle insured by the policy has had a driver's license suspended or revoked. This must have occurred during the policy period or, if this is a renewal, during its policy period or the 90 days immediately preceding the last anniversary of the effective date.

Any unearned premium amounts under $2.00 will be refunded only upon **your** request.

We will not be liable for any claims or damages which would otherwise be covered, had there not been material misrepresentation, fraud, or concealment of material fact.

We do not cover any loss or occurrence in which any insured person has concealed or misrepresented any material fact or circumstance.

Non-Renewal

We will renew **your** policy, unless South Carolina law permits non-renewal and **we** decide not to renew. If **we** decide not to renew **your** policy, **we** will mail notice to **you** at **your** last known address. **Our** notice will include the specific reason(s) for nonrenewal. Notice will be mailed at least 15 days before the end of the policy period. Proof of mailing the notice will be proof of notice.

Charge For Insufficient Funds Or Closed Account

If at any time, **your** payment of any premium amount due is made by check, electronic transaction, or other remittance which is not honored because of insufficient funds or a closed account, **you** will be charged a fee.

What Law Will Apply

This policy is issued in accordance with the laws of South Carolina and covers property or risks principally located in South Carolina. Subject to the following paragraph, any and all claims or disputes in any way related to this policy shall be governed by the laws of South Carolina.

If a covered loss to the **auto**, a covered **auto** accident, or any other occurrence for which coverage applies under this policy happens outside South Carolina, claims or disputes regarding that covered loss to the **auto**, covered **auto** accident, or other covered occurrence may be governed by the laws of the jurisdiction in which that covered loss to the **auto**, covered **auto** accident, or other covered occurrence happened.

Where Lawsuits May Be Brought

Subject to the following two paragraphs, any and all lawsuits in any way related to this policy, shall be brought, heard, and decided only in a state or federal court located in South Carolina. Any and all lawsuits against persons not parties to this policy but involved in the sale, administration, performance, or alleged breach of this policy, or involved in any other way with this policy, shall be brought, heard, and decided only in a state or federal court located in South Carolina, provided that such persons are subject to or consent to suit in the courts specified in this paragraph.

If a covered loss to the **auto**, a covered **auto** accident, or any other occurrence for which coverage applies under this policy happens outside South Carolina, lawsuits regarding that covered loss to the **auto**, covered **auto** accident, or other covered occurrence may also be brought in the judicial district where that covered loss to the **auto**, covered **auto** accident, or other covered occurrence happened.

Nothing in this provision, **Where Lawsuits May Be Brought**, shall impair any party's right to remove a state court lawsuit to a federal court.

Action Against Us

No one may bring an action against **us** unless there is full compliance with all policy terms; and the action is commenced within one year of the date the cause of action accrues. However, if an action is in any way related to the existence or amount of coverage, or the amount of loss for which coverage is sought, under a particular coverage that is shown on the Policy Declarations, such action must be commenced within the time period specified in the **Action Against Us** provision of that particular coverage. If an action is brought asserting claims relating to the existence or amount of coverage, or the amount of loss for which coverage is sought, under different coverages of this policy, the claims relating to each coverage shall be treated as if they were separate actions for the purpose of the time limit to commence action.

Arbitration

Any claim or dispute in any way related to this policy, by an insured person under this policy against **us** or **us** against an insured person under this policy, may be resolved by arbitration only upon mutual consent of the parties. Arbitration pursuant to this provision shall be subject to the following:

1. no arbitrator shall have the authority to award punitive damages or attorney's fees;
2. neither of the parties shall be entitled to arbitrate any claims or disputes in a representative capacity or as a member of a class; and
3. no arbitrator shall have the authority, without the mutual consent of the parties, to consolidate claims or disputes in arbitration.

Part 1
Automobile Liability Insurance
Bodily Injury – Coverage AA
Property Damage – Coverage BB

Insuring Agreements

We will pay for damages an insured person is legally obligated to pay because of **bodily injury** or property damage meaning:

1. **bodily injury** to any person; and
2. damage to or destruction of property, including loss of use.

Under these coverages, **your** policy protects an insured person from claims for accidents arising out of the ownership, maintenance or use, loading or unloading of an insured **auto**. Damages include prejudgment interest awarded against an insured person.

We will defend an insured person sued as the result of an **auto** accident, even if the suit is groundless or false. **We** will choose the counsel. **We** may settle any claim or suit if **we** believe it is proper.

Additional Payments We Will Make

When **we** defend an insured person under this Part I, **we** will pay:

1. up to $50 a day for the loss of wages or salary if **we** ask that person to attend hearings or trials to defend against a **bodily injury** suit. **We** will not pay for loss of other income. **We** will pay other reasonable expenses incurred at our request.

2. court costs for defense.

3. interest accruing on a judgment entered against **you**, but only on that part of a judgment entered against **you** which do not exceed **our** limits of liability, until such time as **we** have paid, formally offered, or conditionally or unconditionally deposited in court, the amount for which **we** are liable under this policy. This means that under no circumstances will **we** pay interest on that part of a judgment entered against **you** which exceeds **our** stated limits of liability.

4. premiums on appeal bonds and on bonds to release attachments, but not in excess of **our** limit of liability. **We** have no obligation, however, to apply for or furnish these bonds.

We will repay an insured person for:

1. the cost of any bail bonds required because of an accident or traffic law violation involving the use of the insured **auto**. Payment will not exceed $300 per bond. **We** have no obligation to apply for or furnish a bond.

2. reasonable expenses incurred by an insured person for first aid to other persons at the time of an **auto** accident involving the insured **auto**.

Insured Persons

1. While using **your** insured **auto**:
   a. **you**,
   b. any **resident**, and
   c. any other person using it with **your** permission.

2. While using a non-owned **auto**:
   a. **you**,
   b. any **resident** relative using a four wheel private passenger **auto** or **utility auto**.

The following are not insured persons:

1. The United States of America or any of its agencies.

2. Any person with respect to bodily injury or property damage resulting from the operation of an **auto** by that person as an employee of the United States Government. This applies only if the provisions of Section 2679 of Title 28, United States Code as amended, require the Attorney General of the United States to defend that person in any civil action which may be brought for the **bodily injury** or property damage.

Insured Autos

1. Any **auto** described on the Policy Declarations. This includes the four wheel private passenger **auto** or **utility auto you** replace it with.

2. An additional private passenger **auto** or **utility auto you** become the owner of during the policy period provided **we** insure all other private passenger **autos** or **utility autos you** own. **You** must tell **us** within 30 days of acquiring the **auto** and **you** must pay any additional premium. **We** must agree to insure the **auto**. Coverage will not continue after 30 days if **we** are not notified of the additional **auto**.

3. A substitute four wheel private passenger **auto** or **utility auto**, not owned by **you** or a **resident**, being temporarily used while **your** insured **auto** is being serviced or repaired, or if **your** insured **auto** is stolen or destroyed.

4. A non-owned **auto** used by **you** or a **resident** relative with the owner's permission. This **auto** must not be available or furnished for the regular use of an insured person.

5. A trailer while attached to an insured **auto**. The trailer must be designed for use with a private passenger **auto** or **utility auto**. This trailer cannot be used for business purposes with other than a private passenger **auto** or **utility auto**.

Definitions Used In Part 1

1. **We, Us,** or **Our** means the company shown on the Policy Declarations.

2. **Auto** means a land motor vehicle with at least four wheels designed for use on public roads.

3. **Bodily injury** means bodily injury, sickness, disease or death.

4. **Resident** means the physical presence in **your** household with the intention to continue living there. **Your** unmarried dependent children while temporarily away from home will be considered residents, if they intend to continue to live in **your** household.

5. **Utility auto** means an **auto** of the pick-up body, sedan delivery or panel truck type. This **auto** must have a gross vehicle weight of

10,000 pounds or less, according to manufacturer's specifications.

6. **You** or **Your** means the policyholder named on the Policy Declarations and that policyholder's **resident** spouse.

Exclusions – What Is Not Covered

This coverage does not apply to liability for:

1. **your** insured **auto** while used to carry persons or property for a charge, or any **auto you** are driving while available for hire by the public. This exclusion does not apply to shared-expense car pools.

2. auto business operations such as repairing, servicing, testing, washing, parking, storing or selling of **autos** or motor vehicles. This exclusion does not apply to the use of **your** insured **auto** by:
   a. **you, resident relatives**, partners or employees of the partnership of **you** or a **resident relative**; or
   b. any other insured person for damages up to the minimum limits required by the financial responsibility law of South Carolina.

3. a non-owned **auto** while being used in any business or occupation of an insured person. However, coverage does apply while **you, your** chauffeur, or domestic servant are using a private passenger **auto** or trailer.

4. **bodily injury** to an employee of any insured person arising in the course of employment. Coverage does apply to a domestic employee who is not required to be covered by workers' compensation law or similar law.

5. **bodily injury** or property damage arising out of the ownership, maintenance, or use of a motor vehicle with less than four wheels.

6. anyone other than **you**, for claims made by a co-worker injured in the course of employment.

7. damage to or destruction of property an insured person owns, is in charge of, or rents. However, a private residence or a garage rented by that person is covered.

8. **bodily injury** or property damage caused intentionally by or at the direction of an insured person. This exclusion applies only to damages in excess of the minimum limit required by the financial responsibility law of South Carolina.

9. **bodily injury** or property damage which would also be covered under nuclear energy liability insurance. This applies even if the limits of that insurance are exhausted.

10. **bodily injury** or property damage arising out of the participation in any prearranged, organized, or spontaneous:
    a. racing contest;
    b. speed contest; or
    c. use of an **auto** at a track or course designed or used for racing or high performance driving,

    or in practice or preparation for any contest or use of this type.

This exclusion does not apply up to the minimum limits required by the financial responsibility law of South Carolina.

Financial Responsibility

When this policy is certified as proof under any motor vehicle financial responsibility law, the insurance under this part of the policy will comply with the provisions of that law.

Limits Of Liability

The limits shown on the Policy Declarations are the maximum **we** will pay for any single accident involving an insured **auto**. The limit stated for each person for **bodily injury** is **our** total limit of liability for all damages because of **bodily injury** sustained by one person in any single accident involving an insured **auto** including all damages sustained by anyone else as a result of that **bodily injury**. Subject to the limit for each person, the limit stated for each

accident is **our** total limit of liability for all damages for **bodily injury** sustained by two or more persons in any single accident involving an insured **auto**. For property damage, the limit stated for each accident is **our** total limit of liability for property damage sustained in any single accident involving an insured **auto**.

The liability limits apply to each insured **auto** as shown on the Policy Declarations. The insuring of more than one person or **auto** under this policy will not increase our liability limits beyond the amount shown for any one **auto**, even though a separate premium is charged for each **auto**. The limits also will not be increased if **you** have other **auto** insurance policies that apply.

There will be no duplication of payments made under the Bodily Injury Liability and Uninsured Motorists Insurance or Underinsured Motorists Insurance of this policy.

An **auto** and attached trailer are considered one **auto**. Also, an **auto** and a mounted camper unit, topper, cap or canopy are considered one **auto**.

If There Is Other Insurance

If an insured person is using a substitute private passenger **auto** or non-owned **auto, our** liability insurance will be excess over other collectible insurance. If more than one policy applies to an accident involving **your** insured **auto, we** will bear **our** proportionate share with other collectible liability insurance.

Assistance And Cooperation

When **we** ask, an insured person must cooperate with **us** in the investigation, settlement and defense of any claim or lawsuit. If **we** ask, that person must also help **us** obtain payment from anyone who may be jointly responsible.

We can't be obligated if an insured person voluntarily takes any action or makes any payments other than for covered expenses for bail bonds or first aid to others.

Action Against Us

No insured person may bring an action against **us** in any way related to the existence or amount of coverage, or the amount of loss for which coverage is sought, under **Part I—Automobile Liability Insurance**, unless there is full compliance with all policy terms and such action is commenced no later than the last of the following to occur:

1. two years after the date of the accident; or
2. one year after entry of final judgment or other court order terminating a lawsuit against the insured to determine the insured's liability or the amount of the insured's liability arising out of the accident; or
3. one year after **we** agree to a settlement; or
4. if **we** have denied coverage and the insured person has thereafter settled with the claimant without any lawsuit being filed to determine the insured's liability or the amount of the insured's liability arising out of the accident, within one year after the denial of coverage.

If the insured person is subjected to claims arising out of the same accident by more than one person claiming **bodily injury** or property damage, the time for the insured person to bring an action against **us** shall be determined separately as to the coverage sought or provided with respect to the claims of each of those claiming against the insured person.

If liability has been determined by judgment after trial, or by written agreement among the insured, the other person, and **us**, then whoever obtains this judgment or agreement against an insured person may sue **us** up to the limits of this policy. However, no one has the right to join **us** in a suit to determine legal responsibility of an insured person.

Bankruptcy Or Insolvency

The bankruptcy or insolvency of an insured person will not relieve **us** of any obligation.

What To Do In Case Of An Auto Accident Or Claim

If an insured person has an **auto** accident, **we** must be informed promptly of all details. If an insured

person is sued as the result of an **auto** accident, **we** must be informed immediately.

Additional Interested Parties

If one or more additional interested parties are listed on the Policy Declarations, the Automobile Liability Insurance coverages of this policy will apply to those parties as insureds.

We will mail or deliver at least 15 days notice to an additional interested party if **we** cancel or make any changes to this policy which adversely affect that party's interest. **Our** notice will be considered properly given if mailed to the last known address of the additional interested party.

The naming of an additional interested party does not increase that party's right to recovery under this policy, nor does it impose an obligation for the payment of premiums under this policy.

Part 2
Medical Expense Benefits
Coverage CC

Insuring Agreements

We will pay an **injured person** medical expense benefits. Payments will be made only when bodily injury, sickness, disease or death is caused by an accident arising from the use of a **motor vehicle** as a **motor vehicle.**

Medical Expense

All reasonable and necessary treatment expenses incurred within three years from the date of accident This covers medical, surgical, x-ray, optical, dental, chiropractic and rehabilitative services, prosthetic devices, prescription drugs, ambulance, hospital, extended care and nursing services, and funeral services. Also covered are treatment and services rendered in accordance with a recognized religious or licensed method of healing.

Definitions Used In Part 2

1. **We, Us,** or **Our** means the company indicated on the Policy Declarations.

2. **Injured Person** means:
   a. **You** or a **resident relative** who sustains bodily injury, sickness, disease or death:
      i. while in, on, getting into or out of a **motor vehicle**
      ii. when struck as a pedestrian by a **motor vehicle.**
   b. any other person who sustains bodily injury, sickness, disease or death:
      i. while in, on, getting into or out of the **insured auto.**
      ii. while in, on, getting into or out of a **motor vehicle** operated by **you** or a **resident relative.**

3. **Insured auto** means a **motor vehicle** to which the insurance under this coverage applies, and for which a specific premium is charged.

4. **Motor vehicle** means a vehicle which is required to be registered under the South Carolina Motor Vehicle Registration and Licensing Act.

5. **Resident relative** means
   a. any person related to **you** and residing in **your** household, and
   b. any minor residing in **your** household who is:
      i. in **your** custody; or
      ii. in the custody of any relative who resides in **your** household.

   These persons will be considered **resident relatives**, even if temporarily living elsewhere.

6. **You** or **Your** means the policyholder named on the Policy Declarations.

Exclusions – What Is Not Covered

This coverage does not apply to bodily injury, sickness, disease or death:

1. to **you** or a **resident relative** while maintaining or using any **motor vehicle you** own which is not an **insured auto.**

2. to any **resident relative** while maintaining or using any **motor vehicle** owned by that relative.

3. to any person who intentionally causes the accident resulting in such injury.

4. to any person
   a. while operating or voluntarily riding in a vehicle known by him to be stolen; or
   b. while in the commission of a felony or while in violation of Section 56-5-750 of the South Carolina 1976 Code.

5. to any person while in, on, getting into or out of a **motor vehicle**, or while a pedestrian, as a result of an accident involving any **motor vehicle** (other than an **insured auto**) for which security is available under South Carolina law.

6. to any pedestrian, other than **you** or a **resident relative**, if the accident occurs outside the State of South Carolina.

7. to any person while maintaining or using a **motor vehicle** while located for use as a residence or premises.

8. to any person, arising out of the operation, maintenance, or use of a motorcycle by such person.

9. any person arising out of the participation in any prearranged, organized, or spontaneous:
   a. racing contest;
   b. speed contest; or
   c. use of an **auto** at a track or course designed or used for racing or high performance driving,

   or in practice or preparation for any contest or use of this type.

Limits Of Liability

The limit of **our** liability for Medical Expense Benefits, as stated on the Policy Declarations, is the maximum **We** will pay per any one **injured person** for any **motor vehicle** accident. This is the maximum **we** will pay regardless of the number of:

1. claims made;

2. vehicles shown on the Policy Declarations; or

3. vehicles involved in the accident.

Benefits will be reduced by any amounts paid or payable under any workers' compensation law.

Determination Of Reasonable And Necessary Medical Expenses

If the **injured person** incurs medical expenses which **we** deem not to be reasonable or necessary, **we** have no obligation to pay and may refuse to pay for those medical expenses.

If the **injured person** is sued by a health care provider because **we** refuse to pay medical expenses which **we** deem to be unreasonable or unnecessary, **we** will pay resulting defense costs, and pay any resulting judgment against the injured person, up to the Automobile Medical Expense Benefits policy limit. **We** will choose the counsel. The **injured person** must cooperate with **us** in the defense of any claim or lawsuit. If **we** ask the **injured person** to attend hearings or trials, **we** will pay up to $50 per day for loss of wages or salary. **We** will also pay other reasonable expenses incurred at **our** request. If the **injured person** is threatened with or made the subject of collection activity by the medical care provider, **we** will defend the **injured person** as to such activity.

Action Against Us

No one may bring an action against **us** in any way related to the existence or amount of coverage, or the amount of loss for which coverage is sought, under **Part II—Auto Medical Payments, Coverage CC**, unless there is full compliance with all policy terms and such action is commenced within one year after the date the expenses for which coverage is sought were actually incurred by an insured person.

Notice To Us

As soon as possible, the **injured person** or someone on that person's behalf must give **us** written notice of the accident. This notice must include the time, place and circumstances of the accident and the identity of the **injured person**.

Proof Of Claim; Medical Reports

As soon as practicable, the **injured person** or someone on that person's behalf must give **us** written proof of claim. It must include all details reasonably required by **us** to determine the amounts

payable. The injured person may be asked to take physical examinations by physicians **we** choose, when and as often as **we** may reasonably require.

Non-Duplication Of Benefits; Priority Of Payments; Other Insurance

No **injured person** will recover duplicate benefits for the same loss under this and any similar insurance, including self-insurance. If the **injured person** is entitled to recover benefits under more than one policy, the maximum recovery under all policies will not exceed the amount payable under the provisions of the policy providing the highest dollar limit. **We** will not be liable for more than the proportion of any loss to which this coverage applies than **our** limit of liability bears to the sum of **our** limit of liability and that of any other applicable insurance.

Subrogation

Subject to the provisions of South Carolina law, no benefit payable under this coverage will be subject to subrogation or assignment.

Reimbursement And Trust Agreement

When **we** pay any person under this coverage:

1. **We** are entitled to repayment of amounts paid by **us** out of the proceeds of any settlement that person recovers from any legally responsible party or insurer.

2. All rights of recovery against any legally responsible party or insurer must be preserved for **our** benefit.

Our rights under this provision are subject to any applicable limitations provided under the laws of South Carolina.

Constitutionality Clause

The premium for and the coverages of the policy have been established in accordance with the laws of South Carolina. If a court of competent jurisdiction declares, or enters a judgment the effect of which is to render the provisions of those applicable laws invalid or unenforceable, in whole or in part, **we** will have the right to recompute the premium payable for this policy. These provisions will be voidable or subject to amendment at **our** option in accordance with such declaration or judgment.

Part 3
Uninsured Motorists Insurance – Coverage SS
Underinsured Motorists Insurance – Coverage SU

Section I
Uninsured Motorists Insurance – Coverage SS

Insuring Agreements

If a premium is shown on the Policy Declarations for Uninsured Motorists Insurance, **we** will pay those damages that an insured person is legally entitled to recover from the owner or operator of an uninsured auto because of:

1. **bodily injury** sustained by an insured person; and
2. **property damage.**

The **bodily injury** or **property damage** must be caused by accident and arise out of the ownership, maintenance or use of an uninsured auto. This coverage does not apply to the first $200 of the total amount of all **property damage** as the result of any one accident.

Insured Persons

1. **you** and any **resident** relative.

2. any other person while in, on, or getting into or out of an insured auto with **your** permission.

3. any other person who is legally entitled to recover because of **bodily injury** to **you**, a **resident** relative or an occupant of **your** insured auto with **your** permission.

An Insured Auto Is A Motor Vehicle:

1. described on the Policy Declarations. This includes the **motor vehicle you** replace it with.

2. **you** become the owner of during the policy period. This additional **motor vehicle** will be

covered if **we** insure all other private passenger **motor vehicles you** own. **You** must, however, tell **us** within 30 days after **you** acquire the **motor vehicle**. **You** must pay any additional premium. **We** must agree to insure the **motor vehicle**. Coverage will not continue after 30 days if **we** are not notified of the additional **motor vehicle**.

3. not owned by **you** or a **resident** relative, if being temporarily used while **your** insured auto is being serviced or repaired, or if **your** insured auto is stolen or destroyed. The **motor vehicle** must be used with the owner's permission. It cannot be furnished for the regular use of **you** or any **resident** relative.

4. not owned by **you** or a **resident** relative if being operated by **you** or a **resident** relative with the owner's permission. The **motor vehicle** cannot be furnished for the regular use of **you** or any **resident** relative.

An insured auto is not a **motor vehicle** made available for public hire by an insured person.

An Uninsured Auto Is:

1. a **motor vehicle** which has
   a. no bodily injury liability bond or insurance in effect; and
   b. no cash or securities deposited with the State Treasurer;

   at the time of the accident.

2. a **motor vehicle** covered by insurance which doesn't provide at least the minimum limits specified by the South Carolina Financial Responsibility Act and for which there is no cash deposit or bond in lieu of such minimum insurance limits.

3. a **motor vehicle** for which the bonding or insuring company:
   a. successfully denies coverage;
   b. is or becomes insolvent;
   c. is in delinquency proceedings, suspension or receivership; or
   d. is proven unable to respond to a judgment.

4. a hit-and-run **motor vehicle** which causes **bodily injury** to an insured person by physical contact with the insured person or with a vehicle occupied by that person or which causes **property damage** arising out of the physical contact with the damaged property. The identity of the operator or the owner of the vehicle must be unknown and the insured must not have been negligent in failing to determine the identification of the other vehicle and driver of the other vehicle at the time of the accident. The accident must be reported within 24 hours to some appropriate police authority. **We** must be notified within 30 days or as soon thereafter as practicable. If the insured person was occupying a vehicle at the time of the accident, **we** have a right to inspect it.

5. a phantom **motor vehicle** which causes:
   a. **bodily injury** to an insured person without physical contact with the insured person or with a **motor vehicle** occupied by that person.
   b. **property damage** to the insured auto without physical contact between the vehicles.

   The facts of the accident must have been witnessed by someone other than the owner or operator of the insured vehicle, provided, however, the witness must sign an affidavit attesting to the truth of the facts of the accident contained in the affidavit.

An Uninsured Auto Is Not:

1. a **motor vehicle** owned by any state or local government or agency, unless operated by a person without proper authorization.

2. a **motor vehicle** owned by any federal government or agency.

3. a **motor vehicle** that is lawfully self-insured.

4. a **motor vehicle** which is insured for Automobile Liability Insurance under Part 1 of this policy.

Definitions Used In Part 3 – Section I

1. **We, Us,** or **Our** means the company shown on the Policy Declarations.

2. **Bodily injury** means bodily injury, sickness, disease or death.

3. **Motor vehicle** means a land motor vehicle or trailer other than:
   a. a vehicle or other equipment designed for use off public roads, while not on public roads;
   b. a vehicle operated on rails or crawler-treads; or
   c. a vehicle while used as a residence or premises.

4. **Property damage** means damage to or destruction of the property of an insured person.

5. **Resident** means a person who physically resides in **your** household with the intention of continuing residence there. **Your** unmarried dependent children while temporarily away from home will be considered **residents** if they intend to resume residing in **your** household.

6. **You** or **Your** means the policyholder named on the Policy Declarations and that policyholder's **resident** spouse.

Exclusions – What Is Not Covered

We will not pay any damages an insured person is legally entitled to recover because of:

1. **bodily injury** or **property damage** to any person who makes a settlement with the owner or operator of the uninsured auto without **our** written consent.

2. **bodily injury** or **property damage** to any person while in, on, getting into, or out of an insured auto while available for hire to the public. This exclusion does not apply to shared expense car pools.

3. **bodily injury** or **property damage**, to the extent that benefits are paid, payable or required to be provided under any workers' compensation or disability benefits law.

4. **property damage** if the payment would directly or indirectly benefit any insurer of property.

5. **property damage** to the extent that an insured person has been compensated by other property or physical damage insurance.

6. **bodily injury** or **property damage** arising out of the participation in any prearranged, organized, or spontaneous:
   a. racing contest;
   b. speed contest; or
   c. use of a **motor vehicle** at a track or course designed or used for racing or high performance driving,

   or in practice or preparation for any contest or use of this type.

Limits Of Liability

The limits shown on the Policy Declarations are the maximum **we** will pay for any single accident involving an insured **auto**. The limit stated for each person for **bodily injury** is **our** total limit of liability for all damages because of **bodily injury** sustained by one person in any single accident involving an insured auto including all damages sustained by anyone else as a result of that **bodily injury**. Subject to the limit for each person, the limit stated for each accident is **our** total limit of liability for all damages for **bodily injury** sustained by two or more persons in any single accident involving an insured auto. For **property damage**, the limit stated for each accident is **our** total limit of liability for **property damage** sustained in any single accident involving an insured auto.

These limits are the maximum **we** will pay for any one motor vehicle accident regardless of the number of:

1. insured persons;
2. claims made;

3. vehicles or premiums shown on the Policy Declarations; or
4. vehicles involved in the accident.

The liability limits apply to each insured **motor vehicle** as shown on the Policy Declarations. The insuring of more than one person or auto under this policy will not increase **our** liability limits beyond the amount shown for any one auto, even though a separate premium is charged for each auto. The limits also will not be increased if **you** have other auto insurance policies that apply.

In addition to this limit, **we** will make an additional amount available to **you** or any **resident** relative if such person sustains **bodily injury** or **property damage** in an accident involving **your** insured auto. The additional amount is equal to the sum of that part of the limit on each additional insured auto shown on the Policy Declarations that does not exceed the limit provided for the insured auto involved in the accident. This additional amount is the most **we** will pay over the stated limit of liability regardless of the number of:

1. insured persons;
2. claims made; or
3. vehicles involved in the accident.

However, no one will be entitled to receive duplicate benefits for the same elements of loss.

Subject to the above limits of liability, damages payable will be reduced by:

1. all amounts paid or payable by or on behalf of the owner or operator of the uninsured auto, or anyone else responsible. This includes all sums paid under the bodily injury liability coverage or property damage liability coverage of this or any other auto policy.
2. all amounts paid or payable under any Uninsured Motorists Coverage applicable to the vehicle involved in the accident; and
3. all amounts paid because of the **property damage** under Part 4 of the policy or any similar coverage under any other policy.
4. all amounts payable under any workers' compensation law, disability benefits law, or similar law, Medical Expense Benefits Coverage under this policy or any similar automobile medical payments coverage.

Non-Duplication Of Benefits

No injured person will recover duplicate benefits for the same elements of loss under this or any other uninsured motorists insurance, including approved plans of self-insurance.

Proof Of Claim; Medical Reports

Any person making claim for **bodily injury** must give us written proof of claim as soon as practicable. Any person making claim for **property damage** must submit written proof of claim within 60 days, unless **we** extend this time in writing. All proof of claims must include all details **we** need to determine the amounts payable.

The insured person may be required to take physical examinations by physicians **we** choose, as often as **we** may reasonably require. The insured person or that person's representative must authorize us to obtain medical reports or copies of records. **We** may also require any person making claim to submit to questioning under oath and sign the transcript.

Any person making claim for **property damage** must allow us to inspect the damaged property.

Assistance And Cooperation

With respect to the minimum limits required by law, **we** may require the insured person to take proper action to preserve all rights to recover damages from anyone responsible for the **bodily injury** or **property damage** to the extent of **our** payment.

If There Is Other Insurance

If the insured person was in, on, getting into or out of a vehicle which is insured for this coverage under another policy, coverage under this policy will be excess. This means that when the insured person is legally entitled to recover damages in excess of the other policy limit, **we** will pay only the amount by which the damages exceed the limit of liability of that policy up to the limit of liability of this policy.

If more than one policy applies to the accident on a primary basis, the total benefits payable will not exceed the amount the insured person is legally entitled to recover. **We** will bear **our** proportionate share with other uninsured motorists benefits.

With respect to **property damage**, this coverage will apply only after the limit of any other collectible insurance applicable to the damaged property has been exhausted.

Our Rights Of Recovery

1. If an insured person has prosecuted to judgment any suit against any person responsible, **we** will be entitled to an assignment of the judgment to the extent of payment under this insurance.

2. **We** will pay **our** proportionate part of any reasonable costs and expenses incurred for any recovery to the extent of payment under this insurance, including reasonable attorneys' fees. However, **we** reserve the right to retain an attorney of **our** choice to pursue a claim to the extent that claim is not in excess of the minimum limits required by law.

3. If an insured person making a claim for **property damage** under this insurance is also entitled to other insurance or other compensation for the **property damage**, **we** will not be obligated to pay a claim until the insured person has assigned us the rights to the compensation, to the extent of payment under this insurance.

4. If **we** make a payment under this policy and the person to or for whom payment is made recovers damages from another, that person shall:
   a. hold in trust for **us** the proceeds of the recovery; and
   b. reimburse **us** to the extent of **our** payment.

Payment Of Loss By Us

Any amount due is payable to the insured person, to the parent or guardian of an injured minor, or to the spouse of any insured person who dies. However, **we** may pay any person lawfully entitled to recover damages.

Legal Actions

No one may sue **us** under this coverage unless there is full compliance with all the policy terms. No action attempting to establish the liability of the uninsured motorist may be brought under this coverage unless **we** are served with copies of the pleadings in the manner prescribed by law. **We** have the right to appear and defend in the name of the uninsured motorist in any suit which may affect **our** liability.

Conformity With State Statute

These coverages are intended to be in full conformity with the South Carolina Uninsured Motorists Law. If any provision of this coverage is in conflict with such law, the provision is amended or eliminated to conform with such law.

Action Against Us

No one may bring an action against **us** in any way related to the existence or amount of coverage, or the amount of loss for which coverage is sought, under **Part 3—Uninsured Motorists Insurance, Coverage SS**, unless there is full compliance with all policy terms and, except as provided below, such action is commenced within two years after the date of the accident.

If an insured person commences a timely action against the owner or operator of an uninsured auto to recover damages for loss arising out of the accident and gives **us** written notice of such action within 30 days after such action is commenced, an action against **us** related to the existence or amount of coverage, or the amount of loss for which coverage is sought, may be brought more than two years after the date of the accident, but in no event later than the earliest of the following to occur:

1. one year after entry of a final judgment or other court order terminating such lawsuit against the owner or operator of an uninsured auto; or
2. one year after **we** deny coverage.

If any insured person sues a person believed responsible for the accident without **our** written consent, **we** are not bound by any resulting judgment.

Section II
Underinsured Motorists Insurance Coverage SU

Insuring Agreements
We will pay those damages that an insured person is legally entitled to recover from the owner or operator of an underinsured auto because of:

1. **bodily injury** sustained by an insured person; and

2. **property damage.**

The **bodily injury** or **property damage** must be caused by accident and arise out of the ownership, maintenance or use of an underinsured auto.

We will pay under this coverage only after the limits of liability under any applicable liability bonds or policies, or any applicable uninsured motorists coverage have been exhausted by payment of judgments or settlements.

Insured Persons
1. **you** and any **resident** relative.

2. any other person while in, on, getting into or out of an insured auto with **your** permission.

3. any other person who is legally entitled to recover because of **bodily injury** to **you**, a **resident** relative or an occupant of **your** insured auto with **your** permission.

An insured auto is a motor vehicle:
1. described on the Policy Declarations. This includes the **motor vehicle you** replace it with.

2. **you** become the owner of during the policy period. This additional **motor vehicle** will be covered if **we** insure all other private passenger **motor vehicles you** own. **You** must, however, tell **us** within 30 days after **you** acquire the **motor vehicle. You** must pay any additional premium. **We** must agree to insure the additional **motor vehicle.** Coverage will not continue after 30 days if **we** are not notified of the additional **motor vehicle.**

3. not owned by **you** or a **resident** relative if being temporarily used while **your** insured auto is being serviced or repaired, or if **your** insured auto is stolen or destroyed. The **motor vehicle** must be used with the owner's permission. It cannot be furnished or available for the regular use of **you** or any **resident** relative.

4. not owned by **you** or a **resident** relative, if being operated by **you** or a **resident** relative with the owner's permission. The **motor vehicle** cannot be furnished for the regular use of **you** or any **resident** relative.

An insured auto is not a **motor vehicle** made available for public hire by an insured person.

An underinsured auto is a **motor vehicle** which has liability insurance or a bond in effect at the time of the accident in an amount at least equal to the minimum limits required by the financial responsibility law of South Carolina, but its limit of liability is not enough to pay the full amount the insured is legally entitled to recover as damages.

An underinsured auto is not a **motor vehicle** which is owned by any state or local government or agency.

Definitions Used In Part 3 – Section II
1. **We, Us** or **Our** means the company shown on the Policy Declarations.

2. **Bodily injury** means bodily injury, sickness, disease or death.

3. **Motor vehicle** means a land motor vehicle or trailer other than:
   a. a vehicle or other equipment designed for use off public roads, while not on public roads;
   b. a vehicle operated on rails or crawler treads; or
   c. a vehicle while used as a residence or premises.

4. **Property damage** means damage to or destruction of property of an insured person.

5. **Resident** means a person who physically resides in **your** household with the intention of continuing residence there. **Your** unmarried dependent children while temporarily away from home will be considered **residents** if they intend to resume residing in **your** household.

6. **You** or **Your** means the policyholder named on the Policy Declarations and that policyholder's **resident** spouse.

Exclusions – What Is Not Covered

We will not pay any damages an insured person is legally entitled to recover because of:

1. **bodily injury** or **property damage** to any person who makes a settlement with the owner or operator of the underinsured auto without **our** written consent.

2. **bodily injury** or **property damage** to any person while in, on, getting into, or out of an insured auto while available for hire to the public. This exclusion does not apply to shared expense car pools.

3. **bodily injury** or **property damage** to the extent that benefits are paid, payable or required to be provided under any workers' compensation or disability benefits law.

4. **property damage** if the payment would directly or indirectly benefit any insurer of property.

5. **property damage** to the extent that an insured person has been compensated by other property or physical damage insurance.

6. **bodily injury** or **property damage** arising out of the participation in any prearranged, organized, or spontaneous:
   a. racing contest;
   b. speed contest; or
   c. use of a **motor vehicle** at a track or course designed or used for racing or high performance driving,

   or in practice or preparation for any contest or use of this type.

Limits Of Liability

The limits shown on the Policy Declarations are the maximum **we** will pay for any single accident involving an insured auto. The limit stated for each person for **bodily injury** is **our** total limit of liability for all damages because of **bodily injury** sustained by one person in any single accident involving an insured auto including all damages sustained by anyone else as a result of that **bodily injury**. Subject to the limit for each person, the limit stated for each accident is **our** total limit of liability for all damages for **bodily injury** sustained by two or more persons in any single accident involving an insured auto. For **property damage**, the limit stated for each accident is **our** total limit of liability for **property damage** sustained in any single accident involving an insured auto. This is the most **we** will pay regardless of the number of:

1. insured persons;

2. claims made;

3. vehicles or premiums shown on the Policy Declarations; or

4. vehicles involved in the accident.

The Underinsured Motorists Insurance limits apply to each insured **motor vehicle** as shown on the Policy Declarations. The insuring of more than one person or auto under this policy will not increase **our** liability limits beyond the amount shown for any one auto, even though a separate premium is charged for each auto. The limits also will not be increased if **you** have other auto insurance policies that apply.

In addition to this limit, **we** will make an additional amount available to **you** or any **resident** relative if such person sustains **bodily injury** or **property damage** in an accident involving **your** insured auto. The additional amount is equal to the sum of that part of the limit on each additional insured auto shown on the Policy Declarations that does not exceed the limit provided for the insured auto involved in the accident. This additional amount is the most **we** will

pay over the stated limit of liability regardless of the number of:

1. insured persons;

2. claims made; or

3. vehicles involved in the accident.

However, no one will be entitled to receive duplicate benefits for the same elements of loss.

Subject to the above limits of liability, damages payable will be reduced by:

1. all amounts paid or payable by or on behalf of the owner or operator of the underinsured auto or anyone else responsible. This includes all sums paid or payable under the bodily injury liability coverage or property damage liability coverage of this or any other auto policy.

2. all amounts paid or payable under any applicable uninsured motorists coverage. This includes all amounts paid under the Uninsured Motorists Insurance of this policy.

3. all amounts payable under any workers' compensation law, disability benefits law, or similar law, Medical Expense Benefits Coverage of this policy, or any similar automobile medical payments coverage.

4. all amounts paid or payable under any Underinsured Motorists Coverage applicable to a vehicle, other than **your** insured auto, which the insured person was in, on, getting into, or out of at the time of the accident.

5. all amounts paid under Part 4, Protection Against Loss To The Auto, of this policy or any similar coverage under any other policy.

Any payment under this coverage will reduce any amount that person is entitled to recover for the same damages under Part I of this policy.

Non-Duplication Of Benefits

No injured person will recover duplicate benefits for the same elements of loss under this or any other underinsured motorists insurance, including approved plans of self-insurance.

Proof Of Claim; Medical Reports

As soon as possible, any person making claim must give **us** written proof of claim. It must include all details **we** may need to determine the amounts payable.

The insured person may be required to take physical examinations by physicians **we** choose, as often as **we** may reasonably require. The insured person or that person's representative must authorize **us** to obtain medical reports or copies of records. **We** may also require any person making claim to submit to questioning under oath and sign the transcript.

Any person making claim for **property damage** must allow us to inspect the damaged property.

Our Rights Of Recovery

1. If an insured person has prosecuted to judgment any suit against any person responsible, **we** will be entitled to an assignment of the judgment to the extent of payment under this insurance. **We** will pay our proportionate part of any reasonable costs and expenses incurred for any recovery to the extent of payment under this insurance, including reasonable attorneys' fees.

2 If an insured person making a claim for **property damage** under this insurance is also entitled to other insurance or other compensation for the **property damage, we** will not be obligated to pay a claim until the insured person has assigned **us** the rights to the compensation, to the extent of payment under this insurance.

3. If **we** make a payment under this policy and the person to or for whom payment is made recovers damages from another, that person shall:
   a. hold in trust for **us** the proceeds of the **recovery**; and
   b. reimburse **us** to the extent of **our** payment.

If There Other Insurance

If the insured person was in, on, getting into or out of a vehicle which is insured for this coverage under another policy, coverage under this policy will be excess. This means that when the insured person is

legally entitled to recover damages in excess of the other policy limit, **we** will pay only the amount by which the damages exceed the limit of liability of that policy up to the limit of liability of this policy.

If more than one policy applies to the accident on a primary basis, the total benefits payable will not exceed the amount the insured person is legally entitled to recover. **We** will bear **our** proportionate share with other underinsured motorists benefits.

With respect to **property damage**, this coverage will apply only after the limit of any other collectible insurance applicable to the damaged property has been exhausted.

Payment of Loss by Us
Any amount due is payable to the insured person, to the parent or guardian of an injured minor, or to the spouse of any insured person who dies. However, **we** may pay any person lawfully entitled to recover damages.

Legal Actions
No one may sue us under this coverage unless there is full compliance with all the policy terms.

If, at any time before **we** pay for the loss, an insured person institutes a suit against anyone believed responsible for the accident, **we** must be given a copy of the summons and complaint or other process. If a suit is brought without **our** written consent, **we** are not bound by any resulting judgment.

Conformity To Statute
This coverage is intended to be in full compliance with the South Carolina Uninsured Motorists Law. If any provision of this endorsement conflicts with that law, it is amended or eliminated to comply with the law.

Action Against Us
No one may bring an action against **us** in any way related to the existence or amount of coverage, or the amount of loss for which coverage is sought, under **Part 3—Underinsured Motorists Insurance, Coverage SU**, unless there is full compliance with all policy terms and, except as provided below, such action is commenced within two years after the date of the accident.

If an insured person commences a timely action against the owner or operator of an uninsured auto to recover damages for loss arising out of the accident and gives **us** written notice of such action within 30 days after such action is commenced, an action against **us** related to the existence or amount of coverage, or the amount of loss for which coverage is sought, may be brought more than two years after the date of the accident, but in no event later than the earliest of the following to occur:

1. one year after entry of a final judgment or other court order terminating such lawsuit against the owner or operator of an uninsured auto; or
2. one year after **we** deny coverage.

If any insured person sues a person believed responsible for the accident without **our** written consent, **we** are not bound by any resulting judgment.

Part 4
Protection Against Loss To The Auto

Insuring Agreements
The following coverages apply when indicated and a premium for them is shown on the Policy Declarations. Other information applicable to all these coverages appears after all the coverage descriptions.

Auto Collision Insurance
Coverage DD
We will pay for loss to **your** insured **auto** or a non-owned auto from a collision with another object or by upset of that **auto** or trailer. No deductible will apply to loss to automobile safety glass.

Auto Comprehensive Insurance
Coverage HH
We will pay for loss to an insured **auto** not caused by collision. Loss caused by missiles, falling objects, fire, theft or larceny, explosion, earthquake, windstorm, hail, water, flood, malicious mischief or vandalism, and riot or civil commotion is covered. Glass breakage, whether or not caused by collision,

and collision with a bird or animal is covered. Plastic or other materials used by the manufacturer as substitutes for glass will also be considered glass.

If by agreement between **you** and **us**, the glass is repaired rather than replaced, the deductible amount will not be subtracted from a glass breakage loss. No deductible will apply to loss to automobile safety glass.

Towing And Labor Costs Coverage JJ

We will pay costs for labor performed at the initial place of disablement and for towing made necessary by the disablement of **your** insured **auto** or a non-owned **auto**. The total limit of **our** liability for towing and labor caused by a single loss is stated on the Policy Declarations.

Rental Reimbursement Coverage Coverage UU

If a premium is shown on the Policy Declarations for Rental Reimbursement Coverage, and if **you** have an **auto** accident, or the entire insured **auto** is stolen, **we** will reimburse **you** for **your** cost of renting an **auto** from a rental agency or garage. **We** will not pay more than the dollar amount per day shown on the Policy Declarations. We will not pay mileage charges or any collision damage waiver.

If an insured **auto** is disabled by a collision or comprehensive loss, coverage starts the day of the loss. If the entire insured **auto** is stolen, coverage begins the day **you** report the theft to **us**. If an insured **auto** is driveable, coverage starts the day the **auto** is taken to a garage for repairs.

Coverage ends when whichever of the following occurs first:

1. if an insured **auto** is disabled by a collision or comprehensive loss, completion of the repairs or replacement of the **auto**;

2. if an insured **auto** is stolen, when **we** offer settlement or **your auto** is returned to use; or

3. thirty full days of coverage.

Sound System Coverage Coverage ZA

If a premium is shown on the Policy Declarations for Sound System Coverage, **we** will pay for loss to a **sound system**.

Sound System Coverage applies only if Auto Comprehensive Insurance is in effect under this policy. This coverage makes **sound systems**, and antennas or other apparatus used specifically with them, insured property under the terms of both Auto Collision Insurance and Auto Comprehensive Insurance. The limit of **our** liability for each loss is shown on the Policy Declarations.

Tape Coverage Coverage ZZ

If a premium is shown on the Policy Declarations for Tape Coverage, **we** will pay for loss to any tapes, compact discs or similar items used with **auto sound systems**. Coverage applies to property owned by **you** or a **resident** relative that is in or on **your** insured **auto** at the time of loss. The total limit of **our** liability for each loss is shown on the Policy Declarations.

This coverage applies only if **you** have Auto Comprehensive Insurance under this policy. Tape Coverage makes tapes, compact discs, or similar items insured property under **your** Auto Comprehensive Insurance.

Additional Payments We Will Make Under Part 4

1. **We** will pay up to $200 for loss of clothing and personal luggage, including its contents, belonging to **you** or a **resident** relative while it is in or upon **your** insured **auto**. This provision does not apply if the insured **auto** is a **travel-trailer**.

   This coverage applies only when:

   a. the loss is caused by collision and **you** have purchased Auto Collision Insurance.

   b. the entire **auto** is stolen, and **you** have purchased Auto Comprehensive Insurance.

   c. physical damage is done to the **auto** and to the clothing and luggage caused by

earthquake, explosion, falling objects, fire, lightning or flood and **you** have purchased Auto Comprehensive Insurance.

The amount stated under paragraph 1. Above is the maximum **we** will pay, regardless of the number of vehicles insured.

2. If **you** have purchased Auto Collision Insurance or Auto Comprehensive Insurance under this policy, **we** will pay general average and salvage charges imposed when **your** insured **auto** is being transported.

Insured Autos

1. Any **auto** described on the Policy Declarations. This includes the four wheel private passenger **auto** or **utility auto you** replace it with if **you** notify **us** within 30 days of the replacement and pay the additional premium.

2. An additional four wheel private passenger **auto** or **utility auto you** become the owner of during the policy period. This **auto** will be covered if **we** insure all other private passenger **autos** or **utility autos you** own. **You** must, however, tell **us** within 30 days of acquiring the **auto. You** must pay any additional premium. **We** must agree to insure the **auto.** Coverage will not continue after 30 days if **we** are not notified of the additional **auto.**

3. A substitute four wheel private passenger **auto** or **utility auto,** not owned by **you** or a **resident,** temporarily used with the permission of the owner while **your** insured **auto** is being serviced or repaired, or if **your** insured **auto** is stolen or destroyed.

4. A non-owned four wheel private passenger **auto** used by **you** or a **resident** relative with the owner's permission. This **auto** must not be available or furnished for the regular use of **you** or any **resident.**

5. A trailer while attached to an insured **auto.** This trailer must be designed for use with a private passenger **auto.** This trailer cannot be used for business purposes with other than a private passenger **auto** or **utility auto.** Home, office, store, display, or passenger trailers, **travel-trailers** or **camper units** are not covered unless described on the Policy Declarations.

Definitions Used In Part 4

1. **We, Us,** or **Our** the company as shown on the Policy Declarations.

2. **Auto** means a land motor vehicle with at least four wheels designed for use on public roads.

3. **Camper unit** means a demountable unit designed to be used as temporary living quarters, including all accessories built into and forming a permanent part of the unit. A camper unit includes caps, toppers, canopies and all equipment and accessories built into and forming a permanent part of the structure. However, a camper unit will not include radio or television antennas, awnings, cabanas, or equipment designed to create additional living facilities while off a highway.

4. **Motor home** means a self-propelled vehicle equipped, designed or used as a living quarters.

5. **Resident** means the physical presence in **your** household with the intention to continue living there. Unmarried dependent children temporarily away from home will be considered residents if they intend to continue to live in **your** household.

6. **Sound system** means any device permanently installed inside **your** insured **auto** by bolts, brackets, or other similar means designed for:
   a. voice or video transmission, or for voice or video reception; or
   b. recording or playing back recorded material; or
   c. supplying power to cellular or similar telephone equipment,

   and which is permanently installed in a location other than the one designed by the **auto's** manufacturer for that device.

A **sound system** also includes antennas or other apparatus in or on **your insured auto** used specifically with that system, if permanently installed. Apparatus does not include sound reproducing media such as compact discs or cassette tapes. A **sound system** does not include any equipment that is externally exposed except for antennas.

7. **Travel-trailer** means a trailer of the house, cabin or camping type equipped or used as a living quarters.

8. **Utility auto** means an **auto** of the pick-up body, sedan delivery or panel truck type. This **auto** must have a gross vehicle weight of 10,000 pounds or less, according to manufacturer's specifications.

9. **You** or **Your** means the policyholder named on the Policy Declarations and that policyholder's **resident** spouse.

10. **Custom parts or equipment** means equipment, devices, accessories, enhancements, and changes, other than those offered by the manufacturer of the **auto** specifically for that model, or installed by the auto dealership when new as part of the original sale, which alter the appearance or performance of an **auto**. This does not include items designed for assisting disabled persons or items covered under **Sound System Coverage.**

Exclusions – What Is Not Covered

These coverages do not apply to:

1. loss caused intentionally by or at the direction of an insured person.

2. any **auto** used for the transportation of people or property for a fee. This exclusion does not apply to shared-expense car pools.

3. any damage or loss resulting from any act of war, insurrection, rebellion or revolution.

4. loss to any non-owned **auto** used in auto business operations such as repairing, servicing, testing, washing, parking, storing or selling of **autos**.

5. loss due to radioactive contamination.

6. damage resulting from wear and tear, freezing, mechanical or electrical breakdown unless the damage is the burning of wiring used to connect electrical components, or the result of other loss covered by this policy.

7. tires unless stolen or damaged by fire, malicious mischief or vandalism. Coverage is provided if the damage to tires occurs at the same time and from the same cause as other loss covered by this policy.

8. loss to any **sound system** within **your auto**. Coverages under this Part also will not apply to any apparatus in or on the **auto** designed for use with that system.

   This exclusion will not apply if **you** have purchased Sound System Coverage.

9. damage or loss to any tapes, compact discs or similar items. This exclusion will not apply if **you** purchased Tape Coverage under this policy.

10. damage or loss to a **camper unit** whether or not mounted. This exclusion will not apply if the **camper unit** is described on the Policy Declarations.

11. damage or loss to appliances, furniture, equipment and accessories that are not built into or forming a permanent part of a **motor home** or a **travel-trailer**.

12. damage or loss to **your motor home** or **your travel-trailer** while rented to anyone else unless a specific premium is shown on the Policy Declarations for the rented vehicle,

13. loss or damage arising out of the participation in any prearranged, organized, or spontaneous:
    a. racing contest;
    b. speed contest; or

c. use of a **motor vehicle** at a track or course designed or used for racing or high performance driving,

or in practice or preparation for any contest or use of this type.

14. damage or loss to home, office, store, display, or passenger trailers, or **travel-trailers**. This exclusion will not apply if the item is described on the Policy Declarations.

15. damage or loss to any device that is designed for the detection of radar or laser.

16. damage or loss to any custom furnishings or equipment in or upon any **auto** or **utility auto**. Custom furnishings include, but are not limited to:
    a. Special carpeting and insulation, furniture, bars or television receivers;
    b. Facilities for cooking and sleeping;
    c. Height extending roofs; or custom murals, paintings, or other decals or graphics.

17. loss to any **custom parts or equipment** designed for racing which is installed in or upon **your insured auto**. This includes, but is not limited to, nitrous oxide systems, roll cages, and air intake modifications.

Right To Appraisal

Both **you** and **us** have a right to demand an appraisal of the loss. Each will appoint and pay a qualified appraiser. Other appraisal expenses will be shared equally. The two appraisers, or a judge of a court of record, will choose an umpire. Each appraiser will state the actual cash value and the amount of loss. If they disagree, they will submit their differences to the umpire. A written decision by any two of these three persons will determine the amount of the loss.

Payment Of Loss By Us

We may pay for the loss in money, or may repair or replace the damaged or stolen property. **We** may, at any time before the loss is paid or the property is replaced, return at **our** own expense any stolen property, either to **you** or at **our** option to the address shown on the Policy Declarations, with payment for any resulting damage. **We** may take all or part of the property at the agreed or appraised value. **We** may settle any claim or loss either with **you** or the owner of the property.

Limits Of Liability

Our limit of liability is the least of:

1. the actual cash value of the property or damaged part of the property at the time of the loss, which may include a deduction for depreciation; or

2. the cost to repair or replace the property or part to its physical condition at the time of loss using parts produced by or for the vehicle's manufacturer, or parts from other sources, including, but not limited to, non-original equipment manufacturers, subject to applicable state laws and regulations; or

3. $500, if the loss is to a covered trailer not described on the Policy Declarations.

Any applicable deductible amount is then subtracted.

If **we**, at its option, elects to pay for the cost to repair or replace the property or part, **our** liability does not include any decrease in the property's value, however measured, resulting out of the loss and/or repair or replacement. If repair or replacement results in the betterment of the part, **you** may be responsible, subject to applicable state laws and regulations, for the amount of the betterment.

The maximum **we** will pay for a covered loss to any **custom parts or equipment** is $1000.

An **auto** and attached trailer are considered separate **autos**, and **you** must pay the deductible, if any, on each. Only one deductible will apply to an **auto** with a mounted **camper unit**. If unmounted, a separate deductible will apply to the **auto** and **camper unit**.

When more than one coverage is applicable to the loss, **you** may recover under the broadest coverage but not both. However, any Sound System Coverage deductible will always apply.

If There Is Other Insurance

If there is other insurance covering the loss at the time of the accident, **we** will pay only **our** share of any damages. **Our** share is determined by adding the limits of this insurance to the limits of all other insurance that applies on the same basis and finding the percentage of the total that **our** limits represent.

When this insurance covers a substitute **auto** or non-owned **auto, we** will pay only after all other collectible insurance has been exhausted.

When this insurance covers a replacement **auto** or additional **auto,** this policy will not apply if **you** have other collectible insurance.

Lease Or Loan Gap Coverage is excess over any other collectible insurance.

Action Against Us

No one may bring an action against **us** in any way related to the existence or amount of coverage, or the amount of loss for which coverage is sought, under **Part 4—Protection Against Loss to The Auto,** unless there is full compliance with all policy terms and such action is commenced within one year after the date of loss.

Subrogation Rights

When **we** pay, **your** rights of recovery from anyone else become **ours** up to the amount **we** have paid. **You** must protect these rights and help **us** enforce them.

What You Must Do If There Is A Loss

1. As soon as possible any person making claim must give **us** written proof of loss. It must include all details reasonably required by **us. We** have the right to inspect the damaged property. **We** may require any person making claim to file with **us** a sworn proof of loss. **We** may also require that person to submit to examinations under oath.

2. Protect the **auto** from further loss. **We** will pay reasonable expenses to guard against further loss. If **you** do not protect the **auto,** further loss is not covered.

3. Report all theft losses promptly to the police.

Loss Payable Clause

If a Lienholder and/or Lessor are shown on the Policy Declarations, **we** may pay loss or damage under this policy to **you** and the Lienholder and/or Lessor as its interest may appear, except:

1. Where fraud, misrepresentation, material omission, or intentional damage has been committed by or at the direction of **you.**

2. When the vehicle(s) is intentionally damaged, destroyed or concealed by or at the direction of **you** or any owner.

3. When **you** or any owner makes fraudulent statement(s) or engages in fraudulent conduct in connection with any accident or loss for which coverage is sought.

The Lienholder and/or Lessor must notify **us** of any change in ownership or hazard that is known.

If **you** or any owner fails to render proof of loss within the time granted in the policy, the Lienholder and/or Lessor must do so within sixty days in the form and manner described in the policy. The Lienholder and/or Lessor are subject to the provisions of the policy relating to appraisal, time of payment and bringing suit.

We may cancel this policy according to its terms. **We** will notify the Lienholder and/or Lessor at least ten days prior to the date of cancellation that the cancellation is effective as to the interest of the Lienholder and/or Lessor. Whenever **we** pay the Lienholder and/or Lessor any sum for loss or damage under this policy, **we** will be subrogated to the extent of payment to the rights of the party to whom payment was made. However, these subrogation provisions must in no way impair the rights of the Lienholder and/or Lessor to recover the full amount of its claim from the insured.

The Lienholder and/or Lessor have no greater rights under the provisions of the policy than the insured.

Policy Endorsement

Allstate.
You're in good hands.

The following endorsement changes your policy.
Please read this document carefull

Amendatory Endorsement – AP4838-1

In the **General** section, the **Loss Reduction And Other Items** provision is added:

Loss Reduction And Other Items
From time to time and at **our** sole discretion:

1. **we** may provide **you**, or allow others to provide **you**, with:
   a) items, memberships, special offers, merchandise, points, rewards, airline miles, services, classes, seminars, or other things of value designed to help **you** or other persons insured under this policy manage the risks **you** or they face, including, but not limited to, loss reduction or safety-related items; or

   b) items, memberships, special offers, merchandise, points, rewards, airline miles, services, classes, seminars, or things of any other type that **we** think may be of value to **you** or someone else insured under this policy.

2. **we** may make, or allow others to make, one or more of the following: charitable contributions, donations, or gifts.

These items, memberships, special offers, merchandise, points, rewards, airline miles, services, classes, seminars, charitable contributions, donations, gifts, or other things of value may be provided in any form, including, but not limited to, redemption codes, coupons and vouchers, and will not exceed $75.00 per policy per policy term. At no point shall these things of value be provided in the form of cash or cash equivalents.

All other policy terms and conditions apply.

Policy Endorsement
Policy number:
Policy effective date:

Allstate
You're in good hands.

The following endorsement changes your policy. Please read this document carefully and keep it with your policy.

Claim Satisfaction Guarantee Amendatory Endorsement - AP4878

Claim Satisfaction Guarantee Premium Credit Eligibility Requirements
You are eligible to receive a credit under the Claim Satisfaction Guarantee Premium Credit provision below, if the following credit eligibility requirements are met:

1. **you** are dissatisfied for any reason with any aspect of the claims experience for a loss covered under **your** policy;
2. **your** policy is in force on the date of that covered loss;
3. the Claim Satisfaction Guarantee Amendatory Endorsement applied to **your** policy on the date of that covered loss;
4. **we** have made a payment to **you** or on **your** behalf for that covered loss;
5. **you** have not previously received a credit or payment under the Claim Satisfaction Guarantee Premium Credit provision in connection with that covered loss;
6. **you** have not previously received a credit or payment under the Claim Satisfaction Guarantee Premium Credit provision in connection with another covered loss occurring during the same policy period involving the same vehicle; and
7. **you** have provided notice of **your** dissatisfaction with the claims experience to **us** within 180 days of the date of that covered loss. The notice that **you** submit must include **your** name, address, claim number, date of loss, phone number and the reason that **you** are dissatisfied with the claims experience. The required notice must be submitted via first class mail to **our** Customer Care Center at the following address: Allstate Insurance, CSG, P.O. Box 11904, Roanoke, VA 24022-9933; or by other means made available by **us** for the express purpose of receiving notices of dissatisfaction pursuant to this endorsement.

Claim Satisfaction Guarantee Premium Credit
We will give **you** a premium credit after **you** have met all of the Claim Satisfaction Guarantee Premium Credit Eligibility Requirements listed above. The credit will be in an amount equal to the six month premium listed on the Policy Declarations at the time of the covered loss for the vehicle listed on **your** Policy Declarations that was involved in the covered loss. If no vehicle listed on the Policy Declarations was involved in the covered loss, the premium credit will be equal to the premium for the vehicle listed on the Policy Declarations with the lowest premium amount.

If **your** policy has been in effect for more than six months at the time **we** receive **your** notice of dissatisfaction, the Claim Satisfaction Guarantee Premium Credit will be applied to **your** current policy period; however, if a premium credit amount exceeds the amount necessary to pay **your** policy period premium in full, **we** will either apply the remaining credit to **your** next policy period premium or **we** will pay **you** the remainder via check, at **our** discretion.

If **your** policy has been in effect for less than six months at the time **we** receive **your** notice of dissatisfaction, the Claim Satisfaction Guarantee Premium Credit will be applied to **your** policy renewal premium (if the premium credit amount exceeds **your** policy renewal premium, **we** will either apply the remaining premium credit to the next policy period premium or **we** will pay you the remainder via check during the policy renewal period, at **our** discretion); however, if **your** policy is cancelled during the policy period in which a covered loss occurred, the premium credit under this endorsement will not exceed the prorated premium charged by Allstate for the applicable vehicle for the policy period, nor will it exceed the total premium **you** actually paid for the policy period for all vehicles on the policy.

Our concurrence with any reasons **you** state for **your** dissatisfaction is not a condition of the Claim Satisfaction Guarantee Premium Credit Eligibility Requirements, and **our** provision of a premium credit under this endorsement does not mean that **we** agree with any reasons **you** stated for **your** dissatisfaction.

This endorsement will not apply to **your** policy for any policy periods effective June 1, 2017 or after.

All other policy terms and conditions apply.

Policy Endorsement

The following endorsement changes your policy. Please read this document carefully and keep it with your policy.

Dividend Provision— PDU79

You shall be entitled to participate in a distribution of any surplus of **Allstate** to the extent and upon the conditions fixed and determined from time to time by its Board of Directors in accordance with the provisions of any applicable laws and regulations.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Jocelyn Newman, Circuit Judge

Case No. 2017-CP-40-3520

Clayton M. Somers,

Appellant,

v.

Darrell W. Harper,

Respondent.

NOTICE OF APPEAL

Clayton M. Somers appeals the Order of the Honorable Jocelyn Newman dated November 20, 2019, and the Order denying Appellant's Motion to Alter and/or Amend Judgment. Appellant received written notice of entry of the order denying his Motion to Alter and/or Amend on January 14, 2020.

January 31, 2020

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Jocelyn Newman, Circuit Judge

Case No. 2020-000160

Clayton M. Somers,

Appellant,

v.

Darrell W. Harper,

Respondent.

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Jul 27 2020
SC Court of Appeals

CERTIFICATE OF COUNSEL

The undersigned counsel certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

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July 27, 2020
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